

ORDINANCE NO. 2006 - 5

AN ORDINANCE GRANTING TO THE NATURAL GAS COMPANY, LLC, THE RIGHT AND FRANCHISE TO USE THE STREETS, ALLEYS, AND PUBLIC WAYS OF THE CITY OF BEACH CITY TO CONSTRUCT, OPERATE AND MAINTAIN A GAS UTILITY DISTRIBUTION SYSTEM, WITH RELATED PROVISIONS.

WHEREAS, the Natural Gas Company, LLC. ("the Company"), desires to provide gas utility service in the City of Beach City; and

WHEREAS, the Natural Gas Company, LLC desires to provide natural gas services to the citizens of the City of Beach City, Texas; and

WHEREAS, negotiations between the Natural Gas Company, LLC and the City of Beach City have continued in an effort to reach an agreement for service; and

WHEREAS, the City of Beach City desires to enter into a new franchise with the Natural Gas Company, LLC;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEACH CITY, TEXAS:

SECTION 1: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**ARTICLE. IV. GAS FRANCHISE
DIVISION 1. IN GENERAL**

Sec. One. Purpose.

The City Council has determined it is in the best interest of and consistent with the convenience and necessity of the City to grant franchises to companies desiring to provide cable communications, electric service, gas service, telephone service, and underground or aerial cable services within the confines of the City and on the terms and conditions hereinafter set forth, and as may be further described in each franchise agreement. These regulations include both rights and obligations of a franchisee. It shall be unlawful and it is hereby prohibited for anyone or company to provide any of the services described herein or use any public street or area unless a franchise has been obtained and is still in effect, or is in negotiation.

Sec. Two. Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the

singular number, and the words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

City is the City of Beach City, Texas, in its present incorporated form or as it may be changed by annexation.

Council shall mean the governing body of the City of Beach City.

Force Majeure shall mean, without limitation, acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any government of the United States or the State of Texas, or any of their departments, commissions, agencies, or officials, failure of vendors to supply equipment on a timely basis, weather and any other cause or event not reasonably within the control of Grantee.

Franchisee, Grantee, or Company is the party or parties to which a franchise under this ordinance is granted by the Council, and its or their lawful successors and assigns (a gas utility as defined in Section 1.03 of the Gas Utility Regulatory Act, Article 1446e, V.A.C.S.) including all parts of such system proper for its operation and the transportation, distribution, delivery, and sale of gas hereunder.

Gas shall mean combustible hydrocarbon natural or synthetic natural gas or a mixture thereof.

Gross revenues shall mean all cash, credits, property of any kind or nature, or other consideration received directly or indirectly by a Grantee, or from any source whatsoever, arising from or attributable to the sale or transportation of gas to customers within the City or in any way derived from the operation of its system. These gross revenues shall not be reduced for any purposes other than provided herein, and shall be the basis for computing the franchise fee.

GURA is the Gas Utility Regulatory Act, currently Tex. Utility Code §§ 101.001 et seq., or its successor as same may from time to time be amended. (See also Art. 6050.)

RRC is the Railroad Commission of Texas or its successors.

Regulations are Grantee's "General Rules and Regulations Applicable to Natural Gas Service in Texas," as amended from time to time and on file with the City.

Rules are the Substantive Rules of the RRC.

Sec. Three. Franchise /Grant of Authority.

a. The Natural Gas Company, LLC, is hereby granted a franchise to operate a gas utility distribution system pursuant to this individual franchise ordinance. This franchise shall become effective upon acceptance and signature by Grantee.

b. The area covered by this franchise is all areas within the City limits of Beach City, both current and any future areas annexed. Within forty-five (45) days from the receipt of notice from Beach City of any such annexation, Grantee shall assure that any and all customers located within such annexed territory are included and shown on its accounting system as being within the City of Beach City. After such forty-five (45) day period, all gross receipts received from customers located within such annexed territory shall be subject to the payment provisions specified in Section Ten of this ordinance.

c. The franchise granted under this ordinance will be for the non-exclusive right and privilege to acquire, construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, highways, alleys, and public ways now laid out or dedicated and all extensions thereof, and additions thereto, all fixtures necessary for the maintenance and operation in the City of Grantee's system of pipes, pipelines, gas mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, 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) for heating, lighting, and power, or for any other purpose for which gas may now or hereafter be used. The rights set forth herein shall not be exclusive and City reserves the right to grant a similar right of use to any person or corporation at any time.

d. City hereby retains all of its power and control for regulation of its streets, highways, alleys, bridges, and public ways granted or which may hereafter be granted to it under the Constitution of the State of Texas and the State Statutes.

e. The permission granted herein is likewise subject to laws, ordinances and regulations now in force or which may hereafter be enacted or promulgated by any governmental body or agency having jurisdiction.

f. City assumes no responsibility for securing any franchises, rights-of-way, permits or easements which City does not already own. City shall in no way be responsible for the construction, operation, maintenance, performance, or any other activity of Grantee or its system or any part thereof.

g. Grantee agrees not to oppose intervention by City in any suit or proceeding to which Grantee is a party that is related to this franchise.

h. Grantee agrees to abide by all lawful provisions of this franchise and further agrees that it will not at any future time set up as against City or the City Council the claim that the provisions of this franchise were unreasonable or arbitrary at the time of the acceptance hereof by Grantee.

Sec. Four. Term of Franchise.

a. The duration of the rights, privileges, and authorizations granted in this franchise agreement shall be ten (10) years from the effective date of this franchise.

DIVISION 2. APPLICATION, GRANT, TRANSFER, TERMINATION

Sec. Five. Forfeiture and Termination.

a. In addition to all other rights and powers retained by City under this ordinance or otherwise, City reserves the right to forfeit and terminate a franchise and all rights and privileges of Grantee in the event of a material breach of its terms and conditions. A material breach by Grantee shall include, but shall not be limited to the following:

1. Willful violation of any material provision of the franchise or any material rule, order, regulation or determination of City made pursuant to the franchise, including but not limited to the events listed in Section Twenty;

2. Willful attempt to evade any material provision of the franchise or the practice of any fraud or deceit upon the City or its subscribers or customers;

3. Material misrepresentation of fact in the application for or renegotiation of the franchise; or

4. Attempt to dispose of any of the facilities or property of its system to prevent the City from purchasing it, as provided for herein.

b. None of the foregoing shall constitute a material breach if the violation occurs but is without fault of Grantee or occurs as a result of circumstances beyond its control, including, without limitation, Force Majeure. Grantee shall not be excused by mere economic hardship.

c. Grantee shall not be excused from complying with any of the terms and conditions of a franchise agreement or this ordinance by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions, unless City amends this ordinance or agrees in writing that such noncompliance was excused.

d. Prior to any forfeiture or termination, City shall make a written demand that Grantee comply with any such provision, rule, order, or determination under or pursuant to this ordinance and franchise agreement. If the violation by Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, City may place the issue of termination of a franchise before City Council. City shall cause to be served upon Grantee, at least twenty (20) days prior to the date of such City Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which City Council is to consider.

e. City Council shall hear and consider the issue and shall hear any person interested therein, including Grantee, and shall determine from the evidence and facts and in its discretion, whether or not any violation by Grantee has occurred.

f. If City Council shall determine the material violation by a Grantee was the fault of Grantee and within its control, City Council may, by resolution, declare that the franchise of Grantee shall be forfeited and terminated unless there is compliance within such period as City Council may fix, provided no opportunity for compliance need be granted for fraud or misrepresentation.

g. The issue of forfeiture and termination shall automatically be placed upon City Council agenda at the expiration of the time set by it for compliance. City Council then may terminate a franchise forthwith upon a finding that Grantee has still failed to achieve compliance or may further extend the period for compliance, in its discretion.

h. In the event Grantee's facilities and equipment are abandoned by Grantee and their location is needed for other public facilities, Grantee shall remove them immediately forthwith, at its own expense, but as a reasonable and necessary operating expense, and under the supervision of City and restore such locations to their original condition (a condition similar to adjacent areas). If Grantee fails, within a reasonable time period to accomplish the same, City may either perform the removal at Grantee's expenses as well as retain the salvaged equipment, or leave the system or parts of the system in service.

Grantee shall have the right to appeal any finding of violation or failure to comply that results in a forfeiture of the franchise to, or seek a restraining order and/or injunction enjoining such forfeiture from, the proper government agency or any court of competent jurisdiction sitting in Chambers County, Texas.

Sec. Six. Foreclosure, Judicial Sale or Receivership.

a. Upon the foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system:

1. Grantee shall notify City of such fact, and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this ordinance governing the consent of City to such change in control of Grantee shall apply; or

2. In such an instance, City may serve notice of termination upon Grantee and if applicable, the successful bidder at such sale. In such event, the franchise shall cease and terminate thirty (30) days after service of such notice unless:

(a) City shall have approved the transfer of a franchise and a prospective Grantee, as and in the manner of this ordinance provided; and

(b) The successful bidder shall have covenanted and agreed with City to assume and be bound by all the terms and conditions of the franchise.

b. City shall have the right to revoke a franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless

such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and

2. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the ordinance and franchise agreement and of the franchise granted to Grantee.

Sec. Seven. Continuity of service mandatory.

a. It shall be the right of all customers to continue receiving service insofar as their financial and other obligations to a Grantee are honored. In the event that Grantee elects to reconstruct, modify, or sell the system, or City gives notice of intent to terminate or fails to renew a franchise, Grantee shall act so as to ensure, as far as practicable, that all customers receive continuous, uninterrupted service under the circumstances; however, Grantee does not guarantee uninterrupted service.

b. In the event of a change of Grantee, or in the event a new operator acquires the system, Grantee shall cooperate with City, new Grantee or operator in maintaining continuity of service to all customers. During such period, Grantee shall be entitled to the net revenues for any period during which it operates the system.

Sec. Eight. Purchase of system by City.

a. **Rights to Purchase.** In the event that Grantee forfeits, the City terminates this agreement in accordance with its terms, or upon normal expiration of a franchise pursuant to the provisions of this franchise or at any time after five (5) years from effective date of Grantee's franchise ordinance, but before the expiration thereof, City shall have the option to purchase the system at fair market value including that portion of the system located outside the City of Beach City corporate limits. Option terminates in one year. If City desires, it may assume the customer deposits by requiring Grantee to pay in cash to City the amount of these deposits.

b. **Date of Valuation.** The date of valuation shall be the date of forfeiture, termination, notice of purchase, or expiration of the franchise, as the case may be.

c. Grantor must present Grantee with written notice of Grantor's intent to exercise its option to purchase the franchised property. Within ninety 90 days of receipt of notice, Grantee shall make a written offer (the "Offer") stating the cash price for the purchase and sale of said distribution system. Within twenty (20) days of Grantor's receipt of the Offer, Grantor will submit written notice rejecting or accepting the Offer.

d. Nothing in this franchise shall be construed as limiting or otherwise affecting Grantor's authority, if any, to acquire the franchised property under Grantor's powers of eminent domain.

Sec. Nine. Transfers and Assignments.

a. A franchise shall not be assigned or transferred, either in whole or in part, or lease, sublet, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person other than an affiliate without the prior written consent of City. The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as reasonably determined by City and must agree to comply with all provisions of the franchise which shall be binding on all successors and assigns.

b. Grantee shall promptly notify City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of Grantee shall make the franchise subject to cancellation unless and until City shall have consented thereto, which consent will not be withheld without good cause shown. City shall be deemed to have consented to any such change, transfer or acquisition if City has not responded to Grantee's request within 90 days of receipt of such request. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, City may inquire into the qualifications of the prospective controlling party and Grantee shall assist City in any such inquiry.

DIVISION 3. GRANTEE REQUIREMENTS

Sec. Ten. Payment of Franchise Fee.

a. For the reason that the right-of-way to be used by Grantee in the operation of its system within the boundaries of City are valuable public properties acquired and maintained by City at great expense to its taxpayers, and that the grant to Grantee to the said right-of-way is a valuable property right without which Grantee would be required to invest substantial capital in the right-of-way costs and acquisitions, and because City will incur costs in regulating and administering the franchise, Grantee shall pay to City two percent (2%) of Grantee's gross annual revenue from all sources attributable to the operations of Grantee within the confines of City as defined herein. This amount may be increased during the term hereof by mutual written agreement. City reserves the right to increase the franchise fee upon thirty days written notice at such times as the state law maximum amount for street rental payment is increased above the fee provided herein. In addition, Grantee shall reimburse City for reasonable expenses incurred in employing rate consultants to analyze rate increase cases filed by Grantee to the fullest extent allowed by state law. If such fee requires any waiver or other approval by the FERC or Texas

Railroad Commission or other agency, Grantee agrees to support the waiver and acknowledges its support by its voluntary act of applying for and accepting a franchise.

b. The franchise fee shall be payable quarterly to the City accounting department. Pursuant to Section 5.07 of the GURA, City herewith finds that Grantee is entitled to recover through its rates within the corporate limits of City amounts payable to City hereunder. To ensure that Grantee's rates are just and reasonable; Grantee is herewith directed to revise its rate schedules as necessary to fully recover from its customers within the corporate limits of City amount payable to City as set forth in this Section. The Grantee shall file a complete and accurate verified statement of all collected gross revenues within the City during the period for which said payment is made, and said payment shall be made to the City not later than sixty (60) days after the expiration of the period for which payment is due. Specifically, quarterly payments will be on or before February 28, May 30, August 30, and November 30 for the preceding three months ending December 31, March 31, June 30, and September 30, respectively. If Grantee shall accept (other than by succession or assignment of an existing franchise through the acquisition by merger or otherwise of another utility), renew or extend a franchise ordinance agreement adopted by any municipality on or after the effective date of this ordinance, [other than a short-term (not to exceed three (3) years in the aggregate to be extended by the City in the event that the City determines that the Grantee and such other municipality are negotiating in good faith) extension of a pre-existing franchise agreement pending negotiation of a new franchise agreement], and that franchise agreement provides for payment to the municipality for the use of said municipality's public rights-of-way on a monthly basis, then Grantee's payments under this section shall become monthly. Monthly payments to City will begin within three (3) months following the date Grantee accepts the franchise agreement of such other municipality and shall continue until expiration of the term of this franchise, or until the expiration of the franchisee agreement of such other municipality, whichever is earlier. Payments shall be due on or before the last day of the next month.

c. City shall have the right to inspect Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of Grantee's fiscal years. Such audit or reviews shall be by a firm chosen by City. Any additional amount due to City as a result of the audit shall be paid, along with interest due, within thirty (30) days following written notice to Grantee by City which notice shall include a copy of the audit report.

d. In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at an interest rate being charged by Bank of America N.A., Houston, (or its successor), prime rate plus 1%. The Mayor upon presentation of reasonable justification by the Grantee may grant a 15-day grace period for payment.

e. In order that the Mayor and the City Council at all times shall keep fully informed as to all matters in connection with or affecting the construction, reconstruction,

maintenance, operation, and repair of the properties of Grantee, its accounting methods and procedures, the conduct of Grantee's business in the City; and of service being rendered by Grantee, the City expressly retains all rights and powers available to municipal regulatory authorities under state law.

f. The consideration hereinabove set forth shall be paid and received in lieu of any license, charge, fee, street, or alley rental or other character of charge for use and occupancy for the streets, alleys and public places within Grantor, 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.

Sec. Eleven. Use of Streets, Construction Activity.

a. Construction Codes and Permits. Grantee shall obtain any required permission from City before commencing construction involving the opening or disturbance of any street or public property. City shall cooperate with Grantee and use its best efforts in granting any permission required. All transmission and distribution lines constructed by Grantee within the City shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets and the public use of such streets.

b. Grantee shall conduct its maintenance, repair, construction, placement of facilities, excavations, and similar activity in the streets, alleys and public rights of way in such manner as will cause the least interference practicable with the use by the general public of streets, sidewalks, and other public ways or with the use of private property within the City.

c. Except in case of an emergency, Grantee shall notify City in writing as soon as practicable before the disturbance of any right-of-way where disruption of traffic may occur. In case of such disturbance by Grantee, Grantee shall, at its own cost and expense, repair it to its condition prior to the disturbance.

d. The location and route of all facilities to be placed or constructed by Grantee in City shall conform to the local codes and standards and be subject to review by City. Grantee shall submit engineering plans of projects involving significant construction or reconstruction activity in a public right of way to the City for review and approval as soon as practicable prior to the commencement of construction. Grantee shall not commence construction until opportunity for such review and comment by City. If Grantee has received no notice of conflict from the City within a reasonable period of time (which shall in no event be greater than thirty days) after plan submission, Grantee may proceed with construction. If there are conflicts, construction may be delayed upon written request of the Mayor until such conflicts are resolved.

e. Except in an emergency, Grantee shall comply with applicable City ordinances and rules pertaining to notification, permitting or prior approval when excavating pavement in

or upon an alley, street, or unpaved right of way. In this connection Grantee shall notify City as soon as practicable regarding work performed under emergency conditions.

f. City may, at its option, require Grantee, by prior written notice, to repair, remove, or abate any structure, equipment, or installation that because of Grantee's failure to properly maintain same, is unnecessarily dangerous to life or property and, in the event Grantee fails to take such action within a reasonable time as determined by the Mayor or his designee, City may repair, remove, or abate such structure, equipment, or installation at the expense of Grantee and without compensation or liability to Grantee for damages.

g. City expressly reserves the right to change grades, install, widen, or relocate streets and other public ways and public grounds. Whenever by reason of the installation, relocation, widening, or changing of grade of a street or other public way or public ground, including sidewalks and curbs, or in the location or manner of constructing a water pipe, gas pipe, sewer, or other underground or above-ground structure for a governmental purpose, it is deemed necessary by City to remove, alter, change, adapt, or conform the underground or above-ground facilities of Grantee, Grantee shall make the alterations or changes as soon as practicable when ordered in writing by City, without claim for reimbursement or damages against City. If these requirements impose a financial hardship upon Grantee, Grantee shall have the right to present alternative proposals for City's consideration. City shall not require Grantee to remove its facilities entirely from a street, alley, highway, or public place unless suitable alternatives are available for relocation at reasonable cost in City's opinion. Upon prior written notice of at least thirty (30) days, City may require Grantee to relocate facilities in order to accommodate facilities of other utilities. Grantee and the City shall coordinate the timing and performance of such work to ensure that neither City nor Grantee shall incur unreasonable delay or expense. In the case of City street or water and sewer projects, in the event Grantee has not relocated its affected mains, meters, or other facilities within a reasonable time (as determined by City) prior to City's commencement date for construction, City may relocate or cause to be relocated the affected utilities and Grantee shall reimburse. City for all relocation costs within sixty (60) days of relocation completion.

h. City reserves the right to lay, and permit to be laid, sewer, water, and other pipelines, cables, and conduits, and to do and permit to be done any underground or above-ground work that may be necessary or proper in, across, along, over, or under a street, alley, highway, or public place occupied by the Grantee. City also reserves the right to change any curb, sidewalk, or grade of a street. In permitting this work to be done, City shall not be liable to Grantee for any resulting damage, but nothing herein shall relieve any other person or corporation from responsibility for damages to the facilities of Grantee.

i. Grantee in laying or erecting its mains, pipe and/or service lines shall not interfere with any water lines, sewer lines, traffic signal and related underground conduit, or other conduit, pipe lines or supply lines or with any public or private drain in any street, alley, or public way except with the consent and direction of the Mayor or his designee and if Grantee, in laying its mains, pipes, and supply lines shall come in conflict with the rights

of any other person or corporation having a franchise from City, the Council shall decide all questions concerning the conflicting rights of the respective parties and shall determine the location of the facilities and structures of said parties and what charges if any should be made and at whose expense and to reconcile the difference between the respective franchise holders.

j. If the Council closes or abandons a street, alley, highway, or public place which contains existing facilities of Grantee, any conveyance of land within the closed or abandoned street, alley, highway, or public place shall be subject to the rights of Grantee. Grantee, however, may be ordered to vacate any land so conveyed if an alternate route is practicable and if Grantee is reimbursed by the person to whom the property is conveyed for the reasonable costs of removal and relocation of facilities.

k. If City requires Grantee to adapt or conform its facilities, or to alter, relocate, or change its property to enable any other corporation or person, except City, to use, or use with greater convenience, the street, alley, highway, or public place, Grantee shall not be bound to make any of the changes until the other corporation or person has undertaken, with good and sufficient bond, to reimburse Grantee for any cost, loss, or expense that will be caused by or arise out of the change, alteration, or relocation of Grantee's property.

l. City anticipates a need for greater cooperation and coordination in the future between all utilities. In this regard, City expects and would require as a condition of use of its right-of-way that Grantee cooperate with and participate in such activities.

Sec. Twelve. Gas Purchase Contracts.

a. An industrial or other similar large-volume consumer of natural gas and natural gas service may accept by contract an offer of Grantee to provide natural gas and natural gas service at different schedule of rates than that so fixed by City Council or the Railroad Commission so long as such contract rate schedules and the contracts under which such rates are so fixed conform with the requirements for establishing such rates under the GURA and such rate schedules shall be filed with the City provided such customer is within the City.

b. After the effective date of this franchise, Grantee shall never enter into any contract for the purchase of gas to be used in furnishing gas service under this franchise that shall be binding on City in the event the City takes over and acquires the property of the company constituting the distribution system serving City without the prior, written approval of the City.

Sec. Thirteen. Gas Quality.

Grantee shall at all times furnish a merchantable natural gas commercially free of dust, gums, gum-forming constituents, gasoline, water, other liquid or solid matter, containing, before odorization, not more than two (2) grains of hydrogen sulfide per hundred (100)

cubic feet of gas, and said gas shall have a gross heating value of not less than nine hundred (900) British thermal units per cubic foot. A cubic foot of gas shall be taken to be the amount of gas which occupies a volume of one cubic foot at a temperature of sixty (60) degrees Fahrenheit and under an absolute pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch. For all purposes of gas measurement it shall be assumed that the atmospheric pressure in the City is at all times fourteen and forty hundredths (14.40) pounds per square inch even though it is known that such pressure does vary. Further more, it shall be assumed that the conditions prevailing in the customer's gas meter shall be considered to be the equivalent of conditions defining a cubic foot of gas (sixty (60) degrees Fahrenheit and fourteen and sixty-five hundredths (14.65) pounds absolute pressure) even though it is known that the average temperature may exceed sixty (60) degrees Fahrenheit and the average pressure exceed fourteen and sixty-five hundredths (14.65) pounds absolute.

Sec. Fourteen. Transportation of Gas.

Grantee is encouraged to make its lines and mains available for transportation of gas from other sources to franchise area end users; however, Grantee shall not be required to provide stand-by or back-up gas service to end-users receiving gas transported by Grantee.

Sec. Fifteen. Service Standards.

a. Grantee shall at all times furnish reasonable and prudent service which is modern, safe, and sufficient to meet demands without undue interruption or fluctuations to any person, firm, or corporation that requires service within the City, upon the terms specified and required by ordinance or rules adopted by City subject to state law. The service furnished hereunder to said municipality and its inhabitants shall be first-class in all respects considering all circumstances and shall be subject to such reasonable rules and regulations as Grantee may make from time to time consistent with the Quality of Service regulations established from time to time by the Railroad Commission of Texas. Grantee may require reasonable security for the payment of its bills.

b. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs or installations, Grantee shall do so at such time as will cause the least amount of inconvenience to its customers and unless such repairs are unforeseen and immediately necessary to prevent injury to persons or property, it shall give reasonable notice thereof to its customer.

c. Grantee shall install upon the premises of each customer a meter of standard type which shall be kept adjusted so as to measure accurately the amount of gas sold and no more than three percent fast or slow or such other percentage as the customer and Grantee may agree. Meters shall be installed so as not to create a danger to the health, safety, and welfare of the citizens of City. Charges for installation or relocation of facilities to serve consumers shall be in accordance with Company's Schedule of Miscellaneous Service Charges as filed with City. The use of more than one meter in the

same building or on the same premises may be regulated by City in connection with the regulation of rates. If Grantee shall for its own convenience and not for the safety or convenience of the customer, change the point of delivery or the location of its equipment on private property, Grantee shall bear the expense as a reasonable and necessary operating expense.

d. Grantee, through its authorized agents, shall have the right to enter upon the premises of any consumers of gas to examine gas pipes and appurtenances to prevent waste or theft of gas and to read its meters. No person, company or corporation shall be permitted to make any connection with Grantee's gas mains or service pipes unless duly authorized by Grantee, and Grantee may adopt subject to City approval such reasonable rules and regulations as may be necessary to protect Grantee from loss or damage by imposition or fraud and to prevent the waste of gas. Grantee shall also have the right to refuse gas service or to discontinue such service should the house piping, service lines from curb to meter, or appliance connections are found in faulty condition or in non-conformance with adopted rules.

e. Each meter shall be read or estimated in accordance with General Rules and Regulations Applicable to Natural Gas Service in Texas as filed with City. With respect to service termination, Grantee shall follow either the rules existing at the execution of this franchise or rules filed with and approved by the City in accordance with this ordinance.

Sec. Sixteen. Installations and Maintenance.

a. Grantee shall make all necessary connections with and extensions from gas mains to the customer's property line (hereinafter referred to as the "gas service lines") to the inlet riser valve of the meter location (point of delivery), hereinafter referred to as the "customer's yard line", which shall likewise be installed by Grantee in accordance with the regulations and requirements set forth herein. Following any such installation, Grantee shall have the sole responsibility for continuing maintenance of the customer's yard line.

b. Grantee shall be entitled to make a charge to the property owner for installation of the customer's yard line in accordance with Grantee's Schedule of Miscellaneous Service Charges filed with the City.

c. Replacement of customer-installed lines from curb to meter may be charged for in accordance with Schedule of Miscellaneous Service Charges as filed with City.

d. Grantee shall have the authority to stipulate the proper pipe size from the gas main to the meter location and the material used for gas service lines and customer's yard lines.

e. The meter installation shall be located on the site preferred by the customer, provided it is readily accessible and located in such a place to prevent damage to the meter installation and minimize potential hazards.

f. Grantee shall not be required to secure a permit or to pay permit fees to install meters or to install, extend, relocate, remove, or repair gas service lines or customer's yard lines.

g. Grantee does agree, upon reasonable notice given by the City, to shut off, suspend, or in the alternative, reroute or reduce gas services when the same is necessary, in order that reasonable repairs may be made to City streets. Nothing herein shall preclude Grantee from electing to reroute such service as opposed to shut-off or suspension, when Grantee and the City shall determine this to be a reasonable alternative.

h. All gas mains shall be laid at a safe depth, but not less than fifteen (15) inches under the surface of the streets and alleys, and the company shall use every reasonable care to avoid interference with water or sewer pipes.

Sec. Seventeen. Extensions of Service; Extension Policy.

a. The goal of this franchise is for Grantee to provide universal service to all City residents, industrial and commercial end users who desire such service, however, Grantee shall not be required to extend any of its existing mains or pipes a distance exceeding one hundred (100) feet in order to bring gas service to the property line of each additional customer unless the customer agrees to pay for the extension over 100 feet. Such extensions do not need to exceed a maximum diameter of two (2) inches. Revenues received by Grantee from the sale or installation of extension of pipe to customers shall be excluded from the calculation of gross revenues as defined in Section Two, Definitions. Grantee reserves the right to refuse any extension over one hundred (100) feet to any one customer where not economically justified.

b. Grantee shall file with the City Secretary any written extension policy which shall be subject to Council approval and it shall be uniform and consistent in application and non-discriminatory.

c. No contribution in aid of construction may be required of any customer except as provided for in the extension policy as adopted and approved by the Council.

Sec. Eighteen. Customer Relations.

a. With respect to customer service requirements, billing, handling of complaints, discontinuance of service, and related matters, Grantee shall observe and abide by the current rules of the Texas Railroad Commission or its successor and City Council.

b. Service Interruptions. With respect to service interruptions, Grantee shall follow either the rules existing at the execution of this franchise or the current rules of the Texas

Railroad Commission or its successor, whichever rules are more favorable to the customer.

c. **Customer Security Deposits.** Grantee consistent with applicable State and federal law and Grantee's Regulations, may require a reasonable security deposit in an amount calculated pursuant to rules filed with City. Said deposit shall be retained and refunded in accordance with such rules and shall bear interest, as provided by state law. Grantee shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Grantee by the consumer making the deposit.

d. **Customer Billing; Procedure for Disputed Bills.** With respect to customer billing and disputed bills, Grantee shall follow either the rules existing at the execution of this franchise or the current rules of the Texas Railroad Commission or its successor, whichever rules are more favorable to the customer. Grantee shall maintain the ability for customers to pay bills in person during regular business hours.

Sec. Nineteen. Meter Requirements.

With respect to meter requirements, Grantee shall follow either the rules existing at the execution of this franchise or the current rules of the Texas Railroad Commission or its successor, whichever rules are more favorable to the customer.

Sec. Twenty. Franchise Review.

The City Council reserves the right to review Grantee's performance under this franchise at any time.

Sec. Twenty-One. Complaint Procedures.

a. The Mayor or Mayor's designee is specified by City as having primary responsibility for the continuing administration of this franchise and implementation of complaint procedures, consistent with law, Rules, and Grantee's Regulations.

b. Grantee shall maintain a publicly listed telephone with adequate line capability so that complaints and request for repairs or service adjustments may be received twenty-four (24) hours a day and seven (7) days a week. Sufficient responsibility must be delegated to permit Grantees local management to make timely decisions.

c. Grantee shall establish procedures for receiving, acting upon, and resolving customer complaints as provided by law, Rules, and Grantee's Regulations. A copy of current procedures shall always be filed with the City.

d. City understands that Grantee keeps various maintenance service, customer complaint, and service outage records which are available for review by City.

Sec. Twenty-Two. Indemnification.

a. Grantee shall at all times take reasonable precautions for preventing failures, explosions and accidents which are likely to cause damage or injury to the public, to employees of Grantee, and to public or private property. It is expressly understood and agreed by and between City and any Grantee hereunder that Grantee shall save City and its agents and employees harmless and indemnify it from and against all claims, damages, losses, judgments, and expenses, including attorney's fees sustained by City on account of any suit, judgment, execution, claim or demand whatsoever, arising out of the selection, construction, installation, operation, or maintenance of Grantee's system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this ordinance and any franchise granted hereunder and shall refund to City all sums which City may be adjudged to pay on any such claim, or which may arise or grow out of the exercise of the rights and privileges hereby granted, or by the abuse thereof. Grantee shall have no liability to City under any provision of this paragraph with respect to any claim or action brought against City which is based solely on the actions of City, its agents or employees. It is understood that it is not the intention of the parties to create liability for the benefit of third parties, but that this agreement shall be solely for the benefit of the parties.

b. Grantee shall be promptly notified in writing by City of any notice of claims, and Grantee shall have control of the defense of any action on such claims and all negotiations for its settlement or compromise, with the exception that for any claim which will require City to pay any money, the written consent of City shall be required prior to any such settlement or compromise.

c. Should any actions or inaction of Grantee become, or in Grantee's opinion be likely to become, the subject of any such claim or action, City shall permit Grantee, at its option and expense, to take such reasonable action as may be necessary in order to avoid or mitigate any such claim; and, so long as Grantee reasonably demonstrates capacity to perform its obligations under this section, Grantee may select one law firm to represent both Grantee and City, in any action under this section, unless a conflict of interest requires multiple representation, in which even City agrees to monitor and control the work of its attorneys to the extent feasible to the end that the fees of its attorneys shall be reasonable.

d. Upon the failure of Grantee to comply with this "defense-of-suit" provision of the franchise, after reasonable notice to it by City, City shall have the right to defend the same and in addition to being reimbursed for any such judgment that may be rendered against such City, together with all court costs incurred therein, Grantee shall reimburse said City for attorney's fees if any attorney is employed to assist the City Attorney in such case or cases, as well as all expenses incurred by City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised or fully adjudicated against City. In the event City is compelled to

undertake the defense of any such suit by reason of Grantee's failure to perform as hereinabove provided, City shall have the full right and authority to make or enter into any settlement or compromise of such adjudication as the Council shall deem in the best interests of City, this without the prior approval or consent of Grantee with respect to the terms of such compromise and settlement, unless at such time Grantee is also a party to the proceeding, in which event, Grantee's consent to such settlement shall be obtained.

e. Grantee shall not prosecute or maintain any claims against City or its employees for any damage or injury to Grantee's pipelines or facilities resulting from City's performance of work or repairs upon city streets; provided, however, that the provisions hereof shall in no way limit Grantee's right to prosecute or maintain any such claim against any person, association, or corporation other than City or its employees.

Sec. Twenty-Three. Insurance.

City expects that Grantee will provide sufficient resources, either self-insurance or other insurance, to adequately support this franchise and the indemnity provisions of Section Twenty-Two.

Sec. Twenty-Four. Rights of Individuals.

a. Grantee shall not deny service, deny access, or otherwise discriminate against customers or general citizens on the basis of race, color, religion, national origin, sex, age or handicap. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

b. Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local regulations, and as amended from time to time.

Sec. Twenty-Five. Preference/Discrimination Prohibited.

a. Grantee shall not, as to rates, charges, service, services, facilities, rules, regulations or in any other respect make or grant any undue preference or advantage to any person, class of customers, nor subject any person to any prejudice or disadvantage. Grantee may offer different rates to classes of customers in accordance with filed and approved tariffs.

b. Subject to subsection A., Grantee may not, directly or indirectly, by any device whatsoever or in any manner, change demand, collect or receive from any person a greater or lesser compensation for any service rendered or to be rendered by Grantee than that prescribed in the schedule of rates applicable when filed in the manner provided in this ordinance, nor any person knowingly receive or accept any service from Grantee for a compensation greater or less than that prescribed in the schedules.

c. Subject to subsection A., the service furnished by Grantee shall be furnished to every person within the City of Beach City within reasonable time after demand for such service has been made, upon terms as authorized by Grantee's rates.

Sec. Twenty-Six. Rulemaking by City; Review and Approval of Grantee Rules and Policies.

a. In order to insure uniform and reasonable application of conditions for service and to insure availability of service to all without discrimination, the Council reserves the right to review and approve, consistent with the terms of this code, Grantee's rules, regulations, practices, terms, conditions, or standards governing the conduct of its business, to the full extent authorized by state and federal law.

b. In the foregoing connection, Grantee shall promptly file with the City Secretary any such proposed Grantee rules, regulations, practices, terms, conditions, or standards governing the conduct of its business.

c. In the further exercise of its police powers granted to it by the State Constitution and statutes, City Council may, from time to time, after reasonable notice and hearing, establish such rules and regulations by ordinance as may be in the public interest regarding rates, the furnishing of service, administration of customer accounts, construction of Grantee's facilities on City property, or other matters pertaining to the administration of this franchise, provided such rules and regulations are not inconsistent with the rights of Grantee hereunder or any federal; state, or local law, rules or regulations of the Texas Railroad Commission, or its successor, and subject to Grantee's rights of appeal under GURA.

Sec. Twenty-Seven. Service Rates.

City reserves the right to review and regulate the rates of Grantee as allowed by law. The rates which shall be charged by Grantee for its services within City shall be determined, fixed, and regulated by City Council which expressly retains and reserves its rate modification authority under this franchise.

Sec. Twenty-Eight. Regulation.

Nothing in this franchise shall be construed to limit the authority of the City to regulate the business of the Grantee as provided by law.

Sec. Twenty-Nine. Books, Records, Maps, Inspections.

a. Grantee shall, consistent with applicable law, fully cooperate in making available at reasonable times, and Mayor or designee shall have the right to inspect the books, records, maps, plans, and other like materials of Grantee applicable to Grantee's system, at any time during normal business hours; provided when volume and convenience necessitate, Grantee may require inspection to take place on Grantee's premises.

b. Grantee shall keep its records in accordance with the system of accounts prescribed by state or federal law (currently 16 TAC §7.43) or as it may be amended.

c. Grantee shall always keep and maintain complete books, records, accounts, documents, maps, plats, and papers, pertaining to its franchise operation and showing all existing and proposed installations. Certain historical financial records which are kept at Grantee's corporate office shall be made available as provided in subsection A. Maps, plats, records, inventories, and books of the Grantee pertaining to the franchise system, insofar as they show values of existing property, shall be preserved for use, if necessary in connection with future valuation of the property of Grantee and for such other purposes as necessary.

d. Grantee shall file annually with the office of City Secretary, no later than six (6) months after the end of Grantee's fiscal year, a copy of its annual report to its stockholders, including an income statement applicable to its operations during said fiscal year and a balance sheet. These reports shall be certified as correct by an authorized officer of Grantee and there shall be submitted along with them such other reasonable information as City Council shall request.

e. City shall have the right at reasonable times to inspect the plant, equipment, and other property of Grantee and its affiliates according to state law, and to examine, audit, and obtain copies of the papers, books, accounts, documents, and other business records of Grantee and its affiliates consistent with state law.

f. City retains all of the valid and enforceable investigative powers and other rights provided to City by the charter and state law. Notwithstanding anything to the contrary in this franchise, Grantee does not admit, by accepting this franchise or agreeing to any provision hereof, to the validity or enforceability of any provisions of the City Charter as same currently exists or to any amendments to the City Charter that may be made during the term of this franchise.

Sec. Thirty. Quarterly Reports/Quality of Service Evaluation.

City reserves the right at any time to request information or to hold review sessions concerning Grantee's performance.

Sec. Thirty-One. Filings and Communications.

a. Grantee shall file with the City all rate schedules, and reports required by the Railroad Commission of Texas relating to Grantee's gas utility operations within the City.

b. Upon request, Grantee shall furnish to City Attorney's Office a copy of any other report normally filed by Grantee with its other municipal regulatory authorities or any other document in respect to any matters affecting Grantee's operations authorized pursuant to this franchise.

DIVISION 4. OTHER

Sec. Thirty-Two. Notices.

Whenever any notice or payment is required, such notice or payment shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States mail, addressed to:

Notice to:

Mayor
City of Beach City
12723 FM 2354
Beach City, TX 77520
(281) 383 - 3180

Payment to:
City of Beach City
12723 FM 2354
Beach City, TX 77520
(281) 383 - 3180

and notices, etc. to Grantee addressed to:

The Natural Gas Company, LLC
2129 Peckham Street
Houston, Texas 77019

(713) 528 - 0569

or to such other addresses as the parties may designate to each other in writing.

Sec. Thirty-Three. Amendment/Interpretation.

City shall have the right to amend this ordinance and any amendment made pursuant to this right shall be fully incorporated into any franchise agreement granted under this ordinance only upon Grantee's approval and written acceptance of such amendment. City and Grantee hereby acknowledge that all of the provisions hereof are the result of negotiations between City and Grantee. The provisions of this ordinance shall be construed fairly and reasonably and not more strictly against the party drafting such provisions than against the nondrafting party.

Sec. Thirty-Four. Texas Law and Venue.

Any franchise granted hereunder shall be construed under Texas laws and venue for any actions involving such franchise, other than where an appeal is pursuant to GURA, shall be in Chambers County, Texas.

Sec. Thirty-Five. Savings Clause.

If any section, sentence, clause or phrase of this ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining portions of this ordinance, and any portions in conflict are hereby repealed, provided, however, that in the event that the state or federal government laws or regulations renders any section invalid, then such section or sections may be renegotiated by City and Grantee.

Sec. Thirty-Six. Reservation of Rights/Police Power.


City hereby reserves to itself all rights, privileges, and interests which it has or may hereafter acquire, and nothing in this ordinance shall be construed otherwise unless it is specifically set forth in this ordinance. City specifically reserves the right to adopt such additional regulations as it shall find necessary in the exercise of its police power, and which are not in conflict with any federal, state, or local law. City hereby expressly reserves the right, power, and authority to fully regulate the rates, operations and services of Grantee to the extent authorized by and in a manner not inconsistent with the Constitution, the laws of the State, and the Rules, and subject to Grantee's right of appeal under the GURA.

Sec. Thirty-Seven. Acceptance and Effective Date of Franchise.

- a. This franchise agreement shall not become effective until Grantee accepts it as described below. In the event Grantee does not agree to this document, the franchise will become null and void.
- b. Within thirty (30) days after the passage of this ordinance awarding a franchise, Grantee shall file with City Secretary its written acceptance, shown by signing this document, together with the insurance proofs. By signing and returning this document, Grantee states its agreement to be bound by and to comply with and to do all things required of Grantee by the provisions of this ordinance and the franchise agreement.
- c. By execution of this franchise agreement, the Natural Gas Company, LLC and the City agree that all franchise or other payments for the use and occupancy of City streets and public ways made by the Natural Gas Company, LLC prior to the date of this franchise agreement are correct and sufficient, and each party releases the other from any and all claims relating to fees paid or unpaid for the use and occupancy of City streets and public ways by the Natural Gas Company, LLC

Sec. Thirty-Eight. Adoption.

PASSED, on the 26th day of September, A. D. 2006.


GUIDO PERSIANI, MAYOR OF
THE CITY OF BEACH CITY, TEXAS

ATTEST:


MARGARET GAINER, City Secretary

APPROVED AS TO FORM ONLY:



DANIEL R. JACKSON, CITY ATTORNEY

ACCEPTANCE

Grantee, by and through its undersigned authorized officer hereby accepts this Ordinance, No. 2006- 5 _____ granting it a franchise this 26th day of September 2006, and hereby tenders payment of all costs required herein.

ATTEST:

THE NATURAL GAS COMPANY, LLC


BY:  _____

CERTIFICATION

THE STATE OF TEXAS §

COUNTY OF CHAMBERS §

I, the duly appointed City Secretary of the City of Beach City, Texas, do hereby certify that the above and foregoing franchise ordinance was approved by majority vote of the Council, and that notice of the franchise was published in a newspaper of general circulation in Chambers County.



Margaret Lauer
City Secretary

(SEAL)

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 acceptance was received and filed in the office of the City Secretary of the City of Beach City on the 26th day of September, 2006.


Margaret Lauer
City Clerk Secretary

(SEAL)