

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WAXAHACHIE GRANTING TO SIENERGY, L.P. A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF WAXAHACHIE, ELLIS COUNTY, TEXAS ("CITY"), FOR THE TRANSPORT, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH THE CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FRANCHISE FEE FOR THE USE OF THE CITY'S STREETS, ALLEYS, AND PUBLIC RIGHTS-OF-WAY; REQUIRING COMPLIANCE WITH ALL REGULATORY ORDINANCES OF THE CITY; AND PROVIDING FOR OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, Chapter 121 of the Texas Utilities Code authorizes municipalities to adopt ordinances that establish conditions for mapping, inventorying, locating, or relocating pipelines over, under, along, or across a public street or alley or private residential area in the boundaries of the municipality; and

WHEREAS, the City Council of the City of Waxahachie, Texas ("City Council") strives to promote orderly and safe development within the corporate limits of the City; and

WHEREAS, the City Council finds that a franchise agreement with SiEnergy, L.P., a Texas Limited Partnership (hereinafter referred to as the "Company") is in the best interest of the City and the health, safety, and welfare of the public.

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS:

Section 1. - Grant of Authority.

- (a) Subject to the reasonable and timely compliance by the Company with the provisions contained herein, the City hereby grants to the Company, its successors and assigns, consent to use and occupy the present and future Public Rights-of-Way (as hereinafter defined), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to deliver, transport, and distribute gas in, out of, and through the City and to sell gas to persons, firms, and corporations, including the general public, within the corporate limits of the City, as such limits may be amended from time to time during the term of this Ordinance (the "Franchise").
- (b) This Franchise is granted for a term of ten (10) years from and after the effective date of this Ordinance.
- (c) This Franchise covers the geographical area of the entire corporate limits of the City. The Company agrees that the corporate limits are subject to expansion or reduction by annexation and contraction of municipal boundaries and that the Company has no vested right to a specific area in terms of size or location. The Company hereby agrees to provide service to any and all areas that may be annexed by the City under the same terms and conditions of this Ordinance as if the annexed areas were now covered by this Ordinance. If the City approves any expansion or reduction of the corporate limits by annexation or contraction, the City will provide written notice to the Company. The Company must revise its payments due to any expansion or reduction by annexation or

contraction within a reasonable time after notice by the City, but no later than sixty (60) days after receipt of such notice.

- (d) This Franchise is granted subject to and in accordance with Article IX, Section 9.02 of the City's Charter.

Section 2. - Definitions.

For the 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 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) "Gross Revenues" means:
 - i. All revenues charged by the Company for the sale of gas, including compressed gas, within the City to all consumers within the City;
 - ii. All revenues charged by the Company for the transport of gas through the pipeline system of the Company within the City to consumers within the City regardless of the origination of the gas within the Company's system of lines; and
 - iii. The total cost of gas transported by the Company for Transport Customers (as hereinafter defined) through the pipeline system of the Company within the City.

Gross Revenues shall not be reduced by bad debts, unless and until such debts are actually charged off. Abandoned deposits shall be applied as an offset to bad debts for purposes of this Ordinance. No revenues shall be excluded from Gross Revenues unless such revenues are specifically excluded by this Ordinance.

- (b) "Public Rights-of-Way" means all of the public streets, alleys, highways, bridges, easements, drainage ways, and sidewalks of the City, as they now exist or may be hereafter constructed, reconstructed opened, laid out, expanded or extended within the present corporate limits of the City, or in such territory as may hereafter be added to, consolidated or annexed by the City.
- (c) "Transport Customer" means any person or entity for whom the Company transports gas through the pipeline system of the Company within the City to consumers.
- (d) "Emergencies" means any event which causes a life, health, and/or safety risk or an extenuating event which requires repairs to restore disrupted service to existing customers.

Section 3. - Conditions of Occupancy.

- (a) All occupancy and activities of the Company in the Public Rights-of-Way shall require prior written approval of the City and conform with all the applicable local codes and ordinances, as amended, including local infrastructure standards for design, construction and repair, as amended, and with

all other federal, state and local regulatory requirements as such may be adopted and amended from time to time, including but not limited to requirements regarding the acquisition of permits and the payment of fees therefor. Except in emergencies, before the Company shall be authorized or required to extend, repair, or relay its existing gas mains or street service lines, it shall file with the City's Director of Public Works a written statement showing the nature and character of the extensions to be made, obtain a permit for such work, and pay the required permit fees; provided, however, that the Company may make emergency repairs and replacements without any prior filing, but a written statement shall be filed promptly thereafter. In addition, the Company shall assess and report on the impact of its proposed construction on the City's environment. Such plans and reports may be reviewed by the City to ensure that, among other items, (i) aesthetic and good planning principles have been given due consideration, (ii) any adverse impacts on the environment have been minimized, and (iii) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with. Reasonable changes suggested by the City shall be incorporated into the Company's plans.

- (b) The Company shall, upon the written request of the City, relocate its facilities situated within the Public Rights-of-Way, at no expense to the City, when necessary to accommodate street construction or widening or other improvement projects by the City. When the Company is required by the City to remove or relocate its mains, laterals, and other facilities and the Company is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by the Company as a result of such removal or relocation and such reimbursement is required to be handled through the City, the Company's costs and expenses shall be included in any application by the City for reimbursement if the Company submits its cost and expense documentation to the City prior to the filing of the application. The City shall provide reasonable notice to the Company of the deadline for the Company to submit documentation of the costs and expenses incurred for such relocation to the City.
- (c) Following relocation, the Company shall, at its sole expense and according to the City's specifications, repair, clean up, and restore to their approximate original condition, all Public Rights-of-Way disturbed during the construction and/or repair of the Company's gas distribution system.
- (d) The Company shall at all times keep on file with the City a current map or set of maps of the Company's facilities within the City. Such maps shall indicate subdivision locations and locations of the Company's consumers. As extensions or modifications of facilities are made from time to time, the Company shall file with the City maps or plans showing those extensions or modifications so that the City will at all times have current and accurate maps and plans of the Company's facilities. In addition to showing the location of the Company's facilities and consumers, such maps shall also identify the depth and size of any buried facilities, as well as the type of cover overlaying those facilities. The Company shall furnish the City "as built" drawings not later than sixty (60) days after construction has been completed. Drawings shall be drawn to a scale of one inch (1") equals one hundred feet (100') using the standard format adopted by the City. State plane coordinates shall be shown for benchmarks, curb lines, and structures. The Company shall provide one (1) set of blue or black line "as built" drawings to the City and one (1) set of the maps on computer diskettes with G.I.S. data in an electronic/digital format designated by the City.
- (e) The Company shall provide, on a quarterly basis and at the same time that the quarterly payments and reports required in Section 9 are submitted, a comprehensive listing of its consumers on a subdivision basis. The location information shall also be shown on either a map or a subdivision plat

and may be combined with the maps required in subsection 3(d) above. The Company shall further cooperate with the City in determining the correct jurisdictional coding of all of the Company's consumers in the City and its environs.

- (f) The Company agrees to provide, at its sole cost, information requested by the City to assist in a determination of any changes in conditions, practices, or services provided by the Company through the use of the Public Rights-of-Way.
- (g) The Company agrees to establish and maintain a physical facility within the corporate limits of the City to expedite restoration of service to its consumers. This physical facility shall include permanently installed personnel and equipment necessary to restore service. Gas cannot be transmitted through lines to service customers until a physical facility within the City limits of Waxahachie, housing permanently installed personnel and tools necessary to restore service, is established and satisfactory evidence of the facility and personnel are provided to the City.

Section 4. - Regulations for Service.

- (a) In addition to the rates charged for gas supplied, the Company may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business, including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract for such service. All charges, rules, and regulations of the Company involving any consumer of gas within the City shall be subject to regulation, supervision, and approval by the City, as appropriate.
- (b) The Company shall have the right to contract with each consumer with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the Company's main in the Public Rights-of-Way to and throughout the consumer's premises.
- (c) The Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the Company's main to the consumer's meter where gas is measured by the Company. The consumer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the supply lines extending from the point of connection with the Company's consumer meter to the point of connection with consumer's house piping.

Section 5. - Main Extension.

The Company shall be required at its own expense to extend distribution mains in the Public Rights-of-Way up to one hundred (100) feet to a residential consumer. The Company shall not be required to extend transmission mains in the Public Rights-of-Way within the City or to make a tap on any transmission main within the City unless the Company agrees to such extension by a written agreement between the Company and a consumer.

Section 6. - Deposits.

The Company shall be entitled to require each and every consumer of gas, before gas service is commenced or reinstated, to satisfactorily establish credit pursuant to the Company's quality of service rules as may be in effect during the term of this Ordinance. If required, any deposit shall be retained and refunded in accordance with such quality of service rules and shall bear interest, as provided in Chapter 183 of the Texas Utilities Code, as such may be amended from time to time. Upon termination of service, the Company shall be entitled to apply any deposit, with accrued interest, to any indebtedness owed the Company by the consumer making the deposit.

Section 7. - Indemnity.

IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, THE COMPANY AGREES THAT THE CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND THE COMPANY DOES HEREBY RELEASE, AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ALL SUITS, ACTIONS, OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY DEATH, INJURIES TO, OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF, OR OCCASIONED BY THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE GAS DISTRIBUTION PLANT OR SYSTEM OF THE COMPANY, EXCEPT THAT THIS INDEMNITY AND HOLD HARMLESS AGREEMENT SHALL NOT APPLY TO ANY SITUATION WHEREIN THE CITY IS SOLELY LIABLE FOR THE ACTIONS, SUITS, OR CLAIMS OF INJURY OR DAMAGE BROUGHT AGAINST IT. IN THE EVENT THAT ANY ACTION, SUIT, OR PROCEEDING IS BROUGHT AGAINST THE CITY UPON ANY LIABILITY ARISING OUT OF THE CONSTRUCTION, OPERATIONS, OR MAINTENANCE OF THE COMPANY'S FACILITIES, THE CITY SHALL GIVE NOTICE IN WRITING TO THE COMPANY BY REGISTERED OR CERTIFIED MAIL. UPON RECEIPT OF SUCH NOTICE, THE COMPANY, AT ITS OWN EXPENSE, SHALL DEFEND SUCH ACTION AND TAKE ALL SUCH STEPS AS MAY BE NECESSARY OR PROPER TO PREVENT THE OBTAINING OF A JUDGMENT AGAINST THE CITY AND/OR TO SATISFY SAID JUDGMENT. THE CITY AGREES TO COOPERATE WITH THE COMPANY IN CONNECTION WITH SUCH DEFENSE.

Section 8. - Non-exclusive.

- (a) The rights, privileges, and the Franchise granted by this Ordinance are not to be considered exclusive, and the City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for the City and the inhabitants thereof. The City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City and the inhabitants thereof.
- (b) If the Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in the Dallas-Fort Worth metroplex, which municipal franchise ordinance determines that franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due the City under this Ordinance, then the franchise fee to be paid by the Company to the City pursuant to this

Ordinance may, at the sole election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to the City were the franchise fee provisions of that other franchise ordinance applied to this Ordinance.

Section 9. - Compensation.

- (a) In consideration of the rights granted by the City to the Company to use and occupy the Public Rights-of-Way for the conduct of its business, the Company, its successors and assigns, agree to pay to the City franchise fees in the amount and manner described herein. Such payments shall be made on a quarterly basis, on or before the twentieth (20th) day following the end of each calendar quarter. The franchise fee shall be a sum of money which shall be equivalent to five (5%) percent of the Company's quarterly Gross Revenues.
- (b) For franchise fee payments beginning on the effective date of this Ordinance, payment shall be made by wire transfer on or before the close of business on the payment due date. If any payment due date required herein falls on a weekend or declared bank holiday, payment shall be made by wire transfer on or before the close of business of the last working day prior to the payment due date. Payment shall be considered timely made if the Company requests the wire transfer by the wire transfer deadline of its bank on the payment due date.
- (c) At the time of each quarterly payment, the Company shall also submit to the City a sworn statement showing: (i) its Gross Revenues for the preceding calendar quarter upon which franchise fees are calculated, including the amount of revenues received by the Company for the transportation of gas; (ii) the coded identity of the Company's Transport Customers during the preceding calendar quarter; and (iii) the cost, volume, and transport fee of gas transported during the preceding calendar quarter for such Transport Customers, calculated in accordance with subsection 9(f) below. Upon request, the City shall have access at the Company's office to the actual identity of the Company's Transport Customers and their suppliers as long as such information shall remain confidential, and no copies of such information may be made nor shall the City have a right to custody or control of such information.
- (d) The aforesaid franchise fee payments shall not affect or reduce the Company's obligations with respect to the following: (i) the expenses associated with relocating pipelines and all other appurtenant equipment or facilities located in the Public Rights-of-Way; (ii) the payment of taxes or fees to the state; or (iii) the payment of general or special ad valorem taxes that the City is authorized to levy and impose upon real and personal property; or (iv) the expenses associated with restoring Public Rights-of-Way to their previous condition before the installation or repair of equipment or facilities. None of the aforementioned obligations of the City shall operate as credits or reductions to the amounts due by the Company to the City hereunder.
- (e) The payments by the Company under the provisions of this Ordinance are in lieu of any and all other and additional street rental charges or fees, for those streets owned or controlled by the City. However, the Company is required to obtain all appropriate permits for work in the Public Rights-of-Way and pay the appropriate fees therefor. Should the City not have the legal power to agree that the payment of the franchise fee shall be in lieu of street rental charges, then the City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy the Company's obligations, if any, to pay such rental charges.

- (f) The cost of gas transported by the Company for Transport Customers shall be determined as set forth in this paragraph. In the absence of documentary evidence to the contrary provided by the Company to the City, the cost of gas so transported shall be presumed to be equal to the total volume of gas transported for such Transport Customer times one hundred ten percent (110%) of the index of prices for large packages of gas per MMBtu published each month in *Inside FERC's Gas Market Report* in the table titled, "Delivered Spot-Gas Prices," for gas delivered at the Houston Ship Channel, Beaumont, Texas, or a mutually agreeable successor publication and index, for the period of time the transportation service is performed. If the Company submits documents to the City to indicate the actual cost of gas transported by the Company, the Company may remove therefrom any information that would disclose either the identity of the customer or other information deemed confidential by the Company, so long as such removal does not prevent the City from determining the monetary cost of the gas transported. The Company agrees to give the City, upon request, access to the confidential information so removed in order for the City to verify the accuracy of the information provided to the City under the provisions of this paragraph. The Company shall use all due diligence in collecting from Transport Customers any and all fees required by this Ordinance, but shall not be responsible for paying the fees to the City if the Company's Transport Customer refuses to pay; provided, however, that if the Company's Transport Customer refuses to pay the fee imposed on the cost of gas transported for such Transport Customer and remains delinquent in payment of such fee for a period of greater than thirty (30) days, the Company shall be responsible for the uncollected fee on any gas thereafter transported through the Public Rights-of-Way to the Company's Transport Customer, but in no event shall the Transport Customer be relieved of its obligation to reimburse the Company for any fees paid to the City.
- (g) Simultaneously with the filing of the Company's first rate case following the three (3)-year rate freeze as provided in this franchise agreement, the Company agrees to negotiate an annual rate adjustment mechanism which will allow for the review of its total cost of service, including its return on equity.

Section 10. - Accounting; Audit; Inspection.

- (a) The Company shall maintain, at its local office or principal place of business within the state, adequate books and records relating to the performance of its obligations under this Ordinance. The Company shall maintain separate records in a form sufficient to identify its investment, revenues, and expenses related to its performance under this Ordinance, intending thereby to separate the accounting records of its system in the City from its other systems. The records of the Company applicable to its performance under this Ordinance shall be made available for inspection by the City at any time during normal working hours.
- (b) The City may cause, upon reasonable notice, an audit to be made of the books and records of the Company relating to the Company's performance under this Ordinance or any portion of any of its other operations that may be allocated or charged to its operations in the City. The omission by the City to exercise its rights to any audit at any time shall not constitute a waiver of such right. In the event the City elects to exercise its right of audit, the City shall provide to the Company written notice of such election at least forty-eight (48) hours in advance of the time of such audit. The City shall retain an independent auditor of its selection to perform the audit. The Company shall make available to the auditor such personnel and records as the City may in its reasonable discretion request in order to complete such audit and shall make no charge to the City therefor. The Company

shall assist the City during any audit conducted under this Ordinance, including answering questions and providing any requested records or information within five (5) working days of having received a written request therefor. The cost of an audit pursuant to this provision shall be borne by the City, unless the audit reveals an underpayment of fees paid during the audit period in excess of three (3) percent, in which case the Company shall pay for the audit. In the event any overpayment is discovered, such overpayment will credit toward current and/or future payments owed, without interest.

- (c) Upon request by the City, but no less often than annually, the Company will prepare a statement of its estimate of the Company's Gross Revenues by revenue account for the period covered by the statement signed by an authorized representative of the Company, in such reasonable form and detail as the City may from time to time prescribe, but sufficient to show the source and method of calculation of the Company's Gross Revenues. The acceptance of any statement or payment shall not estop the City from asserting that the amount paid is not the amount due or from recovering any deficit, including interest, by any lawful proceeding.
- (d) Upon completion of the audit, the City shall make the audit report available to the Company and shall give the Company an opportunity to respond to the audit findings. If requested by either party, the City and the Company shall meet and attempt in good faith to resolve any disputed issues arising out of the audit report. In the event the Company shall be determined to have under-remitted the fee required by this Ordinance, the Company shall pay, in addition to the underpayments, interest on the underpayments at the rate of ten (10) percent per annum from the time of the underpayment until payment is made. Underpayment of fees by the Company may also subject the Company to penalties for noncompliance with this Ordinance. After reviewing the Company's response to the audit findings, the City shall make an initial determination as to whether the Company shall also be required to pay a penalty for noncompliance. The amount of the penalty, if any, shall not exceed ten (10) percent of the total underpayment. The City Council shall make the final determination of whether a penalty shall be required, and the amount of same.
- (e) If any of the records to be provided by the Company or to be made available by the Company are considered by the Company to be proprietary in nature or if such records are confidential under federal, state or local law and upon request by the Company, such information shall be treated by the City as confidential and shall be made available only to those persons who must have access to perform their duties on behalf of the City, including but not limited to the City Manager, the Finance Director, the City Attorney, and the members of the City Council. The City shall promptly notify company of any requests for public disclosure of such records under Chapter 552 of the Texas Government Code, and the Company shall have the sole responsibility to assert its claims regarding the proprietary or confidential nature of such records.

Section 11. - Reservation of Rights.

- (a) The City reserves the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of the Company's rates and services to ensure the rendering of efficient public service at reasonable rates, and the maintenance of the Company's property in good repair throughout the term of this Ordinance. The Company shall maintain on file with the City copies of its current tariffs, schedules of rates and charges, customer service provisions, and line extension policies. The Company shall notify the City of the identity of any

customer of the Company that changes from a tariffed rate to a contract rate within forty-five (45) days of such change.

- (b) In granting this Franchise, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City, and it is expressly provided that nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by the Company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the City as same now exist or as such limits may be extended from time to time hereafter.
- (c) In consideration of the City granting this Franchise, the Company agrees that it will not seek an increase of the rates or charges permitted to be charged to the Company's consumers for a period of three (3) years from the effective date of their first consumer within this Franchise.

Section 12. - Termination.

- (a) In addition to any rights set out elsewhere in this Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto in the event that the Company violates any material provision of this Ordinance or the Company becomes insolvent or is adjudged as bankrupt.
- (b) Upon failure of the Company to comply with the material terms of this Ordinance, the City may by ordinance terminate the Franchise in accordance with the procedures set forth in this section. Upon termination, all rights of the Company shall immediately be divested without further action by the City. If the City requires the Company to remove its facilities from the Public Rights-of-Way, the Company shall forthwith remove its structures or property from the Public Rights-of-Way and restore the Public Rights-of-Way to their approximate original condition. Upon failure to do so, the City may perform or commission the work and collect the cost thereof from the Company. Should the City perform or commission the removal of the Company's structures or property, the City shall be reimbursed by the Company for all expenses incurred by the City within thirty (30) days of receipt of the City's invoice. The City reserves the right to place a lien upon all facilities and property of the Company in the event the Company fails to submit payment.
- (c) Procedures for termination.
 - (i) The City shall give written notice to the Company of the existence of a material violation or failure to comply with this Ordinance. The Company shall have a period of thirty (30) days after receipt of such notice from the City in which to cease such violation and comply with the terms and provisions hereof. In the event the Company fails to cease such violation or to otherwise comply with the terms hereof, then the Franchise is subject to termination; provided, however, that if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed and such violations shall cease to exist, the Franchise will not be terminated. The City shall solely

determine whether the work to cure violations is pursued with reasonable diligence. If curative work is determined by the City as not being prosecuted with reasonable diligence, then the Franchise may be terminated by the City.

- (ii) Termination shall be declared only by a written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply.
 - (iii) The City, after a public meeting, and upon finding a material violation or failure to comply, may in its sole discretion terminate the Franchise or excuse the violation or failure to comply upon a showing by the Company of mitigating circumstances or upon a showing of good cause for said violation or failure to comply as may be determined by the City Council in its sole discretion. The failure of the Company to comply with the terms of this Franchise after due notice and hearing and the providing of adequate time for the Company to comply with said terms, shall entitle the City to compel compliance by suit in any court of competent jurisdiction and upon culmination of the suit, if the Company still fails to comply with the terms of this Ordinance, the City may compel compliance upon penalty of forfeiture thereof, with the City having an option to purchase the Company's property located in the City at reasonable fair value.
- (d) In the event the City purchases the Company's property under penalty of forfeiture and the City and the Company cannot agree upon the reasonable fair value of the property, then the reasonable fair value of the Company's property shall be established by a majority vote of three appraisers with one appraiser selected by the Company, one appraiser selected by City, and one appraiser selected by the other two appraisers. If the two appraisers are unable to agree upon the third appraiser, then the third appraiser shall be selected by the City. The Company further agrees that if for any reason the Company fails to pay the franchise fee as provided in this Ordinance within thirty (30) days following written notice from the City that the Company has failed to make such payment, such failure shall be sufficient to permit the City at its sole option to terminate the Franchise without court action.

Section 13. - Renegotiation.

- (a) Should technological, market-driven, regulatory, or similar changes occur in the natural gas industry which create classes or categories of usage different from those enumerated in Section 1 of this Ordinance, or should the Company alter the means, methods, or types of uses of the Public Rights-of-Way, or should the City reasonably believe that the franchise fee provisions should be amended in order to not impair the City's ability to receive an adequate franchise fees pursuant to this Ordinance, then the City may initiate the renegotiation of the franchise fee provisions of this Ordinance.
- (b) If, during the term of the Franchise granted hereunder, the nature of competition in the provision of gas utility services in the City changes to the extent that the Company reasonably believes that the franchise fee provisions of this Ordinance cause the Company to be placed at a competitive disadvantage in the conduct of its business within the City, then the Company may request the renegotiation of the franchise fee provisions of this Ordinance.

- (c) Should either the City or the Company request a change in the franchise fee provisions of this Ordinance, both parties agree to enter into a good faith negotiation. "Good faith," for the purpose of this Ordinance, shall mean an objective, diligent, timely, and responsible discourse on the issue(s) involved and a resolute attempt to settle said issue(s). Should, as a result of renegotiation, the City and the Company agree to a change in a provision of this Ordinance, the change shall become effective upon passage of an ordinance by the City in accordance with the City's Charter and acceptance of the amendment by the Company. Both parties agree that passage and acceptance will be a mandatory act following negotiation and agreement. The Company agrees to provide any and all information requested by the City to assist in a determination of any changes in conditions, practices, or services provided by the Company through the use of the Public Rights-of-Way.

Section 14. - Regulatory Expenses.

The Company agrees that the City may, at any time during the term of this Ordinance, employ at the sole expense of the Company expert assistance and advice in determining fair, just, and reasonable rates to be charged by the Company to its consumers in the City, and in determining the extent to which the Company is complying with the terms and conditions of this Ordinance. The Company agrees to pay reasonable expenses in connection therewith or reimburse the City for same, which expense the Company shall be entitled to recover through its rates and tariffs.

Section 15. - Acceptance.

In order to accept this Franchise, the Company must file its written acceptance of this Ordinance within forty-five (45) days after its final adoption by the City, in a form acceptable to the City Attorney. If this Ordinance is not accepted by the Company within forty-five (45) days, the Ordinance shall be rendered null and void.

Section 16. - Assignment or Transfer.

The Company may not assign or transfer this Franchise, and the rights granted thereby, to any entity without the prior written consent and approval of the City by formal resolution, which consent and approval shall not be unreasonably withheld.

Section 17. 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:

SiEnergy, L.P.
June M. Dively, Chief Executive Officer
3 Lakeway Centre Court, Suite 110
Lakeway, TX 78734

Every such communication to the City shall be sent to:

The City of Waxahachie, Texas
ATTN: City Manager
401 S. Rogers St.
Waxahachie, Texas 75165

Section 18. Severability.

If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent the City Council, in adopting this Ordinance, 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 19. Repeal.

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of such conflict.

Section 20. Governmental Function.

All of the regulations and activities required by this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public.

Section 21. Effective date.

Provided and conditioned upon the City's receipt of the Company's acceptance as provided for in Section 15 herein, this Ordinance shall become effective sixty (60) days after its adoption by the City Council;

Section 22. Conditions Precedent to Adoption Met

This Ordinance granting a public utility franchise has been read at two regular meetings of the City Council called in accordance with Chapter 551 of the Texas Government Code. Final action did not occur until after the second reading, which occurred at least thirty (30) days after the first reading. The caption of the Ordinance and a statement indicating where and how to obtain copies of the full Ordinance were published on the City's official website or other electronic media that was readily accessible to the public within ten (10) days after the first reading of the Ordinance.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS, this
____ day of _____, 2018.

The City of Waxahachie, Texas

Kevin Strength, Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

Robert Brown, City Attorney