

APPENDIX F

APPROVED FRANCHISE OF THE CITY OF LEBANON, MISSOURI

AN ORDINANCE GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO SOUTHERN MISSOURI GAS COMPANY, L.P. (D/B/A SOUTHERN MISSOURI NATURAL GAS) A MISSOURI LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR PLACE, MAINTAIN, OPERATE AND USE ITS MAINS, SERVICE PIPES, CONDUITS, CONDUCTORS, TANKS, VAPORIZERS, UNDERGROUND VAULTS, REGULATORS, AND OTHER EQUIPMENT, WITH ALL NECESSARY OR APPROPRIATE APPLIANCES AND APPURTENANCES IN CONNECTION THEREWITH, IN, ALONG, ACROSS, OVER AND UNDER THE STREET, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES AND OTHER PUBLIC PLACES IN THE CITY OF LEBANON, MISSOURI AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR THE PURPOSE OF TRANSMITTING, FURNISHING, TRANSPORTING, AND/OR DISTRIBUTING GAS FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH.

BE IT ORDAINED by the Council of the City of Lebanon, Missouri as follows:

Section 1: The right, permission and authority (hereinafter sometimes called the "Franchise") is hereby granted to, and vested in Southern Missouri Gas Company, L.P., a Missouri limited partnership, d/b/a Southern Missouri Natural Gas, (hereinafter sometimes called "SMNG"), its successors and assigns, to construct, reconstruct, excavate for, place, maintain, operate and use all necessary appropriate mains, service pipes, conduits, conductors, tanks, vaporizers, underground vaults, regulators and other equipment with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges and other public places within the corporate limits of the City of Lebanon, Missouri as now fixed and as hereafter extended, and areas dedicated to the City for the public utility use, for the purpose of furnishing transporting and distributing gas for light, heat, power and other purposes within the city limits of the Lebanon, Missouri and in territory adjacent to said City and for the purpose of transporting and transmitting gas through said City; all such equipment, appliances and apparatus to be installed and maintained with due regard to the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys sidewalks, squares, bridges and other public utility use; and exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the City in the exercise of its police powers.

Section 2: Extension of, and additions to, the distribution system maintained by SMNG, its successors or assigns, in the City of Lebanon, Missouri shall be made in accordance with the rules and regulations governing such extensions and additions by

SMNG now on file with the Public Service Commission of Missouri, or in accordance with such amended rules and regulations governing such extensions and additions by SMNG, its successors or assigns, as may hereafter become effective in the manner provided by law.

Section 3a: The rights, privileges and authority hereby granted shall inure to and be vested in SMNG, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon SMNG shall devolve and be binding upon its successors and assigns successively, in the same manner, provided however that the assignment, but not the succession, to the rights, privileges and authority herein granted shall be subject to the approval of the City. SMNG shall, however, provide prior notice of any succession and indicate the individual the City should contact regarding this Agreement and who is responsible for maintenance and coordination of the right of way. Assignment requiring consent by the City shall not be unreasonably withheld.

Section 3b: Grant Not Exclusive: The Franchise and the right it grants to use and occupy the Public Rights-of-Way are not exclusive and do not explicitly or implicitly preclude the issuance of other franchises to operate Natural Gas Distribution Systems or other like systems within the City, affect the City's right to authorize use of Public Rights-of-Way by other Persons to operate Natural Gas Systems or other like systems or for other purposes as it determines appropriate, or affect the City's right to itself construct, operate or maintain a Natural Gas Distribution System or other like system, with or without a Franchise.

Notice should be provided to:

Joe Knapp, City Administrator
Scott Shumate, Public Works Director
PO Box 111
Lebanon MO 65536
417-532-2156
417-588-6090
417-532-8388 fax

Section 4: Insurance and Indemnification

(a) Insurance Required: Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the City and the Franchisee: worker's compensation and employer liability insurance to meet all requirements of Missouri law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Natural Gas Distribution System, and the conduct of the Franchisee's business in the city, in the minimum amounts of:

- (1) \$1,000,000 for property damage resulting from any one accident;

- (2) \$5,000,000 for personal bodily injury or death resulting from any one accident; and
- (3) \$2,000,000 for all other types of liability.

Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of Franchisee for damages under the Franchise.

(b) **Qualifications of Sureties:** All insurance policies shall be with sureties qualified to do business in the State of Missouri, with a B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the City.

(1) **Policies Available for Review:** All insurance policies shall be available for review by the City, and Franchisee shall keep on file with the City certificates of insurance.

(2) **Additional Insured's; Prior Notice of Policy Cancellation:** All general liability insurance policies shall name commissioners, agents, and employees as additional insured's and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty (30) days' prior written notice thereof has been given to the City Clerk. Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the City Council which complies with this Franchise Agreement.

(3) **Failure Constitutes Material Violation:** Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(c) **Indemnification:**

(1) Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Natural Gas Distribution System; the conduct of the Franchisee's business in the City; or in any way arising out of the granting of the Franchise or Franchisee's enjoyment or exercise of this Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the this Franchise Agreement.

(2) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim,

suit, or proceeding prior to Franchisee assuming such defense. The City shall notify Franchisee of claims and suits as soon as practicable, but failure to give such notice shall not relieve Franchisee of its obligations hereunder. Once Franchisee assumes such defense, the City may at its option continue to participate in the defense at its own expense.

(3) Notwithstanding anything to the contrary contained in this Agreement the City shall not be so indemnified or reimbursed in relation to any amounts attributable to the City's own negligence, willful misconduct, intentional or criminal acts, including in the performance of its obligations under this Franchise Agreement.

Section 5: This ordinance shall be and continue in force and effect for a period of twenty (20) years from the date of execution herein (sometimes hereinafter referred to as the "Primary Term"). This ordinance shall be reviewed by the City Council prior to two (2) years of the expiration of this franchise. Based on the review and determination of the City Council, the City shall submit in writing to SMNG no less than two (2) years prior of the expiration of this Ordinance, the City's intent to renew this ordinance for a period not to exceed twenty (20) years; to modify this ordinance for a period not less than 5 years nor more than 20 years. The City shall include any and all information related to its decision to extend or modify the ordinance or to exercise its option to purchase the system. The City reserves the right to terminate this franchise prior to its expiration date in the event:

- (a) SMNG fails to comply with any provision hereof; provided, however, that if such failure of compliance shall be due to a cause beyond the control of SMNG the franchise shall not be so terminated. In the event SMNG shall default in the performance of any of the terms, covenants, or conditions herein and such default is curable, City shall give written notice to SMNG to commence within ten days the work necessary to cure such default, and if SMNG fails to comply with such notice, City may terminate this franchise.
- (b) Any provision hereof becomes invalid or unenforceable and City expressly finds that such provision constituted a consideration material to the granting of this franchise.

The city shall give SMNG 15 days' notice of any termination proceedings.

Section 6: Neither acceptance of, nor compliance with, the provisions of this ordinance shall in anywise impair or affect, or constitute be construed as a relinquishment or waiver of, any right, permission or authority with SMNG, its successors or assigns, may have independently of this ordinance; nor shall any use by SMNG, its successors or assigns, of public property or places in the City of Lebanon,

Missouri as authorized by this ordinance or service rendered by SMNG, its successors, or assigns, in said City, be treated as use solely of the rights, permission and authority provided for by this ordinance, or as service referable solely to this ordinance, or to any obligation of service consequent upon acceptance thereof or as in anywise indicating nonuse of, non-compliance with, any obligation incident to, any right permission or authority vested in SMNG, its successors or assigns independently of this ordinance; and the acceptance provided for in section 5 of this ordinance; and each and every compliance with the provisions of this ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 6, with the same force and effect as though each of the provisions of this section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance.

Section 7: This ordinance shall not relieve SMNG of the obligation to comply with any ordinance now existing in the City or enacted in the future requiring SMNG to obtain written permits or other approval from the City prior to commencement of construction of facilities within the streets thereof. The location of any franchise property installed hereunder shall be first approved by the City.

All franchise property installed and maintained hereunder shall be constructed in a good workmanlike manner and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by the City, the PSC, and the U.S. Department of Transportation, Office of Pipeline Safety. All pipelines installed shall conform to the applicable U.S. A. Standard Code for Pressure Pipeline, in its latest revision.

All excavations shall be made and refilled in strict compliance with City ordinances that may be in effect at the time of the performance of the work and shall be so made as not to interfere unreasonably with the free use of the streets by the public.

Upon completion of the work for which street excavations are made, all portions of the streets which have been excavated or otherwise damaged by such excavation work shall be restored to as good condition as they were in before the commencement of such work, to the satisfaction of the City Engineer.

SMNG shall promptly repair any leaks or breaks in its facilities, consistent with good utility practice. Such emergency repair of franchise property may be commenced without prior permit, provided however, that SMNG shall, by not later than the next normal working day, provide notice to the City and apply to the City Department of Public Works for a permit authorizing such emergency work. Such permit will not be unreasonably withheld; however, SMNG remains obligated to perform the work in the least disruptive manner possible, subject to protecting at all times the public safety.

The City shall retain the right to determine that it is reasonable and necessary that the franchise property be temporarily disconnected, abandoned, temporarily or permanently removed, temporarily or permanently relocated or substitute facilities

installed, in order that the City, may relocate, change grade, construct, use, maintain, change or modify any street improvement or city-owned facilities. Upon such determination, the City shall provide notice, in writing, to SMNG, whereupon 30 days after the service of such notice upon SMNG, SMNG will at its sole cost and expense begin and diligently prosecute the necessary work to completion, Upon failure to do so, the City cause said work to be completed and SMNG shall immediately pay for the same upon presentation of an itemized account of the cost thereof.

The City, upon such terms and conditions as it may determine, may give SMNG permission to abandon, without removing, franchise property installed. The length of any pipeline or facility abandoned with such permission shall not be considered in calculating payments due under the franchise until the date the City has inspected and approved in writing the abandonment work. Such abandonment may also be subject to approval by other governmental authorities, such as the PSC, in addition to the City. The ownership of all franchise property abandoned pursuant to this section shall thereafter vest in the City.

Section 8: If any provision of this ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 9: As part of the consideration for the rights and privileges conferred by this Ordinance, SMNG shall pay to the City an amount equal to five percent (5%) of its receipts from sales of gas and/or transportation service from each customer; the five percent (5%) hereinafter referred to as the "Franchise Fee." The City agrees to waive its rights with respect to franchise fees for commercial and industrial customer classes LGS, LV and Transport, and hereby establishes a franchise fee schedule for customer classes LGS, LV and Transport in an amount equal to 1% of gross receipts from such customers for a period of one year starting on the date of first deliveries of Natural Gas to such customer class. The franchise fee for commercial customers shall thereafter increase 1% per year up to maximum of 5%. The payment shall be due monthly payable in arrears.

Section 10: The Grantee shall maintain an appropriate business office in Lebanon which shall be open during normal business hours, have a publicly listed business telephone and be so operated to receive subscriber complaints and requests for repairs or adjustments on a twenty-four hour basis. All complaints and documentation thereof shall be handled in accordance with the rules and regulations of the PSC.

Section 10a: Upon reasonable notice, the City shall be entitled to audit SMNG's books and records in order to confirm that the revenues paid to the City are consistent with this Ordinance.

Section 10b: Maps and records identifying the location of SMNG's facilities within and adjacent to the City shall be filed in with the Department of Public Works.

Section 11: This Ordinance shall be paid in full force and effect from and after its passage and approval.

Section 12: This Ordinance shall be interpreted under the laws of the State of Missouri.

Section 13: The City and SMNG each hereby represent and warrant that they have the authority to enter into and perform the obligations under this Ordinance. However, SMNG represents that such warranty on their behalf is contingent upon receiving all necessary approvals from the Missouri Public Service Commission.

Section 14:

(a) Upon a determination by the City that the ownership of the franchise facilities by the City is in the City's best interest, the City shall have the right, within the first five years of this Ordinance, to buy and operate the facilities installed by SMNG. The payment to SMNG will be equal to the book value of the facilities, less depreciation, plus an additional fifteen percent (15%) of BVLD. The City will return to SMNG any franchise fees paid by SMNG to the City during those five years.

Option 14a must be exercised by the City of Lebanon prior to SMNG presenting a bona fide bid or offer from a prospective buyer. In the event SMNG presents a bona fide bid or offer from a prospective buyer prior to the City electing to exercise its option to purchase the system then the City shall have the right of first refusal according to the terms as specified in option 14c. The City of Lebanon shall retain its purchase rights and terms under 14a in the event that SMNG does not consummate the sale and transfer of the system to prospective buyer and/or the City of Lebanon has not exercised its option to purchase under 14c. Further, it being hereby understood that City's option to purchase under 14a shall apply only to assets related to the Lebanon system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Lebanon, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

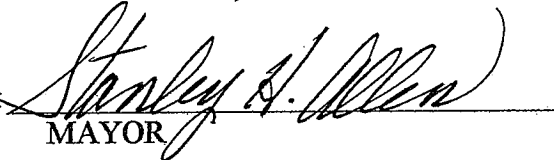
(b) Nothing in this ordinance shall prohibit the parties herein to negotiate in good faith terms of sale and the City's right to purchase and operate the facilities installed by SMNG after the initial five (5) years of this Ordinance.

(c) In the event SMNG elects to sell the facilities contemplated herein related to natural gas distribution for the City, the City shall be granted a right of first refusal to match the terms and conditions of any offer SMNG would otherwise accept.

Upon written notice to the City by SMNG that SMNG intends to sell said facilities the City shall have fifteen (15) business days to notify SMNG in writing of its intent to exercise its right of first refusal. Should the City fail to provide such notification to SMNG within the specified time frame, the City shall have forfeited its right of first refusal and SMNG shall be free to pursue and consummate the sale of said facilities with no further obligations with respect to said right of first refusal. It being hereby understood that right of first refusal shall apply only in the event that SMNG has determined to sell its assets related to the Lebanon system and shall include all underground pipeline facilities and/or other appurtenances downstream from the city gate meter station installed to provide service to customers within the municipality of the City of Lebanon, Missouri. SMNG shall continue to own and operate the city gate meter station and any facilities outside the municipality. Not included in the assets under this purchase option are all construction equipment and/or any other ancillary assets or equipment required to construct, operate and/or maintain the facilities included in the purchase option.

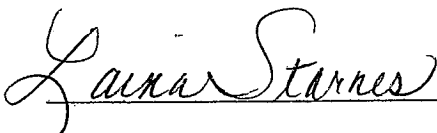
PASSED AND APPROVED THIS 16th DAY OF JANUARY, 2007

CITY OF LEBANON, MISSOURI

BY: 

MAYOR

ATTEST:

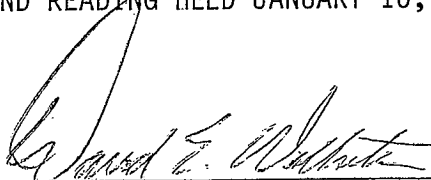


CITY CLERK



SOUTHERN MISSOURI NATURAL GAS

FIRST READING HELD JANUARY 16, 2007
SECOND READING HELD JANUARY 16, 2007


Approved as to Form, City Attorney