

**ORDINANCE NO. 207**

**AN ORDINANCE GRANTING TO TEXAS GAS SERVICE COMPANY THE RIGHT, PRIVILEGE AND FRANCHISE TO USE STREETS, ALLEYS, THOROUGHFARES AND OTHER PUBLIC WAYS TO OPERATE AND MAINTAIN A NATURAL GAS DISTRIBUTION SYSTEM IN THE TOWN OF HORIZON CITY, EL PASO COUNTY, TEXAS; PROVIDING REGULATIONS FOR THE CONDUCT OF THE SYSTEM BY THE GRANTEE; AND REPEALING THE PRESENT FRANCHISE ORDINANCE UPON THE EFFECTIVE DATE OF THE FRANCHISE UNDER THIS AGREEMENT; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; REPEALER; SEVERABILITY; PROPER NOTICE AND HEARING.**

**WHEREAS,** the Town of Horizon City is authorized to grant franchise rights to utilities for the privilege of use of City Streets, alleys and thoroughfares and other public ways to operate and maintain utility systems;

**WHEREAS,** Texas Gas Service Company has requested a franchise to operate and maintain a natural gas distribution system in the Town of Horizon City;

**WHEREAS,** the provision for and the opportunity to receive natural gas for residential and commercial use is a benefit to the Town of Horizon City, its citizens and business owners; and

**WHEREAS,** Section 8.04 of the Charter of the Town of Horizon City provides that all grants, renewals, extensions or amendments of public-utility franchises whether it be so provided in the ordinance or not, shall be subject to the rights of the City as set forth thereunder.

**WHEREAS,** the City Council of the Town of Horizon City desires to approve a franchise agreement and regulations for Texas Gas Service Company to provide natural gas distribution system in the Town of Horizon City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY, TEXAS, that:**

**I. GRANT OF FRANCHISE**

**SECTION 1. - Grant of Franchise**

A. Subject to the terms and conditions of this Franchise Ordinance, the right, privilege and franchise is hereby granted to Texas Gas Service Company, a division of ONE Gas, Inc., an

Oklahoma Corporation, and to its successors, lessees and assigns (hereinafter “Company” or “Grantee”), to have, own, acquire, install, construct, reconstruct, operate, maintain, use, and extend a 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 (hereinafter the “System”) for the purpose of selling, storing, supplying, conveying, transmitting, distributing, and/or transporting natural gas, including the equivalent substitutes, for all other lawful purposes in, through, upon, under, and along the present and future streets, avenues, alleys, bridges, sidewalks, parks, easements, highways, and any other public places including any streams, water courses or water ways (hereinafter collectively referred to as “public ways”) within the city limits of the City of Horizon City, El Paso County, Texas (the “City”), and including any territory that the City may hereafter annex, acquire or purchase; and to distribute, sell, store, supply, transport, carry and/or convey natural gas through Grantee’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. The Franchise Ordinance shall in no way affect or impair the present or future rights, obligations, or remedies of the City or Grantee under the Gas Utility Regulatory Act, as amended.

B. For purposes of this Franchise Ordinance, “Transport Gas” or “Transported Gas” shall mean 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 Grantee) and delivered by such user or its designee to Grantee at a point on Grantee’s distribution system, such point of delivery to be defined by Grantee, and carried, delivered or transported through Grantee’s System at a point of redelivery in the City by Grantee to the user for a fee. The terms and conditions of the transportation arrangement, including but not limited to the point(s) of delivery, point(s) of redelivery,

measurement and location of title transfer, shall be as set forth in the contract entered into between Grantee and the transportation customer and/or Grantee's transportation tariffs on file with the Railroad Commission of Texas or other appropriate regulatory authority.

**SECTION 2. - Incorporation of City Charter Provisions**

The terms and conditions of the Horizon City Charter shall additionally govern the Franchise granted herein.

**SECTION 3. – Location of Facilities and Use of Public Ways**

A. The mainlines and service pipes of the Company shall be laid in alleys, streets, and avenues, and other public ways, and when in streets and avenues, shall be laid parallel with the curb line thereof, or in such locations as shall be most practical, provided, however, that in no case shall any main be laid less than 18 inches below the established street grade, or if not within a street right-of-way at least 18 inches below the grade of the nearest street, without permission of the Planning Director or his/her designee.

B. The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privilege granted by this Franchise Ordinance, provided the same do not conflict with existing infrastructure in the public ways. However, the Company agrees to give the City reasonable notice of the dates, location and nature of all work to be performed on the Company's facilities or System within the public ways or rights of way. This Franchise Ordinance shall constitute a permit to perform all work on existing Company facilities or the System within the public ways or rights of way.

C. Except in the case of an emergency, within the City's full purpose jurisdiction, when the Company desires to lay any new mains hereunder, and before commencing its new construction

work, it shall submit to the Planning Director or his/her designee, or other proper authority, a map or plan showing the streets, avenues, alleys, and other public places and the locations thereon wherein it proposes to construct such new pipes and mains. The Planning Director or his/her designee, or other proper authority, shall by written notice, either issue or deny the permit to Company within a reasonable period of time (not to exceed ten (10) calendar days) of submission of required information by Grantee. Approval by the Planning Director or his/her designee, or other proper authority, shall constitute a permit to the Company for the opening of the streets, avenues, alleys and other public places shown on the map or plan, and for the new construction or laying of the new mains and pipes by the Company (the "Permit") as shown on the plan. If the Planning Director or his/her designee, or other proper authority, does not respond within ten (10) calendar days, the Permit shall be deemed approved and accepted. In the event that the Permit is denied, the Planning Director or his/her designee, or other proper authority, shall advise Grantee of the reasons for the denial and all necessary steps to secure approval of the permit. Company shall have the right to immediately appeal the issuance of the Permit to the Mayor or other chief administrative officer of the City if so established the City Charter, and if not determined within five (5) calendar days by the Mayor or other chief administrative officer of the City if so established by the City Charter, the Company may appeal to the City Council and be heard at a public meeting held in compliance with applicable law. If the Council fails to act on the appeal within thirty (30) days, the appeal will be deemed to be denied unless agreed otherwise in writing by the Company and the City. Appeal of any decision made by the City Council shall be made to the District Court of El Paso County, Texas, and an appeal from any decision of the District Court shall be as in all other civil actions. It shall not be necessary for Company to secure a permit for the laying of service pipes from the mainline pipes of the

Company to its customers. This Section 2B. shall also apply to all other facilities and equipment of the Company to be constructed or installed on public property within the City's full purpose jurisdiction; provided that Company shall not construct, install or erect any facilities or equipment above ground on any such public property without specific written permission of the City Engineer, or other proper public authority.

D. In the refilling of all openings made by the Company, it shall restore the City public rights-of-way to a condition equal to or better than the original condition, and when the Company shall open any ground in the City rights-of-way, the Company shall open no more space nor keep the space open any longer than is reasonably necessary to properly execute the work for which such space shall have been opened. The Company shall at all times display and keep the necessary danger signals and barricades around all excavations and obstructions, and shall keep sufficient space in good condition for the travel of automobiles, trucks, and other motor vehicles, on at least one side of all excavations and obstructions. Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the "Manual of Uniform Traffic Control Devices," Federal Highway Administration of the U.S. Department of Transportation, and the "Texas Manual of Uniform Traffic Control Devices," Texas State Department of Highways and Public Transportation. The Company shall comply with all applicable City ordinances, rules and regulations for the repair of cuts and excavations in effect as of the effective date of this Ordinance.

E. The Company shall not install any pipe, line or facility within any park or recreational land, and shall not install any above ground facility on City property, without specific written permission. The Company may petition the Council for permission to cross park lands, and any such permission shall be in the sole discretion of the Council.

F. 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. When Company is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by City without reimbursement from City, 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.

#### **SECTION 4. - Effect of Other Ordinances and Agreements**

Except as provided in Section 12, Grantee, its successors, lessees or assigns, shall at all times be subject to any Ordinances now in existence, or which may hereafter be passed, not inconsistent herewith. No fee or other charges of any kind shall be imposed upon Grantee, or upon any consumer of gas, for the breaking or opening of any streets or other public ways or for the laying, construction, or maintenance of mainlines, service pipes or other facilities therein except as provided for hereunder. Nothing in this Franchise Ordinance shall be construed in such manner as to in any way abridge the right of the City to pass the necessary police ordinances for the

protection of the citizens of the City and their property, and the property of Grantee, as long as such ordinances are not inconsistent with this Franchise Ordinance.

**SECTION 5. – Damage to City Properties**

Grantee shall use reasonable efforts to avoid permanent damage to any street, avenue, alley, lane, bridge, stream, watercourse, park or public place. Grantee and City shall exercise reasonable efforts to ensure that any future installations of utilities in City public ways by Grantee, City or other utility providers authorized by City do not unreasonably interfere with any facilities of Grantee, City or other utility providers.

**SECTION 6. – Grantee’s Rules of Service**

Grantee, and its successors and assigns, shall have the right to adopt and enforce such reasonable Rules of Service as it deems necessary for the extension of its facilities, the sale of its natural gas and the prudent conduct of business, provided that such rules are not inconsistent with law or this Franchise Ordinance. Grantee 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 7. - Indemnification**

A. Grantee shall indemnify, save and hold harmless the City for 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 Grantee, 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, Grantee 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 Grantee of the presentation or prosecution of such claims.

B. The City, to the extent allowed by Texas law, shall indemnify, save and hold harmless Grantee for any and all claims for damages for which the Grantee shall or might become liable to the extent caused by any negligent act or omission of the City or its agents, contractors or subcontractors; provided, however, that in the event of such claim or claims being prosecuted against the Grantee, City 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 Grantee shall give prompt written notice to City of the presentation or prosecution of such claims.

#### **SECTION 8. - Assignment**

Grantee herein is expressly given the power and privilege to sell, transfer or assign this Franchise Ordinance, or any part of this Franchise Ordinance, to any person, entity or corporation. When required by the Horizon City Charter, the approval of the City Council of the Town of Horizon City shall be obtained for a transfer or assignment of this Franchise Ordinance, and such approval shall not be unreasonably withheld or delayed.

#### **SECTION 9. – Franchise Fees**

A. As full consideration for the rights and privileges conferred by this Franchise Ordinance, the waiver of those fees waived by this Franchise Ordinance, and as a charge for the use of the streets, alleys and public ways, Company shall collect from its customers and pay to the City a sum of money, known as the "Franchise Fee", equal to the sum of the following: (1) three percent (3%) of Company's actual Gross Receipts from Gas Sales (as defined herein) to Company's gas sales customers located in the City; plus (2) three percent (3%) of Company's actual Gross Receipts from Gas Transportation (as defined herein) to Company's gas transportation customers with re-delivery points located in the City and (3) three percent (3%) of Company's actual Gross Receipts from Utility Regulated Service Charges When the Company

pays the Franchise Fee to the City each January and July, the Company shall file a statement with the City showing its Gross Receipts from Gas Sales and Gas Transportation delivered in the City, and Utility Regulated Service Charges, including the calculation of the Franchise Fee for the subject time period.

B. Subject to the other provisions herein, "Gross Receipts" shall be and include: (1) the Company's total receipts from its gas sales to its customers located within the corporate limits of the City; (2) Gross Receipts from Gas Transportation which shall be defined as the Company's total receipts from its transportation of third party gas for re-delivery to customers with re-delivery points located within the corporate limits of the City, consisting of receipts from cost of service; provided that Company's Gross Receipts from Gas Sales and Gross Receipts from Gas Transportation subject to the Franchise Fee shall specifically exclude, without limitation: (1) receipts from gas sales or gas transportation 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, other than 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; (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.

C. "Gross Receipts from Utility Regulated Service Charges" are the gross receipts from charges for services (but not for natural gas sales or transportation services) that (a) Company provides to

its customers located within the corporate limits of the City and (b) which are subject to the rate regulation of the applicable regulatory authority. Such Utility Regulated Service Charges shall include receipts of Company from its customers in the City for connections, disconnections and meter tests. Such Utility Regulated Service Charges shall not include receipts of Company from its customers in the City 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. Gas delivered within the City for or on behalf of an affiliate of the Company, and gas purchased from an affiliate of the Company and delivered within the City, shall be deemed to be sold and delivered by the Company, and the value paid for such gas by the customer shall be subject to the franchise fee.

D. Company shall collect from its customers and pay the City under the terms of this Franchise Ordinance, the franchise fee and gross receipts above provided based upon meters read on or after the effective date of this Franchise Ordinance. During the term of this Franchise Ordinance, Company shall collect from its customers and pay the City in January and July for the preceding six months, not including January and July. Company shall include with the Franchise Fee payment a statement showing its Gross Receipts from Gas Sales and Gas Transportation in the City, including the calculation of the Franchise Fee for the subject time period.

E. It is expressly agreed that the Franchise Fee payments shall be in lieu of any payments for the right to use the public rights-of-way of the City, including expressly the charge permitted to be levied by V.T.C.A. Tax Code §§ 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 of Company's obligations to pay all other franchise, license, easement or occupation taxes, levies, exactions, fees, rentals, street-cut fees, 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 rights-of-way, with the sole 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 streets and public right of way. It is specifically provided however that this subsection shall not release, waive or apply to the imposition of any fine, penalty or charge arising and imposed as a result of the violation of a rule, regulations or ordinance.

F. It is expressly agreed by the City and the Company that the Franchise Fees defined in this Franchise Ordinance are reasonable, and are reasonable and necessary operating expense of Company and shall be fully recovered by Company by collection from its customers in the City, whether asserted retroactively or prospectively, by revising its rate schedules, assessing an additional charge to the monthly bills of its customers within the City, adding an additional charge to the Company's purchased gas adjustment clause for the City or in any legal manner determined in Company's discretion. The City agrees that it will take an affirmative position supporting 100% recovery of Franchise Fees by Grantee in any regulatory proceeding before a federal or state agency, including appeals, in which recovery of Grantee's Franchise Fees is an issue.

G. The City may, upon reasonable prior written notice and during normal business hours, inspect and review the books and records of Company to verify the amount of Franchise Fees due. 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.

H. The rights, privileges, and franchises granted by this Franchise 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, and franchises to any other person or corporation for the purpose of furnishing gas in the City. In the event any entity providing gas sales or gas transportation service to customers within the City (other than Company) is not legally required to pay the same or an equivalent Franchise Fee as required to be collected and paid by Company in this Franchise Ordinance, then with respect to gas sales or transportation service to those specific customers, Company's Franchise Fee obligation resulting from sales or transportation service to those specific customers may be automatically reduced by Company to a level equivalent to the amount the City legally requires to be paid by such other entity.

I. Consistent with Section 8(A), the City shall be paid a franchise fee once with respect to the same gas sold and/or transported to delivery points within the City; provided that such fee shall include three percent (3%) of the actual cost of the gas and the transportation charges and all other related charges. Should the City receive or be entitled to receive from any other company, firm, corporation or person a franchise fee or similar street rental fee payment from the transportation and/or sale of the same or equivalent gas, the aggregate amount which the City has received or is entitled to receive with respect to the same or equivalent gas transported and/or sold by Company shall be deducted from, and reported with, the Franchise Fee payment to be made to the City by Company hereunder. Among other things, this section is intended to apply to gas purchased by Company for resale to its customers within the City and to Transport Gas redelivered by Company within the City. Upon request of Company, the City agrees to provide Company, within a reasonable time of its receipt, with written notice setting forth the amounts of

any such franchise fee received for the use of its streets for the sale of gas in the City that is ultimately delivered through Company's system in the City.

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

#### **SECTION 10. – Annexations by City**

The City shall notify Grantee 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, when available, that highlight the newly annexed territory. Upon receipt of written notice of annexation from the City, Grantee shall have ninety (90) days to begin collecting and paying the Franchise Fee for any revenues received from Grantee's customers residing in the newly annexed territories. City shall assist Grantee in determining and classifying exemptions from Franchise Fees for Grantee's Customers, including providing or requiring written confirmation of the customer's claimed exemption.

#### **SECTION 11. – Dispute Resolution**

Resolution of any dispute arising under this Franchise Ordinance between the City and the Grantee, or any of its affiliates (collectively the "Parties, or individually a Party") shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either party. The mediation shall be held in El Paso County, Texas at the location designated by the party demanding the mediation. The mediator shall be selected by agreement within twenty (20) calendar days from the date the demand for mediation is received by the other party. If an agreement cannot be reached on a mediator within the time period stated herein, each party shall submit the name of a mediator and the selection will be

made by chance drawing. The party not making the demand for mediation shall make the blind draw from the names submitted in the presence of the other party. Thereafter, the mediation shall be held at the selected designation within thirty (30) calendar days. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute. If mediation is unsuccessful, either party may bring suit to enforce the terms of this Ordinance and the City Charter in the Courts of El Paso County, Texas.

#### **SECTION 12. – Conflicting Ordinances and Repealer**

To the extent that all or any part of any other existing ordinance shall conflict with any provision of this Franchise Ordinance, this ordinance shall prevail upon passage, adoption, and acceptance of this Ordinance, and all ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are or shall be repealed to the effect of such conflict.

#### **SECTION 13. – Effective Date and Term**

This Franchise Ordinance shall take effect and be in full force from and after its final passage and approval by the City Council of the Town of Horizon City and the acceptance hereof in writing by Grantee as herein provided. This Franchise Ordinance shall continue and remain in full force and effect for a period of twenty five (25) years from the effective date.

#### **SECTION 14. – Acceptance by Grantee**

Grantee shall, within sixty (60) days from the approval of this Franchise Ordinance signed by the Mayor, file in the office of the City Clerk its consent to and written acceptance of provisions and conditions of this Franchise Ordinance.

## II. FINDINGS OF FACT

That this ordinance was duly enacted with all requisites and formalities incident thereto the enactment of ordinance, and such is evidenced by the signatures below; and further that the foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

## III. SEVERABILITY


Should any of the clauses, sentences, paragraphs, sections or parts of this ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.


## IV. PROPER NOTICE AND MEETING

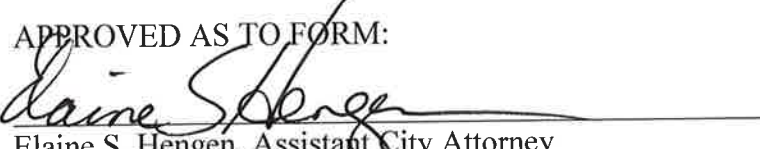
It is officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52, Texas Local Government Code and the Charter of the Town of Horizon City, Texas.

**PASSED AND APPROVED** this the 10<sup>th</sup> day of June, 2014, by a vote of 7 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of Horizon City, Texas.

### TOWN OF HORIZON CITY, TEXAS

By:   
Walter L. Miller, Mayor  
Town of Horizon City, Texas

ATTEST:  
By:   
Elvia Schuller, City Clerk  
Town of Horizon City, Texas

APPROVED AS TO FORM:  
  
Elaine S. Hengen, Assistant City Attorney

First Reading: 5/13/2014  
Second Reading: 6/10/2014

