



City Council of Fort Walton Beach

CITY MANAGER MEMORANDUM

To: Michael D. Beedie, City Manager
From: Michael Beedie, City Manager
Date: October 11, 2016
Subject: 1949 Ordinance for Okaloosa Gas Franchise Agreement

1. BACKGROUND:

- 1.1. In 1996, City Council adopted Ordinance No. 1297 to develop a franchise agreement with the Okaloosa Gas District for natural gas services within the City limits of the City of Fort Walton Beach. The term of this franchise agreement was ten (10) years with an expiration date of March 27, 2006.
- 1.2. On August 22, 2006, a new natural gas franchise agreement with Okaloosa Gas District was adopted by City Council via Ordinance No. 1710 for a period of ten (10) years.
- 1.3. With the expiration of the current franchise agreement occurring in August 2016, it is necessary for the City and Okaloosa Gas District to adopt a new agreement.

2. DISCUSSION:

- 2.1. A summary of the major components of the proposed Ordinance No. 1949, which include the changes from the last franchise agreement, are as follows:
 - 2.1.1. The term is for ten (10) years through September 30, 2026. However, the franchise agreement can be reviewed after five (5) years at the request of either party by giving ninety (90) days written notice to the District.
 - 2.1.2. The franchise fee remains at 6% of gross revenues with monthly payment terms. The previous agreement allowed quarterly payment terms.
 - 2.1.2.1. The District requested a cap on the annual franchise fee payments based on the annualized cost of gas included in the District's approved annual budget for the fiscal year. The City is not agreeable to this request.
 - 2.1.3. The District will conduct an audit annually and provide it to the City at no expense. The City also has the right to audit the District's books and records with 48 hours written notice at the City's expense.
 - 2.1.4. The City retains the right to purchase the distribution facilities within the City's limits and gas requirements at the end of the franchise term with 60 days' notice to the District and a resolution of the City Council.
 - 2.1.5. The District requested that they not be required to obtain or pay for permits to perform work on the gas system within the franchise area, but the City is not

agreeable to this request.

3. FINANCIAL INFORMATION:

3.1. Based on the proposed franchise agreement, the financial impact will not change. The District will be responsible for a franchise fee of 6% of gross revenues and will still be required to obtain and pay for permits to perform any work on the gas system within the franchise area.

4. RECOMMENDATION:

4.1. Staff respectfully recommends City Council adoption of Ordinance No. 1949 to enact a new franchise fee agreement with the Okaloosa Gas District for a term of ten (10) years through September 30, 2026.

ATTACHMENTS:

- Ordinance 1710 - 2006 Okaloosa Gas Franchise Agreement (PDF)
- 2016 Okaloosa Gas Franchise Agreement - Final (PDF)

HISTORY:

08/23/16	City Council	TABLED
Next: 09/20/16		
09/20/16	City Council	FIRST READING
Next: 10/11/16		

SIGNATURE BLOCK:

Michael Beedie	Completed	08/22/2016 6:06 PM
Finance	Skipped	08/22/2016 9:00 PM
City Attorney	Skipped	08/22/2016 9:00 PM
City Clerk	Completed	08/22/2016 9:00 PM
City Manager	Skipped	08/22/2016 9:01 PM
City Council	Completed	08/23/2016 6:00 PM

ORDINANCE 1949

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT WALTON BEACH, FLORIDA, RELATING TO A NATURAL GAS UTILITY FRANCHISE TO THE OKALOOSA GAS DISTRICT, CREATED UNDER THE LAWS OF THE STATE OF FLORIDA, PROVIDING FOR DEFINITIONS; PROVIDING THE RIGHT FOR THE RIGHT, AUTHORITY, EASEMENT, AND PRIVILEGE TO INSTALL, OPERATE AND MAINTAIN A NATURAL GAS MANUFACTURING PLANT OR PLANTS; NATURAL GAS TRANSMISSION AND DISTRIBUTION SYSTEM AND OTHER SUCH NECESSARY FACILITIES FOR THE PURPOSE OF PROVIDING NATURAL GAS SERVICES TO ALL CLASSES OF CUSTOMERS WITHIN THE CITY OF FORT WALTON BEACH, FLORIDA; PROVIDING FOR NON-EXCLUSIVE GRANT; PROVIDING GEOGRAPHIC AREA; PROVIDING A TERM; PROVIDING CONSIDERATION; PROVIDING CONSISTENT CUSTOMER RATES; PROVIDING COLLECTION PROVISION; PROVIDING ACCOUNTING, AUDIT, AND INSPECTION; PROVIDING THE CITY NOT TO COMPETE; PROVIDING RELOCATION AT GAS DISTRICT EXPENSE; PROVIDING RELOCATION FOR PRIVATE ENTERPRISE; PROVIDING RIGHT TO PURCHASE AFTER TERMINATION OF FRANCHISE; PROVIDING NOTICE OF EXERCISE OF OPTION; PROVIDING TRANSMISSION SYSTEM AND INTERRUPTIBLE CUSTOMERS; PROVIDING ANNEXATION; PROVIDING DEFAULT CLAUSE; PROVIDING PROPER OPERATION; PROVIDING HOLD HARMLESS CLAUSE; PROVIDING SOVEREIGN IMMUNITY; PROVIDING CONTINUITY OF SERVICE MANDATORY; PROVIDING FAILURE TO REQUIRE PERFORMANCE, NOT A WAIVER; PROVIDING EXCLUSIVITY OF ORDINANCE SECTIONS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WALTON BEACH, FLORIDA AS FOLLOWS:

SECTION I. Definitions.

For the purposes of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, 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. Words not defined shall be given their common and ordinary meaning:

1. "City" means the City of Fort Walton Beach, its Council members, officers, boards, agents, and employees.
2. "Customer" shall mean any person, firm or public or private corporation served by the District within the franchise area.

3. “Dedication” shall mean any real property appropriated to public gas use by its owner and accepted by the City for gas use on behalf of the public.
4. “District” means the Okaloosa Gas District.
5. “Corporate Limits” means the corporate limits of the City as said limits are now established or as such limits may hereafter be extended.
6. “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 the distribution system within the City and to transport gas to other such distribution systems or points of destination in other cities or unincorporated territories.
7. “Distribution System” means the distribution system of the District lying within the corporate limits of the City and all such distribution facilities of the District in the area adjacent thereto as the City and the District shall mutually in good faith determine to constitute a component part of such distribution system. The terms, however, shall not include any interruptible customer or any connection 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.
8. “Easement” shall mean real property, the right to use and enjoyment of which is vested in the public generally or in the City, and which permits natural gas use.
9. “Facilities or equipment” shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas.
10. “Franchise area” shall mean the area subject to the franchise granted pursuant to this ordinance.
11. “Gas” shall mean natural gas and/or commingled gas and/or manufactured gas which is distributed in pipes. It shall not mean bottled gas or any other fuel.
12. “Interruptible Customer” means natural gas is offered to customers on a contract which anticipates and permits interruption of gas service on short notice.
13. “Non-Interruptible Gas” means gas sold to all classes of customers other than interruptible customers.
14. “Agreed” means an express contractual covenant.
15. “Legislative Charter” means the legislative act creating the Okaloosa County Gas District, and repealing and codifying the District’s Charter, Chapter 29334, Laws of Florida, 1953, as amended, reestablishing and recreating the Okaloosa Gas District, being Chapter 2000-443, House Bill No. 1637.
16. “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.
17. “Gross Revenues” means all sums of money which the District collected from the customers from the sale of gas within the franchise area with the exception of reasonably uncollectible receivables.

18. “Feasible” means the determination of cost effectiveness of extension of service to any and all unserved areas in the District using a single formula for analysis of economic data for all areas with final determination made by the District Board of Directors.

SECTION II. Grant of Franchise Privilege.

District is hereby granted a non-exclusive franchise, including every right and privilege appertaining thereto, to erect, construct, own, install, extend, renew, repair, improve, operate and maintain a gas manufacturing plant or plants, gas transmission system, gas distribution system and other such facilities or equipment as may be necessary or desirable for the purpose of providing gas services, and lawful activities necessary to perform and provide gas services enumerated in the District’s Legislative Charter, in, upon, above, over, under and across the present and future highways, sidewalks, easements, dedications and other public property within the franchise as may be necessary and appurtenant to a gas service system, and the right to transmit same to the inhabitants within the franchise area, such mains, pipes and conduits and other property. The District shall be required to obtain the required permits for construction work within the City’s right-of-way per the City’s Code of Ordinances and/or other regulatory requirement to perform any work on the gas system within the City limits of the City. The District shall reasonably coordinate closely with the City and keep the City reasonably advised of its activities involving public streets and public property. The District shall be required to secure a right-of-way construction permit from the City which will not be unreasonably withheld.

SECTION III. Non-Exclusive Grant.

The right to use and occupy said highways, sidewalks, easements, dedications and other public property for the purpose herein set forth shall not be exclusive, and the City reserves the right to grant a similar use in said highways, sidewalks, easements, dedications and other public property to any other person.

SECTION IV. Geographic Area.

This franchise covers the geographical area of the entire city limits of the City of Fort Walton Beach, Florida. District agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that the District has no vested right in a specific area. The District hereby agrees to provide service to any and all areas that may be annexed to the City provided that feasibility of the area annexed meets the same feasibility requirements for extension of service as other areas serviced by the District. Subject to reasonable and diligent priority, service to all areas proven feasible should be available within six (6) months of notification by the City that the annexed area desires natural gas service. Any and all annexed areas will fall under the same terms and conditions of this ordinance as the current areas now located within the City. The City 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 annexation.

SECTION V. Term.

The franchise shall be granted for a term period of ten (10) years. Provided, however, that the franchise is subject to review at the end of five (5) years upon the request of either party in writing within ninety (90) days of the expiration of the first five (5) years. The purpose of this review is to evaluate any substantial changes in the needs of the City or the District including

any developments or innovations in the energy industry. In such an event, the parties shall make a good faith effort to mutually resolve such needs and changes. Either party may request review of the agreement at any time for the purpose of addressing changes in operating environment, market conditions, new legislation, or any other situations that significantly affect delivery of natural gas services.

SECTION VI. Consideration.

A. District shall pay to the City a sum equal to six percent (6%) of gross revenues collected from the customers from the sale of gas. Payment to the City shall be made in monthly payments during the year, except that when the Cost of Gas component used in the Franchise Fee calculation exceeds the annualized cost of gas included in the District's approved Fiscal Year Budget, the District may delay the monthly payment, up to ninety (90) days for that portion of the franchise fee caused by the incremental cost of gas. The cost of gas portion of gross revenues is a direct pass through to customers in accordance with Section XIII of the Okaloosa Gas District Natural Gas Tariff and the additional time is needed to allow collecting the higher cost of gas from customers to pay the incremental franchise fees.

B. It is further understood and agreed that the consideration paid pursuant to this ordinance shall not be added on as a separate item on the customer's bill unless and until such time as the District separately itemizes such amounts in its system-wide billing.

C. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums. If a re-computation results in additional revenue to be paid to the City, such amount shall be subject to a surcharge of the lesser of twelve percent (12%) per annum, or the prime rate effective the date the payment was originally due as reported in the Wall Street Journal.

D. In the event that any payment is not made within thirty (30) days of when due, interest on such payment shall apply from such date at the prime rate effective the date the payment was originally due as reported in the Wall Street Journal.

SECTION VII. Customer Rates.

By acceptance of this franchise, the District specifically agrees that the City's customers' rates are consistent and shall remain consistent with rates to customers within Okaloosa County, including all other municipalities.

SECTION VIII. Collection Provision.

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

SECTION IX. Accounting; Audit; Inspection.

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 City. The District shall keep an accurate set of books and records reflecting the gross revenues derived under and pursuant to the franchise rights herein granted. The City may, upon reasonable notice at any reasonable time during business hours,

have its 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.

A. City may cause, upon reasonable notice, an audit to be made of the books and records of District in order to determine whether or not the franchise fees paid are the same as those required thereby. The omission of the City to exercise its rights to an audit at any time shall not constitute a waiver of such right. City shall have the right to elect auditors to make the audit and the audit shall be made at City's expense. District 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. Such audits shall be conducted within regular business hours.

SECTION X. City Not to Compete.

The City 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 XI. Proper Operations; Compliance with Laws; Safety.

A. 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 and the District shall observe all federal, state and local safety requirements and regulations. The District and the City mutually agree that the location, appearance and aesthetic qualities of such facilities are important considerations and agree to cooperate with each other with regard to the location, relocation and construction of such facilities to achieve the most feasible and desirable result compatible with sound economics and the City's ordinances, rules and regulations applicable to rights-of-way.

B. All transmission and distribution pipes, lines, conduits and other property erected by District within the franchise area shall be so located as to cause minimum interference with the proper use of public ways, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said public ways, or with any installations of District or of a public utility serving the City.

C. The District shall at all times employ due care and shall install and maintain in use commonly accepted methods and devices for the prevention of failures and accidents which are likely to cause damage, injuries or nuisances to the public.

D. The District shall install and maintain its gas system in accordance with the requirements of US DOT Title 49, §192, Code of Federal Regulations and Chapter 368, Florida Statutes, and shall conduct operations in compliance with all other applicable federal, state, county and city laws and regulatory standards.

E. All structures and all lines, equipment and connections in, over, under and upon the highways, sidewalks, easements, dedications or other public property shall at all times be kept and maintained in a safe, suitable, substantial condition and in good order and repair.

F. District shall conduct its installation and service operations, those beyond the meter, in accordance with the requirements of the Florida Building Code for Gas and the

International Fuel and Gas Code, latest version, and the City's Code of Ordinances, latest version.

SECTION XII. 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, or any change or extension, removal or relocation necessitated by a change by the City of the grade, width or location of any street, alley or other public way, except as provided in Section XIV, 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 City). 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, any 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 City 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 planning to achieve maximum economic cost savings to both parties.

SECTION XIII. Relocation for Private Enterprises.

It is agreed that in the event of the closing or abandonment of any street, alley or other public way by the City 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 City will require as a condition for granting such request that such private persons or corporation defray and pay the actual cost of removing or relocating same.

SECTION XIV. Restoration.

The District agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein, in as good or better condition as it was before being damaged or altered.

SECTION XV. Right to Purchase After Expiration of Franchise.

As a condition precedent to the taking effect of this grant, the City does hereby reserve and the District gives and grants to the City, the right, after expiration of ten (10) years to purchase the gas distribution system within the corporate limits of the City, 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 City 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 City such gas to the extent that 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 XVI. Notice of Exercise of Option.

In the event the City exercises its option to purchase at the expiration of the term of this franchise as enumerated in preceding Section XV, 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 City accompanied by a resolution of the governing body of the City authorizing the exercise of such option.

SECTION XVII. Transmission System and Interruptible Customers.

In the event the City 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 City. In the event the District so elects to continue to supply any such customer or customers, and shall so notify the City in writing within sixty (60) days after the receipt of notice from the City of the exercise of the option in Section XV of this ordinance, the right, privilege, authority and franchise granted by the City to the District by this ordinance shall continue in force and effect with respect to any such customer or customers, and the City 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 under Section VI of this ordinance to make payments for the gross revenues generated by firm customers shall thereupon cease upon the exercise by the City of its rights under Section XV. However, the District shall continue to make payments for gross revenues generated by interruptible customers located within the corporate limits for as long as service continues to be provided by the District.

SECTION XVIII. Service Policies

A. The District shall not deny service to any person within the City's corporate limits who request service based solely upon the service location, except where not feasible based upon the same feasibility requirements of service throughout the service area of the District. The District shall not deny service to any person within the City's corporate limits except for good and reasonable cause shown by the District acceptable to the City.

B. The District shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, as far as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

C. The District shall in good faith attempt to investigate all reasonable complaints within twenty-four (24) hours of their receipt and shall in good faith attempt to resolve them within forty-eight (48) hours of receipt, and agents of the district will be available in the City for these purposes. Records of all customer complaints regarding the District's services, including their resolution or disposition, shall be maintained by the District for a period of twelve (12) months and shall be furnished to the City upon request.

SECTION XIX. Monitoring Performance and Compliance.

The City Manager, or his/her designee, and representatives from the City may monitor and review the performance of the District and each may report and make recommendations to the City and/or the District regarding the quality of service provided for in this ordinance. For the

purposes of this function, “service” shall be defined as the performance of the duties, tasks, and obligations of the District stated herein and the performance of such other duties, tasks and obligations as are generally and reasonably regarded as incident to the gas system.

SECTION XX. Annexation Provision.

The District hereby agrees to provide service to any and all areas that may be annexed to the City provided feasibility of the area annexed meets the same feasibility requirements for the 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 City that the annexed area desires natural gas service. If an area annexed by the City 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 City. Any and all annexed areas will fall under the same terms and conditions of this ordinance as the current areas now located within the City. The City 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 XXI. 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 or conditions of this ordinance, and if any 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, natural disasters or the public enemy, labor strikes or the orders of 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 City stating the alleged default on the part of the District, then and in each and every such case the City, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the District under this ordinance.

SECTION XXII. Hold Harmless Clause.

The District shall indemnify and save harmless the City from any and all damages, judgments, costs and expenses of any 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 City 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 City, together with all information thereon in its possession.

The District agrees to carry adequate liability insurance in accord with prudent industry standards at all times covering its operations, including automobile liability coverage. The District will provide the City proof of insurance and timely notification of the policies.

SECTION XXIII. Sovereign Immunity.

Nothing in this franchise agreement shall be construed to waive either party’s immunity from liability under the doctrine of sovereign immunity or Section 768.28, Florida Statutes, as amended from time to time.

SECTION XXIV. Continuity of Service Mandatory.

It shall be the right of all customers to continue receiving service insofar as their financial and other obligations to the District are honored. In the event that the District elects to overbuild, rebuild or modify the system, or the City gives notice of intent to terminate or fails to renew this franchise, the District shall act to ensure that all customers receive continuous, uninterrupted service for the duration of the franchise regardless of the circumstances. In the event of a change of franchise, the District shall cooperate with the City in maintaining continuous service to all customers. During such period, District shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable compensation for its services when it no longer operates the system.

SECTION XXV. Failure to Require Performance, Not a Waiver.

The failure of either party at any time to require performance by the other party of any provision hereof shall not affect the right of either party thereafter to enforce same; nor shall waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach or as a waiver of any provision itself.

SECTION XXVI. 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 party hereof, other than the part declared to be invalid.

SECTION XXVII. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance for any reason be held invalid or unconstitutional by the decision of any court of competent jurisdiction or administrative agency, such decision shall not affect the validity of remaining portions thereof. The District hereby declares that it would have accepted the provisions of this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation by the District of the franchise granted hereunder; provided further, however, that the City may terminate the franchise when the invalidated provision may not be so amended as to preserve the purposes for which it was agreed to in the original franchise and when said invalidated provision is found by the City to be essential to the franchise as a whole.

SECTION XXVIII. Effective Date.

This ordinance shall be in full force and effect from and after its passage and approval; this franchise shall commence on _____, for a term of ten (10) years, expiring on September 30, 2026, provided the District unconditionally accepts this ordinance in writing filed with the City Clerk on or before the franchise effective date of _____, 2016.

Adopted: _____

Mike Anderson, Mayor
Approved for form, legal sufficiency

Attest:

Kim M. Barnes, City Clerk

Hayward Dykes, Jr., City Attorney

READING	DATE	10.1.a
1st	8-8-06	
2nd	8-22-06	

ORDINANCE 1710

AN ORDINANCE OF THE CITY OF FORT WALTON BEACH, FLORIDA, RELATING TO NATURAL GAS UTILITY FRANCHISE: PROVIDING FOR DEFINITIONS; PROVIDING FOR GRANT OF FRANCHISE; PROVIDING FOR NON-EXCLUSIVE GRANT; PROVIDING FOR GEOGRAPHIC AREA; PROVIDING FOR TERM; PROVIDING FOR CONSIDERATION; PROVIDING FOR THE CITY NOT TO COMPETE; PROVIDING FOR ACCOUNTING, AUDIT, INSPECTION; PROVIDING FOR REGULATION OF RATES; PROVIDING FOR ASSIGNMENT; PROVIDING FOR COMPLIANCE WITH LAWS; PROVIDING FOR CONDITIONS OF OCCUPANCY OF PUBLIC WAYS; PROVIDING FOR RESTORATION; PROVIDING FOR COMPLETION, PROVIDING FOR RELOCATION AT DISTRICT EXPENSE; PROVIDING FOR SAFETY REQUIREMENTS; PROVIDING FOR SERVICE POLICIES; PROVIDING FOR MONITORING PERFORMANCE AND COMPLIANCE; PROVIDING FOR INDEMNIFICATION, LIABILITY AND INSURANCE; PROVIDING FOR ANNUAL AUDIT; PROVIDING FOR COLLECTION PROVISION; PROVIDING FOR DEFAULT CLAUSE; PROVIDING FOR RIGHT TO PURCHASE AFTER EXPIRATION OF FRANCHISE; PROVIDING FOR OPERATIONS DURING DISPUTE; PROVIDING FOR CONTINUITY OF SERVICE MANDATORY; PROVIDING FOR MISCELLANEOUS; PROVIDING FOR FAILURE TO REQUIRE PERFORMANCE, NOT A WAIVER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CAPTIONS; PROVIDING FOR REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Okaloosa County Gas District is an independent agency of the State of Florida created by the State Legislature by Special Act in the year 1953 to provide natural gas service to areas specified in said Legislation; and

WHEREAS, the District has performed its Legislative function since its inception by providing natural gas service; and

WHEREAS, the City Council of Fort Walton Beach and the Okaloosa County Gas District find that it is in the public interest to insure that all areas within the City limits are continued to be adequately provided with high quality gas service; and

WHEREAS, the City Council of Fort Walton Beach finds it in the public interest to retain control over the use of public rights of way by providers of gas to ensure against interference with the public convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right of way space, and to protect the public investment in right of way property; and

Attachment: Ordinance 1710 - 2006 Okaloosa Gas Franchise Agreement (1949 : 1949 Ordinance for Okaloosa Gas Franchise Agreement)

WHEREAS, it is mutually desirable and in the public interest to insure that such high quality gas service rendered by the Grantee in the past be maintained in a safe and efficient manner; and

WHEREAS, the District is required by Federal and state regulatory agencies to observe safety standards to protect the general public including regulation by the appropriate federal and state agencies as to safety standards; and

WHEREAS, the City Council of Fort Walton Beach find that the granting of a non-exclusive franchise to the District to assure that the said objectives are facilitated and promoted; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WALTON BEACH, FLORIDA:

SECTION 1. DEFINITIONS. For the purposes of this ordinance the following terms, phrases, words, abbreviations and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, 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. Words not defined shall be given their common and ordinary meaning.

- A. "Agreed" shall mean an expressed contractual covenant.
- B. "Corporate limits" shall mean the corporate limits of the City as said limits are now established or as such limits may hereafter be extended.
- C. "Customer" shall mean any person, firm or public or private corporation served by the Grantee within the franchise area.
- D. "Dedication" shall mean any real property appropriated to public gas use by its owner and accepted by the City for gas use on behalf of the public.
- E. "Distribution system" shall mean the distribution system of the Grantee lying within the corporate limits of the City and all such distribution facilities of the Grantee in the area adjacent thereto, as the Grantor and the Grantee shall mutually, in good faith, determine to constitute a component part of such distribution system. The term shall not include any interruptible customer or any connections or metering facilities of the Grantee used in connection with its gas transmission system or any transmission line tap connections for individual customers or metering facilities for such connections.
- F. "Easement" shall mean real property, the right to use and enjoyment of which is vested in the public generally or in the Grantor, and which permits natural gas use.
- G. "Facilities or equipment" shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas, located or to be located in, upon, along, across, under or over the streets.
- H. "Fair market value" shall mean 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.

I. "Franchise Area" shall mean the area subject to the franchise granted pursuant to this ordinance.

J. "Gas" shall mean natural gas and/or commingled gas and/or manufactured gas which is distributed in pipes. It shall not mean bottle gas or any other fuel.

K. "Grantee" shall mean the Okaloosa County Gas District and its successors.

L. "Grantor" shall mean the City of Fort Walton Beach, its successors and assigns.

M. "Gross Revenues" shall mean all sums of money which the Grantee receives or becomes lawfully entitled to receive from the sale of gas within the franchise area with the exception of reasonably uncollectible receivables. The Grantee will diligently pursue its collectible receivables. In view of federal and state regulatory uncertainty, monies received from gas transportation sold separately from gas delivered in the franchise area is excluded from gross revenue at this time. However, this subject will be reviewed and negotiated by Grantor and Grantee at such time as Grantee receives a legitimate customer request for gas transportation by Grantee, sold separately from gas, within the franchise area. Grantee shall promptly advise Grantor, in writing, of such request. At the time of such request, Grantor and Grantee shall mutually, and in good faith, considering all relevant regulatory factors, decide the issue.

N. "Highway" shall mean a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway shall include street or alley.

O. "Interruptible Customer" shall mean any customer who receives natural gas from the Grantee under the Commercial and Industrial Interruptible Gas Service Rate I-1-G or pursuant to any contract which anticipates and permits interruption of gas service on short notice.

P. "Legislative Charter" shall mean 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); as amended by Chapter 86-468 (House Bill No. 1418), Laws of Florida; and as further amended by Chapter 2000-443, Laws of Florida.

Q. "Public property" shall mean any real property owned by the Grantor other than a highway, sidewalk, easement or dedication.

R. "Sidewalk" shall mean that portion of a highway, other than a roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel, including paths and parkways, not on private lands.

S. "Transmission system" shall mean the Grantee'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 City and to transport gas to such other distribution systems or points of destination in other cities or unincorporated territories.

SECTION 2. GRANT OF FRANCHISE. Grantee is hereby granted a non-exclusive

franchise, including every right and privilege appertaining thereto, to erect, construct, own, install, extend, renew, repair, improve, operate and maintain a gas manufacturing plant or plants, gas transmission system, gas distribution system and such other facilities or equipment as may be necessary or desirable for the purpose of providing gas services, and lawful activities necessary to perform and provide gas services enumerated in Grantee's Legislative Charter, in, upon, above, over, under and across the present and future highways, sidewalks, easements, dedications and other public property within the franchise area, such mains, pipes and conduits and other property as may be necessary and appurtenance to a gas service system, and the right to transmit same to the inhabitants within the franchise area on the terms and conditions hereinafter set forth. In exchange for this grant of franchise, Grantee hereby undertakes to perform each and every obligation assigned to it herein and hereby agreed to. Grantor also agrees to perform each and every obligation assigned to it herein and hereby agreed to.

SECTION 3. NON-EXCLUSIVE GRANT. The right to use and occupy said highways, sidewalks, easements, dedications and other public property for the purpose herein set forth shall not be exclusive, and Grantor reserves the right to grant a similar use in said highways, sidewalks, easements, dedications and other public property to any other person.

SECTION 4. GEOGRAPHIC AREA. This franchise covers the geographical area of the entire City limits of the City of Fort Walton Beach, Florida. Grantee agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area. The Grantee hereby agrees to provide service to any and all areas that may be annexed to the City provided feasibility of the area annexed meets the same feasibility requirements for extension of service as other areas serviced by the Grantee. Subject to reasonable and diligent priority, service to all areas proven feasible should be available within six (6) months of notification by the Grantor that the annexed area desires natural gas service. Any and all annexed areas will fall under the same terms and conditions of this ordinance as the current areas now located within the City. The Grantor agrees to notify the Grantee of the names and addresses of the residents in newly annexed areas within sixty (60) days of the date of the annexation.

SECTION 5. TERM. The franchise shall be granted for a period of ten (10) years unless sooner terminated by reason of a breach of the terms hereof by the Grantee. Provided however, that the entire franchise is subject to renegotiation by notice of either party issued in writing within ninety (90) days of the third anniversary of this franchise. The exercise of its right to renegotiate on the third anniversary of this franchise shall not give the Grantor the right to terminate the franchise agreement or the right to exercise its purchase rights under Section 24.

SECTION 6. CONSIDERATION.

A. Grantee shall pay to the Grantor a sum equal to six percent (6%) of gross revenues subject to renegotiation pursuant to the terms of Section 5. Payment to the Grantor shall be made in quarterly payments during the year with the last payment within ninety (90) days of the close of the fiscal year and without demand by the Grantor. Any adjustment payment due Grantor resulting from the Grantee's annual audit shall be made to Grantor by Grantee within thirty (30) days of the completion of the Grantee's annual audit.

B. It is further understood and agreed that the consideration paid pursuant to this ordinance shall not be added on as a separate item on the customer's bill, unless and until such time as Grantee

separately itemizes such amounts in its system wide billing.

C. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums. If a re-computation results in additional revenue to be paid to the Grantor, such amount shall be subject to a surcharge of the lesser of twelve percent (12%) per annum, or the prime rate effective the date the payment was originally due as reported in the Wall Street Journal.

D. In the event that any payment is not made within thirty (30) days of when due, interest on such payment shall apply from such date at the prime rate effective the date the payment was originally due as reported in the Wall Street Journal.

SECTION 7. CITY NOT TO COMPETE. The Grantor 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 8. ACCOUNTING; AUDIT; INSPECTION.

A. Grantee shall keep an accurate set of books and records reflecting the gross revenues derived under and pursuant to the franchise rights herein granted. Said books and records shall reflect, in addition to information normally reflected pursuant to standard accounting procedures, the name and service address of each customer, dates of commencement and termination of service, the service charge and any other charges thereto, the billings and billing dates and the receipt of revenues.

B. Grantor may cause, upon reasonable notice, an audit to be made of the books and records of Grantee in order to determine whether or not the franchise fees paid are the same as those required thereby. The omission of the Grantor to exercise its rights to an audit at any time shall not constitute a waiver of such right. In the event Grantor elects to exercise its right of audit, Grantor shall provide to Grantee written notice of such election at least forty-eight (48) hours in advance of the time of such audit. Grantor shall have the right to elect auditors to make the audit and the audit shall be made at Grantor's expense. Grantee shall make available to the auditor such personnel and records as the Grantor may in its reasonable discretion request in order to complete such audit, and shall make no charge, to the Grantor therefor. Such audits shall be conducted within regular business hours.

C. Grantor shall have the right to inspect the books, records, maps, plans and other like materials of Grantee related to its operations in the service area at any time during normal business hours.

SECTION 9. REGULATION OF RATES. By its acceptance of this franchise, the Grantee specifically grants and agrees that its rates and charges to its customers shall be consistent with rates to customers within Okaloosa County, Florida including its other municipalities.

SECTION 10. ASSIGNMENT. The franchise rights herein granted to the Grantee shall not be assigned. Further, the Grantee agrees not to assign or sell its distribution system, facilities and equipment or transmission system during the term of this franchise. Accordingly, no provision for Right

of First Refusal is necessary or included in this franchise.

SECTION 11. (RESERVED)

SECTION 12. COMPLIANCE WITH LAWS. Grantee shall conduct operations under this agreement in compliance with all applicable laws and regulatory standards.

SECTION 13. CONDITIONS OF OCCUPANCY OF PUBLIC WAYS. The Grantee and Grantor mutually agree that the location, appearance and aesthetic qualities of such facilities are important considerations 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 Grantee and the conditions of occupancy of public ways heretofore provided for in this ordinance. All transmission and distribution pipes, lines, conduits and other property erected by Grantee within the franchise area shall first be approved by the City Manager or his designee upon application by Grantee and shall be so located as to cause minimum interference with the proper use of public ways, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said public ways, or with any installations of Grantor or of a public utility serving the City. The Manager's approval shall not be unreasonably withheld. All agreements relating to this Section shall be immediately submitted to a hearing officer mutually agreeable to the Grantor and Grantee, who shall be a certified mediator within the Fourth Judicial Circuit of Florida, for resolution on an emergency basis with the normal notice requirements waived.

SECTION 14. RESTORATION. The Grantee agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein in as good or better condition as it was before being damaged or altered. It is agreed, however, that in the event of the closing or abandonment of any street, alley or other public way by the Grantor to accommodate the request of private persons or corporations solely for the benefit of such private persons or private corporations containing Grantee gas transmission lines, distribution lines, metering or other facilities, that the Grantor 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 the same.

SECTION 15. PROPER OPERATION. All plants, transmission lines, distribution lines, fittings, appliances, appurtenances and all components and installations of Grantee shall be maintained in reasonably good condition and repair.

SECTION 16. RELOCATION AT DISTRICT EXPENSE. The Grantee 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 Grantee, and the construction thereof, or any change or extension, removal, or relocation necessitated by a change by the Grantor of the grade, width or location of any street, alley or other public way, except as provided in Section 14, it 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 rights of way disturbed by the Grantee to their original condition as determined by the Grantor. The Grantee further agrees that it will, in advance of any paving or repaving of any streets, alleys or other public way, and upon reasonable notice thereof, install and construct, at its own expense, all conduits, 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 Grantee of any

pavement; provided further, however, that the Grantor further agrees that it will in advance of any such paving or repaving, advance and coordinate same with the Grantee for the purpose of joint planning to achieve maximum economic cost savings to both parties.

SECTION 17. SAFETY REQUIREMENTS.

A. Grantee shall at all times employ due care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. Grantee shall install and maintain its gas system in accordance with the requirements of the Minimum Federal Safety Standards of the United States Department of Transportation found in Parts 191 and 192 of Title 49, Code of Federal Regulations, as amended from time to time.

C. All structures and all lines, equipment and connections in, over, under and upon the highways, sidewalks, easements, dedications or other public property shall at all times be kept and maintained in a safe, suitable, substantial condition and in good order and repair.

D. Grantee shall conduct its other installation and service operations, those beyond the meter, in accordance with the requirements of the Standard Gas Code, incorporating the International Fuel Gas Code, as adopted by Grantor's City Council, as amended from time to time.

SECTION 18. SERVICE POLICIES.

A. Grantee shall not deny service to any person within the franchise area who requests service based solely upon the service location, except where not feasible based upon the same feasibility requirements for service throughout the service area of Grantee. Grantee shall not deny service to any person within the franchise area who requests service except for reasonable and good cause shown by Grantee.

B. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

C. Grantee shall in good faith attempt to investigate all reasonable complaints within two (2) working days of their receipt and shall in good faith attempt to resolve them within four (4) working days of receipt, and agents of Grantee will be available in the City for these purposes. Records of all customer complaints regarding Grantee's services, including the date and time of day received, the nature of the complaint, type of investigation and their resolution or disposition, shall be maintained by Grantee for a period of twelve (12) months and shall be furnished to Grantor upon request.

SECTION 19. MONITORING PERFORMANCE AND COMPLIANCE. The City Manager of Grantor, or his designee, and the General Manager of the Grantee, or his designee, shall monitor and review the performance of Grantee, and each may report and make recommendations to the Grantor and/or Grantee regarding the quality of service provided for herein. For the purpose of this function, "service" shall be defined as the performance of the duties, tasks, and obligations of the Grantee enumerated herein and the performance of such other duties, tasks and obligations as are generally and reasonably regarded as incident to a gas system.

SECTION 20. INDEMNIFICATION, LIABILITY AND INSURANCE.

A. The Grantee agrees by the acceptance of the franchise to indemnify, keep and save the Grantor, its Council members, officers, boards, agents, and employees free and harmless, and defend, from and against all liability and expense, including reasonable attorney's fees, in connection with or on account of any and all claims whatsoever for injuries or damage to persons or to property arising out of the construction, maintenance, repair and operation of its gas system or the acts, commissions or omissions of Grantee, its servants, agents or employees, arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to Grantee in its business hereunder; claims made by the employees of the Grantee against the Grantor and Grantee, regarding which Grantee hereby waives its entitlements, if any, to immunity under Section 440.11, Florida Statutes, and the Florida Workers Compensation Act; arising out of any violation of federal or state antitrust laws resulting from the granting of a franchise; arising out of any "taking" of property arising out of this ordinance for which just compensation is due under the Constitutions of the United States and the State of Florida; and arising out of or undertaken on behalf of the Grantee's right to do business.

B. The Grantee agrees to carry an adequate and reasonable amount of liability insurance, acceptable to Grantor, at all times. Grantee shall cause the City of Fort Walton Beach to be added as an additional insured on Grantee's general liability and automobile policies.

C. Nothing contained herein shall be construed to waive either party's immunity from liability under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

SECTION 21. ANNUAL AUDIT. The Grantee 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 Grantor.

SECTION 22. COLLECTION PROVISION. The Grantee hereby agrees to collect and remit to the Grantor any lawfully levied utility taxes now existing or hereinafter enacted upon gas customers of the Grantee within the City limits.

SECTION 23. DEFAULT CLAUSE. In the event the Grantee 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 any such default or defaults shall continue for a period of three (3) months, exclusive of all times during which the Grantee 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 Grantee from the Grantor, stating the alleged default on the part of the Grantee, then and in each and every such case the Grantor, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the Grantee under this ordinance.

SECTION 24. RIGHT TO PURCHASE AFTER EXPIRATION OF FRANCHISE.

A. As a condition precedent to this franchise, the Grantor does hereby reserve and the

Grantee gives and grants to the Grantor, the right, after the expiration of this franchise, to purchase the distribution system, including necessary component parts of the distribution system at valuation of fair market value, which fair market value shall be determined by arbitration under the Florida Arbitration Code, Sections 682.01-682.22 Florida Statutes. This option to purchase is further subject to the condition that upon the exercise of the option, the Grantor shall take and purchase from the Grantee its entire requirements of gas for use and for resale in the communities and areas supplied by the distribution system, and the Grantee shall sell and deliver to the Grantor 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 Grantee such rates and charges to be fair, equitable and just commensurate to the same price charged other like customers.

B. In the event the Grantor exercises its option to purchase at the expiration of the term of this franchise as enumerated in paragraph A, 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 City Manager of the Grantor accompanied by a resolution of the City Council of the Grantor authorizing the exercise of such option.

C. Exercise of this option to purchase the distribution system shall not divest the Grantee, at his some discretion, of the right to continue to supply any then existing interruptible or "transportation only" customers previously supplied by the Grantor's distribution system including any such customer associated within the corporate limits of the Grantor. In the event the Grantee elects to continue to supply any such customer or customers, and so notifies the Grantor in writing within sixty (60) days of the receipt of the notice from the Grantor of the exercise of the option to purchase pursuant to Section 24 of this agreement, the right, privilege, authority and franchise granted by the Grantor to the Grantee shall continue in force and effect with respect to any such customer or customers, and the Grantor shall permit the Grantee to make such use of the facilities of such distribution system as may be necessary to permit the Grantee to supply such customer or customers. The obligation of the Grantee under Section 6 to make payments for the gross revenues generated by firm customers shall cease upon the exercise by the Grantor of its rights under Section 24. However, the Grantee shall continue to be obligated to make payments for the gross revenues generated by interruptible and transportation only customers located within the corporate limits for as long as service continues to be provided by the Grantee.

SECTION 25. OPERATIONS DURING DISPUTE.

In the event that a dispute arises between the Grantor and the Grantee, or any other interested party in any way relating to this franchise, performance or compensation hereunder, the Grantee shall continue to render service in full compliance with all terms and conditions of this franchise regardless of the nature of the dispute.

SECTION 26. CONTINUITY OF SERVICE MANDATORY.

A. It shall be the right of all customers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild or modify the system, or the Grantor gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act to ensure that all customers receive continuous, uninterrupted service for the duration of the franchise regardless of the circumstances. In the event of a change of franchise, the Grantee shall cooperate with the Grantor in maintaining continuous service to all customers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be

entitled to reasonable compensation for its services when it no longer operates the system.

B. In the event Grantee fails to operate the system for four (4) consecutive days without prior approval of the Grantor or without just cause, the Grantor may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of revenues from the system received by the Grantor that are the result of the Grantee's failure to perform.

SECTION 27. (RESERVED)

SECTION 28. MISCELLANEOUS. When not otherwise prescribed herein, all matters herein required to be filed with Grantor shall be filed with the City Manager, and with Grantee shall be filed with its General Manager.

SECTION 29. FAILURE TO REQUIRE PERFORMANCE, NOT A WAIVER. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect the right of either party thereafter to enforce same; nor shall waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach or as a waiver of any provision itself.

SECTION 30. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance for any reason be held invalid or unconstitutional by the decision of any Court of competent jurisdiction or administrative agency, such decision shall not affect the validity of the remaining portions thereof. The Grantee hereby declares that it would have accepted the provisions of this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation by the Grantee of the franchise granted hereunder; provided, however, that the Grantor may amend those provisions invalidated; provided further, however, that the Grantor may terminate the franchise when the invalidated provision may not be so amended as to preserve the purposes for which it was agreed to in the original franchise and when said invalidated provision is found by the Grantor to be essential to the franchise as a whole.

SECTION 31. CAPTIONS. The section headings and captions contained herein are for convenience only and shall not be used to vary or interpret the terms of this ordinance.

SECTION 32. REPEALING CLAUSE. All ordinances or parts of ordinance in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 33. EFFECTIVE DATE. This ordinance shall be in force and effect upon its adoption by the Grantor's City Council; the term of this franchise shall commence March 28, 2006, for a term of ten (10) years, subject to renegotiation as provided herein, provided the Grantee unconditionally accepts this ordinance in writing filed with the City Clerk of the City of Fort Walton Beach on or before seven (7) days after the adoption of this ordinance.

ADOPTED: August 22, 2006.

By: Mike Anderson
MIKE ANDERSON, Mayor

ATTEST:

Helen C. Spencer
HELEN SPENCER,
City Clerk

The form and legal sufficiency of the foregoing
has been reviewed and approved by the City Attorney.

By: Suzanne Brownless
SUZANNE BROWNLESS, City Franchise Attorney

c: 5417

DISPOSITION
Code
Finance
Gas District
File

RESOLUTION NO. 06-01

A RESOLUTION CONFIRMING, APPROVING AND ACCEPTING A FRANCHISE FOR THE TRANSPORTATION AND DISTRIBUTION OF NATURAL GAS IN THE CITY OF FORT WALTON BEACH, FLORIDA, AS GRANTED BY THE SAID CITY TO THE OKALOOSA GAS DISTRICT IN ORDINANCE NO. 1710 ADOPTED ON THE 22ND DAY OF AUGUST, 2006, BY THE SAID CITY OF FORT WALTON BEACH, FLORIDA; PROVIDING FOR THE FILING OF THIS RESOLUTION OF ACCEPTANCE WITH THE CLERK'S OFFICE OF THE SAID CITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fort Walton Beach, Florida has enacted Ordinance No.1710 granting unto the Okaloosa Gas District a 10 year franchise for the distribution of natural gas within the City limits thereof, and

WHEREAS, the said Ordinance requires the acceptance of said franchise in writing by the Okaloosa Gas District on or before the 29th day of August, 2006, and

WHEREAS, the said terms of the franchise and the Ordinance in its entirety are acceptable to the Okaloosa Gas District.

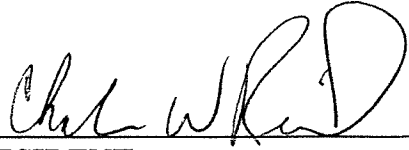
NOW, THEREFORE, BE IT RESOLVED:

1. That Ordinance No. 1710 enacted by the City of Fort Walton Beach, Florida, granting the Okaloosa Gas District a franchise for the distribution of natural gas for a period of 10 years commencing March 28, 2006, is hereby confirmed, approved and unconditionally accepted in its entirety, including all terms and conditions thereof.

2. That an executed copy of this Resolution shall forthwith be filed with the Clerk of the City of Fort Walton Beach, Florida, on or before the 29th day of August, 2006.

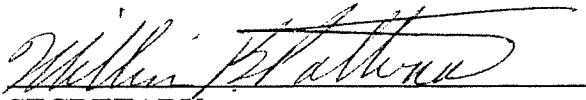
3. This Resolution shall be effective immediately upon adoption.

ADOPTED this 23rd day of August, 2006.



PRESIDENT

ATTEST:



SECRETARY

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FORT WALTON BEACH, FLORIDA, RELATING TO A NATURAL GAS UTILITY FRANCHISE TO THE OKALOOSA GAS DISTRICT, CREATED UNDER THE LAWS OF THE STATE OF FLORIDA, PROVIDING FOR DEFINITIONS; PROVIDING THE RIGHT FOR THE RIGHT, AUTHORITY, EASEMENT, AND PRIVILEGE TO INSTALL, OPERATE AND MAINTAIN A NATURAL GAS MANUFACTURING PLANT OR PLANTS; NATURAL GAS TRANSMISSION AND DISTRIBUTION SYSTEM AND OTHER SUCH NECESSARY FACILITIES FOR THE PURPOSE OF PROVIDING NATURAL GAS SERVICES TO ALL CLASSES OF CUSTOMERS WITHIN THE CITY OF FORT WALTON BEACH, FLORIDA; PROVIDING FOR NON-EXCLUSIVE GRANT; PROVIDING GEOGRAPHIC AREA; PROVIDING A TERM; PROVIDING CONSIDERATION; PROVIDING CONSISTENT CUSTOMER RATES; PROVIDING COLLECTION PROVISION; PROVIDING ACCOUNTING, AUDIT, AND INSPECTION; PROVIDING THE CITY NOT TO COMPETE; PROVIDING RELOCATION AT GAS DISTRICT EXPENSE; PROVIDING RELOCATION FOR PRIVATE ENTERPRISE; PROVIDING RIGHT TO PURCHASE AFTER TERMINATION OF FRANCHISE; PROVIDING NOTICE OF EXERCISE OF OPTION; PROVIDING TRANSMISSION SYSTEM AND INTERRUPTIBLE CUSTOMERS; PROVIDING ANNEXATION; PROVIDING DEFAULT CLAUSE; PROVIDING PROPER OPERATION; PROVIDING HOLD HARMLESS CLAUSE; PROVIDING SOVEREIGN IMMUNITY; PROVIDING CONTINUITY OF SERVICE MANDATORY; PROVIDING FAILURE TO REQUIRE PERFORMANCE, NOT A WAIVER; PROVIDING EXCLUSIVITY OF ORDINANCE SECTIONS; PROVIDING REPEALING CLAUSE; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WALTON BEACH, FLORIDA:

SECTION I. Definitions.

For purposes of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning herein given. When not inconsistent with the context, words

Attachment: 2016 Okaloosa Gas Franchise Agreement - Final (1949 : 1949 Ordinance for Okaloosa Gas Franchise Agreement)

used in the present tense include the future tense, 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. Words not defined shall be given their common and ordinary meaning:

1. “City” means the City of Fort Walton Beach, its Council members, officers, boards, agents, and employees.
2. “Customer” shall mean any person, firm or public or private corporation served by the District within the franchise area.
3. “Dedication” shall mean any real property appropriated to public gas use by its owner and accepted by the City for gas use on behalf of the public.
4. “District” means the Okaloosa Gas District.
5. “Corporate Limits” means the corporate limits of the City as said limits are now established or as such limits may hereafter be extended.
6. “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 the distribution system within the City and to transport gas to other such distribution systems or points of destination in other cities or unincorporated territories.
7. “Distribution System” means the distribution system of the District lying within the corporate limits of the City and all such distribution facilities of the District in the area adjacent thereto as the City and the District shall mutually in good faith determine to constitute a component part of such distribution system. The terms, however, shall not include any interruptible customer or any connection 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.
8. “Easement” shall mean real property, the right to use and enjoyment of which is vested in the public generally or in the City, and which permits natural gas use.
9. “Facilities or equipment” shall mean pipe, pipeline, tube, main, service, trap, vent, Vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas.
10. “Franchise area” shall mean the area subject to the franchise granted pursuant to this ordinance.
11. “Gas” shall mean natural gas and/or commingled gas and/or manufactured gas which is distributed in pipes. It shall not mean bottled gas or any other fuel.

12. “Interruptible Customer” means natural gas is offered to customers on a contract which anticipates and permits interruption of gas service on short notice.
13. “Non-Interruptible Gas” means gas sold to all classes of customers other than interruptible customers.
14. “Agreed” means an express contractual covenant.
15. “Legislative Charter” means the legislative act creating the Okaloosa County Gas District, and repealing and codifying the District’s Charter, Chapter 29334, Laws of Florida, 1953, as amended, reestablishing and recreating the Okaloosa Gas District, being Chapter 2000-443, House Bill No. 1637.
16. “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.
17. “Gross Revenues” means all sums of money which the District collected from the customers from the sale of gas within the franchise area with the exception of reasonably uncollectible receivables.
18. “Feasible” means the determination of cost effectiveness of extension of service to any and all unserved areas in the District using a single formula for analysis of economic data for all areas with final determination made by the District Board of Directors.

SECTION II. Grant of Franchise Privilege.

District is hereby granted a non-exclusive franchise, including every right and privilege appertaining thereto, to erect, construct, own, install, extend, renew, repair, improve, operate and maintain a gas manufacturing plant or plants, gas transmission system, gas distribution system and other such facilities or equipment as may be necessary or desirable for the purpose of providing gas services, and lawful activities necessary to perform and provide gas services enumerated in the District’s Legislative Charter, in, upon, above, over, under and across the present and future highways, sidewalks, easements, dedications and other public property within the franchise as may be necessary and appurtenant to a gas service system, and the right to transmit same to the inhabitants within the franchise area, such mains, pipes and conduits and other property. The District shall be required to obtain the required permits for construction work within the City’s right of way per the City’s Code of Ordinances and/or other regulatory requirement to perform any work on the gas system within the City limits of the City. The District shall reasonably coordinate closely with the City and keep the City reasonably advised of its activities involving public streets and public property. The District shall be required to secure a right of way construction permit from the City which will not be unreasonably withheld.

SECTION III. Non-Exclusive Grant.

The right to use and occupy said highways, sidewalks, easements, dedications and other public property for the purpose herein set forth shall not be exclusive, and the City reserves the right to grant a similar use in said highways, sidewalks, easements, dedications and other public property to any other person.

SECTION IV. Geographic Area.

This franchise covers the geographical area of the entire city limits of the City of Fort Walton Beach, Florida. District agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that the District has no vested right in a specific area. The District hereby agrees to provide service to any and all areas that may be annexed to the City provided that feasibility of the area annexed meets the same feasibility requirements for extension of service as other areas serviced by the District. Subject to reasonable and diligent priority, service to all areas proven feasible should be available within six (6) months of notification by the City that the annexed area desires natural gas service. Any and all annexed areas will fall under the same terms and conditions of this ordinance as the current areas now located within the City. The City 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 annexation.

SECTION V. Term.

The franchise shall be granted for a term period of ten (10) years. Provided, however, that the franchise is subject to review at the end of five (5) years upon the request of either party in writing within ninety (90) days of the expiration of the first five (5) years. The purpose of this review is to evaluate any substantial changes in the needs of the City or the District including any developments or innovations in the energy industry. In such an event, the parties shall make a good faith effort to mutually resolve such needs and changes. Either party may request review of the agreement at any time for the purpose of addressing changes in operating environment, market conditions, new legislation, or any other situations that significantly affect delivery of natural gas services.

SECTION VI. Consideration.

A. The District shall pay the City a sum equal to six percent (6%) of gross revenues collected from the customers from the sale of gas. Payment to the City shall be made in monthly payments during the year, except that when the Cost of Gas component used in the Franchise fee calculation exceeds the annualized cost of gas included in the District's approved Fiscal year Budget, the District may delay the monthly payment, up to ninety (90) days for that portion of the franchise fee caused by the incremental cost of gas. The cost of gas portion of gross revenues is a direct pass through to customers in accordance with Section XIII of the Okaloosa Gas District Natural Gas Tariff and the additional time is needed to allow collecting the higher cost of gas from customers to pay the incremental franchise fees.

B. It is further understood and agreed that the consideration paid pursuant to this

ordinance shall not be added on as a separate item on the customer's bill unless and until such time as the District separately itemizes such amounts in its system-wide billing.

C. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums. If a re-computation results in additional revenue to be paid to the City, such amount shall be subject to a surcharge of the lesser of twelve percent (12%) per annum, or the prime rate effective the date the payment was originally due as reported in the Wall Street Journal.

D. In the event that any payment is not made within thirty (30) days of when due, interest on such payment shall apply from such date at the prime rate effective the date the payment was originally due as reported in the Wall Street Journal.

SECTION VII. Customer Rates.

By acceptance of this franchise, the District specifically agrees that the City's customers' rates are consistent and shall remain consistent with rates to customers within Okaloosa County, including all other municipalities.

SECTION VIII. Collection Provision.

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

SECTION IX. Accounting; Audit; Inspection.

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 City. The District shall keep an accurate set of books and records reflecting the gross revenues derived under and pursuant to the franchise rights herein granted. The City may, upon reasonable notice at any reasonable time during business hours, have its 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.

A. City may cause, upon reasonable notice, an audit to be made of the books and records of District in order to determine whether or not the franchise fees paid are the same as those required thereby. The omission of the City to exercise its rights to an audit at any time shall not constitute a waiver of such right. City shall have the right to elect auditors to make the audit and the audit shall be made at City's expense. District 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. Such audits shall be conducted within regular business hours.

SECTION X. City Not to Compete.

The City 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 XI. Proper Operations; Compliance with Laws; Safety.

A. 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 and the District shall observe all federal, state and local safety requirements and regulations. The District and the City mutually agree that the location, appearance and aesthetic qualities of such facilities are important considerations and agree to cooperate with each other with regard to the location, relocation and construction of such facilities to achieve the most feasible and desirable result compatible with sound economics and the City's ordinances, rules and regulations applicable to rights-of-way.

B. All transmission and distribution pipes, lines, conduits and other property erected by District within the franchise area shall be located as to cause minimum interference with the proper use of public ways, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said public ways, or with any installations of District or of a public utility serving the City.

C. The District shall at all times employ due care and shall install and maintain in use commonly accepted methods and devices for the prevention of failures and accidents which are likely to cause damage, injuries or nuisances to the public.

D. The District shall install and maintain its gas system in accordance with the requirements of US DOT Title 49, §192, Code of Federal Regulations and Chapter 368, Florida Statutes, and shall conduct operations in compliance with all other applicable federal, state, county and city laws and regulatory standards.

E. All structures and all lines, equipment and connections in, over, under and upon the highways, sidewalks, easements, dedications or other public property shall at all times be kept and maintained in a safe, suitable, substantial condition and in good order and repair.

F. District shall conduct its installation and service operations, those beyond the meter, in accordance with the requirements of the Florida Building Code for Gas and the International Fuel and Gas Code, latest version, and the City's Code of Ordinances, latest version.

SECTION XII. 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, or any change or extension, removal or relocation necessitated by a change by the City of the grade, width or location of any street, alley or other public way, except as provided in Section XIV, 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 City). 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, any 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 City 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 planning to achieve maximum economic cost savings to both parties.

SECTION XIII. Relocation for Private Enterprises.

It is agreed that in the event of the closing or abandonment of any street, alley or other public way by the City 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 City will require as a condition for granting such request that such private persons or corporation defray and pay the actual cost of removing or relocating same.

SECTION XIV. Restoration.

The District agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein, in as good or better condition as it was before being damaged or altered.

SECTION XV. Right to Purchase After Expiration of Franchise.

As a condition precedent to the taking effect of this grant, the City does hereby reserve and the District gives and grants to the City, the right, after expiration of ten (10) years to purchase the gas distribution system within the corporate limits of the City, 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 City 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 City such gas to the extent that 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 XVI. Notice of Exercise of Option.

In the event the City exercises its option to purchase at the expiration of the term of this franchise as enumerated in preceding Section XV, 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 City accompanied by a resolution of the governing body of the City authorizing the exercise of such option.

SECTION XVII. Transmission System and Interruptible Customers.

In the event the City 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 City. In the event the District so elects to continue to supply any such customer or customers, and shall so notify the City in writing within sixty (60) days after the receipt of notice from the City of the exercise of the option in Section XV of this ordinance, the right, privilege, authority and franchise granted by the City to the District by this ordinance shall continue in force and effect with respect to any such customer or customers, and the City 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 under Section VI of this ordinance to make payments for the gross revenues generated by firm customers shall thereupon cease upon the exercise by the City of its rights under Section XV. However, the District shall continue to make payments for gross revenues generated by interruptible customers located within the corporate limits for as long as service continues to be provided by the District.

SECTION XVIII. Service Policies

A. The District shall not deny service to any person within the City's corporate limits who request service based solely upon the service location, except where not feasible based upon the same feasibility requirements of service throughout the service area of the District. The District shall not deny service to any person within the City's corporate limits except for good and reasonable cause shown by the District acceptable to the City.

B. The District shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, as far as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

C. The District shall in good faith attempt to investigate all reasonable complaints within twenty-four (24) hours of their receipt and shall in good faith attempt to resolve them within forty-eight (48) hours of receipt, and agents of the district will be available in the City for these purposes. Records of all customer complaints regarding the District's services, including their resolution or disposition, shall be maintained by the District for a period of twelve (12) months and shall be furnished to the City upon request.

SECTION XIX. Monitoring Performance and Compliance.

The City Manager, or his/her designee, and representatives from the City may monitor and review the performance of the District and each may report and make recommendations to the City and/or the District regarding the quality of service provided for in this ordinance. For the purposes of this function, "service" shall be defined as the performance of the duties, tasks, and obligations of the District stated herein and the performance of such other duties, tasks and obligations as are generally and reasonably regarded as incident to the gas system.

SECTION XX. Annexation Provision.

The District hereby agrees to provide service to any and all areas that may be annexed to the City provided feasibility of the area annexed meets the same feasibility requirements for the 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 City that the annexed area desires natural gas service. If an area annexed by the City 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 City. Any and all annexed areas will fall under the same terms and conditions of this ordinance as the current areas now located within the City. The City 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 XXI. 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 or conditions of this ordinance, and if any 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, natural disasters or the public enemy, labor strikes or the orders of 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 City stating the alleged default on the part of the District, then and in each and every such case the City, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the District under this ordinance.

SECTION XXII. Hold Harmless Clause.

The District shall indemnify and save harmless the City from any and all damages, judgments, costs and expenses of any 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 City 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

City, together with all information thereon in its possession.

The District agrees to carry adequate liability insurance in accord with prudent industry standards at all times covering its operations, including automobile liability coverage. The District will provide the City proof of insurance and timely notification of the policies.

SECTION XXIII. Sovereign Immunity.

Nothing in this franchise agreement shall be construed to waive either party's immunity from liability under the doctrine of sovereign immunity or Section 768.28, Florida Statutes, as amended from time to time.

SECTION XXIV. Continuity of Service Mandatory.

It shall be the right of all customers to continue receiving service insofar as their financial and other obligations to the District are honored. In the event that the District elects to overbuild, rebuild or modify the system, or the City gives notice of intent to terminate or fails to renew this franchise, the District shall act to ensure that all customers receive continuous, uninterrupted service for the duration of the franchise regardless of the circumstances. In the event of a change of franchise, the District shall cooperate with the City in maintaining continuous service to all customers. During such period, District shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable compensation for its services when it no longer operates the system.

SECTION XXV. Failure to Require Performance, Not a Waiver.

The failure of either party at any time to require performance by the other party of any provision hereof shall not affect the right of either party thereafter to enforce same; nor shall waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach or as a waiver of any provision itself.

SECTION XXVI. 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 party hereof, other than the part declared to be invalid.

SECTION XXVII. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance for any reason be held invalid or unconstitutional by the decision of any court of competent jurisdiction or administrative agency, such decision shall not affect the validity of remaining portions thereof. The District hereby declares that it would have accepted the provisions of this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional.

The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation by the District of the franchise granted hereunder; provided further, however, that the City may terminate the franchise when the invalidated provision may not be so amended as to preserve the purposes for which it was agreed to in the original franchise and when said invalidated provision is found by the City to be essential to the franchise as a whole.

SECTION XXVIII. Effective Date.

This ordinance shall be in full force and effect from and after its passage and approval; this franchise shall commence on _____, for a term of ten (10) years, expiring on September 30, 2026, provided the District unconditionally accepts this ordinance in writing filed with the City Clerk on or before the franchise effective date of _____, 2016.

ADOPTED IN SESSION THIS ____ day of _____, 2016.

Name: _____
Title: _____

ATTEST:

Name: _____
Title: _____

APPROVED BY ME THIS ____ DAY OF _____ 2016.

Name: _____
Title: _____

1st Reading: _____
2nd Reading: _____

APPROVAL AND ACCEPTANCE

The Okaloosa Gas District does hereby approve and accept the foregoing gas franchise ordinance and agrees to perform, assume and comply with all the terms, conditions, covenants and obligations of said franchise ordinance, and authorizes its Chief Executive Officer to execute this Approval and Acceptance.

Dated this ____ day of _____ 2016.

OKALOOSA GAS DISTRICT

By: _____
Name: _____

Title: _____

ATTEST:

Name: _____

Title: _____