

ORDINANCE NO. 815

AN ORDINANCE OF THE CITY OF MANOR, TEXAS, AMENDING ORDINANCE 492 GRANTING TO SIENERGY, L.P., A TEXAS LIMITED PARTNERSHIP, A FRANCHISE TO, AMONG OTHER THINGS, FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF MANOR, TRAVIS COUNTY, TEXAS, TO AMEND THE DEFINITION OF PUBLIC RIGHT-OF-WAY; MODIFY THE INDEMNIFICATION SECTION; REQUIRING COMPLIANCE WITH ALL REGULATORY ORDINANCES OF THE CITY; PROVIDING FOR OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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, Ordinance No. 492 was adopted by the City of Manor, Texas City Council (“City Council”) on November 1, 2017 (the “Franchise Ordinance”); and

WHEREAS, the City of Manor, Texas (“City”) strives to promote orderly and safe development within the territorial limits of the City; and

WHEREAS, the City Council finds that the franchise agreement with SíEnergy, L.P., a Texas Limited Partnership, (hereinafter referred to as “SíEnergy” or “the Company”) is in the best interest of the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City Council has determined that the Franchise Ordinance should be amended.

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

Section 1. Findings. The forgoing recitals are incorporated into this Ordinance as true and correct findings of fact.

Section 2. Amendment of Franchise Ordinance. In consideration of the premises and such other lawful consideration, the receipt and sufficiency of which each of the parties hereto acknowledges, the parties agree as follows:

1. Amendment of Section 2.0 Definitions. Section 2.0 of the Franchise Ordinance is hereby amended as follows:

The definition for “Public right-of-way” is hereby amended in its entirety to read as follows:

"Public right-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, opened, laid out or extended within the present limits of the city, or in such territory as may hereafter be added to, consolidated or annexed to the city. The term also includes any private residential area, alley or future public right-of-way shown on a Concept Plan, Preliminary Plat, Construction Plan, Final Plat, Short Form Final Plat, or Amended Plat that has been formally submitted by a property owner or property owner's representative to the City for review or approval for use as a public right-of-way."

2. Amendment of Section 7.0 Indemnity. Section 7.0 of the Franchise Ordinance is amended in its entirety to read as follows:

"IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, COMPANY AGREES THAT CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND COMPANY DOES HEREBY RELEASE, AGREE TO INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, EMPLOYEES, AGENTS, AND CONTRACTORS 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, MAINTENANCE, INSTALLATION, REPAIR, OR FAILURE OF THE GAS DISTRIBUTION PLANT OR SYSTEM OF COMPANY, INCLUDING ANY SUCH CLAIMS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, FAULT, OR OTHER ACT OR OMISSION OF THE COMPANY, ITS EMPLOYEES, AGENTS, OR CONTRACTORS, EXCEPT THAT THIS INDEMNITY AND HOLD HARMLESS AGREEMENT SHALL NOT APPLY TO ANY SITUATION WHEREIN CITY IS SOLELY LIABLE FOR THE ACTIONS, SUITS, OR CLAIMS OF INJURY OR DAMAGE BROUGHT AGAINST IT. HOWEVER, IN ANY SITUATION OF CONCURRENT NEGLIGENCE OF THE CITY AND THE COMPANY, THE COMPANY'S DUTY TO INDEMNIFY SHALL APPLY TO THE EXTENT OF THE COMPANY'S FAULT. IN THE EVENT THAT ANY ACTION, SUIT, OR PROCEEDING IS BROUGHT AGAINST CITY UPON ANY LIABILITY ARISING OUT OF THE CONSTRUCTION, OPERATIONS, OR MAINTENANCE OF THE COMPANY'S FACILITIES, CITY SHALL GIVE NOTICE IN WRITING TO COMPANY BY REGISTERED OR CERTIFIED MAIL. UPON RECEIPT OF SUCH NOTICE, THE COMPANY, AT ITS OWN EXPENSE, SHALL IMMEDIATELY DEFEND SUCH ACTION, AND PAY ALL COSTS, EXPENSES, AND ATTORNEY'S FEES RELATED TO SUCH DEFENSE, 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. CITY AGREES TO COOPERATE WITH COMPANY IN CONNECTION WITH SUCH DEFENSE."

3. Amendment of Section 15.0 Acceptance. Section 15.0 of the Franchise Ordinance is hereby amended to add the following paragraph to read as follows:

“In order to accept an amendment to the franchise, SiEnergy must file its written acceptance of the amendment to the franchise ordinance within five (5) days after its final adoption by the city, in a form acceptable to the City Attorney’s office. If this amendment to the Franchise Ordinance is not accepted by SiEnergy within five (5) days, the Franchise Ordinance shall be rendered null and void.”

4.0 Amendment of Section 18.0 No Israel Boycott. Section 18.0 of the Franchise Ordinance is hereby amended in its entirety to read as follows:

“Verifications of Statutory Representations and Covenants. Company makes the following representations and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended (the “Government Code”), in entering into this Agreement. As used in such verifications, “affiliate” means an entity that controls, is controlled by, or is under common control with the Owner within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Fifth Amendment shall survive until barred by the applicable statute of limitations, and shall not be liquidated or otherwise limited by any provision of this Fifth Amendment, notwithstanding anything in this Fifth Amendment to the contrary.

(a) Not a Sanctioned Company. Company represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Government Code. The foregoing representation excludes the Owner and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(b) No Boycott of Israel. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Fifth Amendment. As used in the foregoing verification, “boycott Israel” has the meaning provided in Section 2271.001, Government Code.

(c) No Discrimination Against Firearm Entities. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Fifth Amendment. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning provided in Section 2274.001(3), Government Code.

(d) No Boycott of Energy Companies. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not

boycott energy companies and will not boycott energy companies during the term of this Fifth Amendment. As used in the foregoing verification, "boycott energy companies" has the meaning provided in Section 2276.001(1), Government Code."

Section 3. Governmental Function.

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

Section 4. Repealing All Ordinances in Conflict. All other ordinances or parts of ordinances governing the Franchise in force when the provisions of this amending ordinance become effective which are inconsistent with or in conflict with the terms and provisions contained herein are amended only to the extent of such inconsistency or conflict. In the event of a conflict or inconsistency between this ordinance and another ordinance of the City, this ordinance shall control.

Section 5. Savings Clause. This City Council of the City of Manor, Texas does hereby declares that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that, in such event that it would have passed and ordained any and all remaining portions of this ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declare that its intent is to make no portion of this Ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

Section 5. Compliance With Open Meetings Act. It is hereby officially found and determined that the meeting at which this ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

Section 6. Effective Date. This Ordinance shall take effect upon its adoption by the City Council and publication as required by the Local Government Code, and further conditional upon receipt by the city of company's acceptance, as provided in section 3. herein, and upon all other conditions as provided by the City Charter, as applicable.

PASSED AND APPROVED on this the ____ day of _____, 20____.

THE CITY OF MANOR, TEXAS

ATTEST:

Dr. Christopher Harvey, Mayor

Lluvia T. Almaraz, City Secretary

