

# Memo

**To:** City Council  
**CC:** Frank Salvato  
**From:** Susan Brock, City Clerk  
**Date:** 2/3/2005  
**Re:** Lone Star/TXU Gas/Atmos Energy Franchise Agreement

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At the last council meeting the question arose concerning the expiration date of our franchise agreement for gas utility service. I am attaching a copy of the original franchise agreement with Lone Star Gas Company (TXU, now Atmos Energy). Section 1 states that the agreement is for 15 years and expires in 2007.

Please refer to Section 5 on page 2 regarding the extension of services to new customers. Please let me know if you need any additional information regarding this agreement.

ORDINANCE NO: 06-2-92

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 TAYLOR, WILLIAMSON 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; AND 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 OF TAYLOR, TEXAS:

SECTION 1: That the City of Taylor, 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 corporate limits, and consent being granted for a term of fifteen (15) years from and after the effective date of this ordinance; provided, however, this franchise is subject to renegotiation at the request of either party at any time but no less frequently than every five years.

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 or an authorized committee or agent appointed by said City.

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 herewith including but not limited to court costs and reasonable attorneys fees.

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 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 underground supply lines extending from the point of connection with Company's customers meter to the point of connection with customer's house piping.

SECTION 5: Company shall not be required to extend mains on any street more than one hundred feet (100') for any one customer of gas; provided that no extension of mains is required if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum.

SECTION 6: Company shall be entitled to require from each and every consumer of gas, before gas service is commenced, 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 (Vernon Supp. 1991) 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 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: At the end of the first ten (10) years from the date of the final passage of this ordinance and at the termination of every five (5) years thereafter, City shall have the right to purchase from Company, its successors and assigns, the entire gas distributing plant or system, including any and all property used and useful in connection with the operation and maintenance of said gas distributing plant or system. If at the time said right or option to purchase accrues to City, the then owner or owners

of said gas distributing plant or system shall be unable to agree with City upon the price to be paid for the said plant or system, then such price shall be determined by a board or arbitration consisting of three members, to be appointed as follows: One member by the owner or owners of the gas distributing plant or system; one member by the governing body of City; and the third member to be selected by the two so appointed. If the two members appointed shall be unable to agree upon the third member of said board of arbitration, then such third member shall be appointed by the County Judge of Williamson County, Texas. The decision of the members of said board of arbitration, or any two of them, shall be binding upon both parties. The board of arbitration, in determining the price to be paid, shall execute any franchise value, but shall otherwise fix the price upon the basis of the fair value of the property. All expenses in connection with said arbitration shall be borne by the parties thereto.

SECTION 10: Company, its successors and assigns, agrees to pay and City agrees to accept, on or before the 1st day of August of each calendar year this franchise is in existence commencing on August 1, 1992, a sum of money which be equivalent of three percent of the gross receipts received by Company from the sale of gas to its residential and commercial consumers within the corporate limits of said City (expressly excluding, however, receipts derived from sales to industrial users and consumers in said City) for the preceding twelve month period of July 1 through June 30.

The initial payment shall be based on gas sold to residential and commercial consumers during the period July 1, 1991 through June 30, 1992. The last gross receipts payment shall be due on August 1, 2006.

Each 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 to 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, and 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 consumers) within the corporate limits

of City, Company agrees that on the same date that payments are made, as hereinabove provided in this Section 10, it will file with the City Clerk a sworn report showing the gross receipts received from the sale of gas to its residential 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.

"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 11: 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.

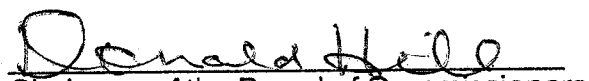
SECTION 12: In order to accept this franchise, Company must file its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by said City. If this franchise ordinance is not accepted by Company within sixty (60) days, the franchise ordinance shall be rendered null and void.

SECTION 13: This ordinance shall become effective on the date Company's written acceptance is filed with the City.

INTRODUCED, PASSED, APPROVED, AND ADOPTED ON FIRST READING THIS  
THE 25<sup>th</sup> DAY OF February, A.D. 1992

ATTEST:

  
City Clerk

  
Chairman of the Board of Commissioners  
City of Taylor, Texas

PASSED, APPROVED, AND ADOPTED ON SECOND READING THIS THE  
10<sup>th</sup> DAY OF March, A.D. 19 92

ATTEST:

*Sherry Morrison*  
City Clerk

*Donald Hill*  
Chairman of the Board of Commissioners  
City of Taylor, Texas

PASSED, APPROVED, AND ADOPTED ON THIRD READING THIS THE  
24<sup>th</sup> DAY OF March, A.D. 19 92

ATTEST:

*Sherry Morrison*  
City Clerk

*Donald Hill*  
Chairman of the Board of Commissioners  
City of Taylor, Texas

STATE OF TEXAS           §  
                                  §  
COUNTY OF DALLAS       §

WHEREAS, there was finally passed and approved on March 24, 1992, Ordinance No. 06-2-92 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 Taylor, Williamson County, Texas, for the transporting, delivery, sale and distribution of gas in, out of and through said municipality for all purposes, which is recorded in the Minute of the City Commission of said City; and

WHEREAS, Section 12 of said ordinance provides as follows:

"SECTION 12:       In order to accept this franchise, Company must file its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by said City. If this franchise ordinance is not accepted by Company within sixty (60) days, the franchise ordinance shall be rendered null and void."

AND, WHEREAS, it is the desire of Lone Star Gas Company, a Division of ENSERCH CORPORATION, the holder of the rights, privileges and grants under the aforesaid franchise ordinance, to comply with the above-quoted provisions of Section 12 thereof.

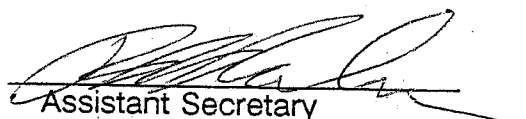
NOW, THEREFORE, premises considered, Lone Star Gas Company, a Division of ENSERCH CORPORATION, acting by and through its duly authorized officers, and within the time prescribed by Section 12 quoted above, does hereby agree to and accept the franchise granted to it by the above-described ordinance, in accordance with its terms, provisions, conditions and requirements and subject to the stipulations and agreements therein contained.

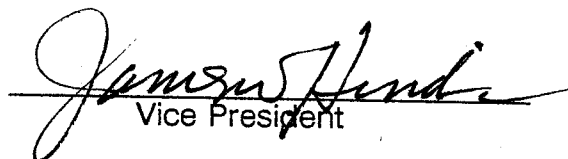
WITNESS THE EXECUTION HEREOF, on this the 6th day of

April, 1992

ATTEST:

LONE STAR GAS COMPANY  
A DIVISION OF  
ENSERCH CORPORATION

  
Assistant Secretary

  
Vice President


STATE OF TEXAS  
COUNTY OF WILLIAMSON  
CITY OF TAYLOR

§  
§  
§

I, SHERRY MORRISON City Secretary of the City of Taylor, Texas, do hereby certify that the above and foregoing is a true and correct copy of a formal acceptance of a franchise ordinance finally passed and approved by said City on March 24, 1992, and of record in the Minutes of the City; and I do further certify that said acceptance has been duly presented to the City Commission and filed in connection with and as a part of said franchise ordinance.

OF WHICH, witness my official signature and the seal of said City on this the

27th day of April, 1992

  
City Secretary  
City of Taylor, Texas