

ORDINANCE NO. 113

AN ORDINANCE GRANTING ENTEX, A DIVISION OF ARKLA, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE FOR A PERIOD OF TWENTY-FIVE (25) YEARS TO CONSTRUCT, LAY, MAINTAIN, OPERATE, EXTEND, REMOVE, REPLACE AND REPAIR A SYSTEM OF PIPELINES, GAS MAINS, LATERALS AND ATTACHMENTS AND ALL DESIRABLE INSTRUMENTALITIES IN, UNDER, OVER, ACROSS AND ALONG ANY AND ALL STREETS, AVENUES, PARKWAYS, SQUARES, ALLEYS AND ALL OTHER PUBLIC PLACES IN THE CITY OF BEVIL OAKS, JEFFERSON COUNTY, TEXAS, FOR THE PURPOSE OF TRANSPORTING, DISTRIBUTING, SUPPLYING AND SELLING GAS (NATURAL AND/OR ARTIFICIAL AND/OR MIXED) FOR HEATING, LIGHTING, POWER, AND FOR ALL OTHER PURPOSES FOR WHICH GAS MAY BE USED, TO THE MUNICIPALITY OF SAID CITY OF BEVIL OAKS, JEFFERSON COUNTY, TEXAS AND ITS INHABITANTS AND OTHERS; PROVIDING CONDITIONS CONTROLLING THE USE OF PUBLIC THOROUGHFARES AND EXTENSIONS THEREIN; ESTABLISHING STANDARDS OF SERVICE; PROVIDING FOR PAYMENT OF TWO PERCENT (2%) OF THE GROSS RECEIPTS FROM THE SALE OF GAS TO RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS WITHIN THE CITY OF BEVIL OAKS; PROVIDING FOR ACCEPTANCE; PROVIDING A SEVERABILITY CLAUSE; MAKING MISCELLANEOUS PROVISIONS; AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEVIL OAKS, TEXAS:**

**SECTION 1.** The City of Bevil Oaks, Jefferson County, Texas (herein called "Grantor") does hereby grant unto Entex, a division of Arkla, Inc., its successors and assigns (herein called "Grantee") the right, privilege, and franchise to construct, lay, maintain, operate, use, extend, remove, replace and repair in, under, over, across, and along any and all of the present and future streets, avenues, parkways, squares, alleys, thoroughfares, roads, highways, sidewalks, viaducts, bridges, streams, public grounds, public properties, and other public places in the City of Bevil Oaks, and in all tracts, territories, and areas hereafter annexed to or acquired by and placed within the corporate boundaries of said municipality, a system, of pipes, pipelines, gas mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, and attachments and other desirable instrumentalities and appurtenances necessary or proper, for the purpose of transporting, distributing, supplying and selling gas (natural and/or artificial and/or mixed) for heating, lighting, power and for any other purpose for which gas may now or hereafter be used, in and to said municipality and its inhabitants or any other person or persons within or without the corporate boundaries of said municipality.

**SECTION 2.** Grantee's property shall be so constructed and maintained as not to interfere unreasonably with traffic over the public thoroughfares of said municipality and the same shall be laid in accordance with the lines, grades, and conditions established by Grantor.

**SECTION 3.** Grantee shall not be required to run or extend any main, service line or other part of its distributing system to any person, firm, association, individual, or corporation applying for or demanding gas or gas service and/or additional gas or gas service unless the probable expected use of such gas or gas service by such person, firm, association, individual or corporation will provide to Grantee a reasonable and compensatory return or income on the value of the additional main, service line and other

equipment which must necessarily be installed to comply with such application or demand; provided, however, in no event shall Grantee be required to run or extend any main, service line, or other part of this distributing system a distance exceeding one hundred (100) feet of pipe of a maximum diameter of two (2) inches for each additional customer.

**SECTION 4.** The service furnished hereunder to said Grantor and its inhabitants shall be first-class in all respects considering all circumstances and shall be subject to such reasonable rules and regulations as Grantee may make from time to time. Grantee may require reasonable security for the payment of its bills.

**SECTION 5.** In consideration of the rights and privileges herein granted, Grantee agrees to pay to the Grantor annually during the continuance of this franchise a sum of money equal to two percent (2%) of the gross receipts received by the Grantee after the effective date of this franchise from the sale of gas to residential and small commercial customers at residential and small commercial rates within the corporate limits of the Grantor for the preceding 12 month period ending September 30th. Payments hereunder shall be calculated on the basis of gross receipts from the sale of gas delivered to residential and small commercial customers at residential and small commercial rates within the corporate limits of Grantor during the 12 month period ending September 30th of the year on account of which the payment is made and shall be payable on or before the first day of November of the year for which payment is made, beginning with the first day of November next following the effective date of this franchise and each and every year thereafter. Upon receipt of the above amount of money, the City Secretary shall deliver to Grantee a receipt for such amount.

The consideration hereinabove set forth shall be paid and received in lieu of any license, charge, fee, street or alley rental or other character of charge for use and occupancy for the streets, alleys and public places within the corporate limits of Grantor, and in lieu of any pipe tax or inspection fee or tax, but shall not in anywise increase or diminish Grantee's obligation to pay the Grantor ad valorem taxes or anywise interfere with collection thereof.

Any special taxes, rentals or other charges accruing after the effective date of this franchise, under the terms of any preexisting ordinance or imposed upon Grantee by subsequent action of the Grantor shall, when paid to the Grantor, be applied as a credit to the amount owed to the Grantor under the terms of this franchise agreement.

**SECTION 6.** Grantee shall hold Grantor harmless from all expenses or liability for any unlawful or negligent act of Grantee hereunder.

**SECTION 7.** Nothing herein contained shall ever be held or considered as conferring upon Grantee and its successors and assigns any exclusive rights or privileges of any nature whatsoever.

**SECTION 8.** All ordinances and parts of ordinances in conflict herewith are hereby repealed. Grantor and Grantee hereby terminate that certain Street Rental Contract dated the 21st day of November, 1963 and said contract shall be without force or effect as of the date of this ordinance.

**SECTION 9.** This franchise shall take effect and continue and remain in effect for a period of twenty-five (25) years from and after the date of passage of this ordinance, provided Grantee files a written acceptance of this franchise within sixty (60) days after final passage of this ordinance.

**SECTION 10.** 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 of the Grantor in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provisions or regulation, and to this end, all provisions of this ordinance are declared to be severable.

Read in full and passed on first reading at a regular meeting of the City Council of the City of Bevil Oaks, Texas, on the 16<sup>th</sup> day of November, 1993.

ATTESTED AND AUTHENTICATED:

APPROVED AND AUTHENTICATED:

Linda Davis  
CITY SECRETARY OF THE  
CITY OF BEVIL OAKS, TEXAS

Randy Gallie  
MAYOR OF THE  
CITY OF BEVIL OAKS, TEXAS

THE STATE OF TEXAS §  
COUNTY OF JEFFERSON §

BEFORE ME, the undersigned authority, a Notary Public in and for the State and County aforesaid,  
on this day personally appeared Linda Davis known to me to be a credible person, who upon his  
oath deposes and says:

I am the City Secretary of the City of Bevil Oaks, Texas, a municipality incorporated under the provisions of Chapter 11, Title 28, of the Revised Civil Statutes of Texas (1925), and have acted in such capacity during the period of time covered by this affidavit. On the 16<sup>th</sup> day of November 1993, meeting of said Board of Aldermen, enacted as ordinance (NO.     , Book     , Pages 1 through 5) granting Entex a division of Arkla, Inc., its successors and assigns, the right, privilege and franchise for a period of twenty five (25) years to construct, lay, maintain, operate, extend, remove, replace and repair a system of pipe lines, gas mains, laterals and attachments and all desirable instrumentalities in, under over, across and along any and all streets, avenues, parkways, squares, alleys and all other public places in the City of Bevil Oaks, Jefferson County, Texas, for the purpose of transporting, distributing, supplying and selling gas (natural and/or artificial and/or mixed) for heating, lighting, power and for all other purposes for which gas may be used, to the municipality of said City of Bevil Oaks, Texas, and its inhabitants and others; providing a severability clause; making miscellaneous provisions; and repealing all ordinances in conflict. After the enactment of the above-described ordinance the full text thereof was published by posting the same for at least ten days (between the 18<sup>th</sup> day of November, 1993, and the 28<sup>th</sup> day of November 1993) in the following three public places in said City of Bevil Oaks:

1. Bulletin Board at Civic Center 7390 Sweetgum
2. V.C. Hall Bulletin Board
3. Bevil Oaks Grocery Bulletin Board

Linda Davis  
City Secretary  
City of Bevil Oaks, Texas

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public by  
Linda Davis, on this the 16<sup>th</sup> day of November, 1993, to certify which witness my  
hand and seal of office.

 MARGRITHA A. FOSTER  
NOTARY PUBLIC  
State of Texas  
Comm. Exp. 04-22-94  
Margritha A. Foster  
Notary Public in and for  
Jefferson County, Texas

THE STATE OF TEXAS  
COUNTY OF JEFFERSON

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I, Linda Davis, the duly appointed, qualified and acting City Secretary of the City of Bevil Oaks, Texas, hereby certify; that the above and foregoing ordinance of the City of Bevil Oaks was passed and adopted at a regular meeting of the City Council of the City of Bevil Oaks held on the 16<sup>th</sup> day of November, 1993; that written notice of the date, hour, place and subject of said meeting was posted for at least 72 hours preceding the scheduled time of said meeting on a bulletin board located in a place in the City Hall which is convenient and readily accessible to the general public at all times; that the Mayor, Randy Gallier and Aldermen Lorraine Turk, Kathie Tew, C. K. Netterville, Karrel Waller and Linda Davis, were present at said meeting and acted as the City Council throughout; that said ordinance has been approved by the Mayor and is duly attested by the City Secretary; and that the same has been duly engrossed and enrolled in the records of the City of Bevil Oaks, Texas.

EXECUTED under my hand and the official seal of the City of Bevil Oaks, Texas, at said City, this 16 day of November, 1993.

Linda Davis  
CITY SECRETARY OF THE  
CITY OF BEVIL OAKS, TEXAS

(SEAL)

**TO THE CITY OF BEVIL OAKS, TEXAS:**

Entex, a division of Arkla, Inc., for itself, its successors and assigns, hereby accepts the above and foregoing ordinance and agrees to be bound by all of its terms and provisions.

ENTEX, a division of ARKLA, INC.

By [Signature]  
Vice President

DATED the 6 day of December, 1993.

**NOTE TO THE CITY SECRETARY:**

Please do not complete the certificate below until an officer of Entex, a division of Arkla, Inc., has executed the Acceptance above.

THE STATE OF TEXAS  
COUNTY OF JEFFERSON

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I, the duly appointed, qualified and acting City Secretary of the City of Bevil Oaks, Texas, hereby certify that the above and foregoing Acceptance was received and filed in the office of the City Secretary of the City of Bevil Oaks on the 18 day of December, 1993.

EXECUTED under my hand and the official seal of the City of Bevil Oaks, Texas, at said City, this 18 day of December, 1993.

Linda Davis  
CITY SECRETARY OF THE  
CITY OF BEVIL OAKS, TEXAS

(SEAL)