

ORDINANCE NO. 99-024

AN ORDINANCE WHEREBY THE CITY OF DENTON, TEXAS, GRANTS TO COSERV GAS A NON-EXCLUSIVE FRANCHISE TO FURNISH, TRANSPORT, SELL AND DISTRIBUTE GAS TO CUSTOMERS IN DENTON, TEXAS, FOR A PERIOD OF TEN (10) YEARS FOR A FRANCHISE FEE IN THE AMOUNT OF 3% OF REVENUES COLLECTED AND PROVIDING DEFINITIONS; PROVIDING A PAYMENT SCHEDULE AND STATEMENT OF REVENUES; PROVIDING FRANCHISE FEE NOT IN LIEU OF OTHER FEES AND CONTRACT OBLIGATIONS; PROVIDING DEPENDABLE GAS SUPPLY AT LOWEST REASONABLE COSTS; PROVIDING OBLIGATIONS REGARDING COMPANY FACILITIES, LONG-RANGE PLANNING FOR CAPITAL IMPROVEMENT PROJECTS, CITY REVIEW OF CONSTRUCTION AND DESIGN, REQUESTS BY CITY FOR RELOCATION OF COMPANY FACILITIES AND WORK BY OTHERS; PROVIDING FOR CHANGING BOUNDARIES OF CITY AND ABANDONMENT; PROVIDING CITY NOT REQUIRED TO ADVANCE FUNDS; PROVIDING FOR TECHNOLOGICAL IMPROVEMENTS; PROVIDING FOR COMPLIANCE WITH CITY RULES AND REGULATIONS, RAILROAD COMMISSION SPECIFICATIONS AND REGULATIONS, AND ENVIRONMENTAL LAWS; PROVIDING OFFICE LOCATION, REPORTS ON COMPANY OPERATIONS AND ACTIVITIES AND DETAILED BILLS; PROVIDING CITY HELD HARMLESS AND INDEMNIFICATION, NOTICE TO COMPANY, INSURANCE AND BONDS; PROVIDING PAYMENT OF EXPENSES INCURRED BY CITY IN RELATION TO ORDINANCE; PROVIDING RIGHT OF FIRST PURCHASE, RIGHT TO PURCHASE OR CONDEMN, LIMITATIONS OF COMPANY REMOVAL OF FACILITIES, TRANSPORTATION AND PROCUREMENT OF GAS BY CITY AND CURTAILMENT; PROVIDING CIVIL PENALTIES, FORECLOSURE, FORFEITURE AND TERMINATION AND OTHER LEGAL REMEDIES; PROVIDING NO WAIVER, RIGHTS OF SUCCESSORS AND ASSIGNS, REPRESENTATIVES AND NOTICES, SEVERABILITY, ENTIRE AGREEMENT, COMPANY APPROVAL, ANNEXATION TO THE CITY AND THIRD PARTIES; PROVIDING COMPLIANCE WITH CITY CHARTER AND APPLICATION OF TERMS IN COMPETING FRANCHISES; AND PROVIDING AN EFFECTIVE DATE; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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1. DEFINITIONS: For the purpose of this Franchise, the following words and phrases shall have meaning given in this section. When not inconsistent with the context, words used in the present tense include future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this section shall be given their common and ordinary meaning.

"Affiliate" means any entity controlling, controlled by or under common control with the entity in question.

“City” means the municipal corporation designated as the City of Denton and includes the territory as currently is or may in the future be included within the boundaries of the City of Denton.

“City Council” means the legislative body of the City.

“City Manager” means the City Manager of the City of Denton or his designee.

“Company” means CoServ Gas, but does not include its Affiliates, subsidiaries or any other entity in which it has an ownership interest.

“Facilities” means all property both real and personal of the Company which are reasonably necessary to provide Gas into, within and through the City, including without limitation, rights of way, transmission and distribution pipes, mains, Gas compressors and meters.

“Franchise” means the rights and obligations of the City and the Company set forth in this Franchise ordinance as the same may be amended from time to time and includes those rights and duties provided under the laws of Texas and of the United States.

“Gas” means such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, or any mixture thereof.

“Public Easement” means easements permitted by the City for the use of Company.

“Public Streets” includes, but is not limited to, streets, medians, boulevards, roads, lanes, alleys, viaducts, bridges and public rights of way that are deeded, dedicated or otherwise available for Company use within the City.

“Railroad Commission” means the Railroad Commission of the State of Texas or other authority succeeding to the regulatory powers of the Railroad Commission.

“Residents” means all persons, businesses, industry, governmental agencies, and any other entity whatsoever, located, in whole or part, within the City that are or may be served by the Company hereunder.

“Revenue” means those amounts of money and other benefits which the Company receives from the:

- A. All Revenues received by Company from the sale of Gas, including compressed Gas, within the City to all customers within the City.
- B. All Revenues received by Company from the transportation of Gas through the pipeline system of Company with the City to commercial industrial customers within the City; and
- C. The value of Gas transported by Company for Transport Customers through the pipeline system of Company within the City.

2. GRANT OF FRANCHISE:

(A) Pursuant to the Constitution of the State of Texas, State Statutes and the City's home rule charter, the City hereby grants to the Company, for the period specified in and subject to the conditions, terms and provisions contained in this Franchise, a non-exclusive right to furnish, transport, sell and distribute Gas to the City and its Residents. Subject to the conditions, terms and provisions contained in this Franchise, the City also hereby grants to the Company a non-exclusive right to acquire, construct, install, locate, maintain, operate and extend Facilities into, within and through the City and a non-exclusive right to make use of the public streets and Public Easements as may be necessary to carry out the terms of this Franchise. These rights shall extend to all areas of the City as it is constituted from time to time.

(B) This Franchise does not grant to the Company the right, privilege or authority to engage in any other business within the City other than the provision of Gas sales, transportation, distribution and the furnishing of Gas to the City and its Residents.

(C) The right to use and occupy the public streets and Public Easements as set forth herein is not an exclusive Franchise, and the City reserves the right to make or grant a similar use of public streets and Public Easements for the City and to any other person, firm, or corporation.

3. TERM OF FRANCHISE:

(A) Unless terminated earlier as provided herein, the term of this Franchise shall be for ten (10) years, beginning on the effective date of this Ordinance.

4. FRANCHISE FEE:

(A) As further consideration for the grant of this Franchise, which provides for the use by the Company of public streets and easements, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of those public streets and Public Easements is a valuable right without which the Company would be required if permitted by the City to invest substantial time and capital in right-of-way costs and acquisitions, the Company shall pay to the City a Franchise fee in the amount three percent (3%) of the Revenue, accruing to the Company. This fee shall change to the fee assessed Lone Star Gas in its new franchise. The Company shall report to the City within sixty days of the execution of a subsequent Franchise of any change of Franchise in another municipality in the State of Texas. Should such Franchise or change in Franchise provide for services or consideration not provided hereunder, Company shall offer to provide such services and/or consideration to the City and its Residents upon the same or similar terms, and provide the City a copy of such Franchise or change.

(B) The value of Gas transported by Company for Transport Customers shall be determined as set forth in this paragraph. In the absence of documentary evidence to the contrary provided by Company to City, the value of Gas so transported shall be presumed to be equal to the total volume of Gas transported for such Transport Customer times the rates charged for Gas as indicated on Schedule N of Company's tariff, as such tariff rates may be amended from time to time by the Texas Railroad Commission, or its successor agency. If Company submits documents to the City to indicate the actual value of Gas transported by Company, the Company may remove therefrom any information that would disclose either the identity of the customer or other information deemed confidential by Company, so long as such removal does not prevent the City from determining the monetary value of the Gas transported. Company agrees to give the City, upon request, access to the confidential information so removed in order for the City to verify the accuracy of the information provided to the City under the provisions of this paragraph. Failure or inability of Company to collect the three percent (3%) Franchise fee from its Transport

Customers does not relieve it of its responsibility and obligation to remit payment in the amount of three percent (3 %) of the value of such Gas to the City.

5. PAYMENT SCHEDULE:

(A) For the Franchise fee owed on Revenues accruing to the Company after the effective date of this Franchise from the sale and transportation of Gas, payment shall be made in quarterly installments not more than ten days following the close of the quarter for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this Franchise. All payments shall be made to the City and accompanied by supporting documentation satisfactory to the City.

(B) In the event an error by the Company results in an overpayment of the Franchise fee to the City and said overpayment is in excess of \$5,000.00, credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is \$5,000.00 or less, credit shall be taken against the next payment. In the event an error by the Company results in an under payment of the Franchise fees to the City and said underpayment is in excess of \$5,000.00, Company shall repay the difference between the underpayment and the correct payment over the same period the error was undiscovered. If the underpayment is \$5,000.00 or less, company shall repay the difference in the next payment.

(C) No charges to the City by Company for any sales or transportation of gas or other services shall exceed the lowest charge for similar services provided by the Company to any other similarity situated customer or consumer of the Company.

6. STATEMENT OF REVENUES:

(A) Company shall file annually with the City, no later than April 15, the Company's annual report to the Railroad Commission of Texas, or its successor, if such report specifically allocates Revenues arising within City's corporate limits. Should the Railroad Commission or its successor fail to require this information, Company shall file annually with the City, no later than four (4) months after the end of the Company's fiscal year, an audited annual statement of Revenues attributable to the operations of the Company's Facilities within the City in conformance with the NARUC system of accounts by a certified public accountant.

(B) Any transactions which have the effect of circumventing payment of required Franchise fees and/or evasion of payment of Franchise fees by non-collection or non-reporting of gross receipts, bartering, or any other means which evade the actual collection of Revenues or fees for business pursued by Company are prohibited.

(C) Company shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Company pertaining to this Franchise ordinance. Company shall fully cooperate in making available its records and otherwise assisting in these activities.

(D) The City may, at any time, make inquiries pertaining to Company's operation of its Facilities within the City. Company shall respond to such inquires on a timely basis.

7. FRANCHISE FEE NOT IN LIEU OF OTHER FEES:

(A) Payment of the fees and other consideration due hereunder by the Company is not accepted by the City in lieu of any occupation tax, license tax or similar tax on the privilege of doing business in the City or reimbursement of regulatory cost. Payment of the fees and other consideration due hereunder does not exempt the Company from payment of taxes that are uniform and generally applicable to other persons conducting business within the City, such as property, sales and use taxes.

(B) Payment of the fees and other considerations due hereunder shall not in any way limit or inhibit any of the privileges of the City whether under this Franchise ordinance or otherwise.

#### 8. CONTRACT OBLIGATION:

This Franchise constitutes a valid and binding contract between the Company and the City. In the event that the fees and other consideration specified in this Franchise is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company shall be contractually bound to pay the City, on the same schedule as provided herein for the fees and other consideration, an aggregate amount equal to the amount which would have been paid as fees and other consideration. In the alternative, the City shall have the right to impose on the Company and the Company shall pay occupation and license fees and permit charges reasonably equivalent on an annual basis to the fees and other consideration payable hereunder.

#### 9. DEPENDABLE GAS SUPPLY AT LOWEST REASONABLE COSTS:

(A) The Company shall at all times take reasonable and necessary steps to assure a dependable supply of Gas to the City and its Residents at the lowest reasonable cost consistent with long term reliable supplies. Should Gas be made available to the Company from whatever source, including any agency or instrumentality of the State, at less total cost than the total cost which would be incurred by the Company to supply such Gas from its own supplies, the Company agrees to purchase such lower-cost Gas and to pass on to the Residents all savings resulting from the purchase. Should Gas be offered to the Company for a price less than being provided to the City and its Residents and Company not accept such offer, Company shall notify City of such offer and the reason(s) that such offer was not accepted.

(B) If the supply of Gas to the City or its Residents should be interrupted, the Company shall immediately take all necessary and reasonable actions to restore such supply at the earliest possible time.

(C) The Company shall provide to the City a telephone number which is not available to the public whereby the City will be able to obtain status reports from the Company on a twenty-four hour basis concerning interruptions of the supply of Gas in any portion of the City.

(D) The Company shall install, repair, maintain and replace its Facilities in a good and workmanlike manner. The Company's Facilities shall be of reasonable quality, redundancy and durability to provide uninterrupted and efficient Gas service to the City and its Residents.

#### 10. OBLIGATIONS REGARDING COMPANY FACILITIES:

(A) All work by the Company shall be done:

1. In a good workmanlike manner,
2. In a timely and expeditious manner,
3. In a manner which minimizes inconvenience to the Residents,
4. In a cost-effective manner, and

5. In accordance with all applicable codes, rules and regulations of the City and the Railroad Commission.

(B) Company Facilities shall not interfere with power, telephone, cable or water Facilities, sanitary or storm sewer Facilities or other municipal or public use of public streets and Public Easements. Company Facilities shall be installed and maintained so as to minimize interference with other property, trees, improvements and natural features.

(C) The Company shall promptly repair all damage caused by Company activities or Facilities. If such damage poses threat to health, safety or welfare of the public or Residents, the City may cause repairs to be made at the Company's expense unless the Company makes such repairs promptly upon the City's request.

(D) The installation, repair, maintenance, and replacement of any Facilities in public streets and public easements by the Company shall be subject to inspection and approval by the City. Such inspection and approval may include, but not be limited to the following matters: location of Facilities in public streets and Public Easements; cutting and trimming of trees and shrubs; and disturbances of pavements, sidewalks and surfaces of public streets and Public Easements. The Company agrees to cooperate fully with the City in conducting the inspection. The Company shall promptly perform reasonable remedial action required by the City pursuant to such an inspection.

(E) The Company shall require its contractors working in public streets and Public Easements to hold all necessary contracting licenses and permits required by the City.

(F) The Company shall reimburse the City for the costs of upgrading the Gas distribution system or facility of any City building or facility that uses Gas where such upgrading is caused or occasioned by the Company's decision to increase the deliverability and/or pressure of delivered Gas.

#### 11. LONG RANGE PLANNING FOR CAPITAL IMPROVEMENT PROJECTS:

(A) The Company shall keep the City informed as to existing and planned system capacity, construction, maintenance and other activities of the Company within the City. Regular planning and coordination meetings will be held. Representatives of the Company and the City shall meet at least annually to discuss long term planning for capital improvement projects contemplated by each. The Company shall include within its capital improvement projects the plans of the City relating to same. The Company shall submit reports of long-term planning for capital improvement projects. Descriptions of required street cuts, excavation, digging and related construction activities, including without limitation, copies of work plans and drawings should be submitted to the City within thirty days after issuance of the report. Except for emergencies, the Company shall coordinate all installations with the City's capital improvement programs. Company shall not proceed with construction until the plans and drawings have been approved by the City. Within 60 days after the City Council adopts the City budget for the following year, the City shall forward, in writing, a list of the improvement projects (including street widening projects, street overlay projects, bridge improvement projects, new street construction projects, drainage improvement projects, and park improvement projects) which are included in the adopted budget. Within 60 days of receipt of the City's list of improvement projects the Company shall make available information regarding each City project within the public streets and Public Easements that identifies and generally describes the existing and anticipated Company Facilities that are or may be within or cross through the project boundaries. Said information shall: (1) identify the size, type and general location of any existing Company facility; (2) address the current condition of any existing Company facility (e.g.: capacity, integrity, expected service life, etc.); (3) identify any scheduled or

anticipated upgrades, repairs or replacements of any existing Company facility: (4) identify generally what activities will be required to be performed by the Company in order to accommodate the City project and the necessary time frame for completion of such activities: and (5) provide any other reasonable information that may be pertinent.

(B) The City and the Company shall designate to each other their respective officials to serve as their representative for coordination of this exchange of information and planning on any such project. Construction, installation, maintenance, alteration or replacement of the Company's Facilities resulting from the City's improvement projects shall be performed at the Company's expense.

## 12. CITY REVIEW OF CONSTRUCTION AND DESIGN:

(A) Except for emergencies, the Company shall advise the City at least thirty (30) days prior to any major construction. The Company shall provide the initial work plans and drawings for the proposed construction. In addition, the Company shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure that, among other items, (1) aesthetic and good planning principles have been given due consideration, (2) adverse impact on the environment has been minimized, and (3) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with. Changes requested by the City shall be incorporated into the Company's construction.

(B) Upon request of the City, Company shall remove and abate any portion of the Facilities that is dangerous to life or property, and in case Company, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Company, all without compensation or liability for damages to the Company.

(C) Company shall promptly restore the public streets, Public Easements and private property to their condition prior to Company's construction, maintenance or excavation, to the satisfaction of the City consistent with their existing City codes and specifications.

(D) Company shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of the Facilities.

(E) Except in an emergency, Company shall not excavate in any public street or Public Easement without first securing permission of the City and all applicable permits at least 24 hours prior to initiation of excavation. Such work shall be performed to minimize interference with the use of Public Easements and public streets. The City shall be notified as soon as practicable regarding work performed under emergency conditions.

(F) Within thirty (30) days of completion of the Company's construction of Facilities. Company shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal Company shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings for each modification to the Facilities. Company shall provide annually a complete set of as-built drawings incorporating these changes.

(G) Company shall be capable of providing services to the City no later than nine (9) months after the passage of this Franchise ordinance. Company shall promptly provide the City with evidence satisfactory to the City, including without limitation "as-built" drawings, establishing that these requirements have been met.

13. REQUESTS BY CITY FOR RELOCATION OF COMPANY FACILITIES:

(A) If at any time the City requests the Company to relocate any facility installed or maintained in public streets or Public Easements, pursuant to this Franchise or previous Franchises, in order to permit the City:

1. to make any public use of public streets or Public Easements,
2. to construct any public improvement,
3. to build any public project, or
4. to pursue any municipal purpose in which the City has a financial or ownership interest;

Such relocation shall be made by the Company at its expense within a reasonable period of time not to exceed forty-five (45) days after notice of request from City unless otherwise specifically agreed to by the City.

(B) As and when requested by the City, representatives of the City and the Company shall meet to share information regarding anticipated City projects which will require relocation of Company Facilities. Such meetings shall be for the purpose of providing the City with the estimated time table within which the involved Company Facilities shall be relocated, including an anticipated start date (within a thirty day window), so as to facilitate coordination with the time table to be established by the City for completion of the City project.

(C) Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, sewers, electric lines, or any other underground or overhead structure for any purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform the Facilities thereto, such alterations or changes shall be promptly made by the Company when requested by the City, without claim for reimbursement or damages against the City.

(D) In the event that Company has not relocated those of its affected Facilities which are located in a public street or Public Easement within a reasonable length of time as determined by the City prior to the City's commencement date for public street or Public Easement construction, the City shall have the right to relocate or cause to be relocated the affected portion of Company's Facilities and the Company shall reimburse the City for all costs of relocation within ten (10) days of the City's billing to the Company.

(E) Following relocation, all property shall be restored to substantially its former condition by the Company at its expense in accordance with then existing City codes and specifications.

(F) Nothing herein contained shall be construed to impose any obligation upon the City to make any payment for any relocation of the Company's Facilities.

(G) Relocated underground Facilities shall be under ground. Relocated aboveground Facilities shall be above ground unless specified otherwise by the City.

14. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT:

The City reserves the right to lay and permit to be laid, electric power, sewer, Gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over and under any public street or Public Easement occupied by Company, and to change any curb or sidewalk or the grade of any street. In

permitting such work to be done, the City, its officers or employees, shall not be liable to Company for any damages caused by the negligence of the City, its officers or employees; providing, however, nothing herein shall relieve any other person or entity from liability for damage to Company's Facilities. Any work done by any person or entity other than City, its officers or employees, shall be performed in a safe and workmanlike manner so as to minimize the risk of damage to Company's Facilities.

15. CHANGING BOUNDARIES OF CITY AND ABANDONMENT:

(A) If, during the term of this Franchise, the boundaries of the City are expanded from time to time, the Company shall extend its existing main lines, if any, in the area of expansion 100 feet at Company's expense if residents of the newly incorporated areas will use gas appliances. Company may require contributions in aid of construction for other extensions. Service to newly expanded areas in accordance with the terms of this Franchise, including without limitation, payment of Franchise fees and other fees and payments provided herein.

(B) In the event that the City shall close or abandon any public street or Public Easement which contains any portion of Company's Facilities, any conveyance of land contained in such closed or abandoned public streets of Public Easement shall be subject to the rights herein granted.

16. CITY NOT REQUIRED TO ADVANCE FUNDS:

Upon receipt of the City's authorization for billing and construction, the Company shall extend its Facilities to provide Gas for municipal uses within the City or for any major municipal facility outside the City limits without requiring the City to advance funds prior to construction.

17. TECHNOLOGICAL IMPROVEMENTS:

(A) The Company shall generally introduce and install, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents. Upon request, the Company shall review and promptly report advances which have occurred in the Gas utility industry that have been incorporated into the Company's operations in the City in the previous year or will be so incorporated in the six months following the City's request.

(B) The Company shall report in advance to the City any plans to include technological advances which may utilize Gas Facilities already in place, which may be installed by the Company for its use, the use of the City, or for use of others as the City may license. The City may use said Facilities for its own use without cost, except such additional expense which may be incurred by the Company as a result of the City's use. In no event shall the City's use materially impair the Company's ability to use its own Facilities for the purposes specified herein. Upon request of the City, the Company will provide a detailed report for the use of such technological advances. Nothing contained herein shall be construed to authorize the Company to engage in activities other than Gas sales and transportation for service to the City and its Residents.

18. CITY RULES AND REGULATIONS:

(A) The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such cost of service, cost of Gas,

charter provisions, ordinances, rules and regulations as the City deems necessary.

(B) The construction, expansion, reconstruction, excavation, use, maintenance, repair and operation of the Facilities shall be subject to all laws, rules and regulations of the City, including without limitation police, building code, and safety code regulations as they may be amended from time to time. The Company shall comply with the same.

(C) At a reasonable time and for a reasonable purpose, the City may:

1. inspect, or cause to be inspected, the books and records of Company,
2. inventory and appraise or cause to be inventoried or appraised the Facilities of Company within the City,
3. compel the attendance of witnesses and the production of books and records.

#### 19. COMPLIANCE WITH CITY AND RAILROAD COMMISSION QUALITY SPECIFICATIONS AND REGULATIONS:

(A) The Gas which the Company sells and transports shall conform with tile specifications promulgated by the City, as the same may be amended from time to time. The City shall have access to all records and Facilities of the Company to monitor compliance with such specifications.

(B) Prior to final adoption by the City of this Franchise ordinance, the Company shall file with the City and Railroad Commission such amendments to its tariffs as may be necessary to make its tariff provisions compatible with the provisions of the ordinance, and shall report to the City any changes that have been made for this purpose.

(C) The Company shall file with the City all tariffs, rules, regulations and policies under consideration in addition to those approved by the City Council, by the Railroad Commission relating to the Facilities and operations in the City, any matters affecting the use of public streets and Public Easements, or this Franchise. The Company shall provide the City with a copy of filings it makes with the Railroad Commission affecting the same. In addition, the Company will provide the City copies of the Company's most recent annual report, and all petitions, non-privileged communication reports, non-privileged advice letters, audits, complaints and applications together with supporting pre-filed testimony and exhibits filed by the Company or third parties with the Railroad Commission that relate to the City or this franchise.

#### 20. COMPLIANCE WITH ENVIRONMENTAL LAWS:

Company shall take such measures which will result in its Facilities meeting the standards required by applicable federal, state and environmental laws. The Company will provide the City with status reports of such measures.

#### 21. OFFICE LOCATION:

Company shall maintain an office and provide local and toll free telephone number, which shall provide

prompt, reasonable responses to Residents' service requests. Company shall provide a 24-hour toll free telephone number for emergency use. Company shall always keep and maintain its books, records, contracts, accounts, documents and papers and shall make them available for inspection by City officials and employees upon request.

22. REPORTS ON COMPANY OPERATIONS AND ACTIVITIES:

(A) The Company shall submit reports and information to the City in the manner and form prescribed by the Railroad Commission, or its successor, except as otherwise provided herein.

1. Upon the City's request, the Company and the City shall meet to share information regarding excavations in public streets, Public Easements, and other public properties made by the Company within the City. Information shared shall include:

- a. Exact locations of excavations
- b. Date(s) excavating made
- c. City permit number
- d. Contractor
- e. Purpose
- f. Cost

2. Should Company transport Gas within the City on behalf of third parties including affiliates, Company shall notify the City of the shipper's name, address, telephone number, volume transported, duration of transport arrangement, transport fee and such other information requested by City from time to time, but in no event later than 72 hours prior to initial deliveries.

23. DETAILED BILLS:

All bills sent to the City by the Company shall include all information requested by the City including without limitation account numbers, address and items metered and they shall specify the type of account for which charges are made for Gas service. The Company shall provide the City annually with a complete listing of all the City's accounts.

24. CITY HELD HARMLESS AND INDEMNIFIED:

(A) The Company shall construct, maintain and operate its Facilities in a manner which provides, reasonable protection against injury or damage to persons or property.

(B) Notwithstanding any other provision of this Franchise, Company (the "Indemnitor") acknowledges its primary responsibility for the day-to-day operation of its Facilities in full accordance with the terms of the Franchise. The Indemnitor covenants, warrants and represents that Company will conduct, operate and manage its business and affairs in compliance with all federal and state laws and all rules and regulations, in addition to all of the terms, requirements and provisions of this Franchise. **THE INDEMNITOR AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FULLY HARMLESS AGAINST ANY AND ALL CLAIMS**

**INCLUDING ENVIRONMENTAL CLAIMS, THAT MAY ARISE FROM OR BE OCCASIONED BY ANY INTENTIONAL, WILLFUL, NEGLIGENT OR STRICTLY LIABLE VIOLATION (CIVIL OR CRIMINAL) OF A FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION BY THE INDEMNITOR, OR BY ANY PERSON OR FIRM HIRED BY OR CONTRACTING WITH THE INDEMNITOR, OR IN THE OPERATION OR MAINTENANCE OF INDEMNITORS FACILITIES. THE INDEMNITOR SHALL FULLY REIMBURSE CITY FOR ALL PENALTIES, FINES, FEES, COSTS, EXPENSES, DAMAGE SETTLEMENTS OR JUDGEMENTS INCURRED OR PAID BY CITY AS A RESULT OF ANY OF THE INDEMNITOR'S VIOLATIONS DESCRIBED ABOVE.**

(C) Nothing herein contained shall be construed as an acknowledgment by the parties that the Company, in exercising its rights and obligations under this Franchise, is an entity controlled by, subject to the control of or acting on behalf of the City.

(D) In the event the City institutes litigation against the Company for a breach of this Franchise or for an interpretation of the Franchise, and the City is the prevailing party, the Company shall reimburse the City for all costs related thereto, including without limitation court costs and reasonable attorney's fees. None of the City's costs reimbursed by the Company under this Section shall be surcharged by the Company.

25. NOTICE TO COMPANY:

(A) Promptly after receipt by an Indemnitee of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the Indemnity provided for in the above Section hereof may apply, the Indemnitee shall notify the Company in writing of such fact. Company shall assume the defense thereof with counsel designated by Company and satisfactory to the Indemnitee.

(B) Should an Indemnitee be entitled to indemnification under the above Section as a result of a claim by a third party, and Company fails to assume the defense of such claim, the Indemnitee will, at the expense of Company, contest (or, with the prior written consent of Company, settle) such third party claim.

26. INSURANCE:

(A) Company shall obtain and maintain in full force and effect throughout the term of this franchise ordinance, and any extension or renewal thereof, insurance with an insurance company approved to do business in the State of Texas and acceptable to the City's Risk Manager which conforms to the requirements set forth herein below. The insurance shall be insured in the standard form approved by the Texas Department of Insurance and shall meet the requirements set forth herein below. Company shall provide the City's Risk Manager with proof of such insurance so required at the time of filing the acceptance of franchise. The City reserves the right to review these insurance requirements during the effective period of the franchise ordinance, and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions or the claims history of the industry, as well as Company.

(B) Subject to Company's right to maintain deductibles in such amounts as are approved by the City's Risk Manager, Company shall obtain and maintain in full force and effect for the duration of this franchise ordinance, and any extension or renewal thereof, at Company's sole expense, insurance policy coverage in the following type(s) and minimum amounts:

**FACILITIES OPERATION**

<b><u>Type</u></b>	<b><u>Amount</u></b>
1. Workers' Compensation and Employers Liability	Statutory \$100,000/500,000/100,000
2. Commercial General (public) Liability insurance including:	Combined single limit for bodily injury and property damage of \$10,000,000 per occurrence or its equivalent
(i) All premises/operations	
(ii) Independent contractors	
(iii) Products/completed operations	
(iv) Personal & advertising injury	
(v) Contractual liability (no limitations)	
(vi) Explosion, collapse and underground hazards	
3. Comprehensive Automobile Liability insurance, including coverage for loading and unloading hazards, for:	Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence or its equivalent
(i) Owned/leased automobiles	
(ii) Non-owned automobiles	
(iii) Hired automobiles	

**FACILITIES MAINTENANCE REPAIR AND/OR CONSTRUCTION**

<u>Type</u>	<u>Amount</u>
1. Workers' Compensation and Employers Liability	Statutory \$500,000/500,000/500,000
2. Commercial General (public) Liability insurance including:	Combined single limit for bodily injury and property damage of \$10,000,000 per occurrence or its equivalent
(i) All premises/operations	
(ii) Independent contractors	
(iii) Products/completed operations	
(iv) Personal & advertising injury	
(v) Contractual liability (no limitations)	
(vi) Explosion, collapse and underground hazards	
3. Comprehensive Automobile Liability insurance, including coverage for loading and unloading hazards, for:	Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence or its equivalent
(i) Owned/leased automobiles	
(ii) Non-owned automobiles	
(iii) Hired automobiles	

(c) The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements hereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Company or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Company shall exercise reasonable efforts to accomplish the changes in policy coverages, and shall pay the cost thereof.

(d) Company agrees that with respect to the above required insurance, all insurance contracts will contain the following required provisions:

1. Name the City and its officers, employees, board members and elected representatives as additional insureds (as the interests of each insured may appear) as to all applicable coverage;
2. Provide for thirty (30) days notice to the City for cancellation, non-renewal, or material change at the address shown below by registered or certified mail;
3. Company agrees to waive subrogation against the City, its officers and employees, for personal injuries (including death), property damage or any other loss;
4. Provide that all provisions of the franchise ordinance, as amended, concerning liability,

duty, and standard of care, including Indemnity, contractual liability coverage sufficient to include such obligations within applicable policies; and

5. Provide that the "other insurance" clause shall not apply to the City where City is an additional insured shown on the policy.

(e) Company shall notify City in the event of any changes in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to City at the following addresses:

City Manager  
City of Denton  
215 E. McKinney  
Denton, Texas 76201

(f) Company shall immediately advise the City Risk Manager of any actual or potential litigation that may develop that would affect this insurance.

(g) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Company and the City and shall be primary coverage for all losses covered by the policies.

(h) Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which are the sole responsibility of Company.

(i) 1. Without limiting any of the other obligations or liabilities of Company, Company shall require each subcontractor performing work under the franchise ordinance to maintain, at the subcontractor's own expense, during the term of the franchise ordinance, the same stipulated minimum insurance, including the required provisions and additional policy conditions as shown in (b) above. As an alternative, Company may include its subcontractors as additional insureds on its own coverage as prescribed under these requirements (except for worker's compensation insurance, which the subcontractors must separately obtain). Company's certificate of insurance shall note in the event that the subcontractors are included as addition insureds.

2. Company shall obtain and monitor the certificates of insurance from each subcontractor in order to assure compliance with the insurance requirements. Company must retain the certificates of insurance for the duration of this Franchise, and shall have the responsibility of enforcing these insurance requirements among its subcontractors. The City shall be entitled, upon request and without expense, to receive copies of these certificates.

(j) Approval, disapproval or failure to act by the City regarding any insurance supplied by Company or its subcontractors shall not relieve Company of full responsibility or liability for damages and accidents as set forth in this Franchise. Neither shall bankruptcy, insolvency or denial of liability by the insurance company exonerate Company from liability.

(k) Company may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against risks described in this section and shall not be required to maintain insurance; provided that Company furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance.

(l) Company shall provide the City with evidence of the form and basis for insurance coverages or self insurance prior to the effective date of this franchise ordinance. Should Company elect to change the form or basis of insurance during the term of this Franchise, Company shall notify the City. Company shall provide all documentation necessary for review by the City of the changed circumstances of Company. Company shall not undertake any activity requiring insurance pursuant to this franchise ordinance, until receiving written confirmation from the City that the requirements contained in this section have been met. Failure to comply with this provision may result in the immediate termination of this franchise ordinance.

27. BONDS:

(A) Company shall obtain and maintain, at its sole cost and expense, and file with the City Secretary prior to the commencement of any construction authorized by this franchise, a corporate surety bond with a surety Company authorized to do business in the State of Texas and in accordance with Section 2253.021 of the Texas Government Code in the amount of One Hundred Thousand Dollars (\$100,000.00) to guarantee Company's performance for the construction of Company's facilities. The bond may be adjusted in subsequent years in accordance with Construction Projections in the Exhibit attached to 25% of the projected construction costs, but in no event less than \$25,000.

(B) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this Franchise ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

28. PAYMENT OF EXPENSES INCURRED BY CITY IN RELATION TO ORDINANCE:

(A) At the City's option, the Company shall pay in advance or reimburse the City for expenses incurred in any proposed transfer of the Franchise including, without limitation attorney's fees, consultants' fees, publication of notices and ordinances and for photocopying of documents arising from the negotiation of this Franchise.

(B) All City expenses reimbursed by the Company under this section shall not be surcharged by the Company.

29. RIGHT OF FIRST PURCHASE:

(A) In the event the Company at any time during the term of the Franchise proposes to sell or dispose of any of its Facilities located within the City, it shall grant to the City the right of first purchase of same. The Company shall obtain a qualified appraisal on any such Facilities and the City shall have sixty days from the time such appraisal is provided to the City in which to exercise the right of first purchase by

giving written notice to the Company. Should the City not provide the required written notice, the Company may proceed to negotiate with others for the sale of such Facilities provided that the Company may not sell such Facilities for an amount less than 95 percent of the appraised value without first providing the City an opportunity to purchase such property at such lesser price, in which event the City must notify the Company in writing within 30 days if wishes to purchase such Facilities.

(B) Upon the exercise of the City's option to purchase, other than under subsection (A) above, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. No value shall be given to the Franchise or to public right-of-way.

(C) Notwithstanding anything herein to the contrary, if the City and the Company cannot reach agreement as to the purchase price or acceptable payment terms within ninety (90) days after commencement of negotiations, the City may commence condemnation proceedings, and each party shall have rights provided by law relating to condemnation: provided, however, no award shall be made for the value of the Franchise or public right-of-way.

### 30. CITY'S RIGHT TO PURCHASE OR CONDEMN:

Company agrees, acknowledges, and affirms City's right to construct, purchase or condemn any public utility works, Facilities or rights-of-ways of the Company is hereby expressly reserved.

(A) In the event the City exercises its option to purchase or condemn, the Company agrees that it, at the City's request, will continue to provide the services it provides under this Ordinance until further notified otherwise by the City.

(B) The Company shall cooperate with the City by making available the existing pertinent Company records to enable the City to evaluate the feasibility of acquisition by the City of Company Facilities.

(C) The Company shall take no action which could inhibit the City's ability to effectively or efficiently use the acquired Facilities.

(D) At the City's request, the Company shall supply Gas for use by the City in the City-owned Facilities according to Company's latest approved tariff.

### 31. LIMITATIONS OF COMPANY REMOVAL OF FACILITIES:

(A) In the event this Franchise is not renewed at the expiration of its term, is forfeited, or the Company terminates any service provided herein for any reason whatsoever, and the City has not purchased or condemned the Facilities and has not provided for alternative Gas service, the Company shall not remove the Facilities pending resolution of the disposition of the Facilities. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than to which it would have been entitled were such services provided during the term of this Franchise. Only upon receipt of written notice from the City stating that the City has adequate alternative Gas sources and delivery systems to provide for the Residents of the City shall the Company be entitled to remove any or all of the Facilities in use under the

terms of this Franchise.

(B) Upon request from the City and within a reasonable time, the Company, at its expense, shall remove from the public streets easements and other public properties the above ground distribution Facilities belonging to the Company which are not otherwise purchased by the City at the termination of the Franchise. All property affected by such removal shall be restored by the Company to substantially its former condition after said removal.

32. TRANSPORTATION AND PROCUREMENT OF GAS BY CITY:

The City expressly reserves the right to procure, transport and resell Gas. If requested by the City the Company shall transport Gas purchased by the City through its Facilities for use by the City in its Facilities and/or its Residents pursuant to separate transportation contracts with the City and in accordance with Grantee's tariffs.

33. CURTAILMENT:

The Company shall not curtail Gas deliveries except in compliance with the Company's curtailment plan approved by the Railroad Commission.

34. PENALTIES:

For the violation of any of the following provisions of this Franchise, penalties shall be paid by Company within ten days of assessment by City Resolution in addition to any other rights or remedies the City may have at law or in equity:

(A) For failure to complete construction in accordance with agreed plans, unless the City specifically approves the delay, Company shall pay Two Hundred Dollars (\$200.00) per day for each day, or part thereof, that the failure continues.

(B) For failure to provide data, documents, reports, information or to cooperate with City during an audit, Company shall pay Two Hundred Dollars (\$200.00) per day for each day the violation occurs or continues.

(C) For failure to comply with any financial obligation required herein, Company shall pay to City Two Hundred Dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.

(D) For failure of Company to comply with operational or maintenance standards, Company shall pay to City Two Hundred Dollars (\$200.00) per day for each day, or part thereof, that such noncompliance continues.

(E) For failure to provide in a continuing manner the services specified herein, Company shall pay Two Hundred Dollars (\$200.00) per day for each day, or part thereof, that each noncompliance continues.

(F) City will not adopt resolution prior to consideration at a public hearing presided over by City's

governing body, setting forth alleged failures complained of and allowance of company to respond to alleged failures. Company to receive thirty (30) days written notice of failures complained of and thirty (30) days written notice of the public hearing date and time to consider adoption of resolution.

(G) Should the new Lone Star Gas Franchise result in an increase in the franchise fee to 4%, then per Section 4(A) this franchise increases as well and the daily civil penalty in subsection (A) through (E) shall be reduced to \$100. If Lone Star's franchise fee does not increase but its penalty is reduced below \$200, then this penalty provision will be adjusted accordingly.

35. FORECLOSURE:

Immediately upon Company receiving notice or knowledge of attempt to foreclose, foreclosure proceedings or other judicial action pertaining to all or a substantial part of the Facilities, or upon the termination of any lease covering all or a substantial part of the Facilities, the Company shall notify the City of such fact, and such notification shall be treated as a notification that a change in ownership of the Company has taken place, and the provisions of this Franchise governing the consent of the City to such change in ownership of the Company shall apply.

36. FORFEITURE AND TERMINATION:

(A) In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to forfeit and terminate the Franchise and all rights and privileges of the Company hereunder in the event of a breach of its terms and conditions. A breach by Company shall include, but shall not be limited to, the following:

1. Repeated violation of any provision of the Franchise or any rule, order, regulation or determination of the City made pursuant to the Franchise after receipt of written notice from City;
2. Attempt to dispose of any of the Facilities or property of its Facilities or real property to prevent the City from purchasing it, as provided for herein;
3. Attempt to evade any provision of the Franchise or to practice any fraud or deceit upon the City or its Residents;
4. Failure to begin or complete Gas facility construction and/or extension as agreed to with the City;
5. Repeated failure to provide the services set forth in the Franchise;
6. Repeated failure to restore service after 48 consecutive hours of interrupted service, except when approval of such interruption is obtained from the City or "force majeure" exists; or
7. Material misrepresentation of fact in the application for or negotiation of the Franchise.
8. Conviction of any director, officer, employee, or agent of the Company of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise to the Company.

(B) The foregoing shall not constitute a breach if the violation occurs without fault of the Company or occurs as a result of circumstances beyond its control which could not have been avoided as a result of

the exercise of reasonable care. Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors or officers.

(C) The City Council retains the right to terminate this Franchise ordinance, Company's use of the public streets or Public Easements is inconsistent with the public use or whenever the Company's use has become a nuisance.

(D) The City may make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may take under consideration, at a public hearing presided over by the City's governing body, the issue of termination of the Franchise. The City shall cause to be served upon Company, at least thirty (30) days prior to the date of such a hearing, a written notice of intent to request such termination and the time and place of the hearing. Public notice shall be given of the hearing and the issue which the City is to consider.

(E) The City shall hear and consider the issue and shall hear any person interested therein. City Council thereafter shall determine whether or not any violation by the Company has occurred.

(F) If the City shall determine that the violation by the Company was the fault of Company and within its control and could not have been avoided with exercise of reasonable care, the City may declare the Franchise of the Company forfeited and terminated, or the Council may grant to Company a period for compliance.

### 37. OTHER LEGAL REMEDIES/RIGHT OF APPEAL:

(A) Neither the City nor the Company by accepting this Ordinance waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Ordinance by the other party, including seeking injunctive relief in a court of competent jurisdiction. Such right to seek injunctive relief is expressly reserved and all terms and provisions hereof shall be enforceable through injunctive relief.

(B) Nothing herein shall be deemed to constitute a waiver, release, or relinquishment of the City's or the Grantee's right to contest or appeal any action or decision of the other party made contrary to any federal, state or local law, rule or regulation.

### 38. NO WAIVER:

Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employers, or agents, upon any one or more occasions to insist upon or seek compliance with any such terms and conditions.

### 39. SUCCESSORS AND ASSIGNS:

The rights, privileges, and obligations granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns.

40. REPRESENTATIVES AND NOTICES:

(A) Upon request by the City, the Company shall provide annually to the City a current chain of command chart showing all managers and supervisors, along with their names, titles, addresses, telephone numbers, up to the Chief Executive Officer of the Company, who have responsibility for providing services within the City.

(B) All notices, including communications and statements which are required or permitted under the terms of this Agreement, shall be in writing, and evidenced by receipt. Service of a notice may be accomplished by personal service, registered or certified mail (postage prepaid) or reputable overnight courier service.

Notices shall be sent to the Parties at the following addresses:

1. City:

City Manager  
City of Denton  
215 E. McKinney  
Denton, Texas 76201

2. Company:

Director of Regulatory Affairs  
CoServ Gas  
3501 FM 2181  
Corinth, Texas 76205

From time to time City and Company each may designate a new address for itself for purpose of notice hereunder by written notice to the other duly given as provided herein.

41. SEVERABILITY:

Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective: provide, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

42. ENTIRE AGREEMENT:

This Franchise constitutes the entire agreement of the parties. There have been no representations made

other than those contained in this Franchise.

43. COMPANY APPROVAL:

The Company shall file with City Manager written approval of this Franchise and of all of its terms and provisions at least ten days prior to the City Council meeting at which the ordinance granting the Franchise is to be approved.

44. ANNEXATION TO THE CITY:

When any property owned by the Company becomes eligible for voluntary annexation to the City and is not simultaneously eligible for voluntary annexation to another municipal corporation, the Company shall petition to annex the same upon request made by the City, provided that no condition of such annexation shall impair the Company's ownership or then existing use of its property. Except as herein provided, the Company agrees to meet all terms and conditions imposed upon the annexation by the City that are no more stringent than those imposed generally upon property owners seeking annexation of their land to the City. The Company shall be exempted from a public donation of land, money or water rights arising from such mandatory annexation under this section to the extent that the land being annexed is committed, dedicated and being utilized by Facilities directly involved in transporting or distributing Gas under this ordinance, and provided further that said exemption from public donation shall not extend to any unimproved land or land not so committed, dedicated and currently used.

45. THIRD PARTIES:

Nothing contained in this Franchise shall be construed to provide rights to third parties.

46. COMPLIANCE WITH CITY CHARTER:

Company recognizes, accepts and agrees that the terms, conditions and provisions of this Franchise are subject to the applicable provisions of the City Charter. Any request by Company for a modification to this Franchise shall be subject to a review by the City Attorney for compliance with the applicable provisions of the City Charter.

47. APPLICATION OF TERMS IN COMPETING FRANCHISES

The terms of this Franchise which are not contained in the franchise of any entity obtaining or renewing a franchise for gas within City from and after January 1, 1999 shall be unenforceable. To the extent terms more favorable to the franchisee are contained in another franchise for gas obtained or renewed by the City from and after January 1, 1999, such terms shall be applicable to Company as if contained herein and shall control over the terms contained herein

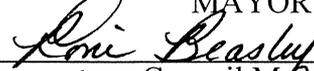
48. EFFECTIVE DATE:

This Franchise ordinance shall take effect twenty-one (21) days after its final passage, pending

publication of the ordinance as required by Sec. 13.02 of the City Charter, and acceptance in accordance with the provisions of the Charter of the City and it is accordingly so ordained.

PASSED AND APPROVED this the 19<sup>th</sup> day of January, 1999.

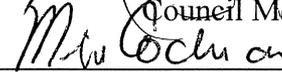
  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
Council Member

  
\_\_\_\_\_  
Council Member

  
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Council Member

  
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Council Member

  
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Council Member

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Council Member

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

  
\_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
HERBERT L. PROUTY, CITY ATTORNEY

  
\_\_\_\_\_

The above and foregoing ordinance read, adopted on first reading and passed to second reading by the following votes, this the 5<sup>th</sup> day of January, 1999, at a regular session of the City Council.

<u>Jack Miller</u>	Mayor, voting	<u>aye</u>
<u>Roni Beasley</u>	Council Member, voting	<u>aye</u>
<u>Mark Burroughs</u>	Council Member, voting	<u>aye</u>
<u>Mike Cochran</u>	Council Member, voting	<u>aye</u>
<u>Neil Durrance</u>	Council Member, voting	<u>aye</u>
<u>Sandy Kristoferson</u>	Council Member, voting	<u>aye</u>
<u>Carl G. Young, Sr.</u>	Council Member, voting	<u>aye</u>

The above and foregoing ordinance read, adopted on second reading and passed by the following votes, this the 19<sup>th</sup> day of January, 1999, at a regular session of the City Council.

<u>Jack Miller</u>	Mayor, voting	<u>aye</u>
<u>Roni Beasley</u>	Council Member, voting	<u>aye</u>
<u>Mark Burroughs</u>	Council Member, voting	<u>aye</u>
<u>Mike Cochran</u>	Council Member, voting	<u>aye</u>
<u>Neil Durrance</u>	Council Member, voting	<u>aye</u>
<u>Sandy Kristoferson</u>	Council Member, voting	<u>aye</u>
_____	Council Member, voting	_____

STATE OF TEXAS                   §  
   §  
 COUNTY OF DENTON           §

I, Jennip Walters City Secretary of the City of Denton, Texas, do hereby certify that the above and foregoing is a true and correct copy of the franchise for gas ordinance between the City of Denton, Texas, and CoServ Gas, an affiliate of Denton County Electric and that the full text of the ordinance was published once each week for two consecutive weeks in the *Denton Record-Chronicle*, the official newspaper of the City of Denton. The same is now recorded as Ordinance No. 99-024 of the Ordinance Records of the City of Denton, Texas.

WITNESS MY AND this the 2<sup>nd</sup> day of February A.D., 19 99.

(Seal)

Jennip Walters  
 City Secretary

ACCEPTANCE

WHEREAS, the **City** Council of the **City** of Denton, Texas, did on the 19 day of January, 1999, enact an Ordinance entitled:

AN ORDINANCE WHEREBY THE CITY OF DENTON, TEXAS, GRANTS TO COSERV GAS A NON-EXCLUSIVE FRANCHISE TO FURNISH, TRANSPORT, SELL AND DISTRIBUTE GAS TO CUSTOMERS IN DENTON, TEXAS, FOR A PERIOD OF TEN (10) YEARS FOR A FRANCHISE FEE IN THE AMOUNT OF 3% OF REVENUES COLLECTED AND PROVIDING DEFINITIONS; PROVIDING A PAYMENT SCHEDULE AND STATEMENT OF REVENUES; PROVIDING FRANCHISE FEE NOT IN LIEU OF OTHER FEES AND CONTRACT OBLIGATIONS; PROVIDING DEPENDABLE GAS SUPPLY AT LOWEST REASONABLE COSTS; PROVIDING OBLIGATIONS REGARDING COMPANY FACILITIES, LONG-RANGE PLANNING FOR CAPITAL IMPROVEMENT PROJECTS, CITY REVIEW OF CONSTRUCTION AND DESIGN, REQUESTS BY CITY FOR RELOCATION OF COMPANY FACILITIES AND WORK BY OTHERS; PROVIDING FOR CHANGING BOUNDARIES OF CITY AND ABANDONMENT; PROVIDING CITY NOT REQUIRED TO ADVANCE FUNDS; PROVIDING FOR TECHNOLOGICAL IMPROVEMENTS; PROVIDING FOR COMPLIANCE WITH CITY RULES AND REGULATIONS, RAILROAD COMMISSION SPECIFICATIONS AND REGULATIONS, AND ENVIRONMENTAL LAWS; PROVIDING OFFICE LOCATION, REPORTS ON COMPANY OPERATIONS AND ACTIVITIES AND DETAILED BILLS; PROVIDING CITY HELD HARMLESS AND INDEMNIFICATION, NOTICE TO COMPANY, INSURANCE AND BONDS; PROVIDING PAYMENT OF EXPENSES INCURRED BY CITY IN RELATION TO ORDINANCE; PROVIDING RIGHT OF FIRST PURCHASE, RIGHT TO PURCHASE OR CONDEMN, LIMITATIONS OF COMPANY REMOVAL OF FACILITIES, TRANSPORTATION AND PROCUREMENT OF GAS BY CITY AND CURTAILMENT; PROVIDING CIVIL PENALTIES, FORECLOSURE, FORFEITURE AND TERMINATION AND OTHER LEGAL REMEDIES; PROVIDING NO WAIVER, RIGHTS OF SUCCESSORS AND ASSIGNS, REPRESENTATIVES AND NOTICES, SEVERABILITY, ENTIRE AGREEMENT, COMPANY APPROVAL, ANNEXATION TO THE CITY AND THIRD PARTIES; PROVIDING COMPLIANCE WITH CITY CHARTER AND APPLICATION OF TERMS IN COMPETING FRANCHISES; AND PROVIDING AN EFFECTIVE DATE;

and

WHEREAS, said Ordinance was on the 19 day of January, 1999, 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, CoServ Gas, an affiliate of Denton County Electric, hereby in all respects accepts, approves, and agrees to said Ordinance, and same shall constitute and be a binding contractual obligation of CoServ Gas and of the City without waiver of any other remedy by CoServ Gas or the City and files this its written acceptance with the City Secretary of the City of Denton, Texas, in his/her office.

Dated this 28 day of January A.D. 19 99.

COSERV GAS, AN AFFILIATE OF  
DENTON COUNTY ELECTRIC

By: Bill McGinnis

ATTEST:

\_\_\_\_\_  
Secretary

Acceptance filed in the office of the City Secretary of Denton, Texas, this 2nd day of February A.D. 19 99.

Jennife Walters  
City Secretary



*An Affiliate of Denton County Electric*

CoServ Gas  
3501 FM 2181  
Corinth, Texas 76205  
Metro 817-430-1195  
FAX 940-497-6525  
800-274-4014

December 10, 1998

Mr. Michael Bucek  
First Assistant City Attorney  
City of Denton  
215 E. McKinney  
Denton, TX 76201

Dear Mr. Bucek:

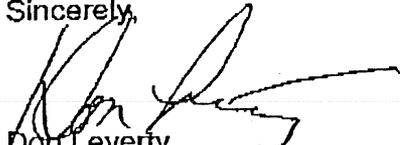
By this letter, CoServ Gas formally accepts the draft franchise dated December 9, 1998 and transmitted by you on that date via e-mail.

We appreciate your efforts to negotiate complex issues over a relatively short period of time. We also appreciate the need to ensure that franchise agreements protect the City and the public it serves.

However, we do not believe it appropriate to impose requirements on CoServ Gas that are more stringent than those for other gas utilities. Given more time, we would have been able to make a persuasive argument that it was neither equitable nor necessary to do so. However, we must meet obligations we have made, and therefore accept the franchise as you have amended it.

Again, we appreciate your efforts in expediting this matter, and please let us know what we can do to expedite its consideration by the Council. Thank you.

Sincerely,



Don Leverty  
Director of Regulatory Affairs

TEXAS STATUTORY PERFORMANCE BOND  
(Public Works)

Bond No. TX 3531473 00

KNOW ALL MEN BY THESE PRESENTS:

THAT, CoServ Gas, Ltd. (hereinafter called the Principal), as principal, and UNIVERSAL SURETY OF AMERICA, a corporation organized and existing under the laws of the State of Texas, licensed to do business in the State of Texas and admitted to write bonds, as surety, (hereinafter called the Surety), and held and firmly bound unto City of Denton, Texas (hereinafter called the Obligee), in the amount of One Hundred Thousand and no/100 ----- (Dollars) (\$ 100,000.00) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into franchise agreement with the Obligee, dated the 19<sup>th</sup> day of January, 1999, for furnishing transport, sell and distribute gas to customers in Denton, Texas which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein. The term of this bond is for one year beginning 2-9-1999 and ending 2-9-2000. This bond is subject to renewal annually by execution of a new bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Chapter to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 9<sup>th</sup> day of February, 1999.

Principal:

COSEV GAS, LTD.

By: *Lee McGinnis*

Surety: UNIVERSAL SURETY OF AMERICA

By: *Michele Degnon*  
Attorney-In-Fact  
Michele Degnon

# UNIVERSAL SURETY OF AMERICA

P.O. BOX 1068 •Houston, Texas 77251-1068

## GENERAL POWER OF ATTORNEY - CERTIFIED COPY

Agency Information

8000325  
McQueary Henry Bowles Troy LLP

GPA#

TX 3531473 00

Know All Men by These Presents, That UNIVERSAL SURETY OF AMERICA, a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Texas, does by these presents make, constitute and appoint

**Bill Henry**  
**Kae Gibbons**

**Dennis Dowd**  
**Donnie D. Doan**  
**Tom P. Ellis, III**

**John D. Fulkerson**  
**Michele Degnon**

of Dallas and State of Texas its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver

Bonds not to exceed \$250,000.00 unless such is accompanied by letter of authority signed by the President, Secretary or Executive Vice President of Universal Surety of America.

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do within the stated limitations, and such authority is to continue in force until 6/30/2000. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of Universal Surety of America at a meeting held on the 11th day of July, 1984.

"Be It Resolved, that the President, and any Vice President, Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company."

"RESOLVED that the signature of any officer of the corporation, and the seal of the corporation may be affixed or printed by facsimile to any power of attorney of the corporation, and that such printed facsimile signature and seal shall be valid and binding upon the corporation."

In Witness Whereof, Universal Surety of America has caused these presents to be signed by its President, Jack McReynolds and its corporate seal to be hereto affixed this 2nd day of January, A.D., 1998.

State of Texas

ss:

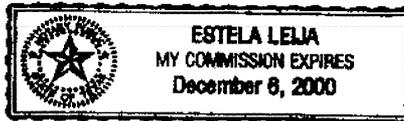
County of Harris



UNIVERSAL SURETY OF AMERICA

*Jack McReynolds*  
\_\_\_\_\_  
Jack McReynolds President

On this 2nd day of January, in the year 1998, before me, Estela Leija, a notary public, personally appeared Jack McReynolds, personally known to me to be the person who executed the within instrument as President, on behalf of the corporation herein named and acknowledged to me that the corporation executed it.



*Estela Leija*  
\_\_\_\_\_  
Notary Public

I, the undersigned Secretary of Universal Surety of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in effect.

GIVEN under my hand and the seal of said company, at Houston, Texas, this 9th day of February, 19 99.

*Agony Bailey*  
\_\_\_\_\_  
Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.

For verification of the authority of this power you may telephone (713) 722-4600.

1451-1500/050