

AN ORDINANCE GRANTING TO THE OKALOOSA COUNTY GAS DISTRICT, CREATED UNDER THE LAWS OF THE STATE OF FLORIDA, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, AUTHORITY, EASEMENT, PRIVILEGE AND FRANCHISE TO INSTALL, OPERATE AND MAINTAIN A GAS MANUFACTURING PLANT OR PLANTS, GAS TRANSMISSION SYSTEM, GAS DISTRIBUTION SYSTEM AND SUCH OTHER FACILITIES AS MAY BE NECESSARY OR DESIRABLE FOR THE PURPOSE OF PROVIDING GAS SERVICES TO ALL CLASSES OF CUSTOMERS WITHIN THE TOWN OF CINCO BAYOU, FLORIDA, AND CONSTRUCT, MAINTAIN, OPERATE AND EXTEND GAS TRANSMISSION AND TRANSMISSION LINES IN THE STREETS, ALLEYS, AND PUBLIC PLACES OF SAID TOWN, PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT OF FRANCHISE PROVIDING AN OPTION TO THE TOWN TO PURCHASE THE DISTRIBUTION SYSTEM THEREOF AT THE EXPIRATION OF SAID FRANCHISE, PROVIDING FOR THE PAYMENT OF A FRANCHISE FEE TO THE TOWN, PROVIDING A SEVERABILITY CLAUSE AND A REPEALING CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE BE IT ORDAINED by the Town Council of Cinco Bayou, Florida:

SECTION I. Whenever used in this Ordinance, the following words shall have the following meaning:

1. "Town" means the Town of Cinco Bayou.
2. "District" means the Okaloosa County Gas District.
3. "Corporate Limits" means the corporate limits to the Town as said limits are now established or as such limits may hereafter be extended.
4. "Transmission System" means the District's main transmission lines, laterals, metering stations, connections and other components thereof used in the transporting of gas to connect to the distribution system within the Town and to transport gas to such other distribution systems or points of destination in other towns or unincorporated territories.
5. "Distribution System" means the distribution system of the District lying within the corporate limits of the Town and all such distribution facilities of the District in the area adjacent thereto as the Town and the District shall mutually in good faith determine to constitute a component part of such distribution system. The term, however, shall not include any interruptible customer or any connections or metering facilities of the District used in connection with its gas transmission system or any transmission line tap connections for individual customers or metering facilities for such connections.
6. "Interruptible Customer" means natural gas is offered to customer on a contract which anticipates and permits interruption of gas service on short notice.
7. "Non-interruptible Gas" means gas sold to all classes of customers other than interruptible customers.
8. "Agreed" means an express contractual covenant.
9. "Legislative Charter" means the legislative act creating the Okaloosa County Gas District, being Chapter 29334, Laws of Florida, Special Acts of 1953, as amended by Chapter 31051, Laws of Florida, Acts of 1955 (Senate Bill No. 1286).

10. "Fair Market Value" means the price that a willing seller would take being under no compulsion to sell and the price that a willing purchaser would pay being under no compulsion to purchase.

SECTION II. Grant of Franchise Privilege. In consideration of the benefits that will accrue to the Town and its inhabitants, the District, its successors and assigns, is hereby given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, own, install, extend, renew, repair, maintain, improve and operate a gas manufacturing plant or plants, gas transmission system, gas distribution system and such other facilities as may be necessary or desirable for the purpose of providing gas services to all classes of customers within the Town and the surrounding territory and to conduct all lawful activities necessary to perform and provide gas services enumerated in its Legislative Charter.

SECTION III. Right to Operate. The Town hereby grants to the District the right, privilege, authority and franchise at any time and from time to time during the period covered by this franchise, and without any requirements as to permit or fee therefor, to construct and extend its mains, pipes and conduits over or under or along any street, avenue, alley or public way or place in the Town for the purpose of constructing, repairing, improving, enlarging or extending said gas transmission and distribution system; additionally, the district agrees to give the Town 24 hours notice before any work is commenced within the town limits by any employee or agent of the gas district. Such notice shall be given to the Town Clerk in writing and shall include the specific area in which work is to be performed, the length of time the gas district expects to be working inside the town limits, and the type of work expected to be performed. This notice shall be given so that the Town can properly advise any residents who may be effected by the work and also so that the Town may adjust its work schedule so as not to interfere with the activities of the District. This notice requirement shall be waived in the event of an emergency which requires the District to perform unscheduled maintenance or repairs. In such event of emergency the district shall notify the Town, after the fact, of the work location and the services that were performed.

SECTION IV. Non-Exclusive. This franchise is non-exclusive.

SECTION V. Town not to Compete. The Town agrees that it shall not, during the term of this franchise, construct, acquire, own or operate, directly or indirectly, a gas plant or gas transmission or gas distribution system within its corporate limits except through the exercise of the option to purchase hereinafter provided in this Ordinance or except in the event this franchise is terminated prior to the end of the term of this franchise.

SECTION VI. Proper Operation. All plants, transmission lines, distribution lines, fittings, appliances, appurtenances, and all components and installations of the District shall be maintained in reasonably good condition and repair. The District and the Town mutually agree that the location, appearance and aesthetic qualities of such facilities is an important consideration and agree to participate during the term of this franchise in a cooperative effort in the location, relocation and construction of such facilities to achieve the most feasible and desirable result compatible with sound economic consideration of the District.

SECTION VII. Relocation at District Expense. The District agrees that in all cases the location or relocation of all plants, transmission lines, distribution lines, fittings, appliances, appurtenances and all components and installations of the District and the construction thereof any change or extension, removal or relocation necessitating by a change by the Town of the grade, width or location of any street, alley or other public way, except as provided in succeeding Paragraph VIII, the District will promptly, at its own expense, change or move its structures so as to conform thereto, and further agrees to restore any and all public right-of-

ways disturbed by the District to their original condition (as determined by the Town). The District further agrees that it will, in advance of any paving or repaving of any street, alley, or other public way, and upon reasonable notice thereof, install and construct, at its own expense, all conduit, transmission lines, distribution lines and other installations reasonably necessary for its future use in said street, alley or other public way, so as to prevent, so far as possible, the disturbance by the District of any pavement; provided further, however, that the Town further agrees that it will in advance of any such paving or repaving of any street, alley, or other public way, notify the District of such plans in advance and coordinate the same with the District for the purpose of joint planning to achieve maximum economic cost savings to both parties.

SECTION VIII. Relocation for Private Enterprise. It is agreed, however, that in the event of the closing or abandonment of any street, alley, or other public way by the Town to accommodate the request of private persons or corporations solely for the benefit of such private persons or private corporations containing District gas transmission lines, distribution lines, metering or other facilities, that the Town will require as a condition for granting such request that such private persons or corporations defray and pay the actual cost of removing or relocating same.

SECTION IX. Hold Harmless Clause. The District shall indemnify and save harmless the Town from any and all damages, judgments, costs and expenses of every kind which may arise or result by reasons of or in consequence of the acts or neglect of the District, its agents or servants to fully comply with the provisions of this Ordinance and will save and keep harmless the Town from any and all damages, judgments, costs and expenses caused by, or incident to, or in any manner resulting from the District's operation, installation, maintenance, construction, relocation or other acts or omissions of the District providing prompt notice in writing of all claims for such damages, costs and expenses and reasonable opportunity to defend against the same are given to the District by the Town, together with all information thereon in its possession.

The District agrees to carry adequate liability insurance at all times.

SECTION X. Term of Franchise - Right to Operate. The franchise granted by this Ordinance shall exist and continue for a period of fifteen (15) years only, commencing JANUARY 1, 1987, and as a condition precedent to the taking effect of this grant, the Town does hereby reserve and the District gives and grants to the said Town, the right, after the expiration of fifteen (15) years, to purchase the gas distribution system within the corporate limits of the Town, including necessary component parts of the gas distribution system at valuation of fair market value, which fair market value shall be determined by arbitration under Florida Statutes governing arbitration methods. This option to purchase is further subject to the condition that upon the exercise of the option, the Town shall take and purchase from the District its entire requirements of gas for use and for resale in the communities and areas supplied by the distribution system, and the District shall sell and deliver to the Town such gas to the extent the same is available at such rates and charges as shall be established from time to time by the Board of Directors of the District; such rates and charges to be fair, equitable and just commensurate to the same price charged other like customers.

SECTION XI. Notice of Exercise of Option. In the event the Town exercises its option to purchase at the expiration of the term of this franchise as enumerated in preceding Section X, such option shall be exercised by giving notice in writing not less than sixty (60) days prior to such expiration signed by the Mayor or other Chief Executive Officer of the Town accompanied by a resolution of the governing body of the Town authorizing the exercise of such option.

SECTION XII. Transmission System and Interruptible Customers.

In the event the Town exercises its option to purchase the distribution system, the District shall have the right to continue to supply any interruptible customers theretofore supplied by the distribution system including any such customers situated within the corporate limits of the Town. In the event the District so elects to continue to supply any such customer or customers, and shall so notify the Town in writing within sixty (60) days after receipt of the notice from the Town of the exercise of the option in Section X of this Ordinance, the right, privilege, authority and franchise granted by the Town to the District by this Ordinance shall continue in force and effect with respect to any such customer or customers, and the Town shall, without charge, permit the District to make such use of the facilities of such distribution system as may be necessary to permit the District to supply such customer or customers.

The obligation of the District to make payments provided for in Section XIV of this Ordinance shall thereupon cease and terminate.

SECTION XIII. Annual Audit. The District agrees that it will cause an annual audit immediately after the end of each Fiscal Year to be made of its books, records and accounts by a certified public accountant and will furnish a copy thereof to the Town.

SECTION XIV. Franchise Fee. The permission and authority herein granted is upon the express condition that the District, as consideration therefor, and as compensation for the use herein granted of town streets, alleys, viaducts, elevated roadways, bridges, and other public ways shall pay into the Town Treasury a sum equal to four percent (4%) of its gross operating receipts which are hereby defined to mean all amounts of money which the District receives or becomes lawfully entitled to receive from the sale of gas resulting from the use of its plant and properties within the Town. The District shall file with the Clerk of the Town within sixty (60) days after the close of each Fiscal Year a statement in detail reflecting its said gross receipts for the preceding Fiscal Year together with a check from the District to the Town for such sum. The Town may, upon reasonable notice at any reasonable time during business hours, have the certified public accountant make examinations at the District's office of any and all of its books and records for the purpose of verifying any of the statements of receipts herein provided for.

SECTION XV. Collection Provision. The District hereby agrees to collect and remit to the Town any lawfully levied utility taxes now existing or hereinafter enacted upon gas customers of the District within the Town limits.

SECTION XVI. Default Clause. In the event that the District shall default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this Ordinance, and if such default or defaults shall continue for a period of six (6) months (exclusive of all times during which the District may be delayed or interfered with, without its connivance, by unavoidable accidents, acts of God or the public enemy, labor strikes or the orders or judgments of any commission or court entered in any suit or proceeding brought without its connivance) after written notice thereof to the District from the Town stating the alleged default on the part of the District, then and in each and every such case the Town, in addition to all other rights and remedies allowed by the law, shall be entitled to terminate the grant made to the District under this Ordinance.

SECTION XVII. Annexation Provision. The District hereby agrees to provide service to any and all areas that may be annexed to the Town provided feasibility of the area annexed meets the same feasibility requirements for extension of service as other areas within the District. Service to all areas proven feasible should be available within six (6) months of notification by the Town that the annexed area desires natural gas service. If an area annexed by the Town is already being served by the District, the District will begin to collect all applicable franchise fees (as provided herein) within sixty (60) days of notification by the Town. Any and all annexed areas will fall under the same terms and conditions of this Ordinance as the current areas now located within the Town. The Town agrees to notify the District of the names and addresses of the residents in newly annexed areas within sixty (60) days of the date of the annexation.

SECTION XVIII. Periodic Review Provisions. The District and the Town agree to meet through their designated representatives at five (5) year intervals beginning with the fifth anniversary of the acceptance by the District of this franchise, for the purpose of reviewing the provisions of this franchise in light of any technological or other pertinent changes which may have occurred since the granting of this franchise. In the event of any such change which impairs the fundamental purpose of this franchise, the parties agree to negotiate in good faith an appropriate modification of the franchise.

SECTION XIX. Exclusivity of Ordinance Sections. Should any section or provision of this Ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part hereof, other than the part declared to be invalid.

SECTION XX. Repealing Clause. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION XXI. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval; the term of this franchise shall commence on JANUARY 1, 1987 for a term of fifteen (15) years provided the District unconditionally accepts this Ordinance in writing filed with the Town Clerk on or before the franchise effective date of JANUARY 1, 1987.

ADOPTED in regular session this 24th day of SEPTEMBER, 1986.

ATTEST:

Annals Pauline
Town Clerk

Robert J. Perry
MAYOR

