

ORDINANCE NO. 2001-484

AN ORDINANCE GRANTING TO TXU GAS DISTRIBUTION, A DIVISION OF TXU GAS COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF DENTON, DENTON COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, 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 THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING A SAVINGS CLAUSE; A SEVERABILITY CLAUSE; AND AN EFFECTIVE DATE.

WHEREAS, TXU Gas Distribution Company, a division of TXU Gas Company, hereinafter referred to as "Company," through a merger with Lone Star Gas Company, assumed the previous franchise to use and occupy the public rights-of-way and public property of the City for the purpose of laying, maintaining, constructing, protecting and operating their system as granted by Ordinance No. 82-56, as amended by Ordinance No. 90-108; and

WHEREAS, the previous franchise referred to above expired on August 19, 2001; and

WHEREAS, the Company and the City desire to enter into a new franchise agreement to authorize the Company, its successors and assigns, the rights to use and occupy the public rights-of-way and other public property of the City as set forth in the body of this ordinance; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. GRANT OF AUTHORITY

(A) The City of Denton, Texas, herein after called "City," hereby grants to TXU Gas Distribution, a division of TXU Gas Company, hereinafter called "Company," its successors and assigns, privilege and license to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating,

and replacing the System and all other appurtenant equipment needed and necessary to deliver, transport and distribute 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.

(B) Said privilege and license being granted by this ordinance is for a term from August 19, 2001 through December 31, 2011. Provided, however, the Company shall pay the franchise fee set forth in Section 20 on gross revenues as defined in Section 8 of this ordinance beginning with the effective date of this ordinance. Until that date Company shall continue to pay revenues based on the franchise fee payment due under the previous franchise which expired on August 19, 2001.

(C) The provisions set forth in this ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System within the City. In granting this franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City, and it is expressly provided that nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Company to residential customers, commercial customers, industrial customers, or to any combination of such customers, within the territorial limits of the City as same now exist or as such limits may be extended from time to time hereinafter and to insure the maintenance of Company's property in good repair throughout the term of this franchise. Company, by its acceptance of this franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time. By entering into this franchise neither Company nor

City waives any claims or defenses they may have in the litigation styled *City of Denton, Texas, et al vs. TXU Electric Company, et al*, currently pending in the 134th Judicial District Court of Dallas County, Texas (“TXU Litigation”).

SECTION 2. ACCEPTANCE OF TERMS OF FRANCHISE

(A) The Company shall have thirty (30) days from and after the passage and approval of the ordinance to file its written acceptance thereof with the City Secretary. The effective date shall be determined in accordance with the requirements of Section 28 and Section 13.01 of the City Charter.

(B) If the Company, its successors and assigns, shall faithfully comply with all the terms, and faithfully perform all the duties and obligations, and faithfully observe and recognize all the limitations and regulations contained in this ordinance and in the valid ordinances of the City relating to the conduct of Company's business adopted hereunder or under the police powers of the City, then the rights, franchises and privileges herein granted shall extend from the date of the acceptance of this ordinance by Company through December 31, 2011; otherwise, the City, after any material breach of the terms of this franchise has been determined by the City Council of the City, may declare all rights granted hereunder to be abated, forfeited or terminated in accordance with the termination procedures provided herein.

(C) At midnight on December 31, 2011, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited, shall at once cease and terminate.

SECTION 3. NO THIRD PARTY BENEFICIARIES

This franchise is made for the exclusive benefit of the City and the Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 4. SUCCESSORS AND ASSIGNS

No assignment or transfer of this franchise shall be made, in whole or in part, without approval of the City Council of the City. The City will grant such approval unless withheld for good cause. Upon approval, the rights, privileges, and franchise herein granted to the Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this franchise shall be binding upon the successors and assigns of the Company.

SECTION 5. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

This franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Denton City Charter of 1959, as amended, including Article XIII "Franchises" of said Charter, and all other applicable ordinances of the City of Denton, not inconsistent herewith.

SECTION 6. CONFLICTING ORDINANCES

All ordinances and parts of ordinances of the City of Denton, Texas, in conflict with the provisions of this ordinance are hereby repealed, to the extent of that conflict only.

SECTION 7. NOTICES

Any notices required or desired to be given from one party to the other party to this ordinance shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for

notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

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

COMPANY
Town Manager
TXU Gas Distribution
100 W. Mulberry
Denton, Texas 76201

SECTION 8. DEFINITIONS

For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(A) "City" shall mean the City of Denton, Texas.

(B) "Company" shall mean TXU Gas Distribution, a division of TXU Gas Company.

(C) "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by the Company from or in connection with the operation of the System and for its services and related services provided by the Company to residential, commercial, industrial, governmental, municipal and all other customers located within the corporate limits of the City, save and except sales to the Spencer Generating Station as indicated in subsection 8(C)(5)(e). The revenues included in Gross Revenues shall include without limitation:

(1) all revenues received by the Company from the sale of gas within the City to all customers within the City;

(2) all revenues received by the Company from the transportation of gas, including third party natural gas, through the System of Company to residential, commercial, industrial and transportation service customers and all other customers

within the City;

(3) to the extent not included in paragraphs (1) and (2), above, the total value of gas, including third party natural gas, which shall include all affiliate revenues, transported in Denton through the System of Company to all customers within the City; and

(4) other revenues of the Company derived from lawful charges: (a) to connect gas service within the City; (b) to disconnect gas service within the City; and (c) to handle returned checks from customers within the City and other such service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City.

(5) Gross revenues shall include, regardless of the outcome of the TXU litigation mentioned in Section 1(C), all transportation service, industrial and miscellaneous revenues. Gross revenues shall not include: (a) the revenue of any person including without limitation, a TXU affiliate, to the extent such revenue is already included in Gross Revenues of the Company (b) taxes imposed by law on customers that the Company is obligated to collect and which the Company passes on, in full, to the applicable tax authority or authorities other than sales taxes; (c) any investment income earned by the Company (d) sales taxes, fee on fee revenues or monies received by Company from customers as a contribution in aid of construction unless these revenues are found by a final judgment of the Court or through a settlement of the TXU litigation to be included within "Gross Revenues"; (e) revenues derived from sales to the Spencer Generating Station. (f) the parties agree that at the exclusive option of the City, the definition of "Gross Revenues" under this franchise will be amended to include all additional revenues which are found by a final judgment of the court or through a

settlement of the TXU litigation to be included or includable within "Gross Revenues".

The parties further agree to amend this franchise to adopt and approve rate ordinances and tariffs as necessary in order to add any such additional revenues.

(D) "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

(E) "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, easements, public places, public thoroughfares, grounds, sidewalks and all other public real property of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

(F) "System" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and any other equipment or instrumentalities used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas for heating, lighting, power, and any other purpose for which natural gas may now or hereafter be used, located within the corporate limits of the City.

(G) "TXU Affiliate" shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

(H) Transportation Service Customer shall mean any person or entity for which

Company transports gas through the pipeline system of Company within the City to customers for delivery or consumption within the City.

SECTION 9. PARAGRAPH HEADINGS. CONSTRUCTION

The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 10. CONDITIONS OF OCCUPANCY

(A) All construction and the work done by Company, and the operation of its business, under and by virtue of this ordinance, shall be in conformance with the ordinances, rules and regulations of City now in force and that may hereafter be adopted by the City relating to the use of its Public Rights-of-Way and grounds of the City.

(B) 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. The placement of all mains, pipes, laterals, and other appurtenant equipment shall be subject to the approval of the City Manager or his designee prior to construction which approval shall not unreasonably be withheld. Reproducible copies of all maps showing the location of all mains, pipes, laterals, and other appurtenant equipment shall be furnished to the City Manager.

(C) In determining the location of Company's pipeline within the City, Company shall minimize interference with then-existing underground structures of City or other utility franchisees. Likewise, in determining the location of the facilities of the City and other utility franchisees within the City, City shall minimize interference with existing facilities of Company and shall request other utility franchisees to minimize interference with existing facilities of Company.

(D) When Company makes or causes to be made excavations or places or causes to be placed obstructions in any Public Right-of-Way or other public place, the public shall be protected by barriers and lights placed, erected, marked and maintained by Company in accordance with applicable state and federal requirements. Company shall repair, clean up, and restore to as good a condition as before commencement of work, all Public Rights-of-Way or other public places disturbed during the construction and repair of its gas distributing system. In the event the Company fails to restore the Public Rights-of-Way or public places to as good a condition as before the commencement of the work and within a reasonable time, the City may restore or maintain same, after giving the Company thirty (30) days' written notice, provided however that if the Company is proceeding diligently to restore the property, the time for restoration shall be extended for such time as is necessary for the Company to complete the restoration. If the Company fails to restore the Public Rights-of-Way or public places appropriately, the Company will receive a bill for the cost of the City repairing same. The Company shall, within thirty (30) days after receiving such bill, pay the actual cost for such service.

After the third such instance of a failure, and in each instance of failure thereafter, to restore the Public Right of Way or public places appropriately in any calendar year, the City may include a penalty of up to ten percent (10%) of the City's cost of repairs. Any penalty of less than One Hundred Dollars (\$100.00) shall be waived as *de minimus*.

(E) If City abandons any Public Right-of-Way in which Company has facilities, Company shall have the right to continue its use of the former Public Right-of-Way upon reasonable conditions to be determined by the City. .

(F) The Company will insure against all the risks undertaken pursuant to this franchise including general liability insurance with a combined single limit of \$1,000,000 per occurrence.

Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under a Company approved formal plan of self-insurance maintained in accordance with sound accounting and risk-management practices. Such insurance coverage or plan of self-insurance is subject to the approval of the Risk Manager of the City, whose approval shall not be unreasonably withheld or delayed. A certificate of insurance shall be provided to the City annually, no later than October 1st for each year during the term of Company's franchise, evidencing such coverage, and additionally within thirty (30) calendar days of any substantial changes in the nature of its coverage under this Section. Should Company elect to self-insure, its annual notice to the City shall contain information clearly identifying the process for filing a claim against such coverage.

The City acknowledges that Company is self-insured or desires the ability to be self-insured. Nothing herein prevents the City from agreeing to substitute self-insurance coverage for the previously listed coverage requirements, upon proof of such self-insurance submitted to the City, and such agreement shall not be unreasonably withheld.

SECTION 11. MAPPING OF DISTRIBUTION SYSTEM

The Company shall within one (1) year after the granting of this franchise file with the City Manager or his designee a map or maps in convenient book, atlas form, or digital format (if available and requested by City) or shall correct and bring up to date any map or maps now on file (including providing the map or maps in digital format, if available and requested by the City). The maps shall show with reasonable detail Company's entire gas distributing system in the City, as same then exists, which shall include the locations and dimensions and depths, to the extent reasonably possible, of all mains, pipes, manholes, connections with premises and other apparatus employed by Company, and which map shall be corrected and brought up to date by Company annually. The information provided pursuant to this paragraph shall be based on Company's original installation specifications unless otherwise noted. It is further agreed by

City and Company that provision of this information does not relieve the Company, City or other third parties from an obligation to utilize all appropriate procedures to locate underground facilities, including the obligation to notify a notification center established pursuant to Tex. Utility Code Chapter 251, prior to conducting work in the right of way such as excavating, drilling, underground boring, jacking, or open cutting.

SECTION 12. RELOCATION OF COMPANY EQUIPMENT

(A) If the City in constructing its sewers, streets, utilities or other public works should require any mains, pipes or other System facilities or equipment to be shifted or relocated, such mains, pipes or other System equipment shall be timely shifted or relocated by Company at its own expense as and when required by the City. The City shall not require Company to remove the facilities entirely from a street, sidewalk, curb, alley, highway, or public way unless suitable alternatives are available for relocation of its facilities.

(B) When the Company is required by the City to remove or relocate its mains, laterals, and other System facilities or equipment to accommodate construction of Public Rights-of-Way or other public or City-owned facilities and the Company is eligible for reimbursement or surcharge under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by the Company as a result of the ordered relocation, and the application for reimbursement or surcharge is required by statute, written governmental policies, or rules to be filed and processed by the City, the City shall make reasonable efforts to timely and promptly notify the Company of any application deadlines of which it may be aware, and Company costs and expenses shall be included in any application by City for reimbursement, if Company submits its costs and expense documentation to the City prior to the filing of the application. Nothing herein shall be construed to prohibit, alter or modify in any way the right of the Company to seek or recover a surcharge pursuant to Section 104.112 of the Texas Utilities Code.

SECTION 13. LAYING OF LINES IN ADVANCE OF PAVING

(A) Whenever the City shall conclude to pave any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes, the Company may be required, at no expense to the City, in advance of such paving, to renew such mains or pipes, if defective or inadequate in size pipes and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located without regard to the number of customers along the line.

(B) The Company shall be given one hundred twenty (120) days' written notice of the intention of the City to pave any such Public Right-of-Way and specifying the new locations for the lines. Within one hundred twenty (120) days from receipt of such notice, the Company shall initiate work and thereafter proceed in a workmanlike manner to completion of the necessary work. If the Company should fail to so proceed, and such street or alley is thereupon paved, except in an emergency, the Company shall for two (2) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose, except by written permission of the City Manager under such terms and conditions as the City Manager may reasonably subscribe.

SECTION 14. CONFLICTING FRANCHISES

If the Company, in laying its pipes, shall come into conflict with the rights of any other person or corporation having a franchise from the City, the City Council shall decide all questions concerning the conflicting rights of the respective parties, and shall determine the location of the structures of the said parties and shall reconcile their differences. The Company records shall be available to City for review and inspection for compliance with this franchise at reasonable times and upon reasonable notice.

SECTION 15. INSTALLATION OF METER

Company shall install upon or immediately adjacent to the premises of each residential customer a meter of standard type for the purpose of accurately measuring the gas consumed by such customer. If a meter is installed in or near the Public Rights of Way, Company agrees to discuss with the City Engineer or his delegate the aesthetics of the meter placement. If agreement cannot be reached, the Company may install standard equipment.

SECTION 16. **EXTENSIONS FOR RESIDENTIAL CUSTOMERS**

Company shall be required to extend distribution mains in any street up to one hundred (100) feet for any one residential customer, in accordance with its extension policy that has been approved by the City; 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 and the provision of service is not economically feasible, the cost of such extension shall be borne by customer. Company shall not be required to extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION 17. **DUTY TO SERVE**

The Company hereby agrees that it will not arbitrarily refuse to provide service to any one that it is economically feasible for the Company to serve. In the event that a party is refused service, said party may request a hearing before the City Council of the City, said hearing to be held within forty-five (45) days from the date of the request for hearing. The Council may order the Company to provide service, amend the franchise or take any other action necessary to bring the Company into compliance with the intent of the Council in granting this franchise, including termination or forfeiture of the franchise in accordance with Section 25. The Council shall render its opinion at its next regular meeting but in no event shall it be required to act in less than seven (7) days.

SECTION 18. RATES

Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with the City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extension policies. The rates and charges collected from its customers in the City shall be subject to revision and change by either the City or Company in the manner provided by law.

SECTION 19. INSTALLATION CHARGES, DEPOSITS AND OTHER COMPANY CHARGES

(A) 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 in accordance with its tariffs, rate schedules, service policies, and Quality of Service Rules as approved by the City and filed with the Texas Railroad Commission. Company may require, before furnishing service, the execution of a contract for such service.

(B) Company shall be entitled to require each and every customer, before service is commenced or reinstated, to satisfactorily establish credit pursuant to the Company's Quality of Service Rules as may be in effect during the term of this franchise. Said deposit shall be retained and refunded in accordance with such Quality of Service Rules and shall bear interest, as provided in Section 183.001 through 183.006 Tex. Util. Code, (Vernon's 2001), including any and all future amendments to said Article. Upon termination of service, Company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the customer making the deposit.

(C) Company shall have the right to contract with each customer 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 right-of-way to and throughout the customer's premises. Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the Company's main to the customer's meter where gas is measured by Company. The customer shall own, operate, and maintain all yard lines and house piping, which are defined as supply lines extending from the point of connection with the Company's customer meter where gas is measured to the point of connection with customer's house piping.

SECTION 20. PAYMENTS TO THE CITY

(A) In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Such payments shall be made on a quarterly basis, on or before the forty-fifth (45th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to four percent (4%) of the quarterly Gross Revenues, as defined in Section 8(C), received by the Company from the sale of gas to its customers, including but not limited to residential, commercial, industrial, governmental, municipal and transportation service customers within the corporate limits of City. The first payment hereunder shall be due and payable on or before April 1, 2002, and shall be based upon Company's Gross Revenues received during the calendar year ending December 31, 2001 and shall be payment for the rights and privileges granted hereunder during the period of January 1, 2001 through December 31, 2001. Subsequent payments shall be due and payable quarterly thereafter on or before the fifteen (15th) day of the second month following the end of the calendar quarter upon which the payment is based and shall be payment for the rights and privileges granted hereunder during the calendar quarter in which payment is made, that is, the quarterly payments shall be as follows:

<u>Payment Due Date</u>	<u>Quarter Upon Which Payment Is Based</u>	<u>Quarter For Which Payment Is Made</u>
May 15	Jan. 1 – Mar. 31	Jan. 1 – Mar. 31
Aug. 15	Apr. 1 – June 30	Apr. 1 – June 30
Nov. 15	July 1 – Sept. 30	July 1 - Sept. 30
Feb. 15	Oct. 1 - Dec. 31	Oct. 1 - Dec. 31

Provided, however, if Company, prior to April 1, 2002, can provide the City with sufficient evidence to demonstrate that Company's predecessor—Lone Star Gas Company—had been prepaying its franchise fee under the franchise entered into by the parties under Ordinance No. 82-56 so that each payment constituted a payment for the rights and privileges granted during the calendar year in which the payment is made, the parties agree to amend this franchise to revise the quarterly payment schedule to reflect and account for the prepayment.

(B) The value of gas transported by Company for Transport Customers shall be determined as set forth in this paragraph. 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 agrees to give to City, upon Request, access to confidential information so removed in order for the City to verify the accuracy of the information provide to the City under the provisions of this paragraph. Failure or inability of Company to collect the 4% franchise fee from its Transport Customers does not relieve it of its responsibility and obligations to remit payment in the amount of 4% of value of such gas to the City.

(C) The aforesaid franchise fee shall be in lieu of any and all other additional

occupation taxes, municipal license, permit and inspection fees, street or alley rentals or charges, and all other and additional charges, levies, fees, and rentals of whatsoever kind or character which City may now impose or hereafter levy and collect from Company or Company's agents, save and except the Company's obligation to reimburse the City for street repairs and regulatory expenses in excess of \$25,000 under Section 103.022 of the Gas Utility Regulatory Act (Tex. Util. Code Section 103.022) or any successor law, and the payment of ad valorem taxes, sales and use taxes, special taxes, and assessments for public improvements, and any fees associated with the use of City-owned poles, which are not affected by Company's payment of franchise fees hereunder. Franchise fees are payable by Company to City in addition to general or special ad valorem taxes which City is authorized to levy and impose upon real and personal property, sales and use taxes, and the special taxes and assessments and fees excepted above. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then 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 occupation taxes, licenses, charges, fees or rentals.

(D) If the Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest at the current prime rate per annum, from such due date until payment is received by City. The reimbursement of the City by Company for hiring experts in connection with the rate making process pursuant to state law for which the Company may be legally liable shall not be deducted from the gross receipts payment.

(E) Company shall notify the City of the identity of any customer of Company that changes from a tariffed rate to a contract rate with forty-five (45) days of such change.

SECTION 21. **BOOKS AND RECORDS**

(A) Company agrees that at the time of each quarterly payment, Company shall also submit to the City a sworn statement showing: (i) its Gross Revenues for the preceding calendar quarter from the sale of gas to its customers, including but not limited to residential, commercial, industrial, governmental and municipal customers, within said corporate limits, including the amount of revenues received by Company for the transportation of gas; (ii) the coded identity of Company's transportation service customers during the preceding calendar quarter, and (iii) the value, volume, and transport fee of gas transported during the proceeding calendar quarter for such transportation service customers, calculated in accordance with Section 20(B) above. Upon request, City shall have access at Company's office to the actual identity of Company's Transport Customers and their suppliers as long as such information shall remain confidential, and no copies of such information may be made.

(B) 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 sworn reports agreed to be filed herein. If such an examination reveals the Company has underpaid the City, then City shall provide Company written notification from City regarding the existence of such underpayment, Company shall remit the amount of underpayment to City within 10 days.

SECTION 22. RESERVATION OF RIGHTS: GENERAL

(A) The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's rates and services to insure the rendering of efficient public service at reasonable rates, and the maintenance of Company's System in good repair throughout the terms of this franchise.

(B) 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 and for City and the inhabitants thereof.

(C) City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City and inhabitants thereof and may, in accordance with applicable state law and the Denton City Charter, purchase this franchise from the Company.

SECTION 23. **RIGHT TO INDEMNIFICATION AND TO BE HELD HARMLESS**

The Company shall indemnify, defend and hold harmless the City and all of its present, future and former agents, employees, officials and representatives in their official, individual and representative capacities from and against any and all liability created by, arising from or in any manner relating to the construction, operation, maintenance, repair or replacement of the Company's System and facilities or the use of the Public Rights-of-Way or in any way growing out of the granting of this franchise, either directly or indirectly, or by reason of any act, negligence, or nonfeasance of the contractors, agents or employees of the Company. As used herein, the term "liability" includes, but is not limited to, any and all claims, demands, causes of action, judgments, liens, and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental) of any conceivable character, due to or arising from injuries to persons (including death) or to property (both real and personal). The indemnity provided herein expressly includes any liability arising through the doctrines of strict or products liability and any liability arising under the constitutions of the United States or Texas. Upon the commencement of any suit or proceeding at law against the City relating to or covering any matter covered by this indemnity, the City shall tender the defense of said suit or proceeding at law to the Company, and the Company shall thereupon at its own cost and expense defend, compromise, or settle the same. Any settlement involving a claim or cause of action against the City shall, unless otherwise

agreed to by the City, release the City from any and all liability as a result of said claim or cause of action. This indemnity and hold harmless agreement shall not apply to any situation to the extent the city is solely liable for the actions, suits or claims of injury or damage by reason of City's sole negligence.

SECTION 24. RENEGOTIATION

If either City or Company requests renegotiation of any term of this franchise ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this franchise ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of the franchise ordinance will continue in effect for the remaining term of the franchise.

SECTION 25. TERMINATION

(A) In addition to any rights set out elsewhere in this ordinance, the City reserves the right to terminate the franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the franchise or the Company becomes insolvent, or is adjudged bankrupt.

(B) Procedures for Termination.

(1) The City may, at any time, terminate this franchise for a continuing material violation by the Company of any of the substantial terms hereof. In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 7 hereof. The Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's franchise is subject to

termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least ten (10) days prior written notice of any public hearing concerning the termination of the franchise. In addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Company.

(3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION 26. **SEVERABILITY**

This ordinance and every provision hereof, 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. If any term or provision of this ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this ordinance shall not be affected thereby.

SECTION 27. NO WAIVER

Either City or the Company shall have the right to waive any requirement contained in this ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 28. EFFECTIVE DATE

This franchise shall be effective only after: (a) its final passage by the City Council; (b) receipt by the City of Company's acceptance as provided by Section 2 herein; and (c) final publication as required by law.

The ordinance shall be passed by a majority vote of the entire City Council at three regular meetings of Council. The City Secretary shall publish, at the Company's expense, the complete text of this ordinance in a newspaper of general circulation. Publication shall take place once each week for three consecutive weeks in the official newspaper published in the City of Denton. The ordinance shall not become effective until thirty days after its final passage in accordance with the City Charter.

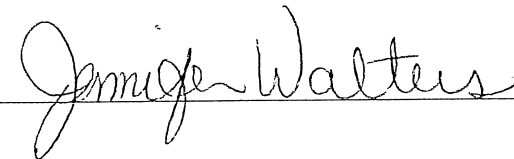
The above-referenced actions having taken place, the effective date of this ordinance will be January 17, 2002.

PRESENTED, AND GIVEN first reading on the 18 day of September, 2001, at a

regular meeting of the City Council of the City of Denton, Texas; and given second reading,
passed and approved on the 18 day of December 2001, by a vote of 5 ayes and 0
noes at a regular meeting of the City Council of the City of Denton, Texas.


RONI BEASLEY, MAYOR PRO TEM

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

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

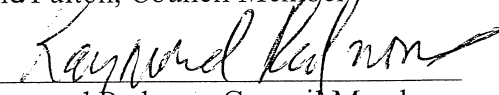
BY: 

The City of Denton, Texas, acting herein by its duly constituted authorities, hereby
declares the foregoing Ordinance passed on first reading on the 18th day of September, 2001; and
passed on second reading on the 16 day of October, 2001; and passed on third
reading on the 18 day of December, 2001; and being finally effective as of the
17 day of January, 2002

/s/ Abstained
Euline Brock, Mayor

/s/ 
Roni Beasley, Council Member

/s/ 
Jane Fulton, Council Member

/s/ 
Raymond Redmon, Council Member

/s/ 
Mark Burroughs, Council Member

/s/ 
Perry McNeill, Council Member

/s/ 
Mike Phillips, Council Member

The above and foregoing ordinance read, adopted on first reading and passed to second reading by the following votes, this the 18th day of September, 2001, at a regular session of the City Council.

Euline Brock, Mayor, abstained from voting.

Mark Burroughs, Council Member, voting aye.

Roni Beasley, Council Member, voting aye.

Perry McNeill, Council Member, voting aye.

Jane Fulton, Council Member, voting aye.

Mike Phillips, Council Member, voting aye.

Raymond Redmon, Council Member, voting aye.

The above and foregoing ordinance read, adopted on second reading and passed to third reading by the following votes, this the 16th day of October, 2001, at a regular session of the City Council.

Euline Brock, Mayor, abstained from voting.

Mark Burroughs, Council Member, absent.

Roni Beasley, Council Member, voting aye.

Perry McNeill, Council Member, voting aye.

Jane Fulton, Council Member, voting aye.

Mike Phillips, Council Member, voting aye.

Raymond Redmon, Council Member, voting aye.

The above and foregoing ordinance read, adopted on third reading and passed by the following votes, this the 18th day of December, 2001, at a regular session of the City Council.

Euline Brock, Mayor, abstained from voting.

Mark Burroughs, Council Member, voting aye.

Roni Beasley, Council Member, voting aye.

Perry McNeill, Council Member, voting aye.

Jane Fulton, Council Member, voting aye.

Mike Phillips, Council Member, voting aye.

Raymond Redmon, Council Member, absent.