

AN ORDINANCE GRANTING TO TXU GAS DISTRIBUTION, A DIVISION OF TXU GAS COMPANY, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE TOWN OF TALTY, KAUFMAN COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID TOWN 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.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF TALTY, TEXAS:

SECTION 1. GRANT OF AUTHORITY: The Town of Talty, Texas, hereinafter called "Town," hereby grants to TXU Gas Distribution, a division of TXU Gas Company, 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 Town, 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 (the "System") to deliver, transport, and distribute gas in, out of, and through Town 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 Town corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2028.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF COMPANY FACILITIES: Company shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and, to the extent reasonably practicable, restore to equal or better condition, all Public Rights-of-Way that it may disturb. In determining the location of the facilities of the Town and other utility franchisees within Town, Town 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 Town or other utility franchisees within Public Rights-of-Way that cannot otherwise be resolved, Town or an authorized agent of Town shall resolve the conflict and determine the location of the respective facilities. Company shall not be required 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.

When the Company is required by Town to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets and alleys by Town, 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 Town, Company costs and expenses shall be included in any application by Town for reimbursement, if Company submits its cost and expense documentation to Town prior to the filing of the application. Town shall provide reasonable notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to Town. If the Company is required by Town to remove or relocate its mains, laterals, or other facilities for any reason other than the construction of streets and alleys by Town, Company shall be entitled to reimbursement from Town or others of the cost and expense of such removal or relocation. When Company is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by Town without reimbursement from Town, Company shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 et al, of the Texas Utilities Code.

If Town 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 to reimburse 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. INDEMNITY & INSURANCE: 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 Town from any and all liability in connection therewith, except to the extent such injury or damage is attributable to the fault of the Town, including, without limitation, the Town's negligent or intentional acts or omissions. Company's insurance of its obligations and risks undertaken pursuant to this franchise 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.

SECTION 4. RATES, INSTALLATION CHARGES, DEPOSITS AND OTHER COMPANY CHARGES: 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 Chapter 183 of the Texas Utilities Code as 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.

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. EXTENSIONS FOR RESIDENTIAL CUSTOMERS: At an individual residential customer's request, Company shall be required to extend distribution mains for such customer 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 Town or to make a tap on any transmission main within Town unless Company agrees to such extension or tap by a written agreement between Company and a customer.

SECTION 6. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and Town 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 Town and the inhabitants

thereof.

SECTION 7. PAYMENTS TO TOWN:

A. Company, its successors and assigns, agrees to pay and Town agrees to accept, a one-time payment of \$500.00 in consideration of the use and occupancy of the streets, alleys, highways and public grounds and ways during the prior periods and for the period ending December 31, 2003. Town agrees that Company may recover this payment amount from all customer classes pursuant to Section 7.E below. This initial payment will be provided at the time of the Company's written acceptance of this franchise as set forth in Section 8.

B. Company, its successors and assigns, agrees to pay and Town agrees to accept, on or before the 30th day of April, 2004, and on or before the same day of each succeeding year during the life of this franchise the last payment being made on the 30th day of April 2028, a sum of money which shall be equivalent to four percent (4%) of the Gross Revenues, as defined in 7.C below, received by Company during the preceding calendar year; provided that the 2004 payment will be based on Gross Revenues received by Company between the effective date of this Ordinance and December 31, 2003.

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 within the corporate limits of the Town and including, without limitation:

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

(2) all revenues received by the Company from the transportation of gas through the System of Company within the Town to customers located within the Town;

(3) the value of gas transported by Company for Transport Customers through the System of Company within the Town ("Third Party Sales"), with the value of such gas to be reported by each Transport Customer to the Company, provided, however, that should a Transport Customer refuse to furnish Company its gas purchase price, Company shall estimate same by utilizing TXU Gas Distribution's monthly industrial Weighted Average Cost of

Gas, as reasonably near the time as the transportation service is performed; and

(4) “Gross revenues” shall also include:

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

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

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

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

iv. contributions in aid of construction” (“CIAC”);

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

(c) gross receipts fees.

(5) “Gross revenues” shall not include:

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

(b) sales taxes;

(c) any interest income earned by the Company; and

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

D. The initial payment described in Section 7.A above for the rights and privileges herein provided shall be for the period through December 31, 2003, and each succeeding payment shall be for the calendar year in which the payment is made.

(1) The franchise fee amounts based on “Contributions in aid of Construction” (“CIAC”) shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year; provided that the fee amounts based on CIAC during 2003 will be calculated from the effective date of this Ordinance through December 31, 2003.

- (2) The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year; provided that the 2004 payment will be based on CIAC calculated from the effective date of this Ordinance through December 31, 2003.

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 that Town may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that Town is authorized to levy and impose upon real and personal property. If the Town does 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 Town 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.

E. Company Franchise Fee Recovery Tariff

- (1) Company may file with the Town a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.

(2) Town agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Company's rates; (ii) if the Town intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, the Town will take an affirmative position supporting 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the Town has intervened, the Town will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.

- (3) Town agrees that it will take no action, nor cause any other person or entity to take any

action, to prohibit the recovery of such franchise fees by Company.

F. Lease of Facilities Within Town's Rights-of-Way. Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its facilities within the Town's public rights-of-way provided: (i) Company first notifies the Town of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Company makes the franchise fee payments due pursuant to Sections 7.A, 7.B, and 7.C of this Ordinance. This authority to Lease Facilities within Town's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

SECTION 8. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Company must file with the Town Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by Town. If such written acceptance of this franchise ordinance is not filed by Company, the franchise ordinance shall be rendered null and void.

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

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. EFFECTIVE DATE: If Company accepts this ordinance, the provisions of this ordinance become effective as of May 1, 2003.

PASSED AND APPROVED on this the 8th day of April, A.D. 2003.

Allison Weaver, Mayor

ATTEST:

Carla Milligan, Town Secretary

STATE OF TEXAS §
COUNTY OF KAUFMAN §
TOWN OF TALTY §

I, Carla Milligan, Town Secretary of the Town of Talty, Kaufman County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the Board of Aldermen of the Town of Talty, Texas, at a regular session, held on the 8th day of April, 2003 as it appears of record in the Minutes.

WITNESS MY HAND AND SEAL OF SAID TOWN, this the ____ day of _____,
A. D. 2003.

Carla Milligan, Town Secretary