

**CITY OF LAVON, TEXAS**  
**ORDINANCE NO. 2019-08-01**

SiEnergy Franchise Agreement

**AN ORDINANCE OF THE CITY OF LAVON, TEXAS, GRANTING TO SIENERGY, L.P. A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF LAVON, COLLIN COUNTY, TEXAS, AND TO TRANSPORT, DELIVER, SELL, AND DISTRIBUTE GAS IN AND 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; AND PROVIDING A SEVERABILITY CLAUSE, A PENALTY CLAUSE, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lavon, Texas (hereinafter referred to as "City"), finds that it is in the best interest of the City to adopt a franchise ordinance allowing SiEnergy, L.P., ("SiEnergy" or "Company") to furnish and supply gas to the general public in the City, and to transport, deliver, sell, and distribute gas in, out of, and through said municipality for all purposes.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS, THAT:**

**SECTION I. Grant of Franchise, Term, and Use**

(A) City hereby grants to Company and its successors and assigns, subject to Section XIV herein, the right, privilege and franchise, and City's consent, to use and occupy the present and future Public Right-of-Way of the City for the purpose of constructing, operating, maintaining, removing and replacing therein and thereon the System needed and necessary to transport, deliver, sell and distribute gas in, out of, and through the City, and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

(B) The term of this Ordinance begins on the Effective Date (as defined in Section XX below) and ends on December 31 of the calendar year in which the tenth (10th) anniversary of the Effective Date occurs; provided that, unless written notice is given by either party hereto to the other not less than six (6) months before the expiration of this Ordinance, it shall be automatically renewed for up to two (2) additional terms of five (5) years each on the same terms and conditions as set forth herein.

(C) The terms and conditions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate, maintain, remove and replace the System within the City.

(D) By entering into this Ordinance, the City does not in any manner surrender or waive its regulatory or other authority or rights pursuant to the Constitution and statutes of the

State of Texas as the same may be amended, nor any of its rights and powers pursuant to present or future ordinances of the City. Likewise, Company's acceptance of the terms of this Ordinance shall in no way affect or impair Company's rights, obligations or remedies under any federal, state or local law or regulation, nor shall such acceptance be deemed a waiver, release or relinquishment of Company's rights to contest, appeal or file suit with respect to any action or inaction of the City, including adoption of ordinances by the City, that Company believes is contrary to this Ordinance or any federal, state or local law or regulation.

## **SECTION II. Definitions**

- (A) "City" shall mean the City of Lavon, Texas
- (B) "Company" shall mean SiEnergy, L.P. and its successors and assigns, but does not include a SiEnergy affiliate, which shall have no rights hereunder except by succession or assignment in accordance with Section XIV herein.
- (C) "City Administrator" shall mean the City Administrator of the City or his or her designee.
- (D) "Gross Revenues" shall mean the operating revenue for the sale of gas after the Effective Date to the Company's customers within the corporate boundaries of the City pursuant to the accounting principles established by the Federal Energy Regulatory Commission, including specifically Accounts 480, 481 and 482, as amended, except as modified herein, including:
  - (1) all revenues derived, directly or indirectly, from the sale of gas to all classes of customers in the City (excluding gas sold to another gas utility in the City for resale to its customers within the City);
  - (2) all revenues derived from the transportation of gas through the System of Company within the City to customers located within the City (excluding gas transported to another gas utility in the City for resale to its customers within the City);
  - (3) the purchase price or, if the purchase price is not disclosed to the Company by the Transport Customer, the value of gas transported by Company for Transport Customers through the System of Company within the City ("Third Party Sales") (excluding the value of any gas transported to another gas utility in the City for resale to its customers within the City). Company shall request that each Transport Customer of the Company disclose to the Company the purchase price of said gas. Should the Transport Customer fail or refuse to disclose such purchase price to Company, the value of such gas shall be established by utilizing 110% of the Houston Ship Channel index of prices for large package of gas as published each month in "Inside FERC's Gas Market Report" under "Delivered Spot-Gas Prices" (or a successor publication or another

publication agreed upon by City and Company) as reasonably near the time as the transportation service is performed;

- (4) franchise fees paid pursuant to Section X of this Ordinance, revenues from non-utility and non-regulated services or products, revenues billed but not ultimately collected or received by Company, and the following "miscellaneous charges:"
  - (a) charges to connect, disconnect, or reconnect gas,
  - (b) charges to handle returned checks from consumers within the City, and
  - (c) State gross receipts fees.

"Gross Revenues" shall not include:

- (i) the revenue of any Affiliate or subsidiary of Company;
- (ii) other than fees specifically included within the definition of Gross Revenues and franchise fees payable pursuant to Section X below, any taxes or fees required to be remitted to a third party including the City;
- (iii) interest or investment income earned by Company;
- (iv) monies received from the lease or sale of real or personal property;
- (v) amounts billed or collected from Company's customers for refundable fees and deposits;
- (vi) State or federal grants, credits or reimbursements;
- (vii) sales of gas for resale or to wholesale customers;
- (viii) reimbursements for damage to, or relocation of, any part of the System;
- (ix) amounts billed or collected by the Company from its customers for charitable contributions such as Operation Roundup;
- (x) revenues billed but not ultimately collected or received by the Company; and
- (xi) payments received for contributions in aid of construction performed within the City, including but not limited to, builder contributions, under contracts entered into after the Effective Date.

(E) "Person" shall mean any natural person, or any association, firm, partnership,

joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context explicitly requires otherwise, include the City or any employee, agent, servant, representative, or official of the City.

(F) "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, public easements, public places, thoroughfares and sidewalks of the City, as they now exist or may be hereafter constructed or extended within the corporate limits of the City.

(G) "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections and other infrastructure and appurtenant equipment used for or incident to providing delivery, transportation, distribution, supply and sales of natural gas for, but not limited to, heating, lighting and power, located within the corporate limits of the City.

(H) "Transport Customer" shall mean any Person for which Company delivers gas through the System of Company within the City for delivery or consumption within the City.

(I) "Affiliate" shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other Person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.

### **SECTION III. Construction, Maintenance, Operation & Relocation of Company System Facilities**

(A) Company's System shall be initially constructed so as not to unreasonably interfere with any existing water and wastewater lines, electric facilities, storm sewer lines, open drainage areas, cable, fiber optic cable, roadways, sidewalks, alleys, traffic control devices, public signs, or any other publicly owned or publicly franchised facility. Company shall promptly clean-up, repair, and restore all thoroughfares and other surfaces which it may disturb.

#### **(B) Permits**

- (1) Company's facilities shall not unreasonably interfere with City-owned public works facilities and with vehicular and pedestrian use of Public Right-of-Way.
- (2) Company shall not be required to submit a permit application for the placement of facilities outside of the Public Right-of-Way, however, Company shall provide detailed drawings, in accordance with Company's customary practice, reflecting Company's installations on private property to the extent necessary for City to verify compliance with City ordinances related to zoning, development, building regulations, and setbacks, and for easement verification.
- (3) Company shall submit a permit application to City for the placement of

new facilities, for upgrade or augmentation of existing facilities, or for replacement of existing facilities in the Public Right-of-Way. Such permit application shall include:

- (a) complete plans and detailed drawings reflecting compliance with all applicable zoning, development, and building requirements of the City; and
  - (b) all additional information requested by City reasonably related to the permit request.
- (4) Except as otherwise provided in this Section III (B), following the submission of a permit application described herein, notice of City's approval or denial of Company's request for a permit shall be provided in accordance with City's usual procedures for processing of permit applications.
- (5) City shall endeavor to complete its review of Company's application within thirty (30) days after City's receipt of the permit application. Prior to the expiration of the said thirty (30) day period, City shall request any additional information that is necessary to complete its review of Company's application. City shall issue a decision regarding Company's permit application within fifteen (15) days after receipt of the additional information. If the additional information is not sufficient to complete the review of Company's application, the City may request additional information. City shall issue a decision regarding the application within fifteen (15) days after receipt of all additionally requested information.
- (6) If City has not approved or denied Company's request for a permit within:
  - (a) Thirty (30) days after receipt by City of the permit application (if no additional information was requested by City), or
  - (b) The timeline established in Section III(B)(5) after receipt by City of all additional information requested by City reasonably related to the permit request,then upon written request by Company, the City's department director in charge of the permit process shall, within fifteen (15) days after such written request, approve (and issue) the permit or deny the permit application in question.
- (7) Company may proceed with the placement of the facilities described in its permit application if written notice of City's approval or denial of Company's request for a permit is not provided within the timeline pursuant to Section III(B)(6) above.

- (8) A permit application approved by the City shall be valid for a period of time consistent with the amount of time reasonably required and submitted in the permit application for the Company to perform the work described in the permit application. City shall grant an extension of such time as reasonably required to complete such work upon City's receipt of Company's request in writing for such an extension, but in no case shall the extended period exceed six (6) months from the date of such written request.

(C) Company shall install, maintain, construct, operate, remove and replace its facilities in accordance with applicable City ordinances, as may be amended, and so as to not unreasonably interfere with traffic. In determining the location of new facilities of the City and other users of Public Right-Of-Way within City, City shall minimize interference with then-existing System Facilities of Company and agrees to work with Company and other users of Public Right-of-Way in order to minimize, to the extent reasonably possible, interference with existing System Facilities of Company by other users of the Public Right-of-Way. In determining the location of the Company's new facilities in the City, the Company shall minimize interference with then-existing or documented planned underground structures of the City or with existing facilities of other users of the Public Right-of-Way. In the event of a conflict between the location of the proposed System Facilities of Company and the location of the existing facilities of City or other users of Public Right-of-Way within Public Right-of-Way which the parties involved have been unable to resolve through their good faith efforts, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities within the Public Right-of-Way, subject however to the terms and conditions of this Ordinance and giving effect to generally accepted industry operational and safety practices.

(D) Company's property and operations within the Public Right-of-Way of the City shall be subject to such reasonable rules and regulations of the City as may be authorized by applicable law from time to time for the protection of the general public. The City shall endeavor to provide Company with reasonable notice and opportunity to review and comment upon any new or revised City laws, rules, or regulations that impact Company's use of the Public Right-of-Way, but the failure to do so shall not affect the applicability of such laws, rules, or regulations to Company.

(E) The City's annual and long-range capital improvements plans, as well as any updates or changes thereto, will be made available to Company upon request. City shall notify Company as soon as reasonably possible of any projects that will *affect* Company's System Facilities located in the Public Right-of-Way.

(F) Any and all excavations and obstructions in and upon the Public Right-of-Way caused by the Company's operations under this Ordinance shall be repaired and removed as quickly as is reasonably possible under the circumstances. All excavations shall be repaired in a good and workmanlike manner and restored to the approximate condition that existed prior to the excavation. Replacement of sod is to be of like kind, and smoothed, shaped, rolled, and compacted for proper landscape maintenance. The public shall be protected by barriers and lights placed,

erected, marked, and maintained by the Company in accordance with the standards set forth in the current Texas Manual on Uniform Traffic Control Devices, as well as any other applicable local, state, and federal requirements. Company warrants that any such restoration work performed in the Public Right-of-Way shall be in satisfactory condition for a period not to exceed two (2) years, to the extent that such restoration work has not been disturbed by other users of the Public Right-of-Way or by acts of God. In the event that the Company fails to repair or restore an excavation site within fourteen (14) days after receipt of written notice from the City of a deficiency, the City may, at its option, perform the needed repair or restoration and the Company shall promptly reimburse the City for the reasonable cost of such repair or restoration. Except for repairs, day-to-day maintenance, or in cases of emergency conditions, work conducted within the Public Right-of-Way shall require an approved permit issued by the City prior to commencement of work. In no instance shall Company be required to pay fees or bonds related to its use of the Public Right-of-Way.

(G) The City reserves the right to lay, and permit to be laid, any City-owned facilities, such as stormwater, sewer, gas, water, wastewater and other pipe lines, cable, and conduits, or other improvements, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Right-of-Way occupied by Company. The City also reserves the right to change in any manner any City-owned curb, sidewalk, highway, alley, public way, street, and City-owned utility lines, storm sewers, drainage basins, drainage ditches, and other City facilities.

(H) If City, in constructing, reconstructing, improving, widening, or straightening its Public Right-of-Way, sewers, drainage, water lines, or other utilities, including modifications to sidewalks or other Public Right-of-Way required by the Americans with Disabilities Act, should request that Company remove or relocate its mains, laterals, and other System Facilities lying within Public Right-of-Way, Company shall do so at its own expense for System Facilities that are in conflict, unless such work is for the primary purpose of beautification or to accommodate a private developer. Company and City shall jointly determine whether System Facilities are in conflict and the extent that the proposed City facilities are determined by City and Company to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. All such relocations shall be performed in accordance with applicable City ordinances. Company shall not be required to relocate System Facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Company.

(I) When Company is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Right-of-Way to accommodate a request by City, and costs of utility removals or relocations are 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 by City in any application by City for reimbursement if Company submits its cost and expense documentation to City prior to the filing of the application. City shall make all reasonable efforts to provide reasonable written notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City in order for City to be able to submit its application for reimbursement to such program in a timely manner. Upon receipt of an amount of reimbursement intended for utility relocation including, but not

limited to, gas utilities, City shall remit to Company, within sixty (60) days of receipt, the portion of reimbursement related to the relocation or removal of Company's facilities. If Company is required by City to remove or relocate its mains, laterals, or other System Facilities lying within Public Right-of-Way to accommodate a private developer or for projects whose primary purpose is beautification or for any reason other than the construction, reconstruction, improving, widening, or straightening of its Public Right-of-Way, sewers, drainage, water lines, or other utilities by City, Company shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

(J) When Company is required to remove or relocate its mains, laterals or other System Facilities to accommodate construction by City without reimbursement from City, Company shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Company to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery from customers of such relocation costs pursuant to applicable state and/or federal law. Notwithstanding the foregoing, the City shall have the right to request other project documentation to the full extent provided by state law.

(K) If City abandons any portion of the Public Right-of-Way in which Company has System Facilities, for public safety reasons or in furtherance of a public project, City shall determine whether it is appropriate to retain a public utility easement in such Public Right-of-Way for use by Company. If City determines, in its sole discretion, that the continued use of the Public Right-of-Way by Company is compatible with the abandonment of the Public Right-of-Way, then in consideration of the compensation set forth in Section XX, and to the maximum extent of its right to do so, City shall grant Company an easement for such use, and the abandonment of the Public Right-of-Way shall be subject to the right and continued use of Company. If City determines, in its sole reasonable discretion, that it is not appropriate to retain a public utility easement in such Public Right-of-Way, Company shall be responsible, subject to the provisions of Section III, for relocating its System from such Public Right-of-Way, as directed by City. If Public Right-of-Way is sold, conveyed, abandoned, or surrendered by City to a third party, such action shall be conditioned upon Company's right to maintain use of the former Public Right-of-Way. If the third-party requests Company to relocate its System from the former Public Right-of-Way, and if such relocation is agreed to by Company, such relocation shall be at the expense of the party requesting same. In addition, in the event of a third party requesting the relocation, if the relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

(L) Upon request by City made no more often than once in any 12-month period, Company shall provide maps showing the location of its primary System Facilities. In addition, Company shall cooperate in locating its System Facilities when necessary to avoid conflict and protect the health and safety of the public.



#### **SECTION IV. Laying of Lines in Advance of Paving**

(A) Whenever City shall conclude to pave any Public Right-of-Way in which Company's System Facilities already exist or in which Company may propose to install its System Facilities, Company will be provided the opportunity, at no expense to City, in advance of such paving to modify such System Facilities, if defective or inadequate in size, and to lay new System Facilities, or modify same, if inadequate in size or defective, next to the property lines where buildings are already located.

(B) At least ninety (90) calendar days prior to the planned paving or repaving of Public Right-of-Way, City shall give Company written notice of the intention of City to pave any such Public Right-of-Way. Upon receipt of such notice, Company shall initiate its review process to determine the need to modify its System Facilities, and the need to lay or modify service lines underneath the portions of the Public Right-of-Way to be paved. If Company determines such a need, Company shall promptly initiate such work and shall thereafter proceed in a good faith and workmanlike manner to completion of the necessary work within ninety (90) calendar days after receipt of the notice from the City. Company's failure to complete the necessary work within the ninety (90) day period may be excused at the City's discretion, if Company has promptly notified the City of the circumstances that have caused the delay and has requested an extension of the construction period. City shall grant the extension unless withheld for good cause.

#### **SECTION V. Liability Insurance**

Company shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of this Ordinance, insurance in the amounts, types and coverages in accordance with the following requirements. The City shall be listed as an additional insured on any policies required under this Section V. Such insurance may be in the form of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

(A) Commercial general or excess liability on an occurrence or claims made form with minimum limits of five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate. This coverage shall include the following:

- (1) Products/completed operations to be maintained for a warranty period of 2 years,
- (2) Personal and advertising injury,
- (3) Contractual liability, and
- (4) Explosion, collapse, or underground (XCU) hazards.

(B) Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000) combined single limit each accident. This coverage shall include all owned, hired, and non-owned automobiles.

(C) Workers' compensation and employer's liability coverage. Statutory workers'

compensation benefits in accordance with the statutes and regulations of the State of Texas. Company must provide the City with a waiver of subrogation for workers' compensation claims.

(D) Upon request, the Company will provide proof of insurance in accordance with this Ordinance within thirty (30) days after such request. Company will not be required to furnish separate proof when applying for permits.

#### **SECTION VI. Installation of Meter**

If a meter is to be installed in or near the Public Right-of-Way, Company agrees to discuss with the City's representative the aesthetics of the meter placement and to accommodate the request of City to the maximum extent possible. If City requests a meter upgrade, Company will comply so long as City reimburses Company for the reasonable costs incurred by Company in changing meters. In no event, however, shall underground meters be required.

#### **SECTION VII. Rates**

Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor, and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with the City copies of its current tariffs, schedules, or rates, and charges and service rules and regulations applicable to the City. The rates and charges collected from its customers in the City shall be subject to revision and change by either the City or Company in the manner provided by law.

#### **SECTION VIII. Extensions of Mains**

Company shall not be required to extend mains on any Public Right-of-Way more than one hundred (100) feet for any one consumer of gas; provided, however, Company is not required to extend its mains or facilities if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum.

#### **SECTION IX. Non-Exclusive Use**

The rights and privileges granted to Company by this Ordinance are not to be considered exclusive and City hereby expressly reserves the right to grant, at any time, like privileges and rights as it may see fit to any other person or corporation for the purpose of furnishing gas for, but not limited to, light, heat, and power to and for City and the inhabitants thereof.

#### **SECTION X. Franchise Fee and Payment**

(A) In consideration of the privilege granted by the City to Company to use and occupy the Public Right-of-Way in the City for the purposes stated herein, Company and its successors and assigns agree to deliver and pay to City, and City agrees to accept, a franchise fee in an amount

equivalent to five percent (5%) of the Company's Gross Revenues as defined in Section II (D). The initial payment shall be paid to the City by Company on or before the Due Date for the Quarter, as set forth below, in which the Effective Date occurs, and shall include Gross Revenues received by Company from the Effective Date of this Ordinance. Thereafter the Company shall pay the franchise fee quarterly as follows:

Due Date	Quarter
May 15	First (January 1 – March 31)
August 15	Second (April 1 – June 30)
November 15	Third (July 1 – September 30)
February 15	Fourth (October 1 – December 31)

(B) Each payment due during the term of this Ordinance will be made on or before the close of business on the payment due date. If any payment due date required by this Ordinance falls on a weekend or declared bank holiday, payment shall be made by the close of business on the next working day.

(C) It is expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a special or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character, including, without limitation, any charges under Chapter 182 of the Texas Tax Code (collectively, the "Other Charges") that City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property and Company's separate obligation to reimburse the City for street repairs in accordance with this Ordinance. Should City not have the legal power to agree that the payment of the franchise fees shall be in lieu of the Other Charges, then City agrees that it will apply so much of said franchise fee payments as may be necessary to satisfy Company's obligations, if any, to pay such Other Charges.

(D) If Company fails to pay when due any payment provided for in this Section X, Company shall pay such amount plus interest consistent with the rate for customer deposits under Texas Utilities Code Section 183.003 from such due date until payment is received by City.

(E) SiEnergy Franchise Fee Recovery Tariff.

(1) The Company may from time-to-time file with the City a tariff amendment(s) to provide for the recovery of the franchise fees payable by the Company under this Ordinance.

(2) 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 the Company.

(F) In order to determine the Gross Revenues received by Company, Company agrees that quarterly, on the same date that payment is made as provided in the preceding paragraphs of this Section X, it will provide a statement showing the amount of Gross Revenues for the period

covered by the payments.

(G) Within thirty (30) days after receipt of a request by Company following the effective date of this Ordinance, the City shall provide Company (at the notice address specified in Section (XV)) with maps clearly showing the location of the boundaries of the City. Within thirty (30) days after City annexes property into, or disannexes property from, the territory of City, City shall provide Company (at the notice address specified in Section XV) with maps clearly showing the location of the boundaries of such annexed or disannexed property. Within sixty (60) days, or such additional time as mutually agreed to by the City and Company, after Company's receipt of (i) written notice from the City that the City has annexed territory into the City and (ii) maps showing clearly the areas annexed, the Company shall revise its accounting records to include the annexed territory, and Company's customers therein, within the City. After such time period, Gross Revenues related to Company's customers whose consuming facilities' points of delivery are located within such annexed area shall be included in the calculation of the franchise fee payable under this Ordinance. Likewise, Gross Revenues related to Company's customers whose consuming facilities' points of delivery are located in any area disannexed by City shall cease to be included in the calculation of the franchise fee payable under this Ordinance upon the effective date of such disannexation.

#### **SECTION XI. Retention, Accessibility and Confidentiality of Records**

(A) Company shall maintain the fiscal records and supporting documentation for payments of Gross Revenues associated with this Ordinance for not less than five years.

(B) Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written material, and other papers belonging to or in use by Company pertaining to the franchise fee payable under this Ordinance (the "Records") during the Company's regular business hours and at the Company's principal offices upon receipt of thirty (30) days written notice from the City. The City's access to the Records will be limited to information needed to verify that, within the two (2) year period prior to such access to the Records, Company is and has been complying with the terms of this Ordinance. If such an examination reveals that Company has underpaid the franchise fee to City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of City's claim and, if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section X(D). The cost of the audit shall be borne by City unless the Company is finally determined to have underpaid the franchise fee by five percent (5%) or more, in which case the reasonable costs of the audit shall be immediately reimbursed to the City by Company. The rights to access the Records shall terminate two (2) years after the termination or expiration of this Ordinance. Company agrees to maintain the Records in an accessible location.

(C) Any information that is not required by law to be made public shall be kept confidential by City. The City shall provide notice to Company of any request for release of information previously designated by Company as proprietary or confidential non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information

Act that includes Company's previously designated proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the information. The City also will provide Company with notice of the request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information.

## **SECTION XII. Renegotiation**

If either the City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Ordinance.

## **SECTION XIII. Termination**

(A) The City, in accordance with subsection (B) below, may terminate this Ordinance and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of this Ordinance (an "Event of Default").

(B) **Uncured Events of Default.**

- (1) Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City or a third party, Company shall have thirty (30) days (or such additional time as may be agreed to by the City) after receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies pursuant to Section XIII (C).
- (2) Upon the occurrence of an Event of Default by Company which cannot be cured by the immediate payment of money to City or a third party, Company shall have sixty (60) days (or such additional time as may be agreed to by the City) after receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies pursuant to Section XIII (C).
- (3) If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies pursuant to Section XIII.

(C) **Remedies.** Upon receipt of a notice of an alleged Uncured Event of Default as described in Section XIII (B), which notice shall specify the alleged failure with reasonable particularity, the Company shall, within the time periods specified in Section XIII (B) or such longer period of time as may be agreed to by the City, either cure such alleged failure or, in a written response to the City, present facts and arguments in refuting or defending such alleged

failure, or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming, or the City determines that an unexcused "Uncured Event of Default" has occurred, City shall be entitled to exercise any and all of the following cumulative remedies:

- (1) The commencement of an action against Company at law for monetary damages.
- (2) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions, which as a matter of equity, are specifically enforceable.
- (3) The termination of the franchise granted herein.

(D) Remedies Not Exclusive. The rights and remedies of City and Company set forth in this Ordinance 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 a party of any one or more of such remedies shall not preclude the exercise by such party, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Ordinance, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Ordinance.

(E) Termination. The franchise granted herein may be terminated only in accordance with the provisions of Section XIII (C). City shall notify Company in writing at least thirty (30) business days in advance of the City Council meeting at which the questions of termination shall be considered, and Company shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Company may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Company of the City Council's decision terminating the franchise granted herein, the effective date of such termination shall be either when such appeal is withdrawn or a court order upholding the termination becomes final and unappealable. If no appeal is filed, the effective date of such termination shall be the thirtieth (30th) day following the date of the final termination decision of the City Council. Until the termination becomes effective, the provisions of this Ordinance shall remain in effect for all purposes.

#### **SECTION XIV. Successors and Assigns**

Company's rights under this Ordinance shall not be assigned or transferred without the written consent of the City, which consent shall not be unreasonably withheld; provided, however, that Company may assign its rights under this Ordinance to a parent, subsidiary, affiliate or successor entity without such consent, so long as such parent, subsidiary, affiliate or successor (i) assumes all obligations of Company hereunder, and (ii) is bound to the same extent as Company hereunder. Company shall give the City sixty (60) days prior written notice of any assignment to a

parent, subsidiary, affiliate or successor entity. Any required consent shall be expressed by an ordinance that fully recites the terms and conditions, if any, upon which such consent is given. Any assignment or transfer effected prior to the City's approval thereof, if required, shall authorize the City to treat such assignment or transfer as an Uncured Event of Default and immediately implement the provisions of Section XIII, including the right to terminate the franchise granted herein.

#### **SECTION XV. Notices**

Any notice required or permitted to be delivered hereunder shall be deemed received if: (i) delivered in person to the applicable address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the applicable address set forth below; or (iii) delivered to such party by courier receipted delivery to the applicable address set forth below. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is deemed received by the other party as provided above, the last address of such party designated for notice shall remain such party's address for notice.

If intended for the City:  
City of Lavon, Texas  
Attention: City Administrator  
120 School Road  
Lavon, Texas 75166

With copy to:

Messer, Fort & McDonald, PLLC  
Attn: Wm. Andrew Messer  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

If intended for the Company: SiEnergy, L.P.  
Attention: Chief Executive Officer  
3 Lakeway Centre Court, Suite 110  
Austin, Texas 78734

#### **SECTION XVI. Severability: Amendment: Ordinance Controlling**

It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. Both the Company and the City expressly recognize that this Ordinance creates a binding and enforceable contract between them, which contract may not be amended without written consent of both the Company and the City. Should any inconsistency or conflict exist now or in the future between the provisions of this Ordinance and the City's charter or another ordinance or ordinances, then the provisions of this Ordinance shall control to the extent of such inconsistency

or conflict to the extent not prohibited by law.

#### **SECTION XVII. Governing Law**

This Ordinance shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Exclusive venue for any action concerning this Ordinance, the transactions contemplated hereby, or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

#### **SECTION XVIII. No Waiver**

Either City or Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.


#### **SECTION XIX. Paragraph Headings: Construction**

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 and several 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.

#### **SECTION XX. Acceptance: Effective Date**

To accept the franchise granted herein, the Company must evidence its written acceptance of the terms and conditions of this Ordinance by executing and delivering to the City, within thirty (30) days after the City provides written notice to Company of the final adoption of this Ordinance by the City, a letter in the form of Exhibit A attached hereto and incorporated herein. Upon and subject to such written acceptance, this Ordinance shall become effective as of the first day of the calendar month that is not less than sixty (60) days after the final adoption of this Ordinance by the City (such date being the "Effective Date").

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
LAVON, TEXAS, THIS THE 6 DAY OF August, 2019.**

  
Vicki Sanson, Mayor



ATTEST:

  
Kim Dobbs, City Administrator / City Secretary



**EXHIBIT A**

STATE OF TEXAS           §  
                                     §  
COUNTY OF COLLIN       §

WHEREAS, there was finally passed and approved on \_\_\_\_\_ Ordinance No. \_\_\_\_\_ granting SiEnergy Company, Inc., its successors and assigns, a franchise to furnish and deliver gas to the general public in the City of Lavon, Collin County, Texas, for the transporting, delivery and distribution of gas in, out of and through said municipality for all purposes, which is recorded in the Minutes of the City Council of said City; and

WHEREAS, Section XX of said ordinance provides as follows:

In order to accept this franchise, SiEnergy Company, Inc. must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by SiEnergy Company, Inc., the franchise ordinance shall be rendered null and void.

WHEREAS, it is the desire of SiEnergy Company, Inc., the holder of the rights, privileges and grants under the aforesaid franchise ordinance, to comply with the above-quoted provisions of Section 8 thereof.

NOW, THEREFORE, premises considered, SiEnergy Company, Inc., acting by and through its duly authorized officers, and within the time prescribed by Section 8 quoted above, does hereby agree to and accept the franchise granted to it by the above-described ordinance, in accordance with its terms, provisions, conditions and requirements and subject to the stipulations and agreements therein contained.

WITNESS THE EXECUTION HEREOF, on this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

SiEnergy Company, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS           §  
§  
COUNTY OF COLLIN       §

I, Kim Dobbs, City Administrator | City Secretary of the City of Lavon, Texas, do hereby certify that the attached Acceptance executed by SiEnergy Company, Inc. is a true and correct copy of a formal acceptance of a franchise ordinance finally passed and approved by said City on \_\_\_\_\_ and of record in the Minutes of the City;

OF WHICH, witness my official signature and the seal of said City on this the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Kim Dobbs  
City Administrator / City Secretary