

1ST READING 2-22-11
2ND READING 3-1-11
INDEX NO. _____

ORDINANCE NO. 12480

AN ORDINANCE GRANTING UNTO CHATTANOOGA GAS COMPANY, A TENNESSEE CORPORATION, A FRANCHISE FOR THE PURPOSE OF OPERATING A SYSTEM OF GAS DISTRIBUTION AND SERVICE WITHIN THE CITY OF CHATTANOOGA SO AS TO FURNISH GAS SERVICE WITHIN THE CITY TO ITS INHABITANTS FOR DOMESTIC, COMMERCIAL, INDUSTRIAL AND MUNICIPAL GENERAL USE.

THIS GAS FRANCHISE ORDINANCE AND AGREEMENT (the "Franchise Agreement") is entered into by and between the City of Chattanooga, Tennessee ("City"), a municipal corporation, and Chattanooga Gas Company ("Franchisee").

WHEREAS, Franchisee has asked the City to renew its nonexclusive gas franchise including any amendments, resolutions, written agreements or transfer consent ordinances and resolutions related thereto (the "Prior Franchise" dated November 4, 1980, Ordinance No. 7746) to construct, install, maintain and operate a gas system in the City; and

WHEREAS, the construction, installation, maintenance and operation of a gas system involves the occupation of and placement of facilities in the Public Rights-of-Way within the City; and

WHEREAS, the City has reviewed the performance of Franchisee under the Prior Franchise and the quality of service during the Prior Franchise term, has identified the future gas-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined whether Franchisee's plans for constructing, operating and maintaining its gas system are reasonable to meet the

future gas-related community needs and interests, in light of the costs of meeting such needs and interests, in a full public proceeding affording due process to all parties; and

WHEREAS, the City has relied on Franchisee's representations and has considered the information that Franchisee has presented to it; and

WHEREAS, based on Franchisee's representations and information, and in response to its request for renewal, the City Council has determined that the terms and conditions set forth herein, the grant of a new, nonexclusive renewal Franchise to Franchisee, to supersede the Prior Franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

Section 1. This Ordinance shall be known as the "Chattanooga Gas Company Franchise Ordinance."

Section 2. For 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 used 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.

- (a) City - City of Chattanooga, Tennessee.
- (b) Company - Chattanooga Gas Company, a Tennessee corporation, the Grantee of rights under this franchise and its lawful successors or assigns.

- (c) Construction - The installation, re-installation, laying, erection, digging, renewal, repair, replacement, extension and removal of the gas system, or any activity that may be necessary to maintain and operate a gas system.
- (d) Council - The City Council of the City of Chattanooga, Tennessee
- (e) Gas System - Any pipe, pipeline, tube, main, duct, conduit, service, fitting, feeder, trap, vent, vault, manhole, meter, gauge, regulator, valve, appliance, attachment, appurtenance, and any other personal property constructed, maintained, or operated by Chattanooga Gas Company as may be necessary to import, transport, distribute and sell gas.
- (f) Mayor - The Mayor of the City of Chattanooga, Tennessee.
- (g) Permit Fee Floor - \$100,000 annually
- (h) Streets - The public streets, highways, avenues, roads, courts, alleys, lanes, ways, bridges, utility easements, sidewalks, parkways, public rights-of-way, or other public places or grounds in the City as they now exist or they may be established at any time during the term of this franchise in the City.

Section 3. That there is hereby granted to the Company a franchise to construct, reconstruct, maintain and operate a Gas System in, upon, along, and under the Streets within the City and to carry on, operate, enlarge and continue the same in said City as the same is now or may hereafter exist, for the purposes of furnishing gas service. The Company shall also have the right and privilege within the City to manufacture, sell and distribute natural gas and all other products and services, including appliances, which are related thereto. Neither the enactment of this Ordinance nor anything contained herein shall constitute any repeal or modification, expressed or implied, of any other ordinance of the City now in effect, whether codified or not; provided however, this Ordinance cancels and supersedes all prior Ordinances passed by the City specifically concerning Company and

repeals Ordinance No. 7746. The City expressly reserves the right to enact any and all such ordinances respecting the Company and its business as may be authorized by law, provided that any such ordinances shall not abridge the rights and privileges granted to the Company hereunder.

Section 4. That this franchise shall inure to the benefit of the Company, its successors and assigns, and shall exist and remain in effect from January 1, 2011 for a period of ten (10) years.

Section 5. That the Company shall not at any time charge in excess of such lawful rates as from time to time may be fixed by the Tennessee Regulatory Authority, or such other duly constituted body as may have power and authority in such matter. That the Company shall comply with all lawful orders of the Tennessee Regulatory Authority, or any other duly constituted body as may have power and authority in such matters respecting rates, the quality of gas, pressure, health measures and other conditions of service.

Section 6. That the Company in constructing or continuing a gas system along, across, under or through any City Street, shall comply with all ordinances of the City and shall take care not to obstruct or injure unnecessarily any such Streets, and shall with reasonable diligence restore such Streets to as good state of repair and condition as the same were before disturbed by said Company. The Company shall in all respects fully indemnify and save harmless the City from and against all damages, costs, attorneys fees, or other expenses which the City may incur by reason of such construction. The obligation of indemnity set forth in this section shall also extend to any construction in any Street or right-of-way of the City by any property owner pursuant to any contract between said property owner and the Company authorizing the property owner to construct a service line or other gas line from any main of the Company to such property owner's property.

Section 7. That the Company, its successors, or assigns, by the exercise of this franchise, agrees to hold harmless the City on account of any loss, expense, damage, cost, attorneys fees, litigation expenses, or liabilities that may result from Company's operation of its

gas system except to the extent that such loss, expense, damage, cost, attorneys fees, litigation expenses or liabilities is attributable to the negligence of the City, its agents, servants or employees. This right of indemnification shall include all expenses reasonably incurred by the City in defending any claim arising from the Company's operation of its gas system, whether or not the claim has merit. The Company hereby agrees, upon official request of the City, to maintain and furnish verification to the City's Risk Manager evidence of liability insurance in the minimum annual coverage amounts of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, or coverage limits as required by law, and list the City as an additional insured on the same. Failure to comply with the insurance requirements herein shall be deemed a material violation of the franchise. Notwithstanding the foregoing, the Company may provide the foregoing insurance through self-insurance or through an affiliated captive insurance carrier.

Section 8. The Company shall provide service personnel and equipment based in Chattanooga and/or Hamilton County, Tennessee to respond to customer service calls from locations within the City, and shall provide the local public service agencies, including the City police department, the City fire department, and the 911 Center with the Company's toll-free emergency telephone number and a listing of direct local telephone and/or pager numbers of local Company agents to contact in the event of an emergency. Company shall have trained personnel available 24 hours a day, 365 days per year, who will promptly respond to emergency calls. The Company shall make every reasonable effort to furnish an ample and uninterrupted supply of gas to all customers throughout its entire gas system within the City and on any enlargements and extensions thereof within the City. At the time each and every annexation ordinance of the City becomes operative, the City shall provide the Company with a copy of its ordinance and its accompanying map precisely describing the annexed territory. The Company shall not unreasonably or arbitrarily refuse to make an extension for the purpose of giving gas service to the City, its inhabitants, institutions and businesses.

Section 9. That in consideration of the grant of this franchise, the Company shall pay as a franchise fee (the "Franchise Fee") a sum as shown in

the table below:

Year	Percentage of the gross receipts received from sales of any type to the Company's customers within the city limits of the City
2011, 2012	3.15%
2013, 2014	4.15%
2015 and beyond	5.15%

Such sum shall, in accordance with prevailing state law and the Company's rate tariffs, be approved by the Tennessee Regulatory Authority, be directly added to the gas bills of, and collected from, those customers of the Company located within the City. Said fee shall be in addition to any sums due to the City from the Company as ad valorem taxes, street cut fees, permit fees, water quality fees, administrative fees or any other related fees, taxes or charges for the exercise of Company's work in the City ("Permit Fees"). Notwithstanding the foregoing, the Franchise Fee payable hereunder shall be reduced, on an annual basis, by the amount of Permit Fees paid by Company to the City up to the Permit Fee Floor.

The amount of the franchise fee billed by the Company each quarter shall be paid to the City on or before the 45th day following the end of each quarter. If the Company shall fail to pay the amount due, then the City reserves the right to revoke this franchise if said amount that is due and payable is not paid within a period of sixty (60) days after written notice of such delinquency to the Company.

There shall be a grace period of fifteen (15) days for any amount which is unpaid on the 45th day following the end of each quarter. In the event any Franchise fee payment or re-computation amount is not made on or before the expiration of said grace period, the Franchisee shall pay additional compensation and charges computed from such due date at an annual rate equal to one percent (1%) per month on any portion thereof of the unpaid amount.

The City shall have access with reasonable advance notice at all reasonable times to the books of the Company for the purpose of ascertaining and/or auditing the amount of fees due the City. The Company shall furnish the City with an annual report showing the amount of gross receipts from its sale of gas within the City. The franchise fee imposed herein shall be effective from and after the adoption of this Ordinance and acceptance by the Company.

The Franchise fee payments required by this Section shall be in addition to any and all taxes or fees of general applicability. The Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise fee payments from or against any of said City taxes or other fees of general applicability, except as expressly permitted pursuant to this Paragraph 9 or by applicable law.

Section 10. If the Company desires to sell the assets of its gas system located within the City as a stand-alone transaction and not as a sale of its larger gas system, then the Company must offer the City the opportunity to buy those assets located and situated in the City on the same terms as being offered to some other party. The City will have sixty (60) days to accept the offer and an additional one hundred twenty (120) days to close said transaction in the event the City elects to exercise the option to purchase.

In the event the City chooses not to exercise the option to purchase, the City shall continue to have the right to approve any sale, assignment, or transfer that Company may desire and this franchise cannot be sold, assigned, or transferred without the express written consent of the City Council, provided, however, that such consent shall not be unreasonably withheld.

In any negotiations between the City and the Company for the purchase of the Company's property by the City, no value shall be placed upon this franchise agreement in arriving at the purchase price to be paid by the City.

Section 11. Any flagrant or continuing violation of the provisions of this Franchise Ordinance by the Company or its successors shall be cause for forfeiture of this franchise agreement, provided that the City shall have given the Company written notification of such violation and allow the Company a

reasonable and appropriate time to correct the cited violations.

Section 12. In the event it becomes necessary or expedient for the City to change the course or grade of any highway, street, avenue, road, alley, way, parkway or other public ground in which the Company is maintaining its gas system, then, upon the written request of the City, the Company will remove or change the location or depth of such gas system to conform to the proposed street alteration. It is agreed that Company will, at its own expense, within sixty (60) days after written notice from the Mayor, Company's receipt of final plan approval, and notice to proceed, begin the work of completing any and all things necessary to effect such change in position or location in conformity with such written instructions; provided, however, that if such request is to accommodate any development by any person or entity other than the City or another governmental body, then the person or entity responsible for such development shall reimburse Company its expenses for such removal or change.

Section 13. After adoption of this Ordinance, should any section, subsection, sentence, provision, clause or phrase of this Ordinance be declared invalid by a court of competent jurisdiction or appropriate regulatory authority, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional, it being the intent in adopting this Ordinance that no portion thereof or provision or regulation contained therein shall become inoperative or fail by reason of the unconstitutionality or invalidity of any other portion or provision or regulation.

Section 14. That this Ordinance shall not be operative, as distinguished from its effectiveness, until it has been accepted by the Company. The Company shall have thirty (30) days from the date of the final passage of this Ordinance to file with the City Clerk its unconditional acceptance of the terms and conditions of this Ordinance. After receipt of the written approval of this franchise agreement from the Tennessee Regulatory Authority, the Company shall promptly furnish the City a copy, which shall be filed with this Franchise Ordinance.

Section 15. All rights herein granted and/or authorized shall be subject to and governed by this Ordinance, provided, however, the City Council expressly reserves unto itself all its police power to adopt general ordinances and to take other action necessary to protect and promote the safety and welfare of the general public in relation to the rights now reserved to or in the City of Chattanooga under its Charter and to all such rights as are now provided by general law.

Section 16. This Franchise Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Franchisee and the City.

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

Section 17. This Franchise Agreement shall be governed in all respects by the law of the State of Tennessee.

Section 18. Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the

addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

Notices to the Franchisee shall be mailed to:

Chattanooga Gas Company
c/o AGL Resources Inc.
P.O. Box 4569
Atlanta, GA 30302-4569
Attn: General Counsel

Notices to the City shall be mailed to:

City of Chattanooga
Attn: Mayor's Office
City Hall
101 East 11th Street
Chattanooga, Tennessee 37402

with a copy to:

City Attorney
City of Chattanooga
100 E. 11th Street, Suite 200
Chattanooga, TN 37402

Unless otherwise provided by the Municipal Code or by this Agreement, notices shall be effective upon receipt.

Section 19. Time is of the essence in all provisions of this Agreement.

Section 20. This Agreement is not intended to, and shall not be construed to, grant any rights to or vest any rights in third parties, except as expressly provided herein.

Section 21. This Agreement supersedes all prior oral or written agreements, drafts, commitments, or understandings with respect to the matters provided for herein. The parties recognize, however, the right of the City to establish and amend the Municipal Code and City regulations from time to time, as empowered by the State of Tennessee, and the Franchisee agrees to abide by all such applicable laws and regulations, subject to the provisions of the Franchise Agreement.

Section 22. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two (2) weeks from and after its passage.

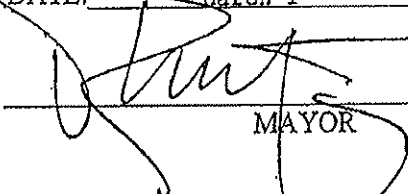
PASSED on Second and Final Reading.



CHAIRPERSON

APPROVED: DISAPPROVED:

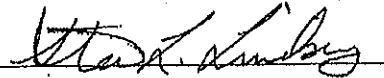
DATE: March 1, 2011.



MAYOR

The within Franchise and its terms and conditions are hereby accepted by Chattanooga Gas Company on this ___ day of _____, 20__.

CHATTANOOGA GAS COMPANY

By: 

Name: Steven L. Lindsey

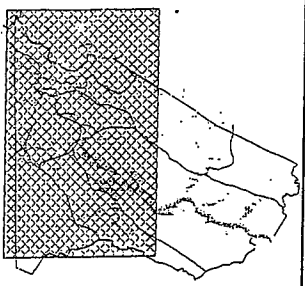
Title: Vice President & General Manager

PPB/mms



2011-0028 Franchise Agreement with Chatt Gas Co for ten (10) years

PLANNING COMMISSION RECOMMENDATION FOR CASE NO. MR-2011-028: Approve



1 in. = 5.39 miles

