

ORDINANCE NO. 1923

AN ORDINANCE GRANTING A PIPELINE FRANCHISE ORDINANCE TO FERGUSON CROSSING PIPELINE COMPANY TO GATHER, COLLECT, RECEIVE, TRANSPORT FOR COLLECTION AND STORE OIL, GAS, OR OTHER FLUIDS USED OR PRODUCED IN CONNECTION WITH OIL AND GAS OPERATIONS IN AND AROUND COLLEGE STATION, TEXAS; PROVIDING FOR PAYMENT OF FEES AND CHARGES FOR PERMITS AND THE USE OF STREETS, ALLEYS, PUBLIC WAYS, AND PUBLIC PROPERTY; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SAVINGS CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; DECLARING AN EMERGENCY SO AS TO SUSPEND THE RULE REQUIRING TWO SEPARATE READINGS OF AN ORDINANCE BEFORE IT IS EFFECTIVE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Ferguson Crossing Pipeline Company desires to receive a franchise from the City of College Station, Texas, for the purpose of utilizing and crossing the easements and streets in the City limits of College Station, Texas; and

WHEREAS, the College Station City Council desires to enter into a franchise agreement;

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

SECTION 1. USE OF STREETS AND PUBLIC PLACES

The City of College Station, Texas (hereinafter called "City"), hereby grants, subject to the limitations specified in Section 6 hereinbelow, to Ferguson Crossing Pipeline Company (hereinafter called "Company"), its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, easements, public places, public thoroughfares, and grounds owned or controlled by City for the purpose of laying, maintaining, constructing, operating, and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to gather, collect, transport for collection in, out of, and through City to an approved storage or disposal site or for injection into a transportation pipeline, oil, gas and other fluids used or produced in connection with oil and gas operations within the corporate city limits; said consent being granted for the term to expire on September 30, 2001.

SECTION 2. PLACEMENT OF COMPANY EQUIPMENT, BARRICADING, AND RESTORATION OF STREETS AND ALL OTHER PUBLIC PROPERTY

Company shall lay, maintain, construct, operate, and replace its pipeline system and other equipment so as to interfere as

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little as possible with traffic. The placement of all pipelines and other appurtenant equipment shall be subject to the approval of the City Manager or his designee prior to construction. Reproducible copies of all maps showing the location of all pipeline and other appurtenant equipment shall be furnished to the City Manager or his designee. When Company shall make or cause to be made excavations or shall place obstructions in any street, alley, highway or public place, the public shall be protected by barriers and lights placed, erected and maintained by Company in compliance with Traffic Controls for Streets and Highway Construction and Maintenance Operations" of the Texas Manual of Uniform Traffic Control Devices. Company shall repair, clean up, and restore to as good a condition as before commencement of work, all property, public and private, disturbed during the construction and repair of its system. In the event Company fails to restore the street, alley, highway, public or private property to as good a condition as before the commencement of the work within a reasonable time, City may restore or maintain same, after giving Company ten (10) days' written notice. Company shall, within ten (10) days after receiving a bill, which may include a penalty of twenty-five percent (25%) for such cost, pay the actual cost plus the penalty for such service. All construction and other work done by Company in 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 City, relating to the use of streets, alleys, highways, easements, public places, public thoroughfares, and grounds of City.

**SECTION 3.      HOLD HARMLESS**

Company shall protect and hold City harmless against all claims for damages to any person or property by reason of the construction and maintenance of Company's system and facilities or in any way growing out of the granting of this franchise, either directly or indirectly, or by reason of any act, negligence, or nonfeasance of the contractors, agents or employees of Company; Company shall refund to City all sums which City may have been required to pay by a decision of a court of competent jurisdiction in accordance with the provisions of this section; and Company shall indemnify and hold City harmless from and on account of all damages, costs, expenses, and causes of action that may accrue to or be brought by any person or corporation at any time hereafter by reason of the exercise of the rights and privileges of Company, its contractors, agents or employees, hereby granted or the abuse thereof. Upon the commencement of any suit or proceeding at law against City relating to or covering any matter wherein

Company has agreed, as stipulated above, to indemnify and save harmless City, City shall tender the defense of said suit or proceeding at law to Company; and Company shall thereupon, at its own cost and expense, defend, compromise, or settle the same. Any settlement involving a claim or cause of action against City shall release City from any and all liability as a result of said claim or cause of action.

**SECTION 4.        INSURANCE**

Company shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in the State of Texas. Such policy or policies in the aggregate shall provide for the following minimum coverages:

**A.    GENERAL LIABILITY.** Standard comprehensive general liability including coverage for premises, operations, explosion, products-completed operations, blanket contractual liability, underground property damage, broad form property damage, independent contractors and personal injury:

- (1) Bodily injuries, \$2,000,000 each occurrence, \$2,000,000 aggregate;
- (2) Property damage, \$2,000,000 each occurrence, \$2,000,000 aggregate;

**B.    AUTOMOBILE LIABILITY**

- (1) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for Bodily Injury and Property Damage.
- (2) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.

**C.    WORKERS' COMPENSATION**

- (1) Employer's Liability limits of \$100,000.00 for each accident is required.
- (2) Texas Waiver Of Our Right To Recover From Others Endorsement, WC 42 03 04 shall be included in this policy.

- (3) Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

**D. CERTIFICATES OF INSURANCE**

Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions and warranting the following:

- (1) The company is licensed and admitted to do business in the State of Texas.
- (2) The insurances set forth by the insurance company are underwritten on forms which have been provided by the Texas State Board of Insurance or ISO.
- (3) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- (4) Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
- (5) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**SECTION 5. RELOCATION OF COMPANY EQUIPMENT**

If City, within and without the city limits, in constructing its sewers, streets, utilities or other public works should require any pipelines or other Company equipment to be shifted or relocated, such pipelines or other equipment shall be shifted or relocated by Company at its own expense as and when required by City.

**SECTION 6. LAYING OF LINES IN ADVANCE OF PAVING**

Whenever City, within and without the city limits, shall commence to pave any street or alley in which any part of the pipeline system of Company already exists, or in which Company may propose to place its system, Company may be required, at no expense to City, in advance of such paving, to renew such system, if defective or inadequate in size, and to lay lines, or renew the same, if inadequate in size or defective. Company shall be given sixty (60) days' written notice of the

intention of City to pave any such street or alley and specifying the new locations for the lines. Within sixty (60) days from receipt of such notice, Company shall initiate work and thereafter proceed in a workmanlike manner to the completion of the necessary work. If Company should fail to so proceed and such street or alley is thereupon paved, except in an emergency, Company shall for three (3) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose, except by first obtaining the written permission of the City Manager under such terms and conditions as City may prescribe unless for emergency repairs, in which case no permission will be required.

**SECTION 7.        MAPS, PLATS, PLANS**

Company shall submit maps, plats or plans showing the location, either actual or proposed, of the course and alignment of any pipeline which has not heretofore been constructed, installed, and approved by City. Said maps, plats, or plans shall also show an accurate profile of the pipeline to be installed and all other infrastructure, whether public or private, within twenty feet (20') of each side of the proposed location of the pipeline.

Any additions, deletions or corrections must be specifically approved by the City Manager or his designee.

Company shall also file with the City Manager or his designee, maps, plats or plans showing the location, course and alignment of its system in place which has not heretofore been constructed, installed and approved by City and as it is constructed in the extraterritorial jurisdiction of the City of College Station, and that part of Company's system will be governed by this franchise. Company hereby agrees that in the event the County of Brazos does not exercise its authority in regard to Company's business in City of College Station extraterritorial jurisdiction that Company will submit itself to the jurisdiction of the City of College Station and that part of Company's system will be governed by this franchise.

Company agrees and consents to the mutual use of its easements and rights-of-way by City. City recognizes that where the use of an easement or right-of-way is restricted and/or exclusive City shall make separate arrangements with the property owner, but once such arrangements are made, Company shall not deny mutual access to City premised upon the restrictiveness or exclusivity of its easement or right-of-way grant. Provided however, if Company within such easements or rights-of-way should require any of City's sewers, utilities, other public

works or other equipment to be shifted or relocated, such sewers, utilities, other public works or equipment shall be shifted or relocated by City, at its own expense, as and when required by Company. City shall protect and hold harmless the Company against any claims for damages to any person or property by reason of the use, construction, relocation or maintenance of City's property, within the Company's easements or rights-of-way.

**SECTION 8.        FRANCHISE FEES, RENTAL, ETC.**

- A.    Company agrees to pay as consideration for the granting of this franchise a fee of Five Hundred Twenty Dollars (\$520.00).
- B.    Company shall pay on or before each and every anniversary date of this franchise a fee adopted by Council resolution and based upon the number of feet of pipeline installed and in use, but which shall include projects under construction, said fee to be for the expenses of City involved in administering, maintaining records, supervising inspections, and regulating the use and maintenance of Company's facilities located within the jurisdiction of City.
- C.    Company shall pay on or before each and every anniversary date of this franchise a fair rental value adopted by Council resolution and based upon the number of feet of pipeline installed and in use in any street, alley, easement, or other public property owned or controlled by City, but which shall include projects under construction.
- D.    Prior to each and every time Company begins construction of a segment of its system, Company shall obtain a construction and inspection permit from the City Manager or his designee and pay the fees associated therewith.
- E.    Each and every time Company proposes to cross any street, alley, easement or other public property owned or controlled by City, they shall obtain a permit from the City Manager or his designee and pay the fees associated therewith.
- F.    Each and every time Company proposes to abandon, temporarily abandon, or re-activate all or any part of its system, Company shall obtain a permit from the City Manager or his designee and pay the fees associated therewith.

**SECTION 9. DUTY TO SERVE**

Company hereby agrees that it will not arbitrarily refuse to provide service to anyone that it is economically feasible for Company to serve. In the event that a party is refused service, said party may request a hearing before the City Council of the City of College Station, said hearing to be held within forty-five (45) days from the date of the request for hearing. The Council may order Company to provide service, amend the franchise, revoke the franchise, or take any other action necessary to bring Company into compliance with the intent of the Council in granting this franchise. The Council shall render its opinion at its next regular meeting, but in no event shall it be required to act in less than seven (7) days.

**SECTION 10. INSTALLATION OF METER**

Company shall install upon or immediately adjacent to the premises of each producer a meter of standard type or other approved measuring device for the purpose of measuring accurately the product to be purchased or transported by Company.

**SECTION 11. NOT AN EXCLUSIVE FRANCHISE**

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 on the same terms and conditions that this franchise is granted.

**SERVICE 12. VENUE**

The venue of all actions at law and in equity, concerning any matter or controversy growing out of or incident to any exercise or abuse of the privileges and powers granted hereunder, or any default of the duties or obligations imposed hereunder, or any controversy concerning rates, in which City is a party, shall be in the State court of competent jurisdiction of Brazos County, Texas; and Company, by the exercise of the privileges and the enjoyment of the benefits of this franchise, expressly agrees in all such matters to submit to the jurisdiction of the courts of the State of Texas, and hereby expressly waives whatever rights it may have to be sued or proceeded against in any other tribunal; provided, however, that if the laws of the State of Texas require such matters to be first submitted to a regulatory body of the State of Texas,

same shall be done before recourse may be had to the State courts; and provided further that this section is subject to the jurisdiction of other courts as required by law.

**SECTION 13. PARTIAL INVALIDITY**

If any section, sentence, clause, or phrase of this ordinance is for any reason held to be illegal, ultra vires, or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this ordinance.

**SECTION 14. PURCHASE OF FRANCHISE**

This franchise may be purchased from Company by City in accordance with applicable state laws and the Charter of City.

**SECTION 15. 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 and its regulatory agencies and commissions, the Charter of City, and resolutions of City, not inconsistent herewith.

Company hereby agrees that with regard to the pipe and other materials and equipment installed it shall provide a certificate that such installation was made in accordance with the laws and regulations pertaining thereto.

**SECTION 16. LIMITATIONS OF ACTION**

Company hereby agrees that it waives its right to plead, as a defense, in any cause of action other than injury done to a person or injury where death ensued from such injury to a person, any statute of limitation less than four (4) years.

**SECTION 17. ACCEPTANCE OF TERMS OF FRANCHISE**

Company shall have sixty (60) days from and after the passage and approval of this ordinance to file its written acceptance thereof with the City Secretary. Upon the sixty-first (61st) day after the third and final reading, it may take effect pursuant to City of College Station Charter Section 120.

If Company, its successors and assigns, shall faithfully comply with all the terms, faithfully perform all the duties and obligations, and faithfully observe and recognize all the limitations and regulations contained in this ordinance and in

the valid ordinances of City relating to the conduct of Company's business adopted hereunder or under the police powers of City, then the rights, franchises, and privileges herein granted shall extend from the date of the acceptance of this ordinance by Company through September 30, 2001; otherwise, City, after any material breach of the terms of this franchise has been judicially ascertained, may declare all rights granted hereunder to be abated and forfeited, provided that prior to any request for a judicial determination of a material breach of the terms of the franchise City shall give Company thirty (30) days after written notice to remedy the breach of the terms of the franchise.

At midnight on September 30, 2001, ALL rights, franchises, and privileges herein granted, unless they have already at that time ceased, been forfeited, abandoned, or otherwise terminated, shall at once cease and terminate.

SECTION 18. RENEWAL OR EARLY TERMINATION OF FRANCHISE

- A. Company shall give City written notice of any request for renewal of its franchise six (6) months prior to expiration of the franchise granted by this ordinance.
- B. Company may terminate this franchise prior to the expiration hereof, by giving City written notice of such early termination six (6) months prior to the effective date of such early termination.

SECTION 19. ABANDONING OR TEMPORARILY ABANDONING A PIPING SYSTEM

In the event of abandoning or temporarily abandoning a pipeline system or any part thereof, it shall be the duty of Company under observation of the City Manager or his designee that:

- A. Facilities to be abandoned or temporarily abandoned in place shall be disconnected from all sources of the transported fluid liquid such as other pipelines, meter stations, control lines, and other appurtenances; and
- B. Facilities to be abandoned or temporarily abandoned in place shall be purged of the transported fluid and replaced with an inert material vented as appropriate and the ends sealed.

SECTION 20. TRENCHING

All trenching shall be performed in accordance with OSHA Standards, as amended.

SECTION 21. NOTICES

Any notices required by this franchise to City shall be addressed to:

City Manager  
City of College Station  
Post Office Box 9960  
College Station, Texas 77842-0960

Any notice required by this franchise to Company shall be addressed to:

Ferguson Crossing Pipeline Company  
P.O. Box 380  
Lyons, TX 77863

SECTION 22.

This franchise may not be assigned without the written consent of City.

SECTION 23.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 24.

Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

SECTION 25.

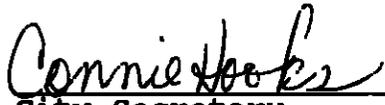
It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Article 6252-17, V.A.T.C.S., and that advance public notice of time, place, and purpose of said meetings was given.

PASSED, ADOPTED, and APPROVED by unanimous vote of the City Council of the City of College Station on the 10th day of October, 1991.

APPROVED:

  
\_\_\_\_\_  
Mayor Larry Ringer

ATTEST:

  
\_\_\_\_\_  
City Secretary

First Consideration & Approval:	<u>9/12/91</u>
Second Consideration & Approval:	<u>9/26/91</u>
Third Consideration & Approval:	<u>10/10/91</u>

LETTER OF ACCEPTANCE OF FRANCHISE

This Letter will serve as our formal acceptance of the terms and conditions of the franchise agreement granted to FERGUSON CROSSING PIPELINE COMPANY on October 10, 1991, by the City of College Station by enactment of Ordinance No. 1923 for the purpose of gathering, collecting, receiving, transporting for collection and storing oil, gas, or other fluids used or produced in connection with oil and gas operations in and around College Station, Texas, across certain public streets, alleys, public ways, and public property, necessary or convenient for rendition of oil and gas operations as set forth in said ordinance. This ordinance takes effect on its passage and expires on September 30, 2001.

- I acknowledge that failure to file this written acceptance with the City Secretary within the number of days provided for acceptance in the franchise will result in expiration of the franchise.

FERGUSON CROSSING PIPELINE COMPANY

BY: J. W. Varner 11/21/91  
Title: J. W. Varner, Senior Vice President