

ORDINANCE O-012-20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, GRANTING TO ONE GAS, INC., ACTING BY AND THROUGH ITS TEXAS GAS SERVICE COMPANY DIVISION, AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TWENTY (20) YEARS FROM APPROVAL AND ACCEPTANCE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC WAYS TO INSTALL, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE PUBLIC WAYS OF THE CITY OF BORGER, HUTCHINSON COUNTY, TEXAS FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CUSTOMERS AND THE PUBLIC GENERALLY IN THE CITY; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR ASSIGNMENT, SALE OR LEASE OF THE FRANCHISE; PROVIDING FOR ACCEPTANCE OF THIS FRANCHISE BY COMPANY AND BOTH AN EFFECTIVE AND AN OPERATIVE DATE THEREOF; PROVIDING FOR USE AND REPAIR OF THE PUBLIC WAYS; PROVIDING FOR REGULATION OF SERVICE; ESTABLISHING DEPTH AND PLACEMENT OF PIPELINES; ESTABLISHING RIGHTS AND DUTIES IN THE MOVEMENT AND ALTERATION OF PIPELINES; PROVIDING FOR PLATS AND ANNEXATIONS; REQUIRING COMPANY TO PAY A FRANCHISE FEE; PROVIDING THAT THE CITY MAY ENACT AN ORDINANCE CHARGING PERSONS TRANSPORTING GAS THROUGH COMPANY'S DISTRIBUTION SYSTEM A FEE ON THE CALCULATED VALUE OF SUCH TRANSPORTED GAS; PROVIDING FOR INSPECTION OF COMPANY'S RECORDS; PROVIDING FOR INDEMNIFICATION OF THE CITY OF BORGER; PROVIDING FOR COMPANY'S RULES AND REGULATIONS; PROVIDING FOR CONDITIONS OF THE FRANCHISE; PROVIDING FOR CONSTRUCTION OF THIS ORDINANCE UPON THE INVALIDITY OF ANY PART THEREOF; PROVIDING FOR VENUE; REPEALING ALL OTHER ORDINANCES DIRECTLY IN CONFLICT

**HEREWITH; AND PROVIDING PUBLICATION
REQUIREMENTS**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
OF BORGER, TEXAS, THAT:**

SECTION 1. DEFINITIONS

As used in this Ordinance, the following words and phrases shall have the following meanings:

- A. “City” means the City of Borger, in Hutchinson County, Texas, a municipal corporation.
- B. “City Council” means the City Council of the City as the governing body of the City.
- C. “City Engineer” means the Director of Planning and Development of the City or such other officer of the City designated to approve engineering plans and designs for construction within Public Ways.
- D. “City Manager” means the City Manager of the City, or his or her designee, or such other chief administrative officer of the City designated to hear appeals from the decisions of other City officers.
- E. “City Secretary” means the City Secretary of the City or other such officer of the City designated to serve as the filing officer for official documents and records of the City.
- F. “Company” means ONE Gas, Inc., an Oklahoma corporation acting by and through its Texas Gas Service Company division, and its successors and assigns.
- G. “Customer” means any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, or public or private entity located within the municipal corporate limits of the City and serviced by the Company through any use of the Public Ways.
- H. “Franchise Fee” or “Franchise Fees” shall mean the sum of fees to be paid to the City by Company under Section 10 of this Ordinance.

- I. “Gas Sales” means the sale of natural gas to Company’s Customers located within the corporate limits of the City by use of the System.
- J. “Gas Transportation” means the transportation of Transport Gas for redelivery to Customers with re-delivery points located within the corporate limits of the City.
- K. “Gross Receipts from Gas Sales” shall constitute and include Company’s total receipts from the sale, distribution or transportation of gas to Company’s Customers. Company’s Gross Receipts from Gas Sales subject to the Franchise Fee shall specifically exclude:
 - [1] receipts from gas sales or services to Customers located at delivery points outside the corporate limits of the City;
 - [2] receipts from gas consumed or transported by Company for its own use;
 - [3] bad debt or uncollected accounts;
 - [4] receipts collected for gas utility taxes;
 - [5] receipts for any taxes, assessments, charges or fees of any kind charged by a governmental entity and collected by Company from the Customer by a pass-through charge on the gas bill, except for Franchise Fees and gross receipts taxes;
 - [6] receipts for construction advances or contributions in aid of construction;
 - [7] receipts for maintenance of appliances, machinery or equipment, including receipts by Company from its Customers in the City, if applicable, for appliance sales, appliance light-ups, maintenance of Customer equipment or facilities and any other receipts that are not legally subject to the rate regulation of the applicable regulatory authority;
 - [8] receipts for compensation for damage to Company’s property;
 - [9] receipts from sales of materials, appliances, or equipment, and
 - [10] receipts from any non-regulated utility or non-regulated services or products.

- L. “Gross Receipts from Gas Transportation” shall constitute and include Company’s total receipts from its transportation of Transport Gas, consisting of receipts from cost of service. Company’s Gross Receipts from Gas Transportation subject to the Franchise Fee shall specifically exclude, without limitation:
- [1] receipts from gas transportation services to Customers located at delivery points outside the corporate limits of the City;
 - [2] receipts from gas transported by Company for its own use;
 - [3] bad debt or uncollected accounts;
 - [4] receipts collected for gas utility taxes;
 - [5] receipts for any taxes, assessments, charges or fees of any kind charged by a governmental entity and collected by Company from the Customer by a pass-through charge on the gas bill, except for Franchise Fees and gross receipts taxes;
 - [6] receipts for construction advances or contributions in aid of construction;
 - [7] receipts for maintenance of appliances, machinery or equipment, including receipts by Company from its Customers in the City, if applicable, for appliance sales, appliance light-ups, maintenance of Customer equipment or facilities and any other receipts that are not legally subject to the rate regulation of the applicable regulatory authority;
 - [8] receipts for compensation for damage to Company’s property; and
 - [9] receipts from any non-regulated utility or non-regulated services or products.
- M. “Public Ways” means the present and future streets, avenues, boulevards, parkways, lanes, alleys, bridges, sidewalks, easements, and highways, within the municipal corporate limits of the City.
- N. “System” means Company’s system of mains, pipelines, conduits, valves, feeders, regulator stations, laterals, service lines, measuring devices, and all other necessary plants, attachments, land, structures, facilities and appurtenances for the purpose of selling, storing, supplying, conveying, transmitting, distributing, and/or transporting natural gas and any gas, including the equivalent substitutes, for all

other lawful purposes in, through, upon, under, and along the present and future Public Ways.

- O. “Transport Gas” means gas owned or controlled by a user or its designee (*i.e.*, gas that is purchased or otherwise acquired by a user from someone other than Company) and delivered by such user or its designee to Company at a point on Company’s System, such point of delivery to be defined by Company, and carried, delivered or transported through Company’s System at a point of redelivery within the municipal corporate limits of the City by Company to the user for a fee.
- P. “Utility Regulated Service Charges” shall consist of charges for services (but not for natural gas sales or transportation services) that:

- [1] Company provides to its Customers located within the corporate limits of the City and

- [2] which are or may, from time to time, become subject to the rate regulation of the applicable regulatory authority. Such Utility Regulated Service Charges shall not include receipts by Company from its Customers in the City, if applicable, for appliance sales, appliance light-ups, maintenance of Customer equipment or facilities and any other receipts that are not legally subject to the rate regulation of the applicable regulatory authority.

SECTION 2. GRANT OF FRANCHISE

The City hereby grants to Company for the term of twenty (20) years from the passage and approval of this Ordinance and the filing of a written acceptance by the Company, the right to enter upon the Public Ways to install, operate and maintain a System along, across, over and under the Public Ways for the privilege of transporting, distributing and/or selling gas to Customers and the public generally within the municipal corporate limits of the City, and including future Public Ways of any territory that the City may hereafter annex, acquire, purchase; and to distribute, sell, store, supply, transport, carry and/or convey natural gas and any gas through Company’s System in the City to other cities, towns, communities and areas outside the City and to inhabitants thereof, for the full term of this Franchise Ordinance.

- A. The Ordinance shall have the effect of and shall be a contract between City and Company and shall be the measure of the rights and liabilities of City as well as Company.

- B. The Franchise granted by this Ordinance shall in no way affect or impair the present or future rights, obligations, or remedies of the City or Company under the Texas Gas Utility Regulatory Act, as amended, or other applicable law.

SECTION 3. FRANCHISE ASSIGNMENT, SALE OR TRANSFER

Company is expressly given the power and privilege to sell, transfer or assign the franchise granted hereby, or any part of this franchise, to any person, entity or corporation that is authorized to provide natural gas utility services under applicable law to the same or similar extent and quality as the Company. The Company shall provide written notice of a proposed sale, transfer, or assignment of this Franchise to the City, provided nevertheless, that the prospective assignee, buyer or transferee shall have agreed in writing as part of the proposed assignment, sale or transfer to accept and become responsible to the City for full performance of all conditions, covenants, obligations and liabilities contained in this Franchise Ordinance and such agreement shall have been filed with the City Secretary. Any sale, transfer, or assignment of this Franchise in violation of this section shall be void.

SECTION 4. EFFECTIVE DATE AND ACCEPTANCE BY COMPANY

The Ordinance shall take effect and be in full force from and after its final passage by the City Council and final publication as required by the City's Charter and upon the acceptance hereof in writing by the Company, at least thirty (30) days after final publication as herein provided, which date of acceptance shall be the "Effective Date." This Franchise Ordinance shall continue and remain in full force and effect for a period of twenty (20) years from the Effective Date.

The Company shall have sixty (60) days from the date of final publication of this Ordinance by the City within which to file in the office of the City Secretary its consent to and written acceptance of provisions and conditions of this Franchise Ordinance.

SECTION 5. USE AND REPAIR OF THE PUBLIC WAYS

A. Company's System shall be erected, placed, and laid or otherwise installed, operated, and maintained in a manner consistent with reasonable necessity, and in a manner to least interfere with other public uses of the Public Ways. This Franchise shall constitute authority for Company to perform all work on Company's existing System within the Public Ways; provided, however, that except for emergency repairs, prior to undertaking any such work, Company shall notify the City Engineer of such work within

5 business days prior to performing such work or not later than 10 calendar days following completion of such work.

B. This Ordinance shall not authorize the performance of work within the boundaries of any City park, City owned property, or other non-dedicated area, other than in a Public Way. Except in the case of an emergency, the Company shall not perform any work on Company's existing System Facilities within the boundaries of a City park, City owned property, or other non-dedicated area, not in the City's Public Ways, without prior notification to, and approval from, the City Engineer or other proper City authority.

C. When Company desires to install new System facilities, and before commencing construction work related to such System facilities, the Company shall notify the City Engineer or other proper authority and submit a map or plan showing the locations thereon wherein it proposes to construct such new System facilities within the Public Ways. Company and City shall exercise reasonable efforts to ensure that future installations of new System Facilities in City Public Ways, do not interfere unnecessarily with any facilities of City, or other users of the Public Ways. The City Engineer, or other proper City authority, shall by written notice, either approve or deny Company's request to install new System Facilities. Approval by the City Engineer, or other proper City authority, shall constitute the authority to Company for the opening of and installation of new System Facilities within the Public Ways as shown on the map or plan. If the City Engineer, or other proper authority, does not respond within ten (10) calendar days, the authority to conduct work shall be deemed approved.

D. In the event that the approval for new System Facilities is denied, the City Engineer, or other proper authority, shall advise Company of the reasons for the denial and all necessary steps to secure approval of the request. Company shall have the right to immediately appeal the denial of the request to the City Manager, and if not approved within ten (10) calendar days by the City Manager, Company may appeal to the City Council and be heard at a public meeting held in compliance with applicable law. If the City Council fails to act on the appeal at the next regularly scheduled council meeting, the appeal will be deemed to be denied unless agreed otherwise in writing by Company and the City. Appeal, if any, of the City Council's decision shall be to the District Court of Hutchinson County, Texas, and an appeal from any decision of the District Court shall be as in all other civil actions.

E. Company shall notify the City of any temporary obstructions resulting from the excavation or disturbance of the Public Ways. Company shall display and maintain the necessary safety signals and barricades around all excavations and obstructions related to the Company's work and will make reasonable efforts to keep sufficient space in good

condition for the travel of pedestrians, automobiles, trucks, and other motor vehicles on at least one side of the excavations and obstructions.

F. After any excavation or disturbance, Company shall, with due diligence and dispatch, place the Public Way in a condition in compliance with the City's reasonable standards and specifications. All improved surfaces such as asphalt or concrete pavement, gravel, brick, or sod will be restored in kind to their original condition. Company may perform restoration work itself or utilize a third-party contractor approved by the City. City does regularly repair asphalt pavement and in its sole discretion, may act as a third-party contractor to Company for asphalt repairs at the then current rate sufficient to recover the cost of labor, equipment, and materials. Company will warranty all restored surfaces for a period of 12 months against damage caused by improper backfill or other sub-surface failures.

SECTION 6. REGULATION OF SERVICE

The System of Company shall at all times be installed, operated, and maintained in accordance with accepted good practice and in such condition as will enable the Company to furnish adequate and continuous natural gas service as required by the orders, rules, and regulations of the Railroad Commission of Texas or other regulatory authority having jurisdiction. The requirements set forth in this Section shall not relieve Company of any other obligations set forth herein.

SECTION 7. DEPTH AND PLACEMENT OF PIPELINES

The Company's mains shall be laid in alleys, streets, and avenues, and other public easements, and, when in streets and avenues, shall be laid parallel with the curb line thereof, or in such locations as shall be most practical. After the operative date of this Franchise, Company's main or lateral lines installed or replaced in Public Ways shall be installed or replaced at depths which comply with all applicable state and federal rules and regulations establishing minimum safety standards for the design, construction, maintenance and operation of pipelines, however, in no case shall any main or lateral be laid less than 18 inches below the established grade without written permission of the City Engineer. Depth shall be measured from the lower of existing grade or proposed future grade as set forth on plans or other specifications existing at the time such lines are installed or replaced.

SECTION 8. DUTY TO MOVE OR ALTER LINES

A. City reserves the right to lay or cause to be laid cables, electric and communications conduits, water, sewer, gas or other pipelines and to do or cause to be done any underground work deemed necessary and proper by the City, along, across, over or under the Public Ways. In causing such work to be done, the City shall be liable to the Company for any damage caused by the negligence of the City or of the City's agents or contractors.

B. When Company is required by City to remove or relocate its mains, laterals, and other System facilities to accommodate construction of streets and alleys by the 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, then Company's costs and expenses shall be included in any application by City for reimbursement. Company will provide the City its appropriate cost and expense documentation prior to the filing of the application.

C. When Company is required to remove or relocate its mains, laterals or other System facilities to accommodate construction of streets or alleys by the City without reimbursement, Company shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 of the Texas Utilities Code or any other applicable law or regulations.

D. If City shall require the Company to adapt or conform its System or in any way to alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than the City, to use the Public Ways, the Company shall have the right to seek reimbursement from the person, firm corporation or entity desiring or occasioning such change for any and all loss, cost or expense occasioned thereby

SECTION 9. PLATS AND ANNEXATIONS

A. Company and City expressly acknowledge that cities have strict statutory limits related to the approval of plats and that thus, with regard to such approvals, time is of the essence. The City shall promptly notify Company of all proposed new or modified plat requests. City will provide Company with a copy of the proposed plat for Company to determine if the proposed plat contains adequate Public Ways that will allow for new System Facilities to adequately service each lot within the proposed plat. Company shall respond to all proposed plat requests within ten (10) calendar days with either a request for

a modification or an approval of the proposed plat. Failure to respond within ten (10) calendar days shall constitute Company's acceptance of the proposed plat.

B. The City shall promptly notify Company in writing of the annexation of any new territory into its city limits by providing the legal description, maps, and any other relevant information such as the GPS/GIS information that highlight the newly annexed territory in the City's possession. Upon receipt of written notice of annexation from the City, the Company shall have ninety (90) days to begin collecting and paying the Franchise Fee for any Gross Receipts received from Company's customers residing in the newly annexed territories.

SECTION 10. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE

A. As full consideration for the rights and privileges conferred by this Franchise Ordinance, Company agrees to pay City as follows:

- (1) Company shall collect the Franchise Fee from its Customers and shall pay City a Franchise Fee the sum of which is equal to Five Percent (5%) of the Gross Receipts received by Company, per billing period, from the transportation, distribution, and sale of natural gas for consumption within the municipal corporate limits of the City. The Franchise Fee shall include only Gross Receipts from Gas Sales to Customers located in the City; Gross Receipts from Gas Transportation to Transport Gas Customers with re-delivery points located in the City; plus, Gross Receipts from Utility Regulated Service Charges. All sums due from Company shall be in lieu of all other franchise fees, licenses, or occupational taxes, which may be levied or attempted to be levied on Company by the City solely for the use of the Public Ways.
- (2) Company shall pay such Franchise Fee collected from its Customers to the City under the terms of this Ordinance, based upon meters read on or after the effective date of this Ordinance. During the term of this Ordinance, Company shall collect from its Customers and pay the City in January and July for the preceding six months.
- (3) Company shall include with the Franchise Fee payment a statement showing its collections of Gross Receipts from Gas Sales and Gas Transportation in the City, and Utility Regulated Service Charges in the City, including the calculation of the Franchise Fee for the subject time period. Collection and payment of Franchise Fee shall be final as to both

parties unless questioned by written notice provided by one party to the other within three (3) years after payment thereof has been made to the City.

It is expressly agreed that the Franchise Fee payments shall be in lieu of any payments for the right to use the Public Ways of the City, including expressly the charge permitted to be levied by the Texas Tax Code sections 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. The Franchise Fee shall be in lieu of and accepted as payment of all obligations of Company or its contractors to pay all other franchise fees, licenses, easement or occupation taxes, levies, exactions, rentals, street-cut fees, inspection fees, right of way inspection fees, permit fees, franchise fees, easement taxes, or charges of any kind whatsoever which may be levied or attempted to be levied in general by the City for the use of City's Public Ways, with the exception of sales taxes, ad valorem taxes and special assessments which are made without reference to or dependence upon Company's franchise or occupancy of the Public Ways, *e.g.*, special assessment paving liens.

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 as it may see fit, like privileges, rights, licenses, or franchises to any other person or corporation access to or the right to use the City's Public Ways. Provided, however, that in the event any entity (other than Company) providing gas sales or gas transportation service to Customers within the City is subject to a lesser franchise fee than is required to be collected and paid by Company in this Ordinance, then with respect to such gas sales or transportation service to those Customers, Company's Franchise Fee obligation on sales or transportation service to those Customers will be reduced to a rate equal to the franchise fee rate required to be paid by such other entity.

Unless expressly set forth herein, or otherwise provided by law, by accepting this Ordinance, Company does not agree to be responsible for the payment of franchise fees other than as expressly set forth herein, or for the payment of franchise fees owed to the City by any other entity, corporation or firm.

SECTION 11. INSPECTION OF RECORDS

A. Company shall permit City or its agents to inspect, during regular business hours, the books, papers and records kept by Company in the ordinary course of business and pertaining to the natural gas business carried on by it in the City, such as plats, maps and atlases identifying Company's pipelines in the City, and the books and records necessary to verify the franchise fee payment provided for in Section 10 hereof. It is understood and

agreed that such representative may be an independent agent, assigned by the City to conduct the inspection of Company's books and records for the reconciliation of Franchise Fee payments to determine the accuracy thereof. Notwithstanding the obligation herein, Company shall have the right to the reasonable protection of proprietary information as permitted under applicable law and to provide redacted documents or require City or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Company in accordance with applicable law but which do not unreasonably frustrate the purposes of this Section.

B. Company shall permit City to audit Company's conformance with and payments made under this Franchise for the previous three (3) years from the date of notice to audit is provided to Company by City and up to two (2) years following the termination of this Franchise. These books, records, documents, and other evidence shall be available, within twenty (20) business days of written request. Company shall keep its accounts as required by law. The City shall have the right to audit the books, records and computations pertaining to this Franchise. Company shall retain such books, records, documents and other evidence pertaining to this Franchise during the term of this Franchise and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept up to one year in addition to the initial five-year period until all audit tasks are completed and resolved.

C. The cost of the audit will be borne by the City unless the audit reveals an underpayment of ten percent (10%) or greater. If an underpayment of ten percent (10%) or greater occurs, the underpayment and all reasonable costs of the audit, including any travel costs, shall be borne by Company and must be paid within sixty (60) days of receipt of an invoice. Failure to comply with the provisions of this section shall be a material breach of this Franchise and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books," "records," "documents," and "other evidence," as used above, shall be construed to include electronic files, even if such electronic files are subsequently used to generate or prepare a final printed document.

D. In the event that a dispute arises regarding an audit performed on Company's books and records, Company agrees to participate in non-binding mediation to attempt in good faith to resolve the dispute, should the City request such mediation. Company agrees that it will consult with the City and the parties will mutually agree on cost, location and a mediator to preside over the mediation.

E. If an audit contemplated by this Section 11 reveals Company has underpaid the City, then City shall provide Company written notification from City regarding the existence of such alleged underpayment, and Company shall proceed in good faith to undertake a review of City's claim. Company shall have thirty (30) business days within

which to verify the City's findings. If Company confirms the existence of an underpayment, or if Company fails to present evidence refuting the City's findings within thirty (30) business days, it shall remit the amount of underpayment to City within ten (10) business days after the end of the 30-day period. Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall proceed in good faith to review Company's claim. If City confirms the existence of an overpayment, or if the City fails to present evidence refuting Company's findings within thirty (30) business days, it shall remit the amount of overpayment to Company within ten (10) business days after the end of the 30-day period.

SECTION 12. INDEMNIFICATION

COMPANY SHALL INDEMNIFY, SAVE AND HOLD CITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS FOR DAMAGES FOR WHICH THE CITY SHALL OR MIGHT BECOME LIABLE TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF COMPANY, ITS AGENTS OR CONTRACTORS IN THE CONSTRUCTION AND OPERATION OF THE SYSTEM; PROVIDED, HOWEVER, THAT IN THE EVENT OF SUCH CLAIM OR CLAIMS BEING PROSECUTED AGAINST THE CITY, COMPANY SHALL HAVE THE RIGHT TO DEFEND AGAINST THE SAME, AND TO SETTLE OR DISCHARGE SAME IN SUCH MANNER AS IT MAY SEE FIT, AND THE CITY SHALL GIVE PROMPT WRITTEN NOTICE TO COMPANY OF THE PRESENTATION OR PROSECUTION OF SUCH CLAIMS. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY CLAIM OR LIABILITY RESULTING FROM THE ACTS, OMISSIONS, OR NEGLIGENCE OF THE CITY, ITS EMPLOYEES, AGENTS OR CONTRACTORS.

Company's undertakings shall be subject to its ability, by use of due diligence and normal business methods, to obtain and place in service the necessary materials and facilities for the operation of its System Facilities. Moreover, Company shall be excused from failure or delay in performing such obligations if and to the extent occasioned by an act of nature or "act of God," fire, explosion, flood, act of a public enemy, contagion or contamination hazardous to human life or health, legal restraints, labor difficulties, material shortages, interruption or deficiency of gas supply not attributable to default of Company or, without limitation, any other cause or combination of causes not reasonably within Company's ability to anticipate or control. The Company shall notify the City promptly and in no case less than thirty (30) days of its intent to utilize this provision of this Ordinance.

SECTION 13. COMPANY'S RULES AND REGULATIONS

The Company shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its facilities, the sale of its gas and the conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Texas, with the orders, rules or regulations of the Railroad Commission of Texas or other regulatory authority, including City, having jurisdiction, nor with the ordinances and regulations of the City. Company shall supply natural gas and provide regulated services at the rates and under the terms and conditions specified by such rules, its tariffs filed with the City and as provided herein.

SECTION 14. CONDITIONS OF FRANCHISE

This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws, including timely compliance with all City ordinances or Code provisions, and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction. To the extent that all or any other existing ordinance shall conflict with any provision of this Ordinance, this Ordinance shall prevail upon passage, adopting and acceptance of this Ordinance. Nothing in this Ordinance shall be construed in such manner as to in any way abridge the right of the City to exercise its police powers for the protection of the citizens of the City and their property.

SECTION 15. INVALIDITY OF ORDINANCE

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining portions of this Ordinance, which shall remain valid and effective as if such invalid provision did not exist, although the parties shall be entitled to a judicial interpretation or construction of this Ordinance to address the validation of such provision by minimal amendment thereof. Further, should any governmental body now or hereafter having jurisdiction determine that Company shall not be permitted to collect in whole or in part the compensation due City by others for Transport Gas as set forth in Paragraph (3) of Subsection A of Section 10 of this Ordinance, Company shall thereafter have no obligation to make such payment to City and Paragraph (3) of Subsection A of Section 10 shall be of no force and effect with regard to the sale of Transport Gas.

SECTION 16. VENUE

The venue for any dispute arising out of this Ordinance shall be in Hutchinson County, Texas.

SECTION 17. REPEALER

Each and every other ordinance or part thereof which is directly in conflict with any provision herein as to the grant of a franchise for natural gas services and the regulation thereof is hereby repealed.

SECTION 18. PUBLICATION

Publication of this Ordinance, as finally proposed to be passed, shall be made in a newspaper published in the City of Borger, once a week for three consecutive weeks. Publication shall be made at the expense of the Company. The proposed Ordinance shall not be thereafter changed unless republished as in the first instance, nor shall any such ordinance take effect or become law or contract or vest any rights in the applicant, until after the expiration of thirty (30) days from the last publication of the Ordinance.

INTRODUCED, on this the 6th day of October, 2020, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

PASSED, APPROVED, AND ADOPTED, on this the 20th day of October, 2020, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

Karen Felker, Acting Mayor

ATTEST:

Stella Sauls, City Secretary

APPROVED AS TO FORM:

/s/ Angelique S. Weaver

Angelique Weaver, City Attorney

The above and forgoing Franchise Ordinance and the grants, franchise, powers, rights and privileges thereto were accepted by the Company this _____, 2020.

TEXAS GAS SERVICE COMPANY
A Division of ONE Gas, Inc.

By: _____
Curtis Dinan
Senior Vice-President and Chief Commercial
Officer
ONE Gas, Inc.