

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO TXU GAS COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF COLLEGE STATION, BRAZOS COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REPEALING ALL PREVIOUS TXU GAS FRANCHISE ORDINANCES AND ORDINANCES IN CONFLICT HEREWITH; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING A SAVINGS CLAUSE; A SEVERABILITY CLAUSE; AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

SECTION 1. GRANT OF AUTHORITY

(A) The City of College Station, Texas, herein after called "City," hereby grants to TXU Gas Company, hereinafter called "Company," its successors and assigns, privilege and license to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through said City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

(B) Said privilege and license being granted by this ordinance is for a term ending December 31, 2013.

(C) The provisions set forth in this ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System within the City. In granting this franchise, the City does not in any manner surrender or waive its regulatory or other

rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City. Company, by its acceptance of this franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 2. DEFINITIONS

For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

(A) “City” shall mean the City of College Station, Texas.

(B) “Company” shall mean TXU Gas Company, its successors and assigns, but does not include a TXU Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 6.

(C) “City Manager” means City’s manager, or his or her designee.

(D) “Gross Revenues” shall mean all revenue derived or received from the sale of gas to its residential and commercial customers within the corporate limits of said City (expressly excluding revenues from governmental customers and revenues from industrial and any other classes of customers in said City except residential and commercial customers).

- (1) “Gross revenues” shall include:
 - (a) other revenues derived from the following ‘miscellaneous charges’:
 - i. charges to connect, disconnect, or reconnect gas within the City;
 - ii. charges to handle returned checks from consumers within the City;
 - iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
 - iv. “contributions in aid of construction” (“CIAC”).
 - (b) revenues billed but not ultimately collected or received by the Company; and,
 - (c) gross receipts fees.
- (2) “Gross revenues” shall not include:
 - (a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of the Company; and
 - (b) sales taxes; and
 - (c) any interest income earned by the Company; and
 - (d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City’s right of way; and

(e) all revenues received by the Company from the transportation of gas through the pipeline system of Company within the City to customers located within the City; the value of gas transported by Company for Transport Customers through the System of Company within the City; and all revenue derived or received from the sale of gas to its governmental and industrial customers within the corporate limits of said City.

(E) “Person” shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

(F) “Public Right-of-Way” shall mean public streets, alleys, highways, bridges, public easements, public places, public thoroughfares, grounds, and sidewalks of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

(G) “System” or “System facilities” shall mean all of the Company’s pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas for heating, lighting, and power, located within the corporate limits of the City.

(H) “TXU Affiliate” shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term “control” means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether

by operation of law, by contract or otherwise.

(I) “Transport Customer” shall mean any person or entity for which Company transports gas through the pipeline system of Company within the City to customers for delivery or consumption within the City.

SECTION 3. **EFFECT OF OTHER MUNICIPAL FRANCHISE ORDINANCE FEES ACCEPTED AND PAID BY TXU GAS**

(A) If TXU Gas should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by TXU Gas to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

(B) The provisions of this Section 3 apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

SECTION 4. **ACCEPTANCE OF TERMS OF FRANCHISE**

(A) The Company shall have sixty (60) days from and after the passage and approval of the ordinance to file its written acceptance thereof with the City Secretary. If the Company does not file such written acceptance of this Franchise Ordinance, the Franchise Ordinance shall be rendered null and void. The effective date shall be determined in accordance with the requirements of Section 28.

(B) At midnight on December 31, 2013, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited or extended by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

SECTION 5. NO THIRD PARTY BENEFICIARIES

This franchise is made for the exclusive benefit of the City and the Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 6. SUCCESSORS AND ASSIGNS

No assignment or transfer of this franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate of Company and subsidiary of TXU Corp. without approval of the City Council of the City. Notice of said transfer or assignment to an Affiliate shall be provided to the City. The City will grant such approval unless withheld for good cause. Upon approval, the rights, privileges, and franchise herein granted to the Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this franchise shall be binding upon the successors and assigns of the Company.

SECTION 7. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

This franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the College Station City Charter, as amended, and all other applicable ordinances of the City of College Station, not inconsistent herewith.

SECTION 8. CONFLICTING ORDINANCES

All ordinances and parts of ordinances of the City of College Station, Texas, with TXU Gas in conflict with the provisions of this ordinance are hereby repealed.

SECTION 9. NOTICES

Any notices required or desired to be given from one party to the other party to this ordinance shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY
City Manager
City of College Station
P.O. Box 9960
310 Krenek Tap Road
College Station, Texas 77842

COMPANY
Manager
TXU Gas
297 N. Earl Rudder Freeway
Bryan, Texas 77802

SECTION 10. PARAGRAPH HEADINGS, CONSTRUCTION

The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 11. CONDITIONS OF OCCUPANCY

(A) All construction and the work done by Company, and the operation of its business, under and by virtue of this ordinance, shall be in conformance with the ordinances, rules and regulations now in force and that may hereafter be adopted by the City, relating to the use of its Public Rights-of-Way of the City. This franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal Law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest or appeal any action or decision of the other party, including ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation.

(B) The Company shall comply with the City's Right-of-Way ordinance, a current copy of which is attached as Exhibit A. Pursuant to the City's police power authority, this Right-of-Way ordinance may be superceded by a new or amended ordinance, which shall be of general application to all users of City rights-of-way other than the City. The Company shall have the opportunity to comment on the draft form of the ordinance prior to its finalization. In the event the Company believes that the current, new or amended ordinance is contrary to the City's legitimate police power or any federal, state or local law or regulation, and imposes obligations on the Company or deprives the Company of benefits conferred by this Franchise Ordinance, nothing in this Franchise Ordinance shall preclude the Company from taking any action it deems appropriate to preserve its rights.

(C) Company shall lay, maintain, construct, operate, and replace its System facilities so as to interfere as little as possible with traffic. The placement of all System facilities shall be subject to the approval of the City Manager or his designee prior to construction. Reproducible

copies of maps showing the location of all System facilities shall be furnished to the City Manager.

(D) In determining the location of Company's pipeline within the City, Company shall minimize interference with then-existing underground structures of City or other utility franchisees or users of the public rights-of-way. Likewise, in determining the location of the facilities of the City and other utility franchisees or users of the public rights-of-way within the City, City shall minimize interference with existing facilities of Company and shall require other utility franchisees or users of the public rights-of-way to minimize interference with existing facilities of Company.

(E) When Company makes or causes to be made excavations or places or causes to be placed obstructions in any Public Right-of-Way, the public shall be protected by barriers and lights placed, erected, marked and maintained by Company in accordance with applicable state and federal requirements. Company shall repair, clean up, and restore to as good a condition as before commencement of work, all Public Rights-of-Way disturbed during the construction and repair of its System. In the event the Company fails to restore the Public Rights-of-Way to as good a condition as before the commencement of the work and within a reasonable time, the City may restore or maintain same, after giving the Company thirty (30) days' written notice, provided however that if the Company is proceeding diligently to restore the property, the time for restoration shall be extended for such time as is necessary for the Company to complete the restoration. If the Company fails to restore the Public Rights-of-Way appropriately, the Company will receive a bill for the cost of the City repairing same. The Company shall, within thirty (30) days after receiving such bill, pay the actual cost for such service.

SECTION 12. MAPPING OF DISTRIBUTION SYSTEM

(A) The Company shall provide the City with “plans of record” (*also called “as built” plans*) as provided for in the City’s Right-of-Way ordinance.

(B) It is further agreed by City and Company that provision of this information does not relieve the City or other third parties from an obligation to utilize all appropriate procedures to locate underground facilities, including the obligation to notify a notification center established pursuant to Texas Utility Code Chapter 251, prior to conducting work in the right-of-way such as excavating, drilling, underground boring, jacking, or open cutting.

SECTION 13. RELOCATION OF COMPANY EQUIPMENT

(A) If the City in constructing its sewers, water lines, electrical lines, streets, utilities or other public works should require any System facilities maintained in the Public right-of-way, to be shifted or relocated, System facilities shall, upon reasonable notice, be timely shifted or relocated by Company at its own expense.

(B) When the Company is required by City to remove or relocate its System 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. Notwithstanding anything contained in the Right-of-Way Ordinance, if the Company is required by City to remove or relocate its System 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 System facilities to accommodate construction of a highway, road, street, public way, or other public work 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.

If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 14. LAYING OF LINES IN ADVANCE OF PAVING

(A) Whenever the City shall conclude to pave any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes, the Company will be provided the opportunity, at no expense to the City, in advance of such paving to lay or renew such mains or pipes, if defective or inadequate in size, to the property lines where buildings are already located.

(B) The Company shall be given ninety (90) days' written notice of the intention of the City to pave any such Public Right-of-Way and specifying the new locations for the lines.

Within ninety (90) days from receipt of such notice, the Company, if it has determined a need, shall initiate work and thereafter proceed in a workmanlike manner to completion of the necessary work. If the Company should fail to so proceed, and such street or alley is thereupon paved, except in an emergency, the Company shall for two (2) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose, except by written permission of the City Manager under such terms and conditions as the City Manager may prescribe.

SECTION 15. CONFLICTING FRANCHISES

If the Company, when installing its System, shall come into conflict with the facilities of any other person or corporation authorized by the City, the City Council shall decide all questions concerning the conflicting rights of the respective parties, and shall determine the location of the structures of the said parties and what shall reconcile their differences. The Company records shall be available to City for review and inspection for compliance with this franchise at reasonable times and upon reasonable notice.

SECTION 16. INSTALLATION OF METER

If a meter is installed in or near the Public Rights-of-Way, Company agrees to discuss with the City Engineer or his delegate the aesthetics of the meter placement. If agreement cannot be reached, the Company may install standard equipment.

SECTION 17. EXTENSIONS FOR RESIDENTIAL CUSTOMERS

Company shall be required to extend distribution mains in any street up to one hundred (100) feet for any one residential customer; provided, however, if the Company determines the anticipated connected load will prohibit Company a reasonable return on its investment as may be allowed by statute, law, or regulation and the provision of service is not economically feasible, the cost of such extension shall be borne by customer. Company shall not be required to extend

transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION 18. DUTY TO SERVE

The Company hereby agrees that it will not arbitrarily refuse to provide service to any residential or commercial customer that it is economically feasible for the Company to serve if the customer to be benefited will pay the cost thereof or if it can be shown that the revenue resulting from such extension will, within a reasonable time after same is made, pay a reasonable return on the Company's investment, after making the customary allowance for depreciation.

SECTION 19. RATES

Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor; and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with the City copies of its current tariffs, schedules or rates and charges and service rules and regulations applicable to the City. The rates and charges collected from its customers in the City shall be subject to revision and change by either the City or Company in the manner provided by law.

SECTION 20. PAYMENTS TO THE CITY

(A) In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided for in Section 20(B), such payments shall be made on a quarterly basis, on or before the forty-fifth (45th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to four

percent (4%) of the quarterly Gross Revenues, as defined in Section 2(D), within the corporate limits of City for the preceding calendar quarter. The initial payment provided under this franchise shall be due on or before May 15, 2005 based on the preceding calendar quarter (January 1 – March 31, 2005) and shall be for the right and privilege during the preceding calendar quarter (January 1 – March 31, 2005). Subsequent payments shall be made as follows during the term of the franchise:

Payment Due	Basis and Privilege Quarter
Aug. 15	April 1 – June 30
Nov. 15	July 1 – Sept. 30
Feb. 15	Oct. 1 – Dec. 31
May 15	Jan. 1 – March 31

The final payment under this franchise will be due on or before February 15, 2014 and will be for the right and privilege during October 1 – December 31, 2013.

(B) The franchise fee amounts based on “Contributions in aid of Construction” (“CIAC”) shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded within the corporate limits of the City during the preceding calendar year. The final payment of franchise fee amounts based on CIAC will be April 30, 2014, for the calendar year ending December 31, 2013.

(C) It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and

additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company's agents, excepting only: 1) the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property; 2) the Company's separate obligation to reimburse the City for street repairs in accordance with Section 11(E); and 3) penalties as may be provided for by this franchise agreement or the Right of Way Ordinance. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

(D) If the Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest consistent with the rate for customer deposits under Texas Utilities Code Section 183.003 in effect for the time period involved.

(E) Company Recovery of Franchise Fees. City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of these franchise fees as part of Company's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the city has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company. City further agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.

(F) Lease of Facilities Within City's Rights-of-Way. Company shall have the right to

lease, license or otherwise grant to a party other than Company the use of its facilities within the City's public rights-of-way provided: (i) Company first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Company makes the franchise fee payment due on the revenues from such lease pursuant to Sections 20(A) and 20(B) of this Ordinance. This authority to Lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

SECTION 21. BOOKS AND RECORDS

Company agrees that at the time of each quarterly payment, Company shall also submit to the City a sworn statement showing: its Gross Revenues for the preceding calendar quarter as defined in Section 2(D). City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of said City to ascertain the correctness of the sworn reports agreed to be filed herein. If such an examination reveals that Company has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 20(D). Should the Company determine through examination of its books and records that the City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review the Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

SECTION 22. RESERVATION OF RIGHTS: GENERAL

(A) The City reserves to itself the right and power at all times to exercise, in the

interest of the public and in accordance with state law, regulation and control of Company's use of the Public rights-of-way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this franchise.

(B) The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of furnishing gas for light, heat, and power and for City and the inhabitants thereof.

(C) City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City and inhabitants thereof.

SECTION 23. RIGHT TO INDEMNIFICATION AND TO BE HELD HARMLESS

(A) In consideration of the granting of this franchise, Company agrees to indemnify, defend, and hold harmless the City, its officers, agents, employees, boards and commissions (the "Indemnitees") from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations; except that the indemnity provided for in this paragraph shall not apply to any liability determined by a court of competent jurisdiction to have resulted from the sole negligence or intentional acts or omissions of the City, its officers, agents and employees. In the event of joint and concurrent negligence or fault of both the Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any necessary consent to suit or governmental immunity available to the City under Texas law and without waiving any of the defenses of the

parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both the Company and the City, responsibility for all costs of defense shall be apportioned between the City and Company based upon the comparative fault of each.

(B) In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Company fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Company shall be liable for all defense costs incurred by City, except as set out in Section 23(A).

SECTION 24. INSURANCE

The Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to the City.

SECTION 25. TERMINATION

(A) Right to Terminate:

In addition to any rights set out elsewhere in this Franchise Ordinance, the City reserves the right to terminate the franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the franchise.

(B) Procedures for Termination.

(1) The City may, at any time, terminate this franchise for a continuing material violation by the Company of any of the substantial terms hereof. In such event, the City

shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 9 hereof. The Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least fifteen (15) business day's prior written notice of any public hearing concerning the termination of the franchise. In addition, ten (10) days notice by one time publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Company.

(3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude the Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction. The effective date of such termination shall be either when the appeal is dismissed, withdrawn or when a court

order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this franchise shall remain in effect for all purposes.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION 26. SEVERABILITY

This ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this ordinance shall not affect the validity or constitutionality of any other portion of this ordinance. If any term or provision of this ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this ordinance shall not be affected thereby.

SECTION 27. NO WAIVER

Either City or the Company shall have the right to waive any requirement contained in this ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 28. EFFECTIVE DATE

This franchise shall be effective only after: (a) sixty (60) days following its final passage by the City Council; and (b) receipt by the City of Company's acceptance as provided by Section 4 herein.

PRESENTED, AND GIVEN first reading on the ____ day of _____, 2004, at a regular meeting of the City Council of the City of College Station, Texas; and given second reading, passed and approved on the ____ day of _____, 2004, by a vote of ____ ayes and ____ noes at a regular meeting of the City Council of the City of College Station, Texas; and given third reading, passed and approved on the ____ day of _____, 2004, by a vote of ____ ayes and ____ noes at a regular meeting of the City Council of the City of College Station, Texas.

ATTEST:

Connie Hooks, City Secretary

CITY OF COLLEGE STATION

Ron Silvia, Mayor

APPROVED:

Harvey Cargill, City Attorney

EXHIBIT A
RIGHTS-OF-WAY ORDINANCE 2457

ORDINANCE NO. 2457

AN ORDINANCE AMENDING CHAPTER 3, "BUILDING REGULATIONS", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING A PENALTY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

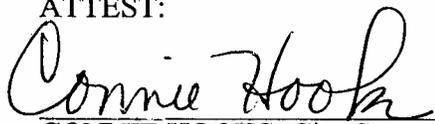
PART 1: That Chapter 3, "Building Regulations", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 22nd day of June, 2000.

ATTEST:



CONNIE HOOKS, City Secretary

APPROVED:



LYNN McILHANEY, Mayor

APPROVED:



Nancy Cargel
City Attorney

EXHIBIT A

That Chapter 3 of the Code of Ordinances of the City of College Station, Texas, is hereby amended by amending Section 2 to read as follows:

“SECTION 2: RIGHT-OF-WAY MAINTENANCE

A. GOVERNING LAW; LIMITATIONS; COMPLIANCE

- (1) This ordinance shall be construed in accordance with the City’s Charter and Code in effect on the effective Date of this ordinance to the extent that such Charter and Code are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.
- (2) This ordinance shall be governed in accordance with the laws of the State of Texas.

B. CIVIL PENALTIES

- (1) Civil penalties may be imposed for the violation of any provision of this Chapter, as follows:
 - (a) Up to One Thousand Dollars (\$1,000.00) for each violation, and each day of a continuing violation may be considered a new violation; and/or
 - (b) If applicable, default and revocation of any or all permits granted to allow work in the right-of-way, subject to the procedural guidelines noted in this chapter and any agreement which applies to the right-of-way user, and further subject to any limitations imposed by federal or state law.
 - (c) In imposing the penalties and the amount, the City may weigh all applicable factors, such as damages caused by the violation, economic benefit to the violator, reasons for the violation, the seriousness of the violation, and all other factors.
- (2) Monetary civil penalties may be imposed in the manner prescribed by either local or state law.
- (3) In addition, the City Council may order specific performance of any actions required by this chapter or required by a franchise, license or permit, including the permit authorizing work to be performed in the rights-of-way, or any other agreement or authorization.

- (4) Prior to initiation of enforcement litigation, the user shall be given the opportunity to correct the violation within time frame specified by the City.
- (5) For the purposes of this Ordinance, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, 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 in this Ordinance shall be given their common and ordinary meaning.

C. CRIMINAL PENALTIES

- (1) That any person, firm, or corporation willfully and intentionally violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

D. DEFINITIONS

Person shall include unless otherwise required in context, a natural person, a legal entity or other group or organization.

Facilities means all the plant and equipment including all tangible and intangible real and personal property without limitation, and any and all means and instrumentality in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with its business.

Owner means the person who owns the facilities located in the City’s right-of-way.

Permit means the document issued by the City to the owner of the facilities that authorizes the use of the right-of-way by the owner to install and maintain its facilities.

Permitee means the owner.

User means a person who uses the City’s rights-of-way to install its facilities.

Right of Way means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the City (including any street, as defined, which is acquired by eminent domain) for the purpose of public travel and shall include other easements or rights-of-way now or hereafter held by the City or in which the City

has an interest (including any easements or rights-of-way acquired by eminent domain) which shall, with their proper use and meaning, entitle the City and a utility to use thereof for the purpose of installing facilities, and other property as may ordinarily be necessary and pertinent to a utility system

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever.

City means the City of College Station, Texas, a home-rule municipal corporation

Applicant means the owner who submits an application to the City for a permit authorized under the terms and conditions set forth in this Ordinance. An application is not considered administratively complete if it is not signed by and submitted by the owner or the owner's authorized representative or if it does not contain all of the information required by the application or this ordinance or if the required fee has not been submitted with the application.

Franchise means the user fee or charge that the City requires as payment for using its streets, rights-of-way, public ways, and easements of the City in order to construct, maintain, and operate a private utility system, and includes fees for permits or licenses.

Invalid Permit – a permit will not be considered valid if it contains information that is incorrect at the time it was submitted or if it is executed by an unauthorized representative or if the applicant has made any misrepresentation of material fact in the application.

E. RIGHT-OF-WAY CONSTRUCTION.

No person shall commence or continue with the construction, installation or operation of facilities within the right-of-way in the City except as provided by the ordinances of the City and the directives of the City. All construction activity in City right-of-way will be in accordance with this Chapter.

F. REGISTRATION AND CONSTRUCTION PERMITS

- (1) **Registration.** In order to protect the public health, safety and welfare, all users of the right-of-way will register with the City of College Station. Registration fees for right-of-way users will be set by College Station City Council resolution. Right of way users who are telecommunications providers and pay annual blanket right-of-way fees pursuant to Chapter 283 of the Texas Local Government Code as amended or users who hold a valid franchise with the City are exempt from the payment of registration fees under this Ordinance

Registration and permits will be issued in the name of the person who owns the facilities. Registration must be renewed every five (5) years. For utilities with a current franchise or license, the franchise or license will be evidence of renewal. If a registration is not renewed, and subject to sixty (60)-day notification to the owner, the facilities of the user will be deemed to have been abandoned. When any information provided for the registration changes, the user will inform the City of College Station of the change no more than thirty (30) days after the date the change is made. Registration shall include:

- (a) The name of the user of the right-of-way;
- (b) The name, address and telephone number of people who will be contact person(s) for the user;
- (c) The name, address and telephone number of any contractor or subcontractor, if known, who will be working in the right-of-way on behalf of the user;
- (d) The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day;
- (e) Proof of insurance and bonds:
 1. An applicant must provide acceptable proof of liability insurance in the total amount of Three Million Dollars (\$3,000,000.00); One Million Dollars (\$1,000,000.00) primary plus Two Million Dollars (\$2,000,000.00) umbrella if requested by the owner of the facilities, or other provisions as acceptable to the director of financial services or his/her designee. The City Manager or his / her designee may waive or reduce the bonding requirements in a non-discriminatory, competitively neutral manner, taking into consideration both that the person has furnished the City with documentation sufficient in the sole discretion of the Finance Director to evidence adequate financial resources substantially greater than the bonding requirements, has a Standard & Poor's A bond rating or better or a Moody's A bond rating or better, and has demonstrated in prior right-of-way construction activity, prompt resolution of any claims and substantial compliance with all required applicable building codes and ordinances.
 2. The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premise liability, medical damages, underground, explosion and collapse hazards.

3. Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.
4. The applicant shall file the required original certificate of insurance prior to any commencement of work. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.
5. Applicant shall file an annual surety bond which will be valid each year construction will occur through one (1) full year after the completion of the construction from a surety company authorized to do business in the State of Texas in the amount of the estimated amount of the cost to restore the right-of-way for the work anticipated to be done in that year, in the event the applicant leaves a job site in the right-of-way unfinished, incomplete or unsafe or other provisions as acceptable to the director of financial services or his/her designee.
6. The above requirements may be met by utilities with a current franchise or license if their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of the City.

(2) Construction permits.

- (a) No person shall perform any construction or installation of facilities in the right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who will own the facilities to be constructed. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.
 1. The phrase “construction or installation of facilities” does not include the installation of facilities necessary to initiate service to a customer’s property, or repair or maintenance of existing facilities unless such repair or maintenance requires the breaking of pavement; the closure of a nonresidential traffic lane for a time period greater than four (4) hours; excavation or boring.

2. Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however the City shall be notified in writing within two (2) business days of any construction related to an emergency response; including a reasonably detailed description of the work performed in the right-of-way and an updated map in a format prescribed by the City of any facilities that were relocated, if applicable.
 3. Emergency response permits are required only if a permit is required pursuant to the applicable provisions herein.
- (b) The permit shall state to whom it is issued, location of work, location of facilities, dates and times work is to take place and any other conditions established by the City.
- (c) The person requesting a permit will provide the City with documentation in the format specified by the City describing:
1. The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for right-of-way construction.
 2. Engineering plans which will be on a scale of one inch (1") equals fifty feet (50') unless otherwise approved by the City.
 3. Detail of the location of all right-of-way and utility easements that applicant plans to use.
 4. Detail of all existing City utilities in relationship to applicant's proposed route.
 5. Detail of what facilities the applicant proposes to install, such as pipe size, number of interducts, valves, etc.
 6. Detail of plans to remove and replace asphalt or concrete in streets (include City of College Station standard construction details).
 7. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth located in public right-of-way.
 8. Handhole and/or manhole typicals of type of manholes and/or handholes applicant plans to use or access.

9. Complete legend of drawings submitted by applicant unless otherwise approved by the City.
 10. Four (4) sets of engineering plans must be submitted with permit application.
 11. The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual employed by the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.
 12. The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way, and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the City.
 13. A statement that the requirements of Subsection E(1)(e)1 are met.
- (d) All construction and installation in the right-of-way shall be in accordance with the permit for the facilities and any approved plans and specifications made in connection with it. The City shall be provided access to the worksite and to such further information as may be reasonably required to ensure compliance with the permit.
 - (e) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the City at all times when construction or installation work is occurring.
 - (f) All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed within the specified time periods, the permittee may request an extension from the City. Extension requests are to be made at the same location where permits are issued. The City will use its best efforts to approve or disapprove a request for extension as soon as possible.
 - (g) A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the City of College Station, if requested by the City.

- (h) A request for a permit must be submitted at least ten (10) working days before the proposed commencement of work in the request, unless waived by the City in writing.
- (i) Requests for permits will be approved or disapproved by the City within a five (5) business days of receiving all the necessary information. The City will use best efforts to approve or disapprove a request for permit as soon as possible. City will provide reason to permittee should permit be disapproved.
- (j) The City or the applicant can request a pre-construction meeting with the permittee and their construction contractor.
- (k) Permit applications are required for construction of new, replacement facilities or upgrading of the company's existing facilities in the right-of-way or public utility easement either aerial or underground.
- (l) Permit fees as adopted by College Station City Council resolution will apply to those right-of-way users who do not pay annual blanket right-of-way fees.

G. CONSTRUCTION STANDARDS.

- (1) City must be notified twenty-four (24) hours in advance that construction is ready to proceed by either the right-of-way user, their contractor or representative. At the time of notification, the right-of-way user will inform the City of the number (or other information) assigned from the one-call system.
- (2) All construction shall be in conformance with all applicable City codes, local, state and federal laws.
- (3) Three-by-three (3 x 3) feet information signs identifying the name of the company doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. An informational sign will be posted in public right-of-way one hundred feet (100') before the construction location commences and each one hundred feet (100') thereafter, unless other posting arrangements are approved or required by the City.
- (4) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins. The contractor will

contain and prevent all soil from migrating offsite by use of water suppression, vehicle cleaning areas, silt fences, hay bales, etc.

- (5) The Contractor will maintain base material on streets under construction and on detours as required to maintain sufficient moisture content in surface layer for dust control. The Contractor will be responsible for cleaning mud and dust from roadways on a daily basis.
- (6) Lane closures on major thoroughfares will be limited after 8:30 a.m. and before 4:00 p.m. unless the City grants prior written approval. Arrow boards will be required on lane closures, with all barricades, advance warning signs and thirty-six inch (36") reflector cones placed according to the specifications of the City.
- (7) Permittee is responsible for the quality of the workmanship and any damage caused by its contractors or subcontractors. A designated representative of the permittee will be available to the City at all times during construction.
- (8) Permittee shall be responsible for storm water management erosion control that complies with City, state and federal regulations and guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire-backed silt fencing. Upon request permittee may be required to furnish documentation submitted or received from federal or state government.
- (9) Permittee, contractor or subcontractor will notify the City immediately of any damage to other utilities, either City or privately owned.
- (10) It is the City's policy not to cut streets or sidewalks; however, when a street or sidewalk cut is necessary, prior written approval must be obtained from the City and all requirements of the City shall be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- (11) Installation of facilities must not interfere with City utilities, in particular, gravity dependent facilities.
- (12) New facilities must be installed to a depth approved by the City.
- (13) All directional boring shall have locator-place bore marks and depths while bore is in progress. Locator shall place mark at each stem with paint dot and depth at least every other stem.

- (14) The working hours in the rights-of-way are 7:00 a.m. to thirty (30) minutes before sunset, Monday through Friday. Work that must be performed after thirty (30) minutes before sunset Monday through Friday must be approved in advance. Any work performed on Saturday must be pre-approved twenty-four (24) hours in advance by the City. Directional boring is permitted only Monday through Friday 7:00 a.m. to thirty (30) minutes before sunset, unless approved in advance. No work will be done, except for emergencies, on City holidays.
- (15) People working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of the Geographic Information System or the plans of record or both does not satisfy this requirement.
- (16) Permittee will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the City, permittee shall verify locations by pot holing, hand digging or other method approved by the City prior to any excavation or boring with the exception of work involving lane closures, as discussed above.
- (17) Placement of all manholes and/or hand holes must be approved in advance by the City. Handholes or manholes will not be located in sidewalks, unless approved by the City.
- (18) Locate flags shall not be removed from a location while facilities are being constructed.
- (19) Construction which requires pumping of water or mud shall be contained in accordance with City of College Station ordinances, federal and state law.

H. PLANS OF RECORD

- (1) Right-of-way and public utility easement users will provide the City with “plans of record” (*also called “as built” plans*) within ninety (90) days of completion of facilities in the right-of-way and/or public utility easement. Users who have existing facilities in the right-of-way and public utility easements as of the effective date of this ordinance who have not provided a copy of the “plans of record” shall provide one-fourth (¼) of the information concerning facilities in City right-of-way within one (1) year after the passage of the ordinance and one-fourth (¼) each six (6) months thereafter. The plans shall be provided to the City with as much detail and accuracy as required by the City. Plans that do not meet these requirements are incomplete and shall not be considered submitted to the City under this Ordinance. All the requirements specified for the plans submitted for the initial permit shall be submitted and updated in the plans of record. The

detail and accuracy will concern issues such as location and any other health, safety and welfare concerns required to be included by City. The detail will not include matters such as capacity of lines, customers, or competitively sensitive details. Submittal of "plans of record" shall be in digital format.

- (2) This requirement, or portions of this requirement, may be waived by the City for good cause.

I. RELOCATION OF FACILITIES REQUIRED; ABANDONMENT

Whenever the City widens, or straightens, installs, relocates public streets, alleys, easements, bikeways, sidewalks, thoroughfares, highways, public ways, water lines, electric lines, fiber optic or sewer lines, the user shall relocate, at its own expense (unless otherwise provided otherwise by state law or a franchise in effect on August 26, 1999, until that franchise expires or is otherwise terminated), its facilities and other appurtenances in order to accommodate the installation, relocation, widening, or changing of the grade of same including if necessary relocating such poles wire cables anchors, manholes, conduits, or other facilities or appurtenances to a sufficient distance from the edge of the pavement to permit a reasonable work area for machinery and individuals engaged in installing, relocating, widening, or changing the grade of any public street, sidewalk, bikeway, alley, public thoroughfare, highway or public way. Additionally, the user must relocate at its sole expense any facilities erected or maintained if said relocation is deemed necessary by the governing body or its designated representative for traffic safety purposes or the accommodation of other necessary utilities owned and/or operated by the City including traffic signals. Whenever by reason of changes in the grade of a thoroughfare or in the location or manner of constructing a water pipe, gas pipe sewer or other aboveground or underground structure it is deemed necessary by the City to remove, alter change adapt or conform the underground or aboveground facilities of the user, the user shall make the promptly but not later than ninety (90) days from the date that notice is sent to Owner unless a different schedule was approved by the City without claim for reimbursement or damages against the City. If Owner fails to move its facilities after ninety (90) days or the approved schedule, whichever is applicable, as same may be extended from time to time, the facilities shall be deemed abandoned and City may remove the facilities without liability therefore and charge the cost of removal to Owner.

J. IMPROPERLY INSTALLED FACILITIES.

- (1) Any person doing work in the City right-of-way shall install, repair, upgrade and maintain facilities in a good and workmanlike manner, and in accordance with the standards and specifications established herein as well as all applicable industry standards, and local, state, administrative and federal laws, rules, regulations and guidelines.

- (2) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
 - (a) The installation, repairs, upgrade or maintenance endangers property or people;
 - (b) The facilities do not meet the applicable City codes;
 - (c) The facilities are not capable of being located using standard practices;
 - (d) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the City.

K. RESTORATION OF PROPERTY.

- (1) Users of the right-of-way shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Restoration must be approved by the City.
- (2) Restoration must be to the reasonable satisfaction of the City. The restoration shall include, but not be limited to:
 - (a) Replacing all ground cover with the type of ground cover damaged during work or better either by sodding or seeding, as directed by the City;
 - (b) Installation of all manholes and handholes, as required;
 - (c) Backfilling all bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety requirements are approved by the City;
 - (d) Leveling of all trenches and backhoe lines;
 - (e) Restoration of excavation site to City specifications;
 - (f) Restoration of all landscaping, and sprinkler systems.
 - 1. All locate flags shall be removed during the clean up process by the permittee or his/her contractor at the completion of the work.
 - 2. Restoration must be made promptly, as specified by approved City schedules and to the satisfaction of the City. If restoration is not performed promptly, all work-in-progress, except that related to

the problem, including all work previously permitted but incomplete may be halted and a hold may be placed on any permits in progress but not approved until all restoration is complete.

L. REVOCATION OR DENIAL OF PERMIT.

If any of the provisions of this ordinance are not followed, a permit may be revoked by the City. If a person has not complied with the terms and conditions of this ordinance in work done pursuant to a prior permit, new permits may be denied or additional terms and conditions required.

M. APPEAL FROM DENIAL OR REVOCATION OF PERMIT.

Appeal from denial or revocation of a permit or from the decision of the City staff shall be to the City Council. Appeal shall be filed with the City Secretary within fifteen (15) days from the date of the decision being appealed.”

EXHIBIT B
CERTIFICATE OF INSURANCE



TXU Business Services
1601 Bryan Street
Dallas, TX 75201-3411

February 12, 2004

Mr. Bill Cody
City of College Station
P. O. Box 9960
College Station, Texas 77842

**TXU Gas Company Insurance Certification
City of College Station Franchise Agreement**

Dear Mr. Cody:

Enclosed is a certificate evidencing \$1,000,000 self-insurance for general and automobile liability. TXU Gas Company is covered under the TXU Corp. excess liability insurance program with limits in excess of \$3,000,000 and consistent with generally accepted industry practice for companies of similar size with similar operations.

If you have any questions, please contact me at telephone number 214/812-4753.

Sincerely,

A handwritten signature in cursive script that reads "Wallace R. Williamson".

Wallace R. Williamson
Risk Analyst Specialist

WRW/sd

Enclosure

cc: Mr. Dominic Fazzino - TXU

BC021204.sd

ACCORD. CERTIFICATE OF INSURANCE

02/19/04

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY
A

COMPANY
B

COMPANY
C

COMPANY
D

INSURED

TXU Gas Company
1601 Bryan St.
Dallas, Texas 75201

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONT PROT	Self-Insured	Continuous		GENERAL AGGREGATE \$ <u>N/A</u> PRODUCTS-COMP/OP AGG \$ PERSONAL & ADV INJURY \$ EACH OCCURRENCE \$ <u>1,000,000</u> FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Self-Insured	See attached		COMBINED SINGLE LIMIT \$ <u>1,000,000</u> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				STATUTORY LIMITS EACH ACCIDENT \$ DISEASE - POLICY LIMIT \$ DISEASE - EACH EMPLOYEE \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Franchise Agreement between City of College Station and TXU Gas Company.

CERTIFICATE HOLDER

City of College Station
P. O. Box 9960
College Station, Texas 77842

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY

OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE Wallace R. Williamson
 Wallace R. Williamson

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD BOX 4087 AUSTIN TX 78773-0001



SAFETY RESPONSIBILITY BUREAU
512/424-2600



THOMAS A. DAVIS, JR.
DIRECTOR

April 19, 2002

DAVID McEATHRON
ASST. DIRECTOR

FRANKIE WALLER
ASST. DIRECTOR

COMMISSION
COLLEEN McHUGH
CHAIRMAN
ROBERT B. HOLY
JAMES B. FRANCIS, JR.
COMMISSIONERS

TXU SYSTEM
(FORMERLY TEXAS UTILITIES COMPANY SYSTEM)
1601 BRYAN STREET
DALLAS TX 75201-3411

RE: Self-Insurance Certificate No.: 78

To Whom It May Concern:

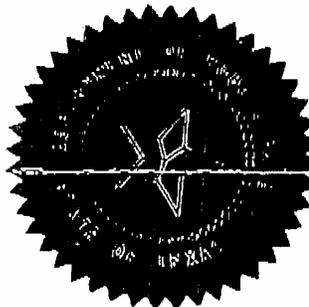
This is to certify that the above entity has been approved as a self-insurer under the Texas Motor Vehicle Safety Responsibility Act and assigned Self-Insurance Number 78 (seventy-eight). This number should be inserted in the space provided on the SR-21, Insurance Information form, which is to be attached to the accident report form in reporting all accidents.

This approval is effective April 19, 2002 and will remain valid for three years unless it should be cancelled by the Department. On April 19, 2005 this certificate will expire and become void.

Sincerely yours,

Debbie Cartwright, Acting Manager
Safety Responsibility Bureau

DC:sw



IT IS THE POSITION OF THE DEPARTMENT OF PUBLIC SAFETY THAT THIS CERTIFICATE OF SELF-INSURANCE EXEMPTS FROM THE AUTOMOBILE LIABILITY INSURANCE REQUIREMENTS OF CHAPTER 601.051(1) AND 601.053, ONLY THOSE VEHICLES REGISTERED IN THE NAME OF THE ENTITY TO WHOM THE CERTIFICATE IS ISSUED.

TXU System (formerly Texas Utilities Company System) means:

Attachment A

TXU Energy Industries Company
TXU Properties Company
TXU Holdings Company (Telecommunications)
Basic Resources
CHACO Energy Company
National Pipeline Company
Oncor Electric Delivery Company
Oncor Utility Solutions Company
TXU Development Company
TXU Gas Company
Lone Star Gas Company of Texas, Inc.
TXU Gas Distribution
TXU Lone Star Gas Distribution
TXU Lone Star Gas Transmission Company
TXU Lone Star Pipeline Division
TXU Energy Pipeline Division
TXU Pipeline Services Division
TXU Business Services Company
TXU US Holdings Company
TXU Energy Company LLC
TXU Energy Services
TXU Energy Retail Company LP
TXU Energy Solutions Management Company LLC
TXU Energy Solutions Company LP
Lone Star Energy Services, Inc.
TXU Chilled Water Company
TXU SEM Company
TXU SESCO Company LLC
TXU SESCO Energy Services Company LLC
TXU Energy Trading Management Company LLC
TXU Energy Trading Company LP
TXU Mining Management Company LLC
TXU Mining Company LP
TXU Fuel Company
TXU Generation Holdings Company
TXU Communications Ventures Company
TXU Communications Telephone Company
TXU Communications Transport Company
TXU Communications Telecom Services Company
TXU Communications Services Company
East Texas Fiber Line Incorporated
Fort Bend Telephone Company
Fort Bend Long Distance Company
TelCon, Inc.
FBCIP, Inc.
Fort Bend Wireless Company
Fort Bend Cellular, Inc.