

ORDINANCE NO. 36

AN ORDINANCE GRANTING FOUR SQUARE GAS COMPANY, INC., ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE, AND FRANCHISE FOR A PERIOD OF TWENTY-FIVE (25) YEARS TO CONSTRUCT, LAY, MAINTAIN, OPERATE, EXTEND, REMOVE, REPLACE AND REPAIR A SYSTEM OF PIPE LINES, GAS LINES, LATERALS AND ATTACHMENTS AND ALL DESIRABLE INSTRUMENTALITIES IN, UNDER, OVER, ACROSS AND ALONG ANY AND ALL STREETS, AVENUES, PARKWAYS, SQUARES, ALLEYS AND ALL OTHER PUBLIC PLACES IN THE CITY OF ZAVALLA, ANGELINA COUNTY, TEXAS, FOR THE PURPOSE OF TRANSPORTING, DISTRIBUTING, SUPPLYING AND SELLING GAS (NATURAL AND/OR ARTIFICIAL AND/OR MIXED) FOR HEATING, LIGHTING, POWER AND FOR ALL OTHER PURPOSES FOR WHICH GAS MAY BE USED, TO THE MUNICIPALITY OF SAID CITY OF ZAVALLA, TEXAS, AND ITS INHABITANTS AND OTHERS; PROVIDING CONDITIONS CONTROLLING THE USE OF PUBLIC THOROUGHFARES AND EXTENSIONS THEREIN; ESTABLISHING STANDARDS OF SERVICE; PROVIDING FOR A RENTAL BASED UPON A PERCENTAGE OF THE GROSS RECEIPTS FROM THE SALE OF GAS FOR RESIDENTIAL AND COMMERCIAL PURPOSES WITHIN THE CITY; PROVIDING FOR ACCEPTANCE; PROVIDING A SEVERABILITY CLAUSE; MAKING MISCELLANEOUS PROVISIONS; AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ZAVALLA, TEXAS:

SECTION 1. The City of Zavalla, Angelina County, Texas, herein called "Grantor", does hereby grant unto Four Square Gas Company, Inc., its successors and assigns, herein called "Grantee", the exclusive right, privilege, and franchise to construct, lay, maintain, operate, use, extend, remove, replace and repair in, under, over, across and along any and all of the present and future streets, avenues, parkways, squares, alleys, thoroughfares, roads, highways, sidewalks, viaducts, bridges, streams, public grounds, public properties, and other public places of Grantor, and in all tracts, territories, and areas hereafter annexed to or acquired by and placed within the corporate boundaries of Grantor, a system of pipes, pipe lines, gas mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, and attachments and other desirable instrumentalities and appurtenances necessary or proper for the purpose of transporting, distributing, and supplying and selling gas (natural and/or artificial and/or mixed) for heating, lighting, power and for any other purposes for which gas may now or hereafter be used, in and to said Grantor and its inhabitants or any other person or persons within or without the corporate boundaries of Grantor.

SECTION 2. Grantee's property shall be so constructed and maintained as not to interfere unreasonably with traffic over the public thoroughfares of Grantor and the same shall be laid in accordance with the lines and grades established by Grantor and in accordance with all applicable rules and regulations.

SECTION 3. Grantee at its own expense shall run or extend not more than one hundred (100) feet of main, not to exceed a maximum diameter of two (2) inches, plus reasonable service lines, to serve any person, firm, association, individual, or corporation applying for or demanding gas or gas service and/or additional gas or gas service. Grantee shall not be required to run or extend any main a distance greater than that specified in the preceding sentence to any person, firm, association, individual, or corporation applying for or demanding gas or gas service and/or additional gas or gas service unless the probably expected use of such gas or gas service by such person, firm, association, individual or corporation will provide to Grantee a reasonable and compensatory return or income on the value of the additional main, service line and other equipment which must necessarily be installed to comply with such application or demand.

SECTION 4. The service furnished hereunder to said Grantor and its inhabitants shall be first-class in all respects considering all circumstances and shall be subject to such reasonable rules and regulations as Grantee may make from time to time. Grantee may require reasonable security for the payment of its bills.

SECTION 5. Subject to the terms hereof and as a portion of the consideration for the rights and privileges herein granted, Grantee agrees to pay as rental to the Grantor, annually during the continuance of this franchise a sum of money equal to two percent (2%) of the annual gross receipts of the preceding year received by the Grantee from the sale of gas to residential and commercial customers within the corporate limits of the City of Zavalla, Texas. Grantee agrees to pay as additional rental to the Grantor, annually during the continuance of this franchise, a sum of money equal to two percent (2%) of the annual gross receipts of the preceding year received by the Grantee for transportation charges applicable to the delivery of gas to industrial users within the corporate limits of the City of Zavalla, Texas. Transportation charges applicable to an industrial user of gas shall be as approved or determined by the Railroad Commission of the State of Texas. It is further stipulated and agreed that in the event laws, rules and/or regulations are modified at a date subsequent to the date of this franchise, this franchise, as well as the rental paid hereunder, shall, at Grantor's option, be modified to reflect such changes in allowable rental, fees and other laws, rules and/or regulations applicable to this franchise or the operations of Grantee.

On or before the first day of February of each and every year beginning with the first day of February, 1991, Grantee shall file with the City Secretary of the Grantor a sworn report showing the gross receipts from such sale of gas to residential, commercial and industrial customers within the corporate limits of the City of Zavalla, Texas, for the next preceding calendar year ending

December 31st. At the same time the Grantee shall pay to the Grantor the rental as herein provided. Upon receipt of the above amount of money, the City Secretary shall deliver to the Grantee a receipt for such amount.

Upon request of the City Commission of the City of Zavalla, Texas, Grantee shall present to it any and all records, accounts, and books for inspection relative to the gross receipts of Grantee within the corporate limits of the City of Zavalla, Texas. Should it be determined that the full amount due to Grantor has not been paid, such unpaid amount plus interest at the rate of eighteen percent (18%) per annum from the payment due date shall immediately be paid to Grantor. Should the amount determined to be due and unpaid exceed \$300.00 the cost of inspecting the records, accounts and books of Grantee shall be paid by Grantee. Standard industry practices shall be used in calculating the amount due.

The consideration hereinabove set forth shall be paid and received in lieu of any license, charge, fee, street or alley rental or other character of charge for use and occupancy for the streets, alleys and public places in the City of Zavalla, Texas, and in lieu of any pipe tax or inspection fee or tax, but shall not in anywise incur or diminish Grantee's obligation to pay the City ad valorem taxes or anywise interfere with collection thereof.

Any special taxes, rentals or other charges, (excluding ad valorem taxes) however designated, for the use by Grantee of Grantor's streets, alleys and other public ways and places, accruing after the effective date of this franchise under the terms of any pre-existing or subsequently enacted ordinance (of either general application or application only to Grantee) shall, when paid to Grantor by Grantee, be credited to the amount owed by Grantee under the terms of this franchise.

SECTION 6. Rates charged by Grantee for gas sold in the corporate limits in the City of Zavalla shall allow a reasonable rate of return on Grantee's investment and shall be subject to the approval of the Railroad Commission of the State of Texas and of Grantor.

SECTION 7. Any damage caused by Grantee's installation and operation of gas lines and related facilities whether to Grantor's property or to the property of any third party shall be promptly repaired. Such repair shall restore the property, including streets, ditches and driveways, to the same or better condition as existed prior to such damage.

SECTION 8. Grantee shall hold harmless and unconditionally indemnify Grantor against and from all liability, costs, expenses (including attorney's fees), claims and damages which Grantor may at any time suffer or sustain or become liable for by reason of any accidents, damages or injuries either to persons or property or both in any manner arising out of Grantee's actions, and/or failure to act and/or the presence of Grantee's facilities. This indemnity

shall be binding on Grantee regardless of the cause, including Grantor's negligence or sole negligence, of such damage, injury, loss or other claim.

SECTION 9. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 10. This franchise shall take effect and continue and remain in effect for a period of twenty-five (25) years from and after the date of this ordinance, provided Grantee files a written acceptance of this franchise with Grantor within one hundred twenty (120) days after final passage of this ordinance.

SECTION 11. The right is hereby reserved to the City to adopt, in addition to the other provisions contained herein, and in existing applicable ordinances, such additional regulations as it may find necessary in the exercise of its regulatory power, provided that such regulations by ordinance or otherwise shall be reasonable and not in conflict with the rights granted herein. The City shall have the right to revoke and terminate this Permit at any time for cause upon giving ninety (90) days written notice thereof to the Grantee. Revocation and termination shall proceed if, after sixty (60) days from written notification of a violation by the City, Grantee fails to undertake corrective action for said violation and diligently pursue such corrective action to a conclusion. In the event the violation is not reasonably curable within sixty (60) days, this Permit shall not be terminated if the Grantee provides a plan to correct said violation and continues to demonstrate good faith in seeking to correct said violation. Notification of revocation and termination shall be by ordinance duly adopted following an appropriate public proceeding affording due process. Cause for termination shall be a finding of fact that Grantee willfully:

- (a) Materially violates any provision of this Permit except where such violation is without fault or through excusable neglect; or
- (b) becomes insolvent, unable to pay its debts or its adjudged a bankrupt; or
- (c) attempts to evade any of the provisions of this permit or practices any fraud or deceit upon the City; or
- (d) fails to undertake corrective action as herein required.

SECTION 12. If any provision, section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, void, or invalid (or for any reason unenforceable), the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the Grantor in adopting this ordinance that no portion hereof or provision or regulation contained herein 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.

PASSED AND APPROVED on third reading by the City Commission of the City of Zavalla, Texas, this the 09 day of October, 1989.

ATTEST:

  
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City Secretary

  
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Mayor, City of Zavalla, Texas