

**ORDINANCE NO. 2006-8-10**

**AN ORDINANCE OF THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AMENDING AND EXTENDING THE EXISTING GAS FRANCHISE BETWEEN THE CITY AND ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, TO PROVIDE FOR A DIFFERENT CONSIDERATION; PROVIDING FOR NEW EXPIRATION DATES; PROVIDING FOR ACCEPTANCE BY ATMOS ENERGY CORPORATION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS**, on November 23, 1992, the City Council of the City of Plano ("City") finally passed and approved Ordinance 92-11-50 granting a gas franchise to Lone Star Gas Company to own, operate, and maintain a gas distribution system in City; and,

**WHEREAS**, Atmos Energy Corporation ("Atmos") is a successor in interest to Lone Star Gas Company and the current holder of this gas franchise which would expire on December 23, 2007;

**WHEREAS**, the City and Atmos desire to amend said Ordinance to provide for a different consideration;

**WHEREAS**, the City and Atmos desire to extend the Ordinance, as amended, until December 31, 2012;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1.** The existing gas franchise ordinance between the City and Atmos is amended as follows:

- A. Effective January 1, 2007, the consideration payable by Atmos for the rights and privileges granted to Atmos by the franchise ordinance heretofore duly passed and amended by the governing body of this City and duly accepted by Atmos is hereby changed to be four percent (4%) of the Gross Revenues, as defined in Section 1.B. below, received by Atmos.
- B. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by Atmos from or in connection with the operation of the System within the corporate limits of the City and including:
  - (1) all revenues received by Atmos from the sale of gas to all classes of customers within the City (excluding revenues gas sold to another gas utility in the City for resale to its customers within City);
  - (2) all revenues received by Atmos from the transportation of gas through the

System of Atmos within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);

- (3) the value of gas transported by Atmos for Transport Customers through the System of Atmos within the City ("Third Party Sales")(excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos' monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and
- (4) "Gross revenues" shall also include:
  - (a) other revenues derived from the following 'miscellaneous charges':
    - i. charges to connect, disconnect, or reconnect gas within the City;
    - ii. charges to handle returned checks from consumers within the City;
    - iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
    - iv. contributions in aid of construction ("CIAC");
  - (b) revenues billed but not ultimately collected or received by Atmos; and
  - (c) gross receipts fees.
- (5) "Gross revenues" shall not include:
  - (a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of Atmos;
  - (b) sales taxes;
  - (c) any interest income earned by Atmos; and
  - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's rights of way.

- C. The provisions of this Section 1 shall apply only to calculation of the amount of the franchise fee to be paid and do not apply to any other franchise fee payment provisions, including without limitation the timing or recovery of such payments.

**SECTION 2.** The term granted by Ordinance 92-11-50 is hereby extended for an additional five (5) years expiring on December 31, 2012. Unless notice of intent to renegotiate is given in writing by either party 180 days prior to the expiration date, the term of the franchise agreement shall be renewed for an additional term of five (5) years on the same terms and conditions as previously agreed to by the parties in Ordinance 92-11-50, as subsequently amended. If written notice of intent to renegotiate is not given by either party as set forth herein, the franchise agreement shall end on December 31, 2017.

**SECTION 3.** In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed and amended by the governing body of the City and duly accepted by Atmos or Atmos' predecessors in interest, shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided herein.

**SECTION 4.** In order to accept this amendment, Atmos must file with the City Secretary its written acceptance of this ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

**SECTION 5.** It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

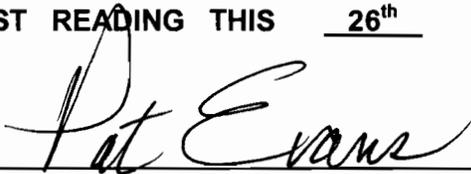
**SECTION 6.** All provisions of the Code of Ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**SECTION 7.** It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

**SECTION 8.** This Ordinance shall be read at two separate regular meetings of the City Council of the City of Plano with the second meeting to be at least 30 days from the first reading, and shall be published once each week for four consecutive weeks in the official newspaper of the City of Plano.

**SECTION 9.** This Ordinance shall become effective 30 days after its final passage and publication as required by City Charter and conditioned upon Atmos executing the written acceptance of this Ordinance attached hereto prior to the effective date; otherwise this Ordinance shall be null and void.

PASSED AND APPROVED ON FIRST READING THIS 26<sup>th</sup> DAY OF  
June, 2006.

  
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Pat Evans, MAYOR

ATTEST:

  
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Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

  
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Diane C. Wetherbee, CITY ATTORNEY

PASSED AND APPROVED ON SECOND READING THIS 14<sup>th</sup> DAY OF August, 2006.



Pat Evans, MAYOR

ATTEST:



Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

ACCEPTED BY ATMOS ENERGY CORPORATION

By: 

Name: Charles R. Yarbrough #

Title: Vice President

Date: August 17, 2006

**ORDINANCE NO. 2006-8-10**

**AN ORDINANCE OF THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AMENDING AND EXTENDING THE EXISTING GAS FRANCHISE BETWEEN THE CITY AND ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, TO PROVIDE FOR A DIFFERENT CONSIDERATION; PROVIDING FOR NEW EXPIRATION DATES; PROVIDING FOR ACCEPTANCE BY ATMOS ENERGY CORPORATION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS**, on November 23, 1992, the City Council of the City of Plano ("City") finally passed and approved Ordinance 92-11-50 granting a gas franchise to Lone Star Gas Company to own, operate, and maintain a gas distribution system in City; and,

**WHEREAS**, Atmos Energy Corporation ("Atmos") is a successor in interest to Lone Star Gas Company and the current holder of this gas franchise which would expire on December 23, 2007;

**WHEREAS**, the City and Atmos desire to amend said Ordinance to provide for a different consideration;

**WHEREAS**, the City and Atmos desire to extend the Ordinance, as amended, until December 31, 2012;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, COLLIN COUNTY, TEXAS, THAT:**

**SECTION 1.** The existing gas franchise ordinance between the City and Atmos is amended as follows:

- A. Effective January 1, 2007, the consideration payable by Atmos for the rights and privileges granted to Atmos by the franchise ordinance heretofore duly passed and amended by the governing body of this City and duly accepted by Atmos is hereby changed to be four percent (4%) of the Gross Revenues, as defined in Section 1.B. below, received by Atmos.
- B. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by Atmos from or in connection with the operation of the System within the corporate limits of the City and including:
  - (1) all revenues received by Atmos from the sale of gas to all classes of customers within the City (excluding revenues gas sold to another gas utility in the City for resale to its customers within City);
  - (2) all revenues received by Atmos from the transportation of gas through the

System of Atmos within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);

(3) the value of gas transported by Atmos for Transport Customers through the System of Atmos within the City ("Third Party Sales")(excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos' monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and

(4) "Gross revenues" shall also include:

(a) other revenues derived from the following 'miscellaneous charges':

i. charges to connect, disconnect, or reconnect gas within the City;

ii. charges to handle returned checks from consumers within the City;

iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and

iv. contributions in aid of construction ("CIAC");

(b) revenues billed but not ultimately collected or received by Atmos; and

(c) gross receipts fees.

(5) "Gross revenues" shall not include:

(a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of Atmos;

(b) sales taxes;

(c) any interest income earned by Atmos; and

(d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's rights of way.

C. The provisions of this Section 1 shall apply only to calculation of the amount of the franchise fee to be paid and do not apply to any other franchise fee payment provisions, including without limitation the timing or recovery of such payments.

**SECTION 2.** The term granted by Ordinance 92-11-50 is hereby extended for an additional five (5) years expiring on December 31, 2012. Unless notice of intent to renegotiate is given in writing by either party 180 days prior to the expiration date, the term of the franchise agreement shall be renewed for an additional term of five (5) years on the same terms and conditions as previously agreed to by the parties in Ordinance 92-11-50, as subsequently amended. If written notice of intent to renegotiate is not given by either party as set forth herein, the franchise agreement shall end on December 31, 2017.

**SECTION 3.** In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed and amended by the governing body of the City and duly accepted by Atmos or Atmos' predecessors in interest, shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided herein.

**SECTION 4.** In order to accept this amendment, Atmos must file with the City Secretary its written acceptance of this ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

**SECTION 5.** It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

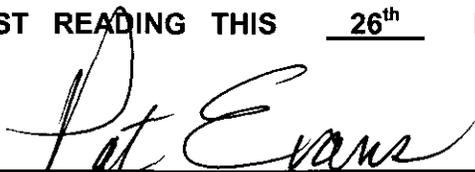
**SECTION 6.** All provisions of the Code of Ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**SECTION 7.** It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

**SECTION 8.** This Ordinance shall be read at two separate regular meetings of the City Council of the City of Plano with the second meeting to be at least 30 days from the first reading, and shall be published once each week for four consecutive weeks in the official newspaper of the City of Plano.

**SECTION 9.** This Ordinance shall become effective 30 days after its final passage and publication as required by City Charter and conditioned upon Atmos executing the written acceptance of this Ordinance attached hereto prior to the effective date; otherwise this Ordinance shall be null and void.

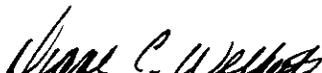
PASSED AND APPROVED ON FIRST READING THIS 26<sup>th</sup> DAY OF June, 2006.

  
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Pat Evans, MAYOR

ATTEST:

  
\_\_\_\_\_  
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

PASSED AND APPROVED ON SECOND READING THIS 14<sup>th</sup> DAY OF August, 2006.

  
\_\_\_\_\_  
Pat Evans, MAYOR

ATTEST:

  
\_\_\_\_\_  
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

ACCEPTED BY ATMOS ENERGY CORPORATION

By:   
\_\_\_\_\_

Name: Charles R. Yarbrough

Title: Vice President

Date: August 17, 2006

**ORDINANCE NO. 2003-2-11**

**AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING ORDINANCE NO. 92-11-50, THE EXISTING GAS FRANCHISE BETWEEN THE CITY OF PLANO AND TXU GAS COMPANY, TO CLARIFY REVENUES SUBJECT TO THE FRANCHISE FEE, TO PROVIDE FOR PAYMENT DUE DATES, AND TO AUTHORIZE THE LEASE OF FACILITIES WITHIN THE CITY'S RIGHTS-OF-WAY; PROVIDING FOR ACCEPTANCE BY TXU GAS COMPANY; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS**, TXU Gas Company ("TXU Gas"), through its TXU Gas Distribution Division, engages in the business of furnishing and supplying gas to the general public in the City of Plano, Texas;

**WHEREAS**, in the course of its business, TXU Gas uses the public streets, alleys, grounds and rights-of-way within the City for the transportation, delivery, sale, and distribution of gas in, out of, and through the City under the terms of Ordinance No. 92-11-50, duly passed by the City Council of the City of Plano on November 23, 1992, and duly accepted by TXU Gas ("Franchise Ordinance");

**WHEREAS**, the City and TXU Gas desire to amend said Franchise Ordinance to clarify the revenues subject to the franchise fee, to provide payment due dates, and to authorize the lease of facilities within the City's rights-of-way; and

**WHEREAS**, the City Council finds that such amendments to said Franchise Ordinance would benefit the City.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, ORDAINS THAT:**

**Section I.** The City Council hereby amends Section IX of Ordinance No. 92-11-50 to include the following language verbatim:

- A. Effective January 1, 2002, the consideration payable by TXU Gas for the rights and privileges granted to TXU Gas by Ordinance No. 92-11-50 is four percent (4%) of the Gross Revenues, as defined in Section B below, received by TXU Gas.
- B. "Gross Revenues" is all revenue derived or received, directly or indirectly, by TXU Gas from or in connection with the operation of the System within the corporate limits of the City, including without limitation:
  - (1) all revenues received by TXU Gas from the sale of gas to all classes of customers within the City;

- (2) all revenues received by TXU Gas from the transportation of gas through the pipeline system of TXU Gas within the City to customers located within the City;
- (3) the value of gas transported by TXU Gas for Transport Customers through the system of TXU Gas within the City ("Third Party Sales"), with the value of such gas to be reported by each Transport Customer to TXU Gas, provided, however, that should a Transport Customer refuse to furnish TXU Gas its gas purchase price, TXU Gas shall estimate same by utilizing TXU Gas Distribution's monthly industrial Weighted Average Cost of Gas, as reasonably near the time as the transportation service is performed; and
- (4) other revenues derived from the following 'miscellaneous charges':
  - i. charges to connect, disconnect, or reconnect gas within the City;
  - ii. charges to handle returned checks from consumers within the City;
  - iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
  - iv. contributions in aid of construction ("CIAC");
- (5) revenues billed but not ultimately collected or received by TXU Gas; and
- (6) gross receipts fees.

C. "Gross revenues" shall not include:

- (a) the revenue of any Person, including an affiliate, to the extent that such revenue is also included in Gross Revenues of the TXU Gas;
- (b) sales taxes;
- (c) any interest income earned by TXU Gas; and

- (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's rights-of-way.

**D. Calculation and Payment of Franchise Fees Based on CIAC**

- (1) The franchise fee amounts based on "Contributions In Aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.
- (2) The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year.

**E. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by TXU Gas**

- (1) If after the effective date of this Ordinance TXU Gas enters into a new municipal franchise agreement or renews an existing municipal franchise agreement with another municipality, which agreement provides for a calculation of franchise fees for use of the public rights-of-way that, if applied to the City, would result in a greater amount of franchise fees owed the City than under this franchise ordinance, then TXU Gas agrees to increase the franchise fee paid to the City to equal the amount due and payable under the franchise fee provisions of the more favorable franchise agreement.
- (2) The provisions of this Subsection E apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments.

**F. TXU Gas Franchise Fee Recovery Tariff**

- (1) TXU Gas may file with the City a tariff amendment(s) to provide for the recovery of the franchise fees under this amendment.
- (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of TXU Gas' rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of TXU Gas' franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by TXU Gas and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has

intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by TXU Gas.

- (3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by TXU Gas.

**G. Lease of Facilities Within City's Rights-of-Way.**

TXU Gas will have the right to lease, license, or otherwise grant to a party other than TXU Gas the use of its facilities within the City's public rights-of-way provided: (i) TXU Gas first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) TXU Gas makes the franchise fee payment due on the revenues from such lease pursuant to Sections A and B of this Ordinance. This authority to lease facilities within the City's rights-of-way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

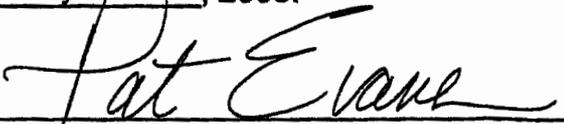
**Section II.** Except as specifically and expressly amended by this Ordinance, Ordinance No. 92-11-50 will remain in full force and effect according to its terms until said Ordinance terminates as provided therein.

**Section III.** The City Council hereby repeals all provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance. All other provisions of City of Plano ordinances, codified or uncodified, not in conflict with the provisions of this Ordinance, remain in full force and effect.

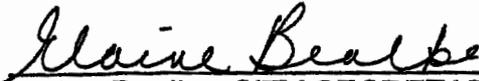
**Section IV.** The City Council intends that this Ordinance, and every provision hereof, is severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance will not affect the validity or constitutionality of any other portion of this Ordinance.

**Section V.** The repeal of any ordinance or part of any ordinance affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this Ordinance.

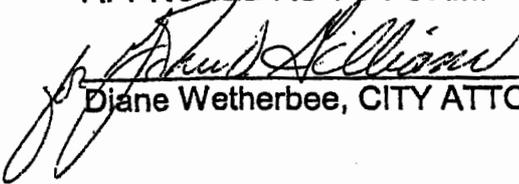
**PASSED AND APPROVED ON FIRST READING** by the City Council of the City of Plano, Texas, on the 6th day of January, 2003.

  
Pat Evans, MAYOR

ATTEST:

  
Elaine Bealke, CITY SECRETARY

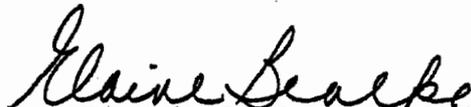
APPROVED AS TO FORM:

  
Diane Wetherbee, CITY ATTORNEY

**FINALLY PASSED AND APPROVED ON SECOND READING** by the City Council of the City of Plano, Texas, on the 10th day of February, 2003.

  
Pat Evans, MAYOR

ATTEST:

  
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

  
Diane Wetherbee, CITY ATTORNEY

DATED:

First Reading: January 6, 2003

Second Reading: February 10, 2003

**ACCEPTANCE**

**WHEREAS**, the City Council of the City of Plano, Texas, did on the 8<sup>th</sup> day of March, 2003, enact an Ordinance entitled:

**AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING ORDINANCE NO. 92-11-50, THE EXISTING GAS FRANCHISE BETWEEN THE CITY OF PLANO AND TXU GAS COMPANY, TO CLARIFY REVENUES SUBJECT TO THE FRANCHISE FEE, TO PROVIDE FOR PAYMENT DUE DATES, AND TO AUTHORIZE THE LEASE OF FACILITIES WITHIN THE CITY'S RIGHTS-OF-WAY; PROVIDING FOR ACCEPTANCE BY TXU GAS COMPANY; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE; and**

**WHEREAS**, said Ordinance was on the 10<sup>th</sup> day of February, 2003, duly approved by the Mayor of said City and, the Seal of said City was thereto affixed and attested by the City Secretary.

**NOW THEREFORE**, in compliance with the terms of said Ordinance as enacted, approved and attested, TXU Gas Distribution, a division of TXU Gas Company, hereby accepts said Ordinance and files this written acceptance with the City Secretary of Plano, Texas in her office.

Dated this 4<sup>th</sup> day of March, 2003.

TXU Gas Distribution  
A division of TXU Gas Company

BY: [Signature]

(Signature)

Richard A. Erskine

(Print name)

Vice President

(Title)

Acceptance filed in the office of the City Secretary of Plano, Texas this day of March 11, 2003.

[Signature]  
City Secretary

ORDINANCE NO. 95-1-31

AN ORDINANCE AMENDING AND MODIFYING ORDINANCE NO. 92-11-50 FINALLY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF PLANO ON NOVEMBER 23, 1992, WHICH GRANTED A FRANCHISE TO LONE STAR GAS COMPANY TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF PLANO; PROVIDING FOR THE AMENDMENT OF SECTION IX DEALING WITH THE METHOD OF PAYING COMPENSATION TO THE CITY PURSUANT TO THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

oooOooo

WHEREAS, Lone Star Gas Company, a Division of ENSERCH Corporation, currently has a franchise in the City of Plano which authorizes said company to supply the citizens of Plano with natural gas through the Company's distribution system; and

WHEREAS, Lone Star Gas Company, a Division of ENSERCH Corporation, and the City of Plano desire to amend the existing franchise ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO:

SECTION 1. That Section IX of Ordinance No. 92-11-50 is hereby amended by deleting the fourth paragraph of said Section in its entirety and substituting the following therefor:

"Each payment due during the term of this agreement will be made by wire transfer on or before the close of business on the payment due date. If any payment due date required by this agreement falls on a weekend or declared bank holiday, payment shall be made by wire transfer on or before the close of business of the last working day prior to the payment due date. Payment shall be considered timely made if Company requests the wire transfer by the wire transfer deadline of its bank on the payment due date."

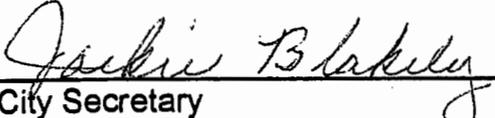
SECTION 2: Except as heretofore and hereinabove changed and amended, the terms, provisions, conditions, and requirements of the aforesaid ordinance shall remain in full force and effect.

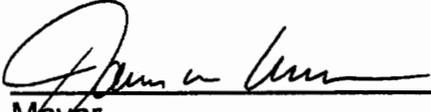
SECTION 3: This amendatory ordinance shall become effective thirty (30) days after its final passage, providing that Company has filed its written acceptance of the provisions of this ordinance with the City Secretary prior to the effective date.

PASSED AND APPROVED on first reading on this the 27th day of December, A.D. 1994.

FINALLY PASSED AND APPROVED on second reading on this the 23rd day of January, A.D. ~~1994~~ 95

ATTEST:

  
\_\_\_\_\_  
City Secretary

  
\_\_\_\_\_  
Mayor  
City of Plano, Texas

APPROVED AS TO FORM:

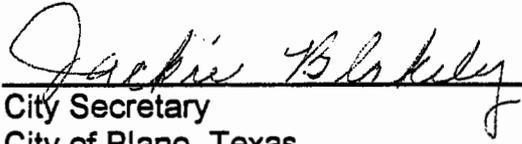
  
\_\_\_\_\_  
City Attorney

STATE OF TEXAS  
COUNTIES OF DENTON AND COLLIN  
CITY OF PLANO

§  
§  
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I, Jackie Blakely, City Secretary of the City of Plano, Denton and Collin Counties, Texas, do hereby certify that the above and foregoing is a true and correct copy of an amendatory ordinance passed by the City Council of the City of Plano, Texas, on final reading at a Regular session, held on the 23rd day of January, 1995, as it appears of record in the Minutes in Book Jan-June, '95 page \_\_\_\_\_.

WITNESS MY HAND AND SEAL OF SAID CITY this the 23rd day of January, A. D. 1995.

  
\_\_\_\_\_  
City Secretary  
City of Plano, Texas

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ORDINANCE NO. 92-11-50

**AN ORDINANCE OF THE CITY OF PLANO, TEXAS, GRANTING TO LONE STAR GAS COMPANY, A DIVISION OF ENSERCH CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF PLANO, COLLIN AND DENTON COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN AND OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES AND ORDINANCES IN CONFLICT HERewith; PROVIDING A SEVERABILITY CLAUSE, A PENALTY CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS** a previous ordinance of the City of Plano, Texas, passed and approved by the City Council of the City of Plano on the 12th day of January, 1976, which granted unto Lone Star Gas Company, a division of ENSERCH Corporation, its successors and assigns, a franchise for the construction and operation of a gas distribution plant or system in the City of Plano expired by its own terms on February 11, 1991; and,

**WHEREAS** the City Council of the City of Plano, Texas is desirous of entering into a new franchise agreement and passing a new franchise ordinance granting to Lone Star Gas Company, a division of ENSERCH Corporation, its successors and assigns, a franchise to furnish and supply gas to the general public in the City of Plano, and for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS:**

**Section I.** That the City of Plano, Texas, herein called "City," hereby grants to Lone Star Gas Company, a division of ENSERCH Corporation, hereinafter called "Company," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public places, public thoroughfares, and grounds of the City for the purpose of laying, maintaining, constructing, operating, and replacing therein and thereon pipe lines and all other appurtenant equipment needed and necessary to deliver gas in, out of, and through said City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits, said consent being granted for a term of fifteen (15) years from and after the date that this ordinance shall become effective.

**Section II.** Company shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment so as to interfere as little as possible with traffic and shall promptly clean up and restore to an approximate original condition, at its cost, all thoroughfares and other surfaces which it may disturb. The location of all mains, pipes, laterals, and other appurtenant equipment shall be consistent with Ordinances and regulations of the City as may be, from time to time, amended or revised by any subsequent Ordinance. A permit shall be obtained from the City of Plano prior to the initiation of any construction, repair, replacement, or other act within the streets, alleys, and public ways of the City.

In the event of an emergency repair, the City shall be notified as soon as possible, repairs shall be performed by the Company, and any permit or formal notice to City delivered by no later than the end of the next following working day, or as prescribed by any Ordinance or regulation governing such incidents.

Company shall within a reasonable time, or as required by any Ordinance or Ordinances which may direct such timeliness, repair, clean up and restore, to an approximate original condition, all streets, alleys, landscaped and grassed areas, or any other improvements existing in or on the streets, alleys, and public ways of the City disturbed during the construction or repair of its gas distribution system. Erosion and sedimentation shall be controlled in accordance with Ordinances and regulations of the City or subsequent revisions as may be, from time to time, amended or revised by any subsequent Ordinance. Permanent erosion control shall be required upon completion of all work with the streets, alleys, and public ways of the City.

When the Company is required to relocate its mains, laterals, and other facilities to accommodate construction, and the relocation is the result of construction or improvement to the Federal-Aid System (or any successor thereto), and Company is eligible for reimbursement for its costs and expenses incurred as a result of such construction and improvement from the Federal Government or the State of Texas, as permitted by law pursuant to any reimbursement program, and City requests reimbursement for costs and expenses incurred as a result of such construction or

improvement, Company costs and expenses shall be included within any such application for reimbursement, provided that Company submits the appropriate documentation to City prior to such application. City shall make a reasonable effort to provide sufficient notice to the Company to allow the submittal of appropriate cost information to the City.

**Section III.** When Company shall make or cause to be made excavations or shall place obstructions in any street, alley, or other public place, the public shall be protected by barriers and lights reasonably necessary to warn members of the public of the hazardous conditions and to protect their safety; said barriers and lights to be erected and maintained by Company, consistent with Ordinances and regulations of the City as may be, from time to time, amended or revised by any subsequent Ordinance.

In consideration of the granting of this franchise, Company agrees that City shall not be liable or responsible for, and Company does hereby release, agree to indemnify and keep harmless City from and against all suits, actions, or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by the construction, operation, or maintenance of the gas distribution plant or system of Company, except that this indemnity and hold harmless agreement shall not apply to any situation wherein City is solely liable for the actions, suits, or claims of injury or damage brought against it. In the event that any action, suit, or proceeding is brought against City upon any liability arising out of the construction, operation, or maintenance of the Gas Distribution Plant or system of Company as aforesaid, City shall give notice in writing to Company by registered or certified mail. Upon receipt of such notice, the Company, at its own expense, shall defend such action and take all such steps as may be necessary or proper to prevent the obtaining of a Judgment against the said City and/or to satisfy said Judgment. City agrees to cooperate with Company in connection with such defense.

**Section IV.** In addition to the rates charged for gas supplied and transported, Company may make and enforce reasonable charges, rules, and regulations for service

rendered in the conduct of its business, including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract therefor. However, all such charges, rules, and regulations, involving any consumer of gas within the corporate limits of the City shall be subject to regulation, supervision, and approval by the City Council of the City of Plano as appropriate. Company shall have the right to contract with each customer, if customer so desires, with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the Company's main in the streets or alleys to and throughout the consumer's premises. Company shall own, operate, and maintain all service lines, which are defined as the supply lines from the Company's main to the consumer's meter where gas is measured by Company. The consumer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the underground supply lines extending from the point of connection with Company's customer meter to the point of connection with consumer's house piping.

**Section V.** Company shall not be required to extend mains on any street more than one hundred (100) feet for any one consumer of gas; provided, however, if the anticipated connected load is calculated to prohibit Company a reasonable return on its investment as may be allowed by statute, law, or regulation, the Company shall have no obligation to extend mains any distance.

**Section VI.** Company shall be entitled to require from each and every consumer of gas, before gas service is commenced, a deposit in an amount calculated pursuant to the Company's Quality of Service Rules as may be in effect during the term of this franchise, and which are incorporated, in their current form within this franchise agreement by reference as if incorporated in full. Said deposit shall be retained and refunded in accordance with such Quality of Service Rules and shall bear interest, as provided in Tex. Rev. Civ. Stat. Ann. art. 1440a as it may be amended from time to time. Company shall be entitled to apply said deposit with accrued interest, to any indebtedness owed Company by the consumer making the deposit.

**Section VII.** The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of furnishing gas for light, heat, and power to and for City and the inhabitants thereof. City shall not grant any more favorable conditions, including franchise fee, to any other gas utility franchisee that are granted herein to Company.

**Section VIII.** Company shall furnish adequate and efficient service to the public at fair, just, and reasonable rates and charges therefor; and Company shall maintain its property, equipment, and appliances in good order and condition.

**Section IX.** Company, its successors and assigns, agrees to deliver and pay to City, and City agrees to accept, no later than the 15th day of February, 1993, a sum of money which shall be equivalent to (1) four percent (4%) of the gross receipts received by Company from the sale of gas during the preceding calendar year to all its customers within the corporate limits of said City, (2) a sum of money equal to four percent (4%) of any fees received by the local distribution Company for the transportation of gas from the effective date of this ordinance up to and including December 31, 1992, to customers within the corporate limits of the City, regardless of the origination of the gas within the Company system of lines, and (3) a sum of money equal to four percent (4%) of the customer purchase price of any and all gas transported by the Company to customers within the corporate limits of the City from the effective date of this ordinance up to and including December 31, 1992. Thereafter, Company, its successors and assigns, agrees to deliver and pay to City, and City agrees to accept, not later than the 15th day of February, 1994, and on or before the same day of each succeeding year during the life of this franchise, up to and including the year 2007, a sum of money which shall be equivalent to (1) four percent (4%) of the gross receipts received by Company from the sale of gas during the preceding calendar year to all its customers within the corporate limits of said City, (2) a sum of money equal to four percent (4%) of any fees received by the local distribution Company for the transportation of gas during the preceding calendar year to customers within the corporate limits of the City, regardless of the origination of

the gas within the Company system of lines, and (3) a sum of money equal to four percent (4%) of the customer purchase price of any and all gas transported by the Company to customers within the corporate limits of the City during the preceding calendar year.

Each transportation customer of the Company shall disclose to the Company the purchase price of said gas. Should the transportation customer fail or refuse to disclose or furnish such purchase price to Company, Company shall establish same by utilizing 110% of the Houston Ship Channel index of prices for large packages of gas published each month in Inside FERC's Gas Market Report (or a successor publication or another publication agreed upon by the City and Company) for the period of time the transportation service is performed. Company shall use all due diligence in collecting from customers any and all fees required by this franchise agreement, but shall not be responsible for paying same to the City if the Company's customer refuses to pay. Provided, however, that if the Company's transportation customer refuses to pay the fee imposed on the purchase price of the gas transported, and remains delinquent in payment of such fee for a period greater than thirty days, Company shall be responsible for the uncollected fee on any gas thereafter transported through the rights of way of the City to Company's transportation customer, but in no event shall the customer be relieved of its obligation to reimburse the Company for any fees paid to the City.

The payment herein provided shall be for the period of January 1 through December 31 of the year in which the payment is made, and shall be for the rights and privileges herein granted to Company, including expressly the right to use the streets, alleys, and public ways of said City.

Should any payment due date required by this agreement fall on a weekend or declared bank holiday, payment shall be delivered to City no later than the close of business of the working day prior to any specifically required due date contained within this agreement.

It is expressly agreed that the aforesaid payment shall be in lieu of any payments for the right to use the streets, alleys, and public ways of said City, including expressly,

the charge permitted to be levied by V.T.C.A., Tax Code Secs. 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of all charges for the use of the streets, alleys, and public ways of the City of Plano, the City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such charges.

If the law of the State is changed to provide for a greater charge than that agreed to in this franchise, City may, at its option, notify Company of its desire to amend this franchise and impose such greater charge in lieu of the charge provided for herein.

In order to determine the gross receipts received by Company for those categories identified in the preceding paragraphs of this Section IX, Company agrees that on the same date that payment is made, as provided in the preceding paragraphs of this Section IX, it will file with the City Secretary a sworn copy of a report in a form (Exhibit "A") to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in the preceding paragraphs of this Section IX. City may, if it sees fit, have the books and records of Company examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein.

**Section X.** All Ordinances and parts of Ordinances of the City of Plano, Texas in conflict with the provisions of this Ordinance are hereby repealed.

**Section XI.** The repeal of any Ordinance or part of Ordinance effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any Ordinances at the time of passage of this Ordinance.

**Section XII.** It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

**Section XIII.** The failure of the Company to comply with the terms of this franchise after due notice and hearing and the providing of an adequate time for Company to comply with said terms shall entitle the City to compel compliance by suit in any courts or competent jurisdiction and if, upon final judgment, not subject to further appeal, being entered in favor of the City, Company still fails to comply with the terms of the franchise and said final judgment, the City may compel compliance under penalty of forfeiture hereof, with the City having an option to purchase Company's property located in the City at a reasonable fair value should such forfeiture occur. In the event the City purchases Company's property under penalty of forfeiture and the City and Company cannot agree upon the reasonable fair value of the property, then the reasonable fair value of the Company's property shall be established by a majority vote of three appraisers with one appraiser selected by Company, one appraiser selected by City, and one appraiser selected by the other two appraisers. If the two appraisers are unable to agree upon the third appraiser, then the third appraiser shall be selected by order of a court of competent jurisdiction. The Company further agrees that if for any reason the Company fails to pay the gross receipts charge as provided in this franchise within thirty (30) days following written notice from the City that Company has failed to make said payment, such failure shall be sufficient to permit City to forfeit the franchise without court action.

**Section XIV.** Company agrees that City may, at any time during the term of this agreement, employ at the expense of Company, expert assistance and advice in determining fair, just, and reasonable rates to be charged by Company to its consumers in the corporate limits of City, and in determining the extent to which Company is complying with the terms and conditions of this Ordinance. Company agrees to pay reasonable expenses in connection therewith, or reimburse City for the same, which expense Company shall be entitled to recover through rates and tariffs.

**Section XV.** Should technological, market-driven, regulatory, or similar changes occur in the natural gas industry which create classes or categories of usage different from those enumerated in Section IX. of this Ordinance, or should Company alter the

means, methods, or types of uses of the rights of way of the City, or should the City reasonably believe that the franchise fee provision should be amended in order to not impair the City's ability to receive an adequate franchise fee pursuant to this agreement, then the City may initiate the renegotiation of the franchise fee provision of this Ordinance.

Should the City request a change in the franchise fee provision of this Ordinance, both parties agree to enter into a good faith negotiation. "Good faith", for the purpose of this Ordinance, shall mean an objective, diligent, timely, and responsible discourse on the issue(s) involved and a resolute attempt to settle said issue(s). Should, as a result of renegotiation, City and Company agree to a change in a provision of this Ordinance, the change shall become effective immediately upon passage of an Ordinance by the City Council of the City of Plano and acceptance of the amendment by the Company. Both parties agree that passage and acceptance will be a mandatory act following negotiation and agreement. Company agrees to provide any and all information requested by City to assist in a determination of any changes in conditions, practices, or services provided by Company through the use of the right of way of the City.

**Section XVI.** This franchise ordinance shall become effective thirty (30) days after its final passage, providing that Company has filed with the City Secretary its written acceptance of this franchise ordinance and agreement prior to the effective date.

**PASSED AND APPROVED ON FIRST READING ON THIS THE \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 1992.**

**FINALLY PASSED AND APPROVED ON SECOND READING THIS THE \_\_\_\_  
DAY OF \_\_\_\_\_, 1992.**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY SECRETARY**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**CITY ATTORNEY**