

**CITY OF TIMPSON**  
**ORDINANCE NO. 2010-09-21-1**

**AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF TIMPSON, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TIMPSON:**

**Section 1. GRANT OF AUTHORITY.** Subject to the terms, conditions, and provisions of this ordinance, the right, privilege, and franchise is hereby granted to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, hereinafter called "Company", to construct, install, extend, remove, replace, abandon, operate, and maintain its facilities within the Public Rights-of-Way of the City of Timpson, Texas for the transportation, delivery, sale and distribution of natural gas within the corporate limits of the City of Timpson, as the same are now and as the same may from time to time be extended.

**Section 2. DEFINITIONS.**

- A. "City" shall mean the City of Timpson, Texas.
- B. "Company" shall mean CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, a Delaware Corporation, and shall not mean any of its affiliates and subsidiaries who shall have no right, privilege or franchise granted hereunder.
- C. "Facilities" shall mean pipes, pipelines, natural gas mains, laterals, feeders, regulators, meters, fixtures, connections and attachments and other instrumentalities and appurtenances, used in or incident to providing transportation, distribution, supply and sales of natural gas for heating, lighting, power and any other purposes for which natural gas may now or hereafter be used.
- D. "Public Rights-of-Way" shall mean the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.
- E. "Street" shall mean the surface and the space above and below any public street, road, highway, alley, bridge, sidewalk, or other public place or way.

**Section 3. TERM OF FRANCHISE.** This Franchise shall become effective on the Effective Date described in Section 21 and shall be in full force and effect for a term of 30 years.

**Section 4. CONSTRUCTION AND MAINTENANCE OF NATURAL GAS DISTRIBUTION SYSTEM.** All Facilities installed by Company shall be of sound material and good

quality, and shall be laid so that they will not interfere with the artificial drainage of the City or its underground fixtures, or with navigation in or the natural drainage of any stream. All Facilities shall be installed in accordance with applicable Federal, State and City regulations and in the absence of such regulations in accordance with accepted industry practice. Within the Public Rights-of-Way, the location and route of the Facilities by the Company shall be subject to the reasonable and proper regulation, direction and control of the City or the City official to whom such duties have been delegated. Such regulation shall include, but not be limited to, the right to require in writing to the extent provided in Section 13 the relocation of Company's Facilities at Company's cost within the Public Rights-of-Way of the City whenever such relocation shall be reasonably necessary to accommodate the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. The Company and the City shall work together to develop a procedure under which Company shall make available to the City maps showing the location of Company's Facilities within the corporate limits of the City.

**Section 5. STREETS TO BE RESTORED TO GOOD CONDITION.** Company and its contractors shall give City reasonable notice, of the dates, location, and nature of all work to be performed on its Facilities within the Public Rights-of-Way. This Franchise shall constitute a permit to perform all work on Company's Facilities within the Public Rights-of-Way and to park vehicles in the Streets and other Public Rights-of- Way when necessary for the installation, replacement, abandonment, operation, or maintenance of Company's Facilities. Company and contractors performing work for Company shall not be required to obtain any permits in addition to the Franchise or to pay any fee in addition to the franchise fee in order to perform work on Company's Facilities, or park within the Streets and other Public Rights-of-Way. Following completion of work in the Public Rights-of-Way, Company shall repair the affected Public Rights-of-Way as soon as possible, but in all cases Company shall comply with all City ordinances governing time periods and standards relating to excavating in the Public Rights-of-Way. No street, alley, highway, or public place shall be encumbered for a longer period than shall be necessary to execute the work.

**Section 6. QUALITY OF SERVICE.** The service furnished hereunder to the City and its inhabitants shall be in accordance with the quality of service rules of the Railroad Commission of Texas and all other applicable local, state and federal regulations. Company shall furnish the grade of service to its customers as provided by its rate schedules and shall maintain its system in reasonable operating condition during the continuance of this Franchise. An exception to this requirement is automatically in effect, but only for so long as is necessary, when caused by a shortage in materials, supplies and equipment beyond the control of the Company as a result of fires, strikes, riots, storms, floods and other casualties, governmental regulations, limitations and restrictions as to the use and availability of materials, supplies and equipment and as to the use of the services, and unforeseeable and unusual demands for service. In any of such events the Company shall do all things reasonably within its power to restore normal service as quickly as practicable.

**Section 7. PAYMENT TO THE CITY.** In consideration of the rights and privileges herein granted, the administration of the Franchise by the City, the temporary interference with the use of Public Rights-of-Way and cost and obligations undertaken by the City in relation thereto and in lieu of any license, charge, fee, street or alley rental or other character of charge for use and occupancy of the Streets, alleys, and public places of the City, and in lieu of any inspection fee, the Company agrees to pay to the City franchise fees in the amount and manner described herein.

Company agrees to pay to the City quarterly during the continuance of this Franchise a sum of money equal to five percent (5%) of the Company's gross receipts for the preceding calendar quarter received by the Company from the sale of gas within the corporate limits of the City plus seven cents (7¢) per Mcf for natural gas transported by Company for its Transport Customers during such quarter. "Transport Customer" means any person or entity for whom Company transports gas through the distribution system of Company within the corporate limits of City for consumption within the corporate limits of City. The franchise fees hereunder shall be calculated for the calendar quarters ending March 31, June 30, September 30, and December 31 and shall be payable on or before the fifteenth day of May, August, November, and February following the quarter for which payment is made, beginning with the first such date following the Effective Date of this Franchise and each August 15th, November 15th, February 15th, and May 15th thereafter; provided, however, the first such payment shall be prorated as necessary to reflect only those gross receipts received and transportation volumes delivered by Company after the Effective Date of this Franchise. In no event shall the Company be required to remit to the City franchise fee amounts that for any reason whatsoever are not fully recoverable from its customers. Upon receipt of the above amount of money, the City Secretary shall deliver to the Company a receipt for such amount. If any payment due date required herein falls on a weekend or bank holiday, payment shall be made on or before the close of business of the first working day after the payment due date.

**Section 8. ANNEXATIONS BY CITY.** This Franchise shall extend to and include any and all territory that is annexed by the City during the term of this Franchise. Within sixty (60) days from the receipt of notice from the City of any such annexation, the Company shall assure that any and all customers within such annexed territory are included and shown on its accounting system as being within the corporate limits of the City of Timpson. After such sixty (60) day period the payment provisions specified in Section 7 of this Franchise shall apply to gross receipts received by the Company from customers located within such annexed territory. Company shall true-up its map of City boundaries to the City's map on an annual basis.

**Section 9. NON-EXCLUSIVE FRANCHISE.** Nothing contained in this Franchise shall ever be construed as conferring upon the Company any exclusive rights or privileges of any nature whatsoever.

**Section 10. COMPLIANCE AND REMEDIES.** (a) In the event the Company by act or omission violates any material term, condition or provision of this Franchise, the City shall notify the Company in writing of such violation. Should the Company fail or refuse to correct any such violation within thirty (30) days from the date of City's notice, the City shall, upon written notification to the Company, have the right to terminate this agreement. Any such termination and cancellation shall be by ordinance adopted by City Council; provided, however, before any such ordinance is adopted, the Company must be given at least sixty (60) days' advance written notice. Such notice shall set forth the causes and reasons for the proposed termination and cancellation, shall advise the Company that it will be provided an opportunity to be heard by City Council regarding such proposed action before any such action is taken and shall set forth the time, date and place of the hearing.

(b) Other than its failure, refusal, or inability to pay its debts and obligations, including, specifically, the payments to the City required by this Franchise, the Company shall not be declared in default or be subject to any sanction under any provision of this Franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

(c) The rights and remedies of City and Company set forth herein shall be in addition to, and not in limitation of, any other rights and remedies provided at law or in equity and City's exercise of any particular remedy shall not constitute a waiver of its rights to exercise any other remedy.

**Section 11. RESERVE OF POWERS.** Except as otherwise provided in this Franchise, the City by the granting of this Franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers, claims and rights, now or hereafter vested in the City under the Constitution and statutes of the State of Texas and under the ordinances of the City of Timpson or other applicable law, to regulate public utilities within the City and to regulate the use of the Streets by the Company; and the Company by its acceptance of this Franchise agrees that, except as otherwise provided in this Franchise, all lawful powers and rights, whether regulatory or otherwise, as are or as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time and from time to time.

**SECTION 12. INDEMNITY. THE COMPANY, ITS SUCCESSORS AND ASSIGNS, SHALL PROTECT AND HOLD THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") HARMLESS AGAINST ANY AND ALL CLAIMS OR DEMANDS FOR DAMAGES TO ANY PERSON OR PROPERTY BY REASON OF THE CONSTRUCTION AND MAINTENANCE OF THE COMPANY'S NATURAL GAS DISTRIBUTION SYSTEM, OR IN ANY WAY GROWING OUT OF THE RIGHTS GRANTED BY THIS FRANCHISE, EITHER DIRECTLY OR INDIRECTLY, OR BY REASON OF ANY ACT, NEGLIGENCE OR NONFEASANCE OF THE COMPANY OR THE CONTRACTORS, AGENTS OR EMPLOYEES OF THE COMPANY OR ITS SUCCESSORS AND ASSIGNS, AND SHALL REFUND TO THE CITY ALL SUMS WHICH THE CITY MAY BE ADJUDGED TO PAY ON ANY SUCH CLAIM, OR WHICH MAY ARISE OR GROW OUT OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED OR BY THE ABUSE THEREOF, AND THE COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND ON ACCOUNT OF ALL DAMAGES, COSTS, EXPENSES, ACTIONS, AND CAUSES OF ACTION THAT MAY ACCRUE TO OR BE BROUGHT BY, A PERSON, PERSONS, COMPANY OR COMPANIES AT ANY TIME HEREAFTER BY REASON OF THE EXERCISE OF THE RIGHTS AND PRIVILEGES HEREBY GRANTED, OR OF THE ABUSE THEREOF.**

**Section 13. RELOCATION OF FACILITIES.** The Company shall, upon written request of the City, relocate its Facilities within Public Rights-of-Way at Company's own expense, exclusive of Facilities installed for service directly to City, whenever such shall be reasonably necessary on account of the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. City shall bear the costs of all relocations of Facilities installed for service directly to City and of any relocation of other Facilities requested by City for reasons other than the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by the City of City utility lines or drainage facilities.

**Section 14. GOVERNMENTAL FUNCTION.** All of the regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety, and welfare of the general public.

**Section 15. RECORDS AND REPORTS.** (a) Books of Account. The Company shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books of accounts and records shall be kept at the Company's principal office in Houston, Texas.

(b) Access by City. The City may conduct an audit or other inquiry or may pursue a cause of action in relation to the payment of the franchise fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than three (3) years before the commencement of such audit, inquiry, or pursuit of a cause of action. Each party shall bear its own costs of any such audit or inquiry. Upon receipt of a written request from the City, all books and records related to Company's operations under this Franchise shall be made available for inspection and copying no later than thirty (30) days from receipt of such request.

(c) Interest on Underpayments and Overpayments. (1) Amounts due to City for late payments shall include interest, compounded daily equal to the return on equity plus three percent (3%) granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City. (2) If the City identifies, as a result of a franchise fee compliance review, amounts owed by the Company from prior periods or prior underpayments, then the Company shall pay simple interest on such amounts equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City. Said interest shall be payable on such sums from the date the initial payment was due until it is paid and shall not be billed to customers. (3) Amounts due Company for past overpayments shall include simple interest equal to the return on equity granted to the Company in its most recent proceeding fixing rates applicable to customers within the corporate limits of the City; provided, however, if there is a change in the approved return on equity during the time period subject to the City's audit or inquiry, then for each time period during which there was an overpayment, the approved return on equity in effect during such time period shall be used in calculating interest under this subparagraph (c). Interest payable on such sums shall be credited to customers.

**Section 16. EASEMENT.** In consideration for the compensation set forth in Section 7, City agrees that if City sells, conveys, or surrenders possession of any portion of the Public Right-of-Way that is being used by Company pursuant to this Franchise, City, to the maximum extent of its right to do so, shall first grant Company an easement for such use and the sale, conveyance, or surrender of possession of the Public Right-of-Way shall be subject to the right and continued use of Company.

**Section 17. ORIGINAL JURISDICTION OVER RATES AND SERVICES.** Pursuant to Section 103.003 of the Gas Utility Regulatory Act, the City hereby elects to surrender to the Railroad Commission of Texas the City's exclusive original jurisdiction over the rates, operations, and services of the Company effective as of the Effective Date of this Franchise and for the term of this Franchise. Notwithstanding the above surrender of the City's exclusive original jurisdiction over the rates, operations, and services of the Company, such surrender shall not affect in any manner the City's rights and privileges pursuant to the provisions of the Gas Utility Regulatory Act as currently enacted, or as

amended, or in any successor legislation, or as otherwise provided at law for the City to both participate in any ratemaking proceeding at the Railroad Commission of Texas which affects the City's gas rates, and to recover from the Company any reasonable expenses incurred by the City in its participation in such a ratemaking proceeding as provided for in law.

**Section 18. ACCEPTANCE.** The Company shall, within thirty (30) days following the final passage and approval of this Franchise, file with the City Secretary of the City of Timpson a written statement signed in its name and behalf in the following form:

“To the Honorable Mayor: and City Council of the City of Timpson:

CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, its successors and assigns, hereby accepts the attached Franchise Ordinance and agrees to be bound by all of its terms and provisions.”

CENTERPOINT ENERGY RESOURCES CORP.,  
DBA CENTERPOINT ENERGY TEXAS GAS  
OPERATIONS

By: \_\_\_\_\_  
Richard A. Zapalac  
Regional Vice President – Texas

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**Section 19. SEVERABILITY.** If any provision, section, subsection, sentence, clause or phrase of this Franchise is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Franchise shall not be affected thereby, it being the intent the City of Timpson in adopting this Franchise that no portion hereof or provision hereof 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.

**Section 20. NOTICES.** Every notice, order, petition, documents or other direction or communication to be served upon the City or the Company shall be deemed sufficiently given if sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to:

CenterPoint Energy Resources Corp.  
Vice President Regulatory Relations  
PO Box 4567  
Houston, TX 77210-4567

With a copy to:

General Counsel, Gas Division  
PO Box 2628

Houston, TX 77252-2628

Every such communication to the City or the City Council shall be sent to the:

Mayor, City of Timpson  
Debra P. Smith  
Timpson, Texas 75975

With a Copy to:

City Manager Secretary  
Tanya Windham  
Timpson, Texas 75975

**Section 21. PASSAGE AND EFFECTIVE DATE.** This Franchise shall take effect and be in force from and after the first day of the month following thirty days after receipt by the City of Company's acceptance filed pursuant to Section 18 ("Effective Date").

**Section 22. REPEAL OF PREVIOUS ORDINANCES.** This Franchise replaces the Franchise agreement with the Company, dated April 27, 2000, granted by City of Timpson, Texas, Ordinance No. 2000-04-18 which ordinance is hereby repealed as of the Effective Date of this Franchise. Any claims of City or Company thereunder are hereby waived.

Read in full and passed and adopted at a regular meeting of the City Council of Timpson, Texas, on the 4 day of September, 2010, and approved by the Mayor.

APPROVED:

Debra P. Smith  
MAYOR OF THE CITY OF TIMPSON, TEXAS

ATTEST:

Tanya Windham  
CITY SECRETARY OF TIMPSON, TEXAS

