

**CITY OF SANCTUARY
P.O. BOX 125
AZLE, TEXAS 76098
PHONE/FAX (817) 677-3008**

ORDINANCE NUMBER 46

AN ORDINANCE AMENDING THE EXISTING GAS FRANCHISE BETWEEN THE CITY AND TXU GAS COMPANY, TO PROVIDE FOR A DIFFERENT CONSIDERATION AND TO AUTHORIZE THE LEASE OF FACILITIES WITHIN THE CITY'S RIGHTS-OF-WAY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY TXU GAS COMPANY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IN OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, TXU Gas Company (hereinafter called "TXU Gas") is, through its TXU Gas Distribution division, engaged in the business of furnishing and supplying gas to the general public in the City, including the transportation, delivery, sale, and distribution of gas in, out of, and through the City for all purposes, and is using the public streets, alleys, grounds, and rights-of-ways within the City for that purpose under the terms of a franchise ordinance heretofore duly passed by the governing body of the city and duly accepted by TXU Gas; and

WHEREAS, the City and TXU Gas desire to amend said franchise ordinance to provide for a different consideration and to authorize the lease of facilities within the City's rights-of-way;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SANCTUARY, PARKER COUNTY, TEXAS: that

I.

The existing gas franchise ordinance between the City and TXU Gas Company is amended as follows:

A. Effective January 1, 2002, the consideration payable by TXU Gas for the rights and privileges granted to TXU Gas by the franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TXU Gas is hereby changed to be four percent (4%) of the Gross Revenues, as defined in Section 1.B. below, received by TXU Gas.

B. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by the Company from or in connection with the operation of the System within the corporate limits of the City and including, without limitation:

1. all revenues received by the Company from the sale of gas to all classes of customers within the City;

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2. all revenues received by the Company from the transpiration of gas through pipeline system of Company within the City to customers located within the City;

3. the value of gas transported by Company for Transport Customers through the System of Company within the City ("third Party Sales"), with the value of such gas to be reported by each Transport Customer to the Company, provided, however, that should a Transport Customer refuse to furnish Company its gas purchase price, Company shall estimate same by utilizing TXU Gas Distribution's monthly industrial Weighted Average Cost of Gas, as reasonably near the time as the transportation service is performed; and

4. "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

b. revenues billed but not ultimately collected or received by the Company;

and,

c. gross receipts fees.

5. "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;

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

C. Calculation and Payment of Franchise Fees Based on CIAC

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1. 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.

2. 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 during the preceding calendar year.

D. Effect of Other Municipal Franchise ordinance Fees Accepted and Paid by TXU Gas

1. 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 shall be increased so that the amount due and to be paid is equal to the amount that would due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

2. The provisions of the Subsection D 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.

E. TXU Gas Franchise Fee Recovery Tariff

1. TXU Gas may file with the City a tariff amendment(s) to provide for the recovery of the franchise fees under this amendment

2. City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of TXU Gas' rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of TXU Gas franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by TXU Gas 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 TXU Gas.

3. City 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 TXU Gas.

F. Lease of Facilities Within City's Rights-of-Way. TXU Gas shall have the right to lease, license or otherwise grant to a party other than TXU Gas the use of its facilities

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within the City's public rights-of-way provided: (i) TXU Gas 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 lessees, licensee or user and (ii) TXU Gas makes the franchise fee payment due on the revenues from such lease pursuant to Sections I.A. and I.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.

II.

In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by TXU Gas shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

III.

This ordinance shall take effect upon its final passage and TXU Gas' acceptance TXU Gas shall, within thirty (30) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

TXU Gas Distribution, a division of TXU Gas Company, acting by and through the undersigned authorized officer, hereby accepts in all respects on this the 17th day of September, 2002, Ordinance Number 46 amending the current gas franchise between the City and TXU Gas and same shall constitute and be a binding contractual obligation of TXU Gas and the City.

TXU Gas Distribution
A division of TXU Gas Company

By 
Vice President

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IV.

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

PASSED AND APPROVED BY THE BOARD OF ALDERMEN OF THE CITY OF SANCTUARY, PARKER COUNTY, TEXAS, THIS THE 5th DAY OF September, 2002, AT WHICH MEETING A QUORUM WAS PRESENT AND VOTING.



Mayor

ATTEST:



City Secretary

APPROVED AS TO FORM:

City Attorney

COMPROMISE, SETTLEMENT AND RELEASE AGREEMENT

This Compromise, Settlement, and Release Agreement (the "Agreement") is made and entered into as of the date set forth below by and between the City of Sanctuary (the "City") and TXU Electric Company n/k/a TXU US Holdings Company ("TXU Electric") and TXU Gas Company ("TXU Gas"):

WHEREAS, thirty seven cities filed a suit in the 134th Judicial District Court of Dallas County, Texas, in Cause No. 00-9383, styled *City of Denton, Texas et al. vs. TXU Electric Company, et al.* (the "Litigation") which included claims arising out of the electric and gas franchise ordinances similar in some respects to the franchise ordinances entered into by and between the City and TXU Electric and TXU Gas and, specifically, the Litigation involved a dispute with regard to the calculation and amount of franchise fees paid by TXU Electric and TXU Gas;

WHEREAS, the Litigation was resolved by agreement and TXU Electric and TXU Gas have agreed to offer the City the same benefits offered to the Plaintiffs in the Litigation and the City has agreed to accept the offer by TXU Electric and TXU Gas and to release any claims related to the payment of franchise fees prior to and through December 31, 2001 ;

NOW, THEREFORE, in order to fully and finally resolve all disputes and claims arising out of the calculation and payment of franchise fees to the City by TXU Electric and TXU Gas prior to and through December 31, 2001, for the mutual promises and covenants set forth in this Agreement, the adequacy and sufficiency of which consideration is acknowledged the City and TXU Electric and TXU Gas agree as follows:

1. AMENDMENTS TO THE ELECTRIC FRANCHISE ORDINANCE

As the result of electric industry restructuring, the electric franchise formerly held by TXU Electric has been assigned to Oncor Electric Delivery Company ("Oncor"), accordingly, effective January 1, 2002, the City agrees to enter into and TXU Electric agrees to cause Oncor to accept an amendment to the current electric franchise ordinance substantially in the form of the amendment attached as Exhibit A which amendment shall, at the election of the City, provide that the Discretionary Services Charges identified in Section 6.1.2 of the Tariff for Retail Delivery applicable to Oncor which

are directly paid by the customer and which are those charges identified as items DD1 through and inclusive of DD24 in said tariff, shall be subject to an additional franchise fee based on 4% of such charges which additional franchise fee shall be paid to the City pursuant to the terms of the amendment attached as Exhibit A. The City acknowledges that Oncor may file with the Texas Public Utility Commission and/or the City a tariff amendment in compliance with the terms of this agreement, which will provide that Oncor shall have the right to collect from the customer the franchise fee on such Discretionary Service Charges such that the customer shall bear 100% of the franchise fee on such Discretionary Service Charges. The City acknowledges that Oncor is an intended third-party beneficiary of this agreement and agrees to cooperate with Oncor in order for Oncor to pass through to customers the entire franchise fee on such Discretionary Service Charges by taking the following actions: (i) to the extent the City acts as regulatory authority, by adopting and approving that portion of any tariff in compliance with the terms of this Agreement which provides for 100% recovery of such franchise fees; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Oncor 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 Oncor. The City further agrees not to take any action to prevent the recovery of the franchise fees on such Discretionary Service Charges by Oncor and to take other action which may be reasonably requested by Oncor to provide for the 100% recovery of such franchise fees by Oncor.

2. AMENDMENTS TO THE GAS FRANCHISE ORDINANCE

Effective January 1, 2002, the City agrees to enact and TXU Gas agrees to accept an amendment to the current gas franchise ordinance substantially in the form of the amendment attached as Exhibit B to provide that, at the election of the City, the franchise fee will increase to a maximum of 4.00% of the applicable franchise fee payment base and, at the election of the City, the franchise fee payment base shall be amended to include miscellaneous fees, contributions in aid of construction, bad debt expense, transportation revenues and third-party gas sales and gross receipts fees as well as a favored nations clause with respect to franchise fee payments and franchise fee calculations, substantially in the form of

the provisions in Exhibit B. The City acknowledges that TXU Gas has the right to recover from its ratepayers such additional franchise fee payments to the City and the City agrees to cooperate with TXU Gas in order for TXU Gas to pass through to its ratepayers the entire franchise fee payment, as amended, by taking the following actions: (i) as regulatory authority, by adopting and approving the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of TXU Gas' rates; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of TXU Gas' franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by TXU Gas and; (iii) in the event of an appeal of any such regulatory proceeding in which a 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 TXU Gas. The City further agrees not to take any action to prevent the recovery of such franchise fees by TXU Gas and to take other action which may be reasonably requested by TXU Gas to provide for the 100% recovery of such franchise fees from TXU Gas' ratepayers.

3. PAYMENTS TO THE CITY

Upon execution and delivery of a fully executed and notarized original of this Agreement:

A. TXU Gas agrees to pay to the City the sum of \$0. The City acknowledges that TXU Gas has the right to and shall recover this amount from its ratepayers pursuant to the tax adjustment clause applicable to TXU Gas, by applying a surcharge to the monthly bills rendered to its ratepayers, provided that the recovery of such surcharge shall be limited as follows: (1) the surcharge shall be amortized over a period not less than three years, and (2) the accrual balance will not be subject to interest. TXU Gas agrees that the franchise fee paid to the City and recovered from ratepayers under this Agreement will not include any amounts collected in the past from ratepayers.

B. TXU Electric agrees to pay, or cause Oncor to pay the City, the sum of \$0.

4. RELEASE OF TXU ELECTRIC, TXU GAS AND THEIR AFFILIATES BY THE CITY

Except for claims arising out of a breach of this Agreement, the City of Sanctuary, on behalf of itself and its successors and assigns and any and all persons, entities or municipalities claiming by, through or under them, hereby RELEASES, DISCHARGES AND ACQUITS, forever and for all purposes, TXU Electric Company (now known as TXU US Holdings Company), its successor Oncor Electric Delivery Company, TXU Gas Company, including its division TXU Gas Distribution, TXU Corp. and each of their respective agents, employees, officers, directors, shareholders, partners, insurers, attorneys, legal representatives, successors and assigns as well as their affiliated corporations, including TXU Business Services Company and TXU Energy Company LLC and its subsidiaries, from and against any and all liability which they now have, have had or may have, and all past, present and future actions, causes of action, claims, demands, damages, costs, expenses, compensation, losses and attorneys' fees of any kind or nature whatsoever, or however described, whether known or unknown, fixed or contingent, in law or in equity, whether asserted or unasserted, whether in tort or contract, whether now existing or accruing in the future arising out of or related to the payment, calculation or rendition of franchise fees to the City on or before December 31, 2001 and all claims which could be asserted against TXU Electric and/or TXU Gas in litigation in any way related to the payment, calculation or rendition of franchise fees by TXU Electric and/or TXU Gas on or before December 31, 2001. This release is intended to only release claims related to the payment, calculation or rendition of franchise fees by TXU Electric and TXU Gas on or before December 31, 2001 and is not intended to release any other claim or cause of action that any party to this Agreement has, known or unknown, or which accrues in the future.

5. WARRANTY AS TO OWNERSHIP OF CLAIMS AND AUTHORITY

- A. The City warrants and represents that it is the owner of the claims being compromised, settled, discharged and released pursuant to this Agreement and each further warrants and represents that it has not previously assigned all or any part of such claims to another entity or person. The City warrants and represents that there are no liens of any nature, assignments or subrogation interests in or to the money paid to the City under the terms of this Agreement. The City warrants that it will take all action necessary to properly execute and deliver this agreement.

- B. TXU Electric and TXU Gas warrant that the person(s) executing this Agreement on their behalf has authority to bind the entity for whom such person signs this Agreement.

6. NO ADMISSION OF LIABILITY

This Agreement is made to compromise, terminate and to constitute an accord and satisfaction of all of the claims released by this Agreement and TXU Electric and TXU Gas admit no liability, fault or wrongdoing of any nature or kind whatsoever and expressly deny and disclaim any liability, fault or wrongdoing alleged or which could have been alleged with regard to the claims asserted in the Litigation if the City had become a party to the Litigation or any similar claims which might be asserted by the City against TXU Electric and/or TXU Gas.

7. RECOVERY OF DAMAGES DUE TO BREACH

In the event of breach by any party of the terms and conditions of this Agreement, a non-breaching party shall be entitled to recover all expenses as a result of such breach, including, but not limited to, reasonable attorneys' fees and costs.

MISCELLANEOUS PROVISIONS

8. It is understood and agreed that all agreements and understandings by and between the parties to this Agreement with respect to the payment of franchise fees and the settlement of any claims related to the payment of franchise fees are expressly embodied in this Agreement and that this Agreement supersedes any and all prior agreements, arrangements or understandings between the parties relating to the claims released pursuant to this Agreement or any matters related thereto executed by the parties.

9. The parties acknowledge and agree that the terms of this Agreement are all contractual and not mere recitals.

10. The parties acknowledge that they have read this Agreement, understand its terms, and that this Agreement is entered into voluntarily, without duress, and with full knowledge of its legal

significance.

11. This Agreement may not be modified in any manner, nor may any rights provided for herein be waived, except by an instrument in writing signed by each party.
12. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
13. Should any term or any provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties agree that all other terms of this Agreement are binding and have full force and effect as if the invalid portion had not been included.
14. The parties represent and warrant that no party has been induced to enter this Agreement by a statement, action or representation of any kind or character made by the persons or entities released under this Agreement or any person or persons representing them, other than those expressly made in this Agreement.
15. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
16. The headings contained herein are for convenience and reference only and are agreed, in no way, to define, describe, extend or limit the scope or intent of this Agreement or its provisions.
17. This Agreement shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date set forth.

THE CITY OF SANCTUARY, TEXAS

By: [Signature]
Its: Mayor
Date: 5 Sept 02

TXU ELECTRIC COMPANY n/k/a TXU US
HOLDINGS COMPANY

By: [Signature]
Its: Asst. Secretary
Date: 9/12/02

TXU GAS COMPANY

By: [Signature]
Its: VICE-PRESIDENT
Date: 9-13-2002

STATE OF TEXAS

COUNTY OF PARKER

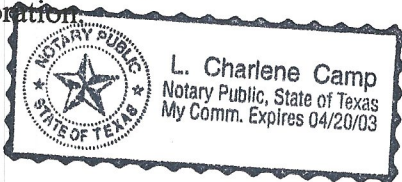
This instrument was acknowledged before me on the 5th day of Sept 2002,
by Martha Elisabeth Sellmeyer Elliott, as City Secretary on behalf of the City of Sanctuary.

[Signature]
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 17 day of Sept 2002,
by John F. Stephen Jr., of TXU Electric Company n/k/a TXU US Holdings Company, on behalf
of said corporation.

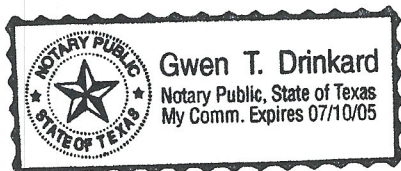


L. Charlene Camp
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 13th day of Sept. 2002,
by Stephen J. Houle, of TXU Gas Company, on behalf of said corporation.



Gwen T. Drinkard
Notary Public, State of Texas