

ORDINANCE NO: 97-1

AN ORDINANCE GRANTING TO LONE STAR GAS COMPANY, A DIVISION OF ENSERCH CORPORATION, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF COMMERCE, HUNT COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING A SAVING CLAUSE AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS:

SECTION 1: That the City of Commerce, 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, hereinafter referred to as "Public Rights-of-Way," for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this ordinance, said consent being granted for a term of ten (10) years from and after the effective date of this ordinance.

SECTION 2: Company shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic and shall promptly clean up and restore to approximate original condition all Public Rights-of-Way which it may disturb. When Company makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any Public Rights-of-Way, Company shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions. In determining the location of Company's pipeline within 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 City, City shall minimize interference with then existing facilities of Company and shall require other utility franchisees to minimize interference with existing facilities of Company. In the event of a conflict between the location of the facilities of Company and the location of the facilities of City or other utility franchisees within Public Rights-of-Way that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities. Company shall be required, without charge, to obtain street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Company's operations in Public Rights-of-Way, provided that no permit will be required prior to performing emergency repairs or maintenance but Company shall obtain an emergency permit as soon as practical following completion of the emergency repairs or maintenance.

When the Company is required by City to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets and alleys by City, and Company is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation, and such reimbursement is required to be handled through City, Company costs and expenses shall be included in any application by City for reimbursement, if Company submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City. If the Company is required by City to remove or relocate its mains, laterals, or other facilities for any reason other than the construction of streets and alleys

by City, Company shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned reimbursing Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 3: In the event of injury to any person or damage to any property by reason of Company's construction, operation, maintenance, or replacement of Company's pipeline system within Public Rights-of-Way, Company shall indemnify and keep harmless City from any and all liability in connection therewith, except to the extent such injury or damage is attributable to City's negligent act or omission. In the event of injury to any person or damage to any property by reason of City's construction, operation, or maintenance of the Public Rights-of-Way and facilities of City within the Public Rights-of-Way, City shall indemnify and keep harmless Company from any and all liability in connection therewith, except to the extent such injury or damage is attributable to Company's negligent act or omission.

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. Company may require, before furnishing service, the execution of a contract for such service. 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 Public Rights-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. Yard lines are defined as the supply lines extending from the point of connection with Company's customer meter to the point of connection with customer's house piping.

SECTION 5: Company shall be required to extend distribution mains in any Public Rights-of-Way up to one hundred feet (100') for any one residential customer only if such customer, at a minimum, uses gas for unsupplemented space heating and water heating. 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 6: Company shall be entitled to require from each and every customer of gas, before gas service is commenced or reinstated, a deposit in an amount calculated pursuant to the Company's Quality of Service Rules as may be in effect during the term of this franchise. Said deposit shall be retained and refunded in accordance with such Quality of Service Rules and shall bear interest, as provided in Tex. Rev. Civ. Stat. Ann. art. 1440a as it may be amended from time to time. Company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the customer 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 transporting, delivering, distributing, or selling gas

to and for City and the inhabitants thereof. Provided, however, in the event City grants franchise conditions to another gas franchisee that are more favorable to such gas franchisee than the terms of this franchise are to Company, City shall approve amendments to this franchise that provide Company with the same favorable terms to be effective on the effective date of the franchise granted to such other gas franchisee.

SECTION 8: Company, its successors and assigns, agrees to pay and City agrees to accept, on or before January 31, April 30, July 31, and October 31, 1997, and on or before the same day of each succeeding year during the life of this franchise the last payment being made on October 31, 2016, a sum of money which shall be equivalent to four percent (4%) of the gross receipts received by Company from the sale of gas to its residential, commercial and industrial customers within the corporate limits of said City (expressly excluding receipts from governmental accounts and receipts from other classes of customers in said City) during the preceding calendar quarter, which quarterly payments shall be for the rights and privileges herein granted to Company, including expressly, without limitation, the right to use the Public Rights-of-Way of City. The initial payment for the rights and privileges herein provided shall be for the period January 1 through March 31, 1997, and each succeeding payment shall be for the calendar quarter in which the payment is made. And it is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, 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 from Company or Company's agents, 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 aforesaid.

Company agrees that on the same date that payments are made, as provided in this Section 8, it will file with the City Secretary a sworn report showing the gross receipts received by the Company from the sale of gas to its residential, commercial and industrial customers within City during the calendar quarter preceding the date of payment. City may, if it sees fit, have the books and records of Company examined by a representative of City to ascertain the correctness of the sworn reports agreed to be filed herein.

SECTION 9: This ordinance shall be subject to the provisions of Paragraphs (2), (3), (4), and (5) of Section 8 of Article II of the Charter of the City.

SECTION 10: When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes which were held by Company shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 11: In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance after its final passage and approval by City. If written acceptance of this franchise ordinance is not filed by Company after its final passage and approval by said City, the franchise ordinance shall be rendered null and void.

SECTION 12: If Company accepts this ordinance, by the filing of its written acceptance, this ordinance shall become effective on 1-7, 1997.

SECTION 13: REPEALING CLAUSES. All ordinances and parts of ordinances inconsistent with or in conflict with the provisions of this Ordinance shall be and the same are hereby expressly repealed.

SECTION 14: SAVINGS CLAUSE. If any section, subsection, word, sentence, or phrase of this Ordinance is declared to be invalid, it shall not affect the validity of this Ordinance.

SECTION 15: DECLARING AN EMERGENCY. WHEREAS, an emergency is apparent for the immediate preservation of order, health, safety and general welfare of the public, therefore, all rules and regulations providing for the reading of ordinances on more than one occasion be and the same are hereby suspended, and this Ordinance is passed and shall take effect as an emergency measure, and shall be and remain in full force and effect as herein provided from and after its passage and approval.

PASSED AND APPROVED on this the 7th day of January, A.D. 1997.

ATTEST:

Marty Morrison
City Secretary

John R. Lunde
Mayor
City of Commerce, Texas

APPROVED AS TO FORM:

James Fair
City Attorney

STATE OF TEXAS
COUNTY OF HUNT
CITY OF COMMERCE

§
§
§

I, Marty Morrison, City Secretary of the City of Commerce, Hunt County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Commerce, Texas, at Regular session, held on the 7th day of January, 1997, as it appears of record in the Minutes in Book _____, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the 7th day of January, A. D. 1997.

Marty Morrison
City Secretary
City of Commerce, Texas

EXTRACT FROM THE MINUTES OF
THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS

The City Council of the City of Commerce, Hunt County, Texas, convened in Regular session on the 7th day of January, 1997, at 7:00 P. M., with the following persons present:

Mayor: John R. Sands

City Council Members: Jason Cunningham
Billie Biggerstaff
Sheryl Zelhart
Penny Belcher

Absent: _____

A quorum being present, came on to be read and considered Ordinance No. 97-1 granting to Lone Star Gas Company, a Division of ENSERCH CORPORATION, a Texas corporation, a franchise to furnish and supply natural gas to the general public in the City of Commerce, Texas, for the transporting, delivery, sale and distribution of gas in, out of, and through said municipality for all purposes. On motion made by Billie Biggerstaff and seconded by Penny Belcher which carried unanimously, the City Council voted the passage of the Ordinance and to record same at length in these minutes.

STATE OF TEXAS
COUNTY OF HUNT
CITY OF COMMERCE

§
§
§

I, Marty Morrison, City Secretary of the City of Commerce, Texas, do hereby certify that the above and foregoing is a true and correct copy of the proceedings of the City Council of the City of Commerce, Texas, at a Regular session, held on the 7th day of January, 1997, in connection with the passage and adoption of Ordinance No. 97-1 granting a franchise to Lone Star Gas Company and that the same is of record in Book _____, page _____ of the Minutes of the City Council.

WITNESS MY HAND AND SEAL OF SAID CITY, this the 7th day of January, A.D. 1997.

Marty Morrison

City Secretary
City of Commerce, Texas