

ORDINANCE 97-1

AN ORDINANCE GRANTING ENTEX, A DIVISION OF NORAM ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AND FRANCHISE FOR A PERIOD OF TEN (10) YEARS TO CONSTRUCT, LAY, MAINTAIN, OPERATE, EXTEND, REMOVE, REPLACE, AND REPAIR A SYSTEM OF PIPELINES, GAS MAINS, LATERALS AND ATTACHMENTS AND ALL DESIRABLE INSTRUMENTALITIES IN, UNDER, AND ALONG ANY AND ALL PUBLIC STREETS, AVENUES, PARKWAYS, SQUARES, ALLEYS, AND OTHER PUBLIC PLACES IN THE CITY OF BEACH CITY, CHAMBERS COUNTY, TEXAS, FOR THE PURPOSE OF TRANSPORTING, DISTRIBUTING, SUPPLYING, AND SELLING GAS FOR HEATING, LIGHTING, POWER, AND FOR ALL OTHER PURPOSES FOR WHICH GAS CONSISTING PRIMARILY OF METHANE MAY BE USED BY SAID MUNICIPALITY, ITS INHABITANTS AND OTHERS; PROVIDING CONDITIONS CONTROLLING THE USE OF PUBLIC THOROUGHFARES AND EXTENSIONS THEREIN; ESTABLISHING STANDARDS OF SERVICE; PROVIDING FOR PAYMENT BY ENTEX OF TWO PERCENT (2%) OF THE GROSS RECEIPTS FROM THE SALE OF GAS WITHIN THE CITY; PROVIDING FOR ACCEPTANCE; PROVIDING A SEVERABILITY CLAUSE; MAKING MISCELLANEOUS PROVISIONS; AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEACH CITY, CHAMBERS COUNTY, TEXAS:

SECTION 1, GRANTING FRANCHISE

The City of Beach City, Chambers County, Texas, (herein called "City" or "Grantor") does hereby grant unto Entex, a division of NorAm Energy Corporation, its successors and assigns (herein called "Grantee") the right, privilege, and franchise to construct, lay, maintain, operate, use, extend, remove, replace, and repair in, under, and along any and all of the present and future public streets, avenues, parkways, squares, alleys, and other public places in the City of Beach City, and in all tracts, territories, and areas hereafter annexed to or acquired by and placed within the corporate boundaries of said City, a system of pipes, pipelines, gas mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, and attachments and other desirable instrumentalities and appurtenances necessary or proper, for the purpose of transporting, distributing, supplying and selling gas (natural and/or artificial and/or mixed) of commercial quality and consisting primarily of methane for heating, lighting, power and for any other purpose for which gas may now or hereafter be used in and to said City and its inhabitants or any other person or persons within or without the corporate boundaries of said City; provided, however, that Grantee shall have no right to place any of the above-described facilities upon or within or under any tract of land upon which Grantor shall have constructed, or shall have designated in writing a plan to construct or consideration of constructing, a City Hall or any other City-owned structure of a type intended for or suitable for frequent occupancy by City officers or employees or the public or City-owned vehicles or equipment or supplies, without the express

written consent of Grantor for said placement, and further provided that this Ordinance does not convey to Grantee any rights whatsoever upon privately owned properties.

## **SECTION 2, REGULATING INTERFERENCE WITH TRAFFIC**

Grantee's property shall be so constructed and maintained as not to interfere unreasonably with traffic over the public thoroughfares of said City and the same shall be laid in accordance with the lines, grades, and conditions established by Grantor. Grantee shall not obstruct traffic on any two routes of ingress to or egress from said City at the same time, nor obstruct traffic on any single route of ingress or egress for more than five days without written consent from the City, nor perform any construction within any sole route to any residence without making reasonable provision for continuous vehicular traffic access to the residence, nor perform any maintenance within any sole route to any residence without making reasonable provision for continuous vehicular traffic access to the residence except as such may be required due to immediate hazard to public safety.

## **SECTION 3, SETTING CONDITIONS FOR PROVISION OF SERVICE BY GRANTEE AND ALLOWING GRANTEE TO REQUIRE REASONABLE SECURITY FOR PAYMENT OF BILLS**

Grantee shall provide gas supplies at its normal and customary prices to any applying customer within Beach City whenever the investment for gas mains and service lines comprising a part of its distribution system shall not exceed one hundred (100) feet of pipe, not to exceed a diameter of two (2) inches, to bring service to the property line of each additional customer, or whenever the applying customer or customers shall agree and make reasonable provision to reimburse Grantee without interest within thirty (30) days from the initiation of service for any investment exceeding that required for one hundred (100) feet of pipe, not to exceed a diameter of two (2) inches, to bring service to the property line of each additional customer; provided, however, that each additional customer requesting such service shall, in advance, furnish Grantee adequate assurance of payment in the form of a security bond, irrevocable letter of credit from a bank, cash bond, or other form acceptable to Grantee. Otherwise, Grantee may or may not provide service to potential new customers at Grantee's sole discretion.

Grantee may require reasonable security for the payment of its bills.

## **SECTION 4, SETTING PERFORMANCE STANDARDS FOR GRANTEE'S FACILITIES, OPERATIONS, PRODUCT AND SERVICES**

The construction and operation of facilities by Grantee within the City and the customer service provided and the gas product delivered to customers within the City shall be of like quality with regard to safety, convenience, efficiency, and dependability to the best provided by Grantee anywhere within Grantee's Texas Coast Division service area.

## **SECTION 5, ESTABLISHING AMOUNT OF AND PROCEDURES RELATED TO GRANTEE'S PAYMENT FOR FRANCHISE**

In consideration of the rights, privileges, and franchise herein granted, Grantee agrees to pay to Grantor annually during the continuance of this franchise a sum of money equal to two per cent (2%) of the gross receipts for the preceding year received by the Grantee after the effective date of this franchise from the sale of gas within the corporate limits of Grantor. Payments hereunder shall be calculated on the basis of gross receipts received by Grantee from its sale of gas delivered within the corporate limits of Grantor during the year next preceding that on account of which the payment is made, and shall be payable on or before the first day of March of the year for which payment is made, beginning with the first day of March next following the effective date of this franchise and each and every year thereafter.

On or before the first day of March of each and every year beginning with March 1, 1997, Grantee shall file with the City Secretary of Beach City a sworn report by an officer of Grantee showing the gross receipts from the sale of gas within the City for the next preceding year ending December 31 or portion thereof during which this franchise is effective. With each such annual report, Grantee shall make payment to the City in the amount calculated as above.

Upon receipt of the above amount of money, the City Secretary shall deliver to Grantee a receipt for such amount.

Upon request of Grantor, Grantee shall present to it any and all records, accounts, and books for inspection relative to the gross receipts of Grantee within the corporate limits of Grantor.

The consideration hereinabove set forth shall be paid in lieu of any license, charge, fee, street or alley rental or other character of charge for use and occupancy for the public streets, alleys, and public places within the City, and in lieu of any pipe tax or inspection fee or tax, but shall not in anywise increase or diminish Grantee's obligation to pay the Grantor ad valorem taxes or anywise interfere with collection thereof. Grantor shall not be obligated to perform any inspections of facilities owned by Grantee.

Any special taxes, rentals, or other charges accruing after the effective date of this franchise, under the terms of any pre-existing ordinance or imposed upon Grantee by subsequent action of the Grantor shall, when paid to the Grantor, be applied as a credit to the amount owed to the Grantor under the terms of this franchise agreement.

The factoring of Grantee's receivables to affiliates or third parties, or other similar actions of Grantee, shall not have the effect of reducing the amounts payable to Grantor hereunder.

#### **SECTION 6, ALLOWING FOR CHANGE IN FRANCHISE FEE AS PER CENT OF GROSS RECEIPTS**

Grantor may prospectively change the percentage of Grantee's gross receipts payable to Grantor under Section 5 of this franchise Ordinance within limits established by, or in accordance with the laws of the State of Texas; provided however, that such change in the percentage of Grantee's gross receipts payable to Grantor shall not become effective unless and until Grantor shall have approved and authorized rate schedules acceptable to Grantee and Grantor which will permit Grantee to fully recover through its

rates effective within the corporate limits of Grantor any increase in amounts payable to Grantor resulting from such change if then-current law of the State of Texas and/or of the United States provides for the regulation of Grantee's rates and the pass-through of franchise fee payments to customers.

#### **SECTION 7, PROVIDING FOR HOLDING GRANTOR HARMLESS FOR ACTS OF GRANTEE**

Grantee shall hold Grantor harmless from all expenses or liability for any unlawful or reckless or negligent act of Grantee hereunder.

#### **SECTION 8, PROVIDING THAT FRANCHISE IS NOT EXCLUSIVE**

Nothing herein contained shall ever be held or considered as conferring upon Grantee or its successors or assigns any exclusive rights or privileges of any nature whatsoever.

#### **SECTION 9, REPEALING OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH**

All ordinances and parts of ordinances in conflict herewith are hereby repealed, except that the franchise dated October 25, 1966 between Grantee and Grantor shall be deemed to be extended until the effective date of this agreement or until July 31, 1997, whichever comes first.

#### **SECTION 10, PROVIDING FOR EFFECTIVE DATE AND TERM HEREOF**

Provided Grantee files a written acceptance of this franchise with Grantor within one hundred and twenty (120) days after final passage of this Ordinance, this franchise will take effect and remain in effect for a primary period of ten (10) years from and after the date of this Ordinance.

#### **SECTION 11, PROVIDING THAT GRANTOR DOES NOT WARRANT SUITABILITY FOR GRANTEE'S USE**

Grantor does not represent or warrant that any of the public properties described in this Ordinance are suitable or convenient or economical for Grantee's use.

#### **SECTION 12, RETAINING REGULATORY AUTHORITY OF GRANTOR OVER PRICES**

Grantor retains any rights which it has or may acquire in the future to regulate the prices charged by Grantee for products or services delivered.

#### **SECTION 13, RETAINING REGULATORY AUTHORITY OF GRANTOR OVER CONSTRUCTION, MAINTENANCE, AND OPERATION OF GRANTEE'S FACILITIES.**

The construction, maintenance, and operation of Grantee's facilities within the City shall be subject to the reasonable and proper regulation, control, and direction of the City, or of any City official to whom such duties have been or may be delegated, which regulation and control shall include, but not by way of limitation, the right to require in writing the relocation of Grantee's facilities at Grantee's cost within public streets or

ways or areas whenever such may be reasonably necessary due to the widening, change of grade, relocation, or other City construction within such public streets or ways or areas.

**SECTION 14, PROVIDING FOR SEVERABILITY**

If any provision, section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid, or for any reason unenforceable, the validity of the remaining portions of this Ordinance shall not be affected thereby; it being the intent of Grantor in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end all provisions of this Ordinance are declared to be severable.

INTRODUCED, READ, AND PASSED by the affirmative vote of a majority of Aldermen of Beach City present, a quorum being present at a regularly-scheduled and duly posted meeting of the City Council, on this 28th day of January, 1997.

  
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J.E. Standridge, Mayor  
City of Beach City, Texas

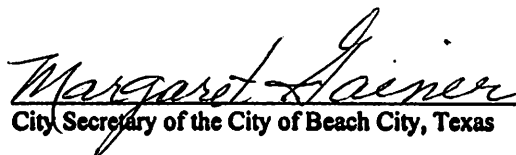
ATTEST:

  
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M. Gainer, City Secretary  
City of Beach City, Texas

THE STATE OF TEXAS       §  
                                      §  
COUNTY OF CHAMBERS     §

I, the duly appointed, qualified and acting City Secretary of the City of Beach City, Texas, do hereby certify that the above and foregoing ordinance was passed and adopted by the City Council of said City of Beach City at a regular meeting of the City Council held on the 28th day of January, 1997; that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the city hall for at least the three days preceding the day of said meeting; that the Mayor James E. Standridge, and Councilmembers A. R. Senac, Dr. Ted Krell, Matthew Faulkner, Kevin Budd and \_\_\_\_\_ were present and voted in favor of said ordinance at said meeting; that said ordinance has been approved by the Mayor and is duly attested by the City Secretary; and that said ordinance has been duly engrossed and enrolled in the records of the City of Beach City.

EXECUTED under my hand and the official seal of the City of Beach City, Texas, at said City, this the 28th day of January, 1997.

  
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City Secretary of the City of Beach City, Texas


[SEAL]

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**TO THE CITY OF BEACH CITY, TEXAS:**

Entex, a division of NorAm Energy Corp., for itself, its successors and assigns, hereby accepts the above and foregoing ordinance and agrees to be bound by all of its terms and provisions.

ENTEX, a division of NorAm Energy Corp.

  
\_\_\_\_\_  
Vice President

Dated this the 14 day of February, 19 97.

**NOTE TO THE CITY SECRETARY:**

Please do not complete the certificate below until an officer of Entex, a division of NorAm Energy Corp., has executed the Acceptance above.

THE STATE OF TEXAS       §  
  §  
COUNTY OF CHAMBERS   §

I, the duly appointed, qualified and acting City Secretary of the City of Beach City, Texas, hereby certify that the above and foregoing Acceptance was received and filed in the office of the City Secretary of the City of Beach City, Texas on the 20<sup>th</sup> day of February, 19 97.

  
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CITY SECRETARY OF THE CITY OF BEACH CITY, TEXAS

[SEAL]