

City of Magnolia

P.O. BOX 396
MONTGOMERY COUNTY
MAGNOLIA, TEXAS 77353-0396
281-356-2266
Fax 281-259-7811



ORDINANCE NO. 2006-092

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS APPROVING THE SALE OF THE NATURAL GAS SYSTEM TO HUGHES NATURAL GAS, INC., AND THE GRANTING OF A FRANCHISE AGREEMENT TO HUGHES NATURAL GAS, INC., A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF MAGNOLIA, MONTGOMERY COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF NATURAL GAS IN, OUT OF, AND THROUGH SAID CITY.

RECITALS

WHEREAS, attached to this Ordinance as Exhibit "1" and made a part hereof is the Franchise Agreement between the City and HNG; and

WHEREAS the City of Magnolia, a political subdivision of the State of Texas ("City") and Hughes Natural Gas, Inc., a Texas corporation ("HNG") wishes to enter into a Franchise Agreement allowing HNG to provide natural gas services within the Territory (as defined in the attached Franchise Agreement) and subject to the terms and conditions of the attached Franchise Agreement;

WHEREAS, the City Council of the City of Magnolia, Texas seeks to fully assure that the Territory of the City is supplied with efficient gas services;

WHEREAS, HNG has agreed to purchase from the City and the City has agreed to sell to HNG substantially all of the tangible and intangible assets comprising the City of Magnolia Municipal Gas System as more fully described in the attached Franchise Agreement;

WHEREAS, the selling of the City Natural Gas system was authorized by the registered voters of the City at a lawful and properly called election on September 10, 2005.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS, THAT:

Section 1. All of the matters and facts set out in the preamble hereof are true and correct.

Section 2. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Texas Government Code, Chapter 551 and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 3. The City Council of the City hereby specifically gives its written consent to the granting of a Franchise Agreement to HNG and does grant the Franchise Agreement that is attached hereto as Exhibit "1".

Section 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed. This Franchise is specifically made subject to all right of way ordinances of the City.

Section 5. The City Secretary is directed to cause a certified copy of this Ordinance granting the Franchise to be attached as Exhibit "B" to the Asset Purchase Agreement between the City and Hughes Natural Gas, Inc.

PASSED AND ADOPTED by a vote of 5 "ayes" in favor and 0 "noes" against on this, the 13TH day of June 2006.

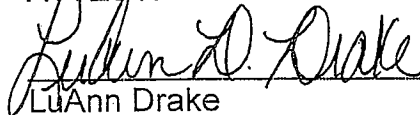
CITY OF MAGNOLIA

By: 

Name: Jimmy W. Thornton, Jr.

Title: Mayor

ATTEST:



LuAnn Drake
Acting City Secretary

ASSIGNMENT OF THE CITY OF MAGNOLIA BUNDLED
GAS SERVICE AGREEMENT BETWEEN THE CITY OF MAGNOLIA AND
MILLENNIUM MIDSTREAM ENERGY, LLC

STATE OF TEXAS

§

COUNTY OF MONTGOMERY

§

§

The City of Magnolia, Montgomery County, Texas (the "City"), is a political subdivision of the State of Texas, (herein called "Assignor"), hereby assigns all the rights, obligations, title and interests given to Millennium Midstream Energy, LLC in and to that certain Agreement listed below (the "Agreement"):

The City of Magnolia Bundled Gas Service Agreement between the City of Magnolia and CLECO Energy LLC (CLECO) a Texas limited liability company dated as of the 1st Day of January 2002 and thereafter assigned to Millennium Midstream Energy, LLC.

to Hughes Natural Gas, Inc., a Texas Corporation (herein called "Assignee").

By execution of this Assignment, Assignee hereby accepts such assignment and assumes all of the Assignor's rights, obligations, title, and interests in and to said Agreement.

Section 10 of the Agreement requires the consent of Millennium Midstream Energy, LLC (MME) to any assignment. By execution of the consent portion of this Assignment, MME hereby consents to the assignment of the Agreement to the Assignee and releases the City from any obligation under the Agreement.

[EXECUTION PAGES FOLLOW]

Executed this the 13 day of June, 2006.

ASSIGNOR- The City of Magnolia, Texas

By: [Signature]

Name: Jimmy Thornton

Title: Mayor

ATTEST:

By: [Signature]

Name: Luan D. Drake

Title: Acting City Secretary

[SEAL]

ASSIGNEE- Hughes Natural Gas, Inc, a Texas Corporation

By: [Signature]

Name: Frank M. Hicks

Title: President

Such Assignment of the Agreement is consented to this ____ day of June, 2006 by Millennium Midstream Energy, LLC.

By: _____

Name: Kevin Coxon

Title: Manager

BILL OF SALE

City of Magnolia, a political subdivision of the State of Texas (the "**Seller**"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sells, assigns and transfers to Hughes Natural Gas, Inc., a Texas corporation (the "**Buyer**"), pursuant to and in furtherance of that certain Asset Purchase Agreement, dated June 13, 2006, by and among Seller and Buyer ("**Purchase Agreement**"), free and clear of all liens, claims and encumbrances, all right, title and interest of the Seller in and to the Acquired Assets, as described in the attached Schedule 1.A, TO HAVE AND TO HOLD the same unto the Buyer, its successors and assigns, forever.

The Seller covenants and agrees that it shall execute such other and further instruments and documents as the Buyer may reasonably request to carry out, give effect to or to evidence further the transfer of the Acquired Assets of the Seller to the Buyer.

This instrument is entered into in connection with and pursuant to the Purchase Agreement and shall, to the extent possible, be construed to be consistent therewith. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement. In the event of any conflict between the terms hereof and of the Purchase Agreement, the terms of the Purchase Agreement shall control.

The Seller has caused this Agreement to be executed and delivered as of this 13 day of June 2006.

By: _____

Jimmy Thornton, Mayor

Attest To:

By: _____

Ann Drake, Acting City Secretary

Schedule 1.A. – Acquired Assets

For purposes of this Agreement, the term “*Acquired Assets*” shall mean as of the Closing, the following assets, properties and rights of Seller:

(a) The pipelines, machinery, equipment and inventory in respect of the City of Magnolia Municipal Gas System, including without limitation, natural gas linepack, tanks, pumps and containers, fixtures, tools, improvements, easements, rights-of-way, and other items of tangible personal property solely used in the operation, maintenance and repair of the City of Magnolia Municipal Gas System.

(b) All Owned Property, including without limitation, storage sites owned in fee, structures, fixtures, gates, stations, improvements, and other rights and interests in and to real property and appurtenances thereto owned by Seller and directly used in connection with the Business, and an undivided, one-hundred percent (100%), interest of all easements and other Rights-of-Way associated with Natural Gas Services as owned by Seller immediately prior to the Closing Date provided, however, Owned Property does not include the Public Rights of Way.

(c) All rights, to the extent such rights exist on or accrue after the Closing, in and to all Contracts, including, but not limited to, all processing agreements, transportation or exchange agreements, supply contracts, purchase contracts, service contracts, storage contracts, and confidentiality agreements, to which the Seller is a party and which directly relate to the Acquired Assets.

(d) To the extent permitted by applicable Law, all sales and business records, files, product specifications, drawings and correspondence; engineering, manufacturing, maintenance, operating and production records; customer, supplier and circulation lists and records; sales and marketing material; and account histories of customers; marketing or other studies; and all other permits, books and records (other than records relating to Excluded Assets) including without limitation, records related to compliance with or which are required to be maintained in accordance with any Laws (including Environmental Laws), and in each case which directly relate to the Business and the Acquired Assets, and copies of any of the same maintained at any facility of Seller.

(e) All Receivables from customers of the Business generated in the Ordinary Course of Business and accrued to such customers' accounts prior to Closing, for which invoices have not been delivered to such customers prior to Closing.

(f) All rights of Seller under licenses, permits, registrations, approvals and franchises issued by any Governmental Authority and exclusively used in the Business and in connection with any of the Acquired Assets, to the extent transferable.

(g) To the extent transferable, all rights of Seller under any agreement relating to the acquisition of any of the Acquired Assets from any third party, including to the extent transferable any and all rights of indemnification, hold harmless agreements, covenants not to prosecute and other agreements and any and all other claims, demands,

suits, actions, proceedings, causes of action or judgments against third parties directly relating to the Business or the Acquired Assets.

(h) To the extent transferable, all intellectual property rights, including patents, trademarks, copyrights, blueprints, drawings or computer software which is owned or used by, or registered in the name of, Seller that are exclusively used in connection with the Business or the Acquired Assets.

(i) To the extent transferable, all rights under all covenants and warranties relating to the Business or the Acquired Assets, express or implied (including title warranties and manufacturers', suppliers' and contractors' warranties), that have heretofore been made by Seller's predecessors in title or any third party manufacturers, suppliers and contractors.

(j) All proceedings, judgments and rights against third parties (including insurance carriers) that are directly related to the Business or the Acquired Assets, including all rights and claims under insurance policies for damage to the Acquired Assets to the extent that any damaged Acquired Assets have not been repaired or replaced prior to the Closing.

(k) All other equipment, goods, intangibles and real and personal property solely used in the Business.

Certificate of Seller
CITY OF MAGNOLIA, TEXAS

Seller, the City of Magnolia, by this certificate, states the following:

1. To the Seller's knowledge, the representations and warranties set forth in Section 3 of the Asset Purchase Agreement between the Seller and Hughes Natural Gas, Inc. ("Buyer") are true and correct at and as of the Closing Date, and said representations and warranties shall not survive and shall expire as of the Closing Date.

2. All covenants, agreements, and conditions contained in the Agreement to be performed by the Seller on or prior to the Closing Date shall have been performed or complied with in all respects or will be performed and complied with as may be properly done subsequent to the Closing. All permits, documents, assignments, and waivers necessary or appropriate for the consummation of the transactions contemplated by the Agreement had been obtained (except for such as may be properly obtained subsequent to the Closing).

3. To Seller's knowledge there are no injunctions, judgments, orders, decrees, rulings, or charges in effect preventing consummation of any of the transactions contemplated by the Asset Purchase Agreement and that there are no actions or proceedings seeking to restrain, enjoin or prohibit the consummation of the transactions contemplated by this Agreement or seeking damages with respect thereto.

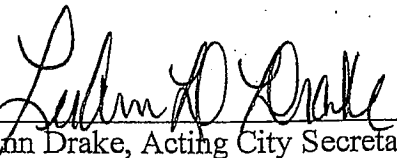
CITY OF MAGNOLIA

By: _____


Jimmy Thornton, Mayor

Attest To:

By: _____


LuAnn Drake, Acting City Secretary