

ORDINANCE NO. 14-2009

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, ADOPTING AND RENEWING A GAS FRANCHISE WITHIN THE TOWN OF LAKE PARK FOR THE FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS; PROVIDING FOR THE IMPOSITION OF PROVISIONS AND CONDITIONS RELATING TO THE FRANCHISE; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Commission has such powers and authority as conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, pursuant to Florida Constitution and Chapter 166, Florida Statutes, the Town Commission has the home rule authority to grant franchises for utilities and service providers within the Town; and

WHEREAS, the Town Commission has previously entered into a gas franchise with Florida Public Utilities to operate a gas franchise within the Town; and

WHEREAS, the gas franchise with Florida Public Utilities has expired and the Town Commission finds that it is in the public interest to renew the gas franchise grant to Florida Public Utilities Company with new conditions and provisions which will be of greater benefit to the Town and its citizens.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA that:

SECTION 1: The Town of Lake Park, a municipal corporation of the State of Florida (hereinafter "TOWN"), hereby grants to FLORIDA PUBLIC UTILITIES COMPANY, a corporation of the State of Florida (hereinafter "COMPANY"), its successors and assigns, for the term of 30 years, beginning the first day of the first full calendar

month following the date of filing by the COMPANY of its acceptance of this franchise grant, the right, privilege and authority or franchise to construct or otherwise acquire and to own, maintain, equip and operate plants and works, and all necessary or desirable appurtenances thereto, for the manufacture, purchase, transmission and distribution of artificial, natural and/or mixed gas (hereinafter referred to generally as "gas"), including the right without the payment by COMPANY of any special tax, assessment or charges therefore to construct, lay, extend, maintain, renew, remove, replace, repair, use and operate gas pipes and gas mains, and all appurtenances and appendages thereto, in, under, on or across the present and future public streets, avenues, alleys, highways, bridges, easements and other public places within the present or any future corporate limits of the TOWN or its successors, for the purpose of distributing, supplying and selling gas to Town or its successors, and to persons and corporations inhabitants thereof, as well as to persons or corporations beyond the present or future corporate limits of the Town. Provided, however, that COMPANY shall comply with all applicable requirements of the TOWN'S Code of Ordinances including the Building and Zoning Codes (which are not in conflict with the Florida Administrative Code and/or the Code of Federal Regulations requirements) with the exception of TOWN'S field inspection requirements. Nor shall COMPANY, its agents or contractors be relieved from the payment of any permits, fees, licenses or ad valorem taxes ordinarily imposed by TOWN on similar business activities.

SECTION 2: COMPANY'S facilities shall be so located or relocated and so erected as to interfere

as little as possible with traffic over said streets, avenues, alleys, highways, bridges, easements and other public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made only after notification to the Town, and if desired by Town, under the supervision and with the approval and such conditions as the TOWN may design, provided any conditions imposed do not unreasonably interfere with the proper operation of COMPANY's facilities and service. When any portion of the TOWN's property is excavated or disturbed by COMPANY in the location or relocation of any of its facilities, the portion of the TOWN's property or those properties owned by others which have been excavated or disturbed shall, as soon as reasonably practicable after such excavation, or disturbance be restored by the COMPANY at its sole expense and in at least the same condition as it was at the time of such excavation or disturbance. In addition, such work shall be done only the manner and pursuant to the regulations established by the TOWN. Upon failure of COMPANY to restore any disturbed or excavated property in a time Town deems to be as soon as reasonably practicable, the Town shall give Company 20 days written notice of Town's intention to repair any property excavated or disturbed. Upon the expiration of the 20 day notice, COMPANY TOWN the TOWN may repair such portion of the TOWN'S property that may have been excavated or disturbed by COMPANY, and the cost of same as well as the Town's expenses shall be paid by COMPANY. Nothing in this section shall be construed to make the TOWN liable to the COMPANY for any cost or expense in connection with the construction, reconstruction or relocation of the

COMPANY'S facilities in streets, avenues, alleys, highways, bridges, easements, and other public places of the TOWN made necessary by widening, paving, or otherwise improving such streets, avenues, alleys, highways, bridges, easements, and other public places, except that the COMPANY shall be entitled to seek reimbursement of such costs and expenses from funds available from sources other than the TOWN as may be provided by law.

SECTION 3: At all times during the term of this franchise COMPANY shall promptly and without discrimination furnish an adequate supply of gas of standard quality and pressure to TOWN and its successors, and to persons, corporations and inhabitants thereof who request the same and agree to abide by COMPANY's reasonable rules and regulations, and shall acquire, construct, maintain, equip and operate all necessary facilities for the manufacture, purchase, transmission, supply and distribution of gas for the benefit and convenience of TOWN and its inhabitants. In any case where there is interruption or impairment of service, or failure to supply gas or pressure, COMPANY shall promptly remedy such condition; provided that any interruption or impairment of service resulting from a strike, accident, an act of God, or other cause beyond the control of the COMPANY shall, if remedied within a reasonable time period agreed to by the parties hereto, shall not constitute grounds for revoking and canceling any rights hereunder.

SECTION 4: COMPANY shall have the right to adopt and enforce rules and regulations with

respect to the extension, initiation and rendering of gas service, including rules providing for the discontinuance of service to any customer for nonpayment of bills when due, or for failure to comply with the COMPANY'S other rules and regulations. All rates for gas and rules and regulations established by COMPANY from time to time shall be subject to the approval of the Florida Public Service Commission.

SECTION 5: TOWN, and its officers, employees and agents shall not be liable or responsible for any accident or damage that may occur in the construction, operation, conduct or maintenance by the COMPANY of its facilities or services hereunder, and the adoption of this ordinance granting a gas franchise shall be deemed an agreement on the part of the COMPANY to protect, defend and indemnify the TOWN, and its officers, employees and agents and hold it harmless against any and all liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of actions, of whatsoever kind or nature arising out of the negligence, default, misconduct or otherwise of the COMPANY in the construction, operation, conduct or maintenance of its facilities or services hereunder, excepting only the negligence of the TOWN.

SECTION 6: COMPANY shall carry in full force and effect during the entire term of this franchise, and any extension period thereof, the following insurance coverages and amounts thereof: (a) Comprehensive General Liability Insurance, including bodily injury liability, property damage liability and product liability insurance, with a minimum combined single limit of \$1,000,000, and (b) Workers Compensation

Insurance and Comprehensive Automobile Liability Insurance as required under the Florida Statutes for the benefit of the employees of COMPANY.

SECTION 7: Within 30 days after the first anniversary date of the adoption of this ordinance and within 30 days after each succeeding anniversary date during the existence of this franchise, the COMPANY, its successors and assigns, shall pay or have paid to the TOWN or its successors a privilege tax equal to the amount by which six and one half percent (6.5%) of its gross revenues (gross revenues being the amount billed less charge-off for uncollectible accounts and adjustments) from the sale of gas to residential and general service customers within the corporate limits of TOWN for the 12 calendar months preceding the applicable anniversary date, shall exceed the amount of any other taxes, licenses or other impositions levied or imposed by TOWN against COMPANY'S property, business or operations for the tax year preceding the beginning of the applicable privilege tax year, but not including any public service tax levied on the purchase of metered or bottled gas pursuant to F. S. § 166.231.

Payment shall be made quarterly on or before the final day of each three calendar month period based on one-fourth of the total payments made in the preceding privilege tax year, except for the first privilege tax year where each quarterly payment shall equal 1.625% of gross revenues from the sale of gas to residential and general service customers for the 12 calendar months preceding the effective date of this Ordinance. At the close of each fiscal tax year, an accounting shall be made to determine whether COMPANY owes additional monies, which shall be paid not

less than 30 days after the close of said fiscal tax year, or whether COMPANY is owed a refund, which shall be collected by offsetting the total amount of the refund from the next succeeding quarterly payment made to the TOWN.

SECTION 8: As a condition precedent to the taking effect of this grant, TOWN hereby reserves and COMPANY hereby gives and grants to TOWN, the right at and after the expiration of this grant to purchase the property of COMPANY used under this franchise grant at a valuation to be determined by negotiation between the parties.

SECTION 9: In consideration of the COMPANY'S undertakings hereunder as evidenced by its acceptance hereof, the TOWN agrees not to engage in the business of distributing and selling gas during the life of this franchise or any extension thereof in competition with the COMPANY, its successors and assigns.

SECTION 10: Failure on the part of COMPANY to comply in any substantial respect with any of the provisions, covenants, terms or conditions of this ordinance, shall be grounds for a forfeiture of this grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by COMPANY until a court of competent jurisdiction (with right of appeal in either party) shall have found that COMPANY has failed to comply in a substantial respect with any of the provisions of this franchise, and the COMPANY shall have six months after the final determination of the question, to make good the default before a forfeiture shall result with the right in TOWN at its discretion to grant such additional time to COMPANY for

compliance as necessities in the case require.

SECTION 11: Upon the adoption of this Ordinance, COMPANY agrees to observe, perform and keep all of the agreements, covenants, terms and conditions specified herein by the COMPANY.

SECTION 12: All of the terms, covenants and conditions hereof shall inure to and be binding upon the respective successors and assigns of the TOWN and the COMPANY.

SECTION 13: No assignment or transfer of the franchise rights granted by this Ordinance, shall be effective unless the COMPANY shall have notified the TOWN in writing 60 days prior to the proposed date of any assignment or transfer, and unless, the TOWN shall have adopted an ordinance approving the terms of the franchise proposed to be assigned. Such approval and consent shall not be unreasonably withheld by TOWN. The assignment or transfer of the franchise rights shall be subject to any additional term, provisions and conditions, as agreed to between the TOWN and the party to whom COMPANY proposes to assign or transfer the franchise, and as set forth in the ordinance approving the assignment or transfer.

SECTION 14: In the event of a final adjudication of bankruptcy of the COMPANY, the TOWN shall have full power and authority to terminate, revoke, and cancel any and all rights granted under the provisions of this ordinance.

SECTION 15: Minor changes to the non-material terms and conditions hereof may be made by written agreement between the TOWN and the COMPANY, provided, however, that this section shall not be construed as conferring authority to make changes in or

modification of the provisions of this ordinance which would be repugnant to or inconsistent with the basic grant, factors or principles underlying the terms and conditions hereof.

SECTION 15: The accounts and records of the COMPANY pertaining to gas service rendered under this franchise shall be maintained within the State of Florida, and TOWN may, at its option, upon reasonable notice to COMPANY, at any time during the 90 days after the close of each privilege tax year of this grant, or at such other times as mutually agreed to between the parties, audit and/or examine the accounts and records of COMPANY relating to the calculation of the franchise payment to the TOWN. Such examination of accounts and records of COMPANY by TOWN shall be made during the regular business hours of the COMPANY at the General Office of the COMPANY. The COMPANY shall maintain its records in sufficient detail that revenues within the corporate limits of the TOWN are readily discernible from other revenues for auditing purposes. All examinations shall be at the sole expense of the TOWN. However, if the TOWN conducts an audit of the COMPANY'S books and records, and substantial discrepancies are discovered which result in sums which should have been paid to TOWN, then the cost of such audit shall be paid by COMPANY.

SECTION 17: Repeal of Laws in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 18: Severability.

Should any section or provision of this ordinance or any portion thereof, any

paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

SECTION 19: Effective Date.

AGREEMENT

COMES NOW, **FLORIDA PUBLIC UTILITIES COMPANY**, a public utility organization organized and existing under the laws of the State of Florida, hereinafter the Company ("Company"), and **the TOWN OF LAKE PARK** ("Town"), a municipal corporation organized and existing under the laws of the State of Florida and agree:

1. That the Town has adopted an ordinance granting a franchise to the Company to construct or otherwise acquire and to own, maintain, equip and operate plants and works, and all necessary or desirable appurtenances thereof, for the manufacture, purchase, transmission and distribution of artificial, natural and/or mixed gas (hereinafter referred to generally as "gas"), including the right without payment by the Company of any special tax, assessment or charge. The franchise authorizes the Company to construct, lay, extend, maintain, renew, remove, replace, repair, use and operate gas pipes and gas mains, and all appurtenances and appendages thereto, in, under, or across the present and future public streets, avenues, alleys, highways, bridges, easements and other public places within the present or any future corporate limits of Town or its successors, for the purpose of distributing, supplying and selling gas to Town or its successors, and to persons and corporations inhabitants thereof.

2. That contemporaneously with the adoption of the franchise by the Town and the acceptance of that franchise by the Company, the Town and the Company have entered into this separate agreement that during the term of the franchise, and any renewal or extension thereof, when and if the Company negotiates a gas franchise after the effective date of the acceptance of the franchise, which increases the percentage of the franchise fee payable above the 6.5% provided by the ordinance, the Town shall have the right to amend the franchise ordinance during the 30 year term to provide for the application of such increase percentage to collections made for the sale of gas within the Town and the Company hereby irrevocably consents to any such amendments adopted pursuant hereto.

Annually, as of January 1 of each year, the Company will furnish the Town a list of all of its gas franchises including the name and address of the franchisor, the date of the franchise, the percentage of the franchise fee, and the length of the term of the franchise, including both those negotiated after the date of acceptance of the franchise, which are covered by this Agreement, and those which are excluded. Should any of the franchises covered by this Agreement provide a franchise fee above the 6.5% provided by the amended ordinance, the Town, may in its sole discretion, elect to amend the existing franchise ordinance to provide for a like franchise fee upon giving the Company at least 30 days advance written notice prior to the effective date in order to give the Company sufficient time to implement the increased franchise fee.

3. Further provided the increase referred to above shall be implemented at the beginning of the franchise year, which shall be the anniversary of the effective date of the franchise referred to above in each succeeding year.

4. Further provided that the amendment shall apply only to a change in the applicable franchise fee percentage and not to any change in class of service to which it applies.

5. If, during the term of the referenced franchise Town, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters ("Alternative Gas Providers") a gas franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public rights of way of the Town, for the purpose of supplying or delivering Natural Gas to customers located within the corporate limits of the Town or receiving such gas from a person other than the Grantee within such corporate limits, and imposes a franchise fee on such Alternate Gas Provider for any customer or class of customers that is less than that imposed with respect to the same Customer or class of Customers under this Franchise Agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of customers of the Company shall be reduced under this Franchise Agreement so that the franchise compensation paid hereunder for such Customer class is no greater than the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance applicable to it, when compared on a dollars-per-therm basis.

In the event that the Town determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Company's obligation to pay a franchise fee under the franchise ordinance with respect to revenues derived from the provision of service by the Company to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

DATED this _____ day of _____, 20__.

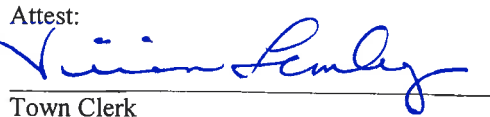
FLORIDA PUBLIC UTILITIES COMPANY

TOWN OF LAKE PARK, FLORIDA

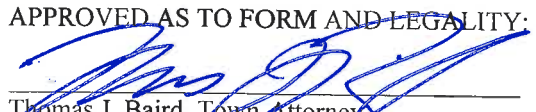
By: C. L. Stein, Sr. Vice President & C.O.O.


By: Mayor Desca DuBois

Witness:

Attest:

Town Clerk

M.L. Schneidermann, Director of Corp Service

APPROVED AS TO FORM AND LEGALITY:

Thomas J. Baird, Town Attorney

Upon First Reading this 7 day of October, 2009, the foregoing Ordinance, was offered by Vice-Mayor Carey, who moved its approval. The motion was seconded by Commissioner Rumsey and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____

PUBLISHED IN THE PALM BEACH POST THIS 11 DAY OF October, 2009

Upon Second Reading this 21 day of October, 2009, the foregoing Ordinance, was offered by Vice-Mayor Carey, who moved its adoption. The motion was seconded by Commissioner Rumsey and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No. 14-2009** duly passed and adopted this 21 day of October, 2009.

TOWN OF LAKE PARK, FLORIDA

BY: Desca DuBois
Mayor, Desca DuBois

ATTEST:

Vivian M. Lemley
Town Clerk, Vivian M. Lemley
(Town Seal)
**TOWN OF LAKE PARK
SEAL**

Approved as to form and legal sufficiency:

Thomas J. Baird
Town Attorney, Thomas J. Baird

FLORIDA

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In the event that the Town determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Company's obligation to pay a franchise fee under the franchise ordinance with respect to revenues derived from the provision of service by the Company to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

DATED this _____ day of _____, 20_____.

FLORIDA PUBLIC UTILITIES COMPANY

By: C. L. Stein, Sr. Vice President & C.O.O.


Witness:

M.L. Schneidermann, Director of Corp Service

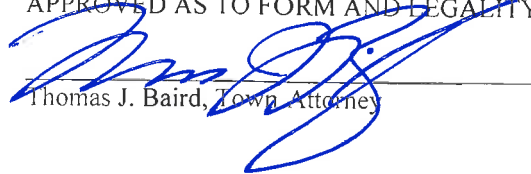
TOWN OF LAKE PARK, FLORIDA


By: Mayor Desca DuBois

Attest:


Town Clerk

APPROVED AS TO FORM AND LEGALITY:


Thomas J. Baird, Town Attorney