

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING TO SIENERGY, L.P. A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF MANSFIELD, 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; REQUIRING COMPLIANCE WITH ALL REGULATORY ORDINANCES OF THE CITY; AND PROVIDING FOR OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF**

**WHEREAS**, Chapter 121 of the Texas Utilities Code authorizes municipalities to adopt ordinances that establish conditions for mapping, inventorying, locating, or relocating pipelines over, under, along, or across a public street or alley or private residential area in the boundaries of the municipality; and,

**WHEREAS**, the City of Mansfield, Texas (“City”) strives to promote orderly and safe development within the territorial limits of the City; and,

**WHEREAS**, the City Council finds that this franchise agreement with SÍEnergy, L.P., a Texas Limited Partnership, (hereinafter referred to as “SÍEnergy” or “the Company”) is in the best interest of the health, safety, and welfare of the citizens of the City.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS:**

**SECTION 1. - GRANT OF AUTHORITY**

- (a) Subject to the reasonable and timely compliance by SÍEnergy with the provisions contained herein, the City of Mansfield, Texas, hereinafter called "city," hereby grants to SÍEnergy, hereinafter called "company," its successors and assigns, consent to use and occupy the present and future public rights-of-way, for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to deliver, transport, and distribute gas in, out of, and through city and to sell gas to persons, firms, and corporations, including all the general public, within the city corporate limits, as such limits may be amended from time to time during the term of this ordinance.
- (b) This franchise is granted for a term of ten (10) years from and after the effective date of this Ordinance. Unless written notice of its intent to renegotiate is provided by either the city or company at least 180 days prior to the expiration of the term, the franchise shall be extended for up to two (2) additional terms of five (5) years each on the same terms and conditions as set forth herein.
- (c) This franchise covers the geographical area of the entire corporate limits of the City of Mansfield, Texas. The company agrees that the corporate limits are subject to expansion or reduction by annexation and contraction of municipal boundaries and that the company has no vested right in a specific area. The company hereby agrees to provide service to any and all

areas that may be annexed to the city under the same terms and conditions of this agreement as the current areas now covered by this agreement. If the city approves any corporate limits expansion or reduction by annexation or contraction, the city will provide written notice to the company. The company must revise its payments due to any expansion or reduction by annexation or contraction within a reasonable time after notice by the city, but no later than sixty (60) days after receipt of notice.

- (d) This franchise is granted subject to and in accordance with Article XI of the City Charter.
- (e) The provisions set forth in this franchise represent the terms and conditions under which company shall construct, operate, and maintain its facilities within 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.
- (f) This Franchise does not grant to the company the right, privilege or authority to engage in any other activities within the city other than those set forth in Section 1(A).

## **SECTION 2. - DEFINITIONS**

For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning 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.

- (i) "Gross revenues" means:

- (A) All revenues charged by company for the sale of gas, including compressed gas, within the city to all customers within city;
- (B) All revenues charged by company for the transportation of gas through the pipeline system of company within the city to customers within the city regardless of the origination of the gas within the company's system of lines; and
- (C) The total cost of gas transported by company for transport customers through the pipeline system of company within city.

Gross revenues shall also include amounts collected from customers for fees paid to the city pursuant to this agreement and the following "miscellaneous charges": charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the Town and State gross receipts fees.

Gross revenues shall not be reduced by bad debts, unless and until such debts are actually charged off. Abandoned deposits shall be applied as an offset to bad debts for purposes of this agreement. No revenues shall be excluded from gross revenues unless such revenues are specifically excluded by this agreement.

- (ii) "Public right-of-way" means all of the public streets, alleys, highways, bridges, easements, drainage ways, 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.
- (iii) "Transport customer" means any person or entity for whom company transports gas through the pipeline system of company within the city to consumers.

### **SECTION 3. - CONDITIONS OF OCCUPANCY**

- (a) All activities of company in the public rights-of-way shall conform with all the applicable city codes and ordinances, as amended, with city infrastructure standards for design, construction and repair, as amended, and with all other city regulatory requirements as such may be adopted and amended from time to time, including but not limited to requirements regarding the acquisition of permits and the payment of fees therefor. Except in emergencies, before company shall be authorized or required to extend, repair, or relay its existing gas mains or street service lines, it shall file with the director of public works a written statement and map showing the nature and character of the extensions to be made, obtain a permit for such work, and pay the required permit fees; provided however, company may make emergency repairs and replacements without prior filing with the director of public works but it shall file a written statement promptly thereafter. In addition, the company shall assess and report on the impact of its proposed construction on the city environment. Such plans and reports may be reviewed by the city to ensure that, among other items, (i) aesthetic and good planning principles have been given due consideration, (ii) adverse impact on the environment has been minimized, and (iii) that all applicable laws, including building and zoning codes, as applicable and air and water pollution regulations, are complied with. Reasonable changes suggested by the city shall be incorporated into the company's plans.
- (b) The location of all pipes, mains, laterals, and other equipment shall be subject to approval by the director of public works or designee prior to construction; provided however, said approval shall not be unreasonably withheld. In the event of a conflict between the location of the facilities of company and the location of the facilities of city or other utility franchisees within the public right-of-way that cannot be resolved, the director of public works or designee shall resolve the conflict and determine the location of the respective facilities. Company shall not interfere with power, telephone, cable, or water facilities, sanitary or storm sewer facilities, or other municipal or public use of the public right-of-way.
- (c) The company shall, upon the written request of the City, relocate its facilities situated within any street, sidewalks, drainage ways, and alleys, at no expense to the City, where reasonable and necessary to accommodate street construction or widening or other city improvement projects. When the company is required by city to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets, sidewalks, drainage ways, 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 only when the city applies for a grant or program where the eligible relocation costs are delineated separately such

that the city has constructive notice that company relocation costs are eligible for reimbursement and only if company submits its cost and expense documentation to city a reasonable time 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. City shall provide reasonable notice to company of the deadline for company to submit documentation of the costs and expenses of such relocation to city. If the company is required by city to remove or relocate its mains, laterals, or other facilities for any reason other than the construction of streets, alleys, drainage ways, and public infrastructure associated therewith by city, company shall be entitled to reimbursement from others of the cost and expense of such removal or relocation. In the event that the city receives only a portion of any reimbursement costs sought and the reimbursement received is not delineated separately such that company's eligible relocation costs are clearly noted, the city will reimburse company only after the city's costs have been paid in full. Notwithstanding the foregoing, city shall not be responsible for reimbursement of any relocation costs if company secures or is eligible to secure reimbursement of eligible costs from any other source other than through a statutory rate mechanism or other rate mechanism adopted by the city. This paragraph applies exclusively to the company's recovery of its relocation costs and nothing herein shall prohibit the city from denying or opposing a request by company to increase or modify its other rates, charges, fees, or tariffs.

- (d) Following relocation, company shall repair, according to city specifications, clean up, and restore to the condition it was in before being disturbed, all public right-of-way disturbed during the construction and repair of company's system at its expense.
- (e) If city abandons any public right-of-way in which company has facilities, when feasible, company shall have the right to maintain its use of the former public right-of-way upon conditions to be determined by the city.
- (f) The company shall at all times keep on file with the city a current map or set of maps of the company's facilities within the city. Such maps shall indicate subdivision locations and locations of company's customers. As extensions or modifications of facilities are made from time to time, the company shall file with the city maps or plans showing those extensions or modifications so that the city will at all times have current and accurate maps and plans of the company's facilities. In addition to showing the location of company's facilities and customers, such maps shall also identify the depth and size of any buried facilities, as well as the type of cover overlaying those facilities. The company shall furnish the city "as built" drawings not later than sixty (60) days after construction has been completed. Drawings shall be drawn to a scale of one inch (1") equals one hundred feet (100') using the standard format adopted by the city. State plane coordinates shall be shown for benchmarks, curb lines, and structures. The company shall provide one (1) set of blue or black line "as built" drawings to the city and one (1) set of the maps on computer diskettes with G.I.S. data in an electronic/digital format designated by the city.
- (g) The company shall provide, on a quarterly basis and at the same time that the quarterly payments and reports required in section 9 are submitted, a comprehensive listing of its customers on a subdivision basis. The location information shall also be shown on either a map or a subdivision plat, and may be combined with the maps required in paragraph 3(f) above.

Company shall further cooperate with city in determining the correct jurisdictional coding of all of company's customers in the city and its environs.

- (g) The company agrees to provide, at its cost, information requested by the city to assist in a determination of any changes in conditions, practices, or services provided by the company through the use of the public rights-of-way.
- (h) The installation and replacement of any facilities in public right-of-way by the company shall be subject to inspection and approval by the City. The repair and maintenance of any facilities in public right-of-way by the company shall be subject to inspection by the city. The company agrees to cooperate fully with the city in conducting the inspection. Such inspections shall be conducted within a reasonable time after completion of the project. The company shall promptly perform reasonable remedial action required by the city pursuant to such an inspection.
- (i) The city reserves the right to lay and permit to be laid, power, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the city in, across, along, over, and under any public right-of-way occupied by company, and to change any curb or sidewalk or the grade of any street.

#### **SECTION 4. - REGULATIONS FOR SERVICE**

- (a) In addition to the rates charged for gas supplied, company may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business, including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract for such service. All charges, rules, and regulations of company involving any consumer of gas within the city shall be subject to regulation, supervision, and approval by the city, as appropriate.
- (b) Company shall have the right to contract with each customer with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the company's main in the public rights-of-way to and throughout the customer's premises.
- (c) Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the company's main to the customer's meter where gas is measured by company. The customer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the supply lines extending from the point of connection with company's customer meter to the point of connection with customer's house piping.

#### **SECTION 5. - MAIN EXTENSION**

Company shall be required at its own expense to extend distribution mains in any public rights-of-way up to one hundred (100) feet to a residential 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 6. - DEPOSITS**

Company shall be entitled to require each and every customer of gas, before gas service is commenced or reinstated, to satisfactorily establish credit pursuant to the company's quality of service rules as may be in effect during the term of this franchise. Said deposit shall be retained and refunded in accordance with such quality of service rules and shall bear interest, as provided in Chapter 183, Texas Utilities Code, as such may be amended from time to time. Upon termination of service, company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the customer making the deposit.

### **SECTION 7. - INDEMNITY**

**(a) IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, COMPANY AGREES THAT CITY, ITS AGENTS, OFFICERS, OR EMPLOYEES SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND COMPANY DOES HEREBY RELEASE, AGREE TO INDEMNIFY AND HOLD HARMLESS CITY, ITS AGENTS, OFFICERS, OR EMPLOYEES 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 THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE GAS DISTRIBUTION PLANT OR SYSTEM OF COMPANY. THIS INDEMNIFICATION SHALL APPLY WHETHER OR NOT THE CITY, ITS AGENTS, OFFICERS, OR EMPLOYEES WERE NEGLIGENT. IN THE EVENT THAT ANY ACTION, SUIT, OR PROCEEDING IS BROUGHT AGAINST CITY UPON ANY LIABILITY ARISING OUT OF THE CONSTRUCTION, OPERATIONS, OR MAINTENANCE OF THE COMPANY'S FACILITIES, CITY SHALL GIVE NOTICE IN WRITING TO COMPANY BY REGISTERED OR CERTIFIED MAIL. UPON RECEIPT OF SUCH NOTICE, THE COMPANY, AT ITS OWN EXPENSE, SHALL DEFEND SUCH ACTION AND TAKE ALL SUCH STEPS AS MAY BE NECESSARY OR PROPER TO PREVENT THE OBTAINING OF A JUDGMENT AGAINST THE CITY AND/OR TO SATISFY SAID JUDGMENT. CITY AGREES TO COOPERATE WITH COMPANY IN CONNECTION WITH SUCH DEFENSE.**

(b) This section does not waive any governmental immunity available to the city under Texas law. This section is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the company and the city. This section is not intended to limit the ability of city or company to settle claims through an alternative dispute resolution process.

### **SECTION 8. - NON-EXCLUSIVE**

(a) The rights, privileges, and franchise 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

transporting, delivering, distributing, or selling gas to and for city and the inhabitants thereof. 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 the inhabitants thereof.

- (b) If company 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 in the North Texas area, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public right-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 company to city pursuant to this Ordinance may, at the election of the city, 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.
- (c) If, on the effective date of this franchise, there is in effect a similar gas franchise granted by the city to another company that provides for a franchise fee in a lower amount than the amount required to be paid by company herein, then company's obligations under section 9 hereof shall be limited to the lower amount contained in the other franchise. City shall give company notice on the effective date of such other franchise affecting company's obligations under section 9 and of the franchise fee required under such other franchise. Company shall thereafter be allowed to calculate its franchise fee payments to the city based upon the lower fee required in the other franchise.
- (d) If company's required franchise fee is lowered as provided in paragraph (c), above, and the city subsequently grants or renews a gas franchise to another company that requires a franchise fee in a greater amount of the franchisee's gross revenues, then company's franchise fee obligations shall be as provided in section 9 hereof or in an amount pursuant to paragraph (b) above, whichever is greater. City shall give company notice of such subsequent franchise or renewal affecting company's obligations under section 9 and of the franchise fee required under such subsequent franchise or renewal. Company shall thereafter be required to calculate its franchise fee payments to the city based upon the requirements of section 9 hereof or in an amount pursuant to paragraph (b) above, whichever is greater, beginning with the next full calendar quarter after receipt of the notice from the city.

#### **SECTION 9. – COMPENSATION**

- (a) In consideration of the right granted by city to company to use and occupy the rights-of-way in the city for the conduct of its business, company, its successors and assigns, agrees to pay to the city franchise fees in the amount and manner described herein. Such payments shall be made on a quarterly basis, on or before the twentieth (20th) day following the end of each calendar quarter. The franchise fee shall be a sum of money which shall be equivalent to three (3) percent of the company's quarterly gross revenues.
- (b) For franchise fee payments beginning on the effective date of this ordinance, payment shall be made by wire transfer on or before the close of business on the payment due date. If any payment due date required herein falls on a weekend or declared bank holiday, payment shall be made by wire transfer on or before the close of business of the last working day prior to the

payment due date. Payment shall be considered timely made if company requests the wire transfer by the wire transfer deadline of its bank on the payment due date.

- (c) At the time of each quarterly payment, company shall also submit to the city a sworn statement showing: (i) its gross revenues for the preceding calendar quarter upon which franchise fees are calculated, including the amount of revenues received by company for the transportation of gas; (ii) the coded identity of company's transport customers during the preceding calendar quarter; and (iii) the cost, volume, and transport fee of gas transported during the preceding calendar quarter for such transport customers, calculated in accordance with section 9(f) below. Upon request, city shall have access at company's office to the actual identity of company's transport customers and their suppliers as long as such information shall remain confidential, and no copies of such information may be made.
- (d) The aforesaid franchise fee payments shall not affect or reduce the company's obligations with respect to the following: (i) to reimburse the city for street repairs; (ii) the payment of taxes or fees to the state; or (iii) the payment of general or special ad valorem taxes that the city is authorized to levy and impose upon real and personal property. None of the aforementioned obligations of the city shall operate as credits or reductions to the amounts due by the company to the city hereunder.
- (e) The payments by the company under the provisions of this ordinance are in lieu of any and all other and additional street rental charges or fees. However, the company is required to obtain all appropriate permits for work in the public rights-of-way and pay the appropriate fees therefor. Should city not have the legal power to agree that the payment of the franchise fee shall be in lieu of street rental charges, 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 rental charges.
- (f) The cost of gas transported by company for transport customers shall be determined as set forth in this paragraph. In the absence of documentary evidence to the contrary provided by company to city, the cost of gas so transported shall be presumed to be equal to the total volume of gas transported for such transport customer times one hundred ten (110) percent of the index of prices for large packages of gas per MMBtu published each month in *Inside FERC's Gas Market Report* in the table titled, "Delivered Spot-Gas Prices," for gas delivered at the Houston Ship Channel/Beaumont, Texas, or a mutually agreeable successor publication and index, for the period of time the transportation service is performed. If company submits documents to the city to indicate the actual cost of gas transported by company, the company may remove therefrom any information that would disclose either the identity of the customer or other information deemed confidential by company, so long as such removal does not prevent the city from determining the monetary cost of the gas transported. Company agrees to give the city, upon request, access to the confidential information so removed in order for the city to verify the accuracy of the information provided to the city under the provisions of this paragraph. Company shall use all due diligence in collecting from transport customers any and all fees required by this franchise ordinance, but shall not be responsible for paying the fees to city if company's transport customer refuses to pay. Provided, however, that if company's transport customer refuses to pay the fee imposed on the cost of gas transported for such transport customer, and remains delinquent in payment of such fee for a period of greater than



thirty (30) days, company shall be responsible for the uncollected fee on any gas thereafter transported through the rights-of-way of city to company's transport customer, but in no event shall the customer be relieved of its obligation to reimburse company for any fees paid to city.

**SECTION 10. - ACCOUNTING; AUDIT; INSPECTION**

- (a) The company shall maintain, at its local office or principal place of business within the state, adequate books and records relating to the performance of its obligations under this franchise. The company shall maintain separate records in a form sufficient to identify its investment, revenues, and expenses related to its performance under this franchise, intending thereby to separate the accounting records of its system in the city from its other systems. The records of the company applicable to its performance under this franchise shall be made available for inspection by the city at any time during normal working hours.
- (b) City may cause, upon reasonable notice, an audit to be made of the books and records of the company relating to the company's performance under this franchise or any portion of any of its other operations that may be allocated or charged to its operations in the city. The omission by the city to exercise its rights to any audit at any time shall not constitute a waiver of such right. In the event city elects to exercise its right of audit, city shall provide to the company written notice of such election at least forty-eight (48) hours in advance of the time of such audit. City shall retain an independent auditor of its selection to perform the audit. The company shall make available to the auditor such personnel and records as the city may in its reasonable discretion request in order to complete such audit, and shall make no charge to the city therefor. The company shall assist the city during any audit conducted under this franchise, including answering questions and providing any requested records or information within five (5) working days of having received a written request therefor. The cost of an audit pursuant to this provision shall be borne by the city, unless the audit reveals an underpayment of fees paid during the audit period in excess of three (3) percent, in which case the company shall pay for the audit. In the event any overpayment is discovered, such overpayment will credit toward current and/or future payments owed, without interest.
- (c) Upon request by the city, but no less often than annually, the company will prepare a statement of its estimate of the company's gross revenues by revenue account for the period covered by the statement signed by an authorized representative of the company, in such reasonable form and detail as city may from time to time prescribe, sufficient to show the source and method of calculation of the company's gross revenues. The acceptance of any statement or payment shall not estop the city from asserting that the amount paid is not the amount due or from recovering any deficit, including interest, by any lawful proceeding.
- (d) Upon completion of the audit, the city shall make the audit report available to the company, and shall give the company an opportunity to respond to the audit findings. If requested by either party, the city and the company shall meet and attempt in good faith to resolve any disputed issues arising out of the audit report. In the event the company shall be determined to have under-remitted the fee required by this franchise, the company shall pay, in addition to the underpayments, interest on the underpayments at the rate of ten (10) percent per annum from the time of the underpayment until payment is made. Underpayment of fees by the company may also subject the company to penalties for noncompliance with this franchise. After

reviewing the company's response to the audit findings, the city shall make an initial determination as to whether the company shall also be required to pay a penalty for noncompliance. The amount of the penalty, if any, shall not exceed ten (10) percent of the total underpayment. The city council shall make the final determination of whether a penalty shall be required, and the amount of same.

- (e) If any of the records to be provided by company or to be made available by company are considered by the company to be proprietary in nature or if such records are confidential under federal, state or local law, upon request by the company such information shall be treated by the city as confidential, and shall be made available only to those persons who must have access to perform their duties on behalf of the city, including but not limited to the finance director, the city attorney, and the council members. City shall promptly notify company of any requests for public disclosure of such records under Chapter 552, Texas Government Code, and company shall have the sole responsibility to assert its claims regarding the proprietary or confidential nature of such records.

#### **SECTION 11. - RESERVATION OF RIGHTS**

- (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 rates and services to insure the rendering of efficient public service at reasonable rates, and the maintenance of company's property in good repair throughout the term of this franchise. Company shall maintain on file with the city copies of its current tariffs, schedules of rates and charges, customer service provisions, and line extension policies. Company shall notify the city of the identity of any customer of company that changes from a tariffed rate to a contract rate within forty-five (45) days of such change.
- (b) In granting this franchise, the city does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws 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, and it is expressly provided that nothing herein shall impair the right of the city to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the city as same now exist or as such limits may be extended from time to time hereafter.
- (c) In consideration of the city granting this franchise, the company agrees that it will not seek an increase of the rates or charges permitted to be charged to the company's customers for a period of three (3) years from the effective date of their first customer within this franchise.

#### **SECTION 12. – TERMINATION**

- (a) In addition to any rights set out elsewhere in this 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 or the company becomes insolvent, or is adjudged as bankrupt.

- (b) Upon failure of the company to comply with the material terms of the franchise, the city may by ordinance terminate the franchise in accordance with the procedures set forth in this section. Upon termination, all rights of the company shall immediately be divested without further act upon the part of the city. If the city requires the company to remove its facilities from the public rights-of-way, the company shall forthwith remove its structures or property from the public rights-of-way and restore it to the original condition. Upon failure to do so, the city may perform the work and collect the cost thereof from the company. The cost thereof shall be a lien upon all facilities and property of the company.
- (c) Procedures for termination
  - (i) The city shall give written notice to the company of the existence of a material violation or failure to comply with the franchise. Company shall have a period of thirty (30) days after receipt of such notice from the city in which to cease such violation and comply with the terms and provisions hereof. In the event company fails to cease such violation or to 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.
  - (ii) Termination shall be declared only by a 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 ten (10) days prior written notice of any public hearing concerning the termination of the franchise. In addition, ten (10) day notice by 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.
  - (iii) The city, after full public hearing, and upon finding a material violation or failure to comply, may in its discretion 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. The failure of the company to comply with the terms of this franchise after due notice and hearing and the providing of adequate time for company to comply with said terms, shall entitle the city to compel compliance by suit in any court of competent jurisdiction and upon culmination of the suit, if the company still fails to comply with the terms of the franchise, the city may compel compliance upon penalty of forfeiture thereof, with the city having an option to purchase company's property located in the city at a reasonable fair value should forfeiture occur.
- (d) In the event the city purchases company's property under penalty of forfeiture and the city and company cannot agree upon the reasonable fair value of the property, then the reasonable fair value of the company's property shall be established by a majority vote of three appraisers with one appraiser selected by company, one appraiser selected by city, and one appraiser selected by the other two appraisers. If the two appraisers are unable to agree upon the third appraiser,

then the third appraiser shall be selected by order of a court of competent jurisdiction. The company further agrees that if for any reason the company fails to pay the franchise fee as provided in this franchise within thirty (30) days following written notice from the city that company has failed to make such payment, such failure shall be sufficient to permit the city to forfeit the franchise without court action.

- (e) Notwithstanding the foregoing, the rights and remedies of city set forth in this section shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and company understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by city of any one or more of such remedies shall not preclude the exercise by city, at the same or different times, of any other such remedies for the same breach of this agreement.

### **SECTION 13. – RENEGOTIATION**

- (a) Should technological, market-driven, regulatory, or similar changes occur in the natural gas industry which create classes or categories of usage different from those enumerated in section 1 of this ordinance, or should company alter the means, methods, or types of uses of the public rights-of-way in the city, or should the city reasonably believe that the franchise fee provision should be amended in order to not impair the city's ability to receive an adequate franchise fee pursuant to this ordinance, then the city may initiate the renegotiation of the franchise fee provision of this ordinance.
- (b) If, during the term of the franchise granted hereunder, the nature of competition in the provision of gas utility services in the city changes to the extent that company reasonably believes that the franchise fee provisions of this ordinance cause the company to be placed at a competitive disadvantage in the conduct of its business within the city, then the company may request the renegotiation of the franchise fee provisions of this ordinance.
- (c) Should either the city or the company request a change in the franchise fee provision of this ordinance, both parties agree to enter into a good faith negotiation. "good faith," for the purpose of this ordinance, shall mean an objective, diligent, timely, and responsible discourse on the issue(s) involved and a resolute attempt to settle said issue(s). Should, as a result of renegotiation, city and company agree to a change in a provision of this ordinance, the change shall become effective upon passage of an ordinance by the city in accordance with the City Charter and acceptance of the amendment by the company. Both parties agree that passage and acceptance will be a mandatory act following negotiation and agreement. Company agrees to provide any and all information requested by city to assist in a determination of any changes in conditions, practices, or services provided by company through the use of the public rights-of-way of the city.

### **SECTION 14. - REGULATORY EXPENSES**

Company agrees that city may, at any time during the term of this franchise, employ at the expense of company expert assistance and advice in determining fair, just, and reasonable rates to be charged by company to its consumers in the city, and in determining the extent to which company is complying with the terms and conditions of this ordinance. Company agrees to pay

reasonable expenses in connection therewith, or reimburse city for the same, which expense company shall be entitled to recover through its rates and tariffs.

### **SECTION 15. – ACCEPTANCE**

In order to accept this franchise, company must file its written acceptance of this franchise ordinance within forty-five (45) days after its final adoption by the city, in a form acceptable to the City Attorney's office. If this franchise ordinance is not accepted by company within forty-five (45) days, the franchise ordinance shall be rendered null and void.

### **SECTION 16. – ASSIGNMENT OR TRANSFER**

Company may not assign or transfer this franchise, and the rights granted thereby, to any entity without the prior consent and approval of the city given by written resolution, which consent and approval shall not be unreasonably withheld.

### **SECTION 17. – NOTICES**

Every notice, order, petition, documents or other direction or communication to be served upon the City or the Company shall be deemed sufficiently given if sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to:

SiEnergy, L.P.  
June M. Dively, Chief Executive Officer  
3 Lakeway Centre Court, Suite 110  
Lakeway, TX 78734

Every such communication to the City or the City Council shall be sent to the:

Mayor, City of Mansfield  
Mansfield City Hall  
1200 East Broad St.  
Mansfield, TX 76063

With copies to:

City Manager  
City of Mansfield  
Mansfield City Hall  
1200 East Broad St.  
Mansfield, TX 76063

Director of Utilities  
City of Mansfield  
Mansfield City Hall  
1200 East Broad St.  
Mansfield, TX 76063

**SECTION 18. – SEVERABILITY**

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

**SECTION 19. – REPEAL**

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

**SECTION 20. – GOVERNMENTAL FUNCTION**

All of the regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety and welfare of the general public.

**SECTION 21. – MISCELLANEOUS PROVISIONS**

- (a) This franchise is made for the exclusive benefit of the Town and the Grantee, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.
- (b) Nothing contained herein shall limit or restrict any legal rights that the city may possess arising from any alleged violation of this franchise.
- (c) Neither the city nor the company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employers, or agents, upon any one or more occasions to insist upon or seek compliance with any such terms and conditions.
- (d) 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 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.
- (e) The prevailing party in the adjudication of any proceeding relating to this franchise shall be authorized to recover its reasonable and necessary attorney's fees.

**SECTION 22. – EFFECTIVE DATE**

This franchise shall be effective sixty days after its adoption on its third reading within thirty days of its first reading, and further conditional upon receipt by the city of company's acceptance, as provided in section 15 herein, and upon all other conditions as provided by the City Charter, as applicable.

**SECTION 23. – CONDITIONS PRECEDENT TO ADOPTION MET**

This ordinance granting, renewing, extending, or amending a public utility franchise has been read at three consecutive regular city council meetings. Final action did not occur until at least twenty-eight days after its first reading. The caption of the ordinance and a statement indicating where and how to obtain copies of the full ordinance was published on the city's official website or other electronic media that is readily accessible to the public within ten days after first reading of the ordinance.

**FIRST READING APPROVED ON THE 27<sup>TH</sup> DAY OF FEBRUARY, 2017.**

**SECOND READING APPROVED ON THE 6<sup>TH</sup> DAY OF MARCH, 2017.**

**DULY PASSED ON THE THIRD AND FINAL READING BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, THIS 10<sup>TH</sup> DAY OF APRIL, 2017.**

\_\_\_\_\_  
**David L. Cook, Mayor**

**ATTEST:**

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**Jeanne Heard, City Secretary**

APPROVED AS TO FORM AND LEGALITY

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**Allen Taylor, City Attorney**