

AN ORDINANCE GRANTING TO LONE STAR GAS COMPANY, A DIVISION OF ENSERCH CORPORATION, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF CUMBY HOPKINS 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; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CUMBY, TEXAS:

SECTION 1. That the City of Cumby, Texas, hereinafter called "City," hereby grants to Lone Star Gas Company, a Division of ENSERCH CORPORATION, hereinafter called "Company," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public places, public thoroughfares, and grounds of City for the purpose of laying, maintaining, constructing, operating, and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to deliver gas in, out of, and through said City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits, said consent being granted for a term of twenty-five (25) years from and after the date of the final passage and approval of this ordinance.

SECTION 2. Company shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment so as to interfere as little as possible with traffic and shall promptly clean up and restore to an approximate original condition, at its cost, all thoroughfares and other surfaces which it may disturb. The location of all mains, pipes, laterals, and other appurtenant equipment shall be fixed under the supervision of the City Commission or an authorized committee or agent appointed by said City Commission.

SECTION 3. When Company shall make or cause to be made excavations or shall place obstructions in any street, alley, or other public place, the public shall be protected by barriers and lights placed, erected, and maintained by Company; and in the event of injury to any person or damage to any property by reason of the construction, operation, or maintenance of the gas distributing plant or system of Company, Company shall indemnify and keep harmless City from any and all liability in connection therewith. Company shall repair, clean up, and restore to an approximate original condition all streets and alleys disturbed during the construction and repair of its gas distributing system.

SECTION 4. In addition to the rates charged for gas supplied, Company may make and enforce reasonable charges, rules, and regulations for service rendered in the conduct of its business, including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract therefor. 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 streets or alleys to and throughout the consumer's premises. Company shall own, operate, and maintain all service lines, which are defined as the supply lines from the Company's main to the consumer's curb line, when mains are located in the streets and to the consumer's property line when mains are located in the alleys. The consumer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the underground supply lines extending from the point of connection with Company's service line to the point of connection with consumer's house piping.

SECTION 5. Company shall not be required to extend mains on any street more than fifty (50) feet for any one consumer of gas.

SECTION 6. Company shall be entitled to require from each and every consumer of gas, before gas service is commenced, a deposit of twice the amount of an estimated average monthly bill, which said deposit may be retained by Company until service is discontinued and all bills therefor have been paid. Company shall then return said deposit to the consumer, together with six percent (6%) interest thereon from the date of said deposit up to the date of discontinuance of service. Company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the consumer making the deposit.

SECTION 7. The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of furnishing gas for light, heat, and power to and for City and the inhabitants thereof.

SECTION 8. Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor; and, Company shall maintain its property, equipment, and appliances in good order and condition.

SECTION 9. Company, its successors and assigns, agrees to pay and City agrees to accept; on or before the 1st day of November, 1977, and on or before the same day of each succeeding year during the life of this franchise, up to and including the year 2001, a sum of money which shall be equivalent to two percent (2%) of the gross receipts received by Company from the sale of gas to its domestic and commercial consumers within the corporate limits of said City (expressly excluding, however, receipts derived from sales to industrial and governmental users and consumers in said City) for the preceding calendar year, which annual payment shall be for the rights and privileges herein granted to Company, including expressly, without limitation, the right to use the streets, alleys, and public ways of said City. And it is also expressly agreed that the aforesaid annual payment shall be in lieu of any and all other and additional occupation taxes, easement, and franchise taxes or charges (whether

levied as an ad valorem, special, or other character of tax or charge), in lieu of municipal license and inspection fees, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character which City may now impose or hereafter levy and collect, excepting only the usual general or special ad valorem taxes which City is authorized to levy and impose upon real and personal property. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, 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 any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges.

In order to determine the gross receipts received by Company from the sale of gas (expressly excluding the sale of gas to industrial and governmental consumers) within the corporate limits of City, Company agrees that on the same date that payments are made, as provided in the preceding paragraph of this Section 9, it will file with the City Clerk a sworn report showing the gross receipts received from the sale of gas to its domestic and commercial consumers within said corporate limits for the calendar year preceding the date of payment. 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.

Receipts from sales to governmental users or consumers shall include all those receipts derived from the sale of gas to federal, state, county or city governments or branches and subdivisions thereof, school districts, or other similar districts, it being the intention to include within the term "governmental users and consumers" all tax-supported institutions owned or operated directly or indirectly by said governments and branches or subdivisions thereof, such as schools, colleges, hospitals, eleemosynary institutions, army or training camps, airports, courthouse, city hall, and other institutions of like or similar kind and character.

"Industrial users or consumers," as herein used, are those generally and commonly classified as such by Company.

The payment herein provided shall be for the period January 1 to December 31 of the respective year that the payment is made.

SECTION 10. When this franchise ordinance shall have become effective, all previous ordinances of said City granting franchises for gas distribution purposes which were held by Company shall be automatically cancelled and annulled, and shall be of no further force and effect.

