

ORDINANCE NO. 04-2003

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, RENEWING A NON-EXCLUSIVE GAS FRANCHISE WITHIN THE TOWN OF LAKE PARK FOR THE FLORIDA PUBLIC UTILITIES COMPANY, PROVIDING FOR CONDITIONS RELATING THERETO; PROVIDING A CONFLICTS CLAUSE PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town has such powers as conferred upon it pursuant to the Florida Constitution, Chapter 166, F.S. and Chapter 180 F.S.; and

WHEREAS, pursuant to the authority conferred upon the Town under Chapter 180 F.S., as amended, the Town may contract with any private company or corporation which is organized for the provision of municipal public works services, specifically including but not limited to, the construction, operation and maintenance of gas plants and distributions systems for domestic, municipal and industrial uses;

WHEREAS, when the Town wishes to exercise its powers granted by Chapter 180, F.S., an ordinance or resolution must be passed by the Town Commission reciting the utility to be constructed or extended; its purpose; the territory to be included; the method of financing the project if any; and any other provisions as the Town may deem necessary;

WHEREAS, the Town previously granted a non-exclusive gas franchise to the Florida Public Utilities Company in accordance with the powers and authority conferred upon it by the Florida Constitution and the Florida Statutes;

WHEREAS, the Town has reviewed and analyzed the existing gas franchise and services provided thereunder by the Florida Public Utilities Company over the term of the preceding franchise term and;

WHEREAS, the Town has determined that it is in the best interests of the Town and its residents and businesses, to renew the Town=s previously granted, non-exclusive franchise for the Florida Public Utilities Company for an additional ten (10) year term, and upon other such conditions and limitations which are expedient and in the Town=s best interest, as further set forth herein;

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 "GRANTOR"), hereby grants to FLORIDA PUBLIC UTILITIES COMPANY, a corporation of the State of Florida (hereinafter "GRANTEE"), a franchise to construct, 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 "gas"), including the right 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 GRANTOR for the purpose of distributing, supplying and selling gas to GRANTOR or its successors, and to persons, corporations and inhabitants thereof, as well as to persons or corporations beyond the present or future corporate limits thereof, (hereinafter "Franchise") for the term of ten (10) years, beginning the first day of the first full calendar month following the date of the Town Commission's adoption of this Ordinance. Nothing contained herein shall relieve GRANTEE from complying with all applicable requirements of the GRANTOR'S Code of Ordinances including its land development regulations. Furthermore, nothing herein contained shall relieve GRANTEE from the payment of any fees, licenses or ad valorem taxes ordinarily imposed by GRANTOR on similar business activities.

SECTION 2: GRANTEE'S facilities shall be located or relocated and erected so as to minimize any interference with traffic over the streets, avenues, alleys, highways, bridges, sidewalks, easements and other public places within the Town, and with reasonable ingress and egress from and to abutting properties. The location or relocation of all of GRANTEE'S facilities and improvements are subject to the supervision and approval of the GRANTOR, provided however, the GRANTOR shall not unreasonably interfere with the location or relocation of GRANTEE's facilities. When any portion of the GRANTOR's property is excavated or disturbed by GRANTEE in the location or relocation of any of its facilities, the portion of the GRANTOR's property so

excavated or disturbed shall be restored by the GRANTEE at its sole expense, within two (2) weeks and in as good condition as it was at the time of such excavation or disturbance. GRANTEE=s work shall be subject to the GRANTOR=s land development regulations. If the GRANTEE fails to restore the property within two (2) weeks as set forth above, the GRANTOR may restore those portions of property that were excavated or disturbed by GRANTEE, and the cost of same shall be paid by GRANTEE. If the costs are not paid, the GRANTOR may take such legal actions as it deems necessary to recover its costs and shall be entitled to recover its legal fees and expenses to enforce this provision. Nothing in this Section shall be construed to subject the GRANTOR to liability to the GRANTEE for any costs or expenses in connection with the construction, reconstruction or relocation of the GRANTEE'S facilities in streets, avenues, alleys, highways, bridges, sidewalks, easements, and other public places of the GRANTOR, which are made necessary by widening, paving, or otherwise improving such streets, avenues, alleys, highways, bridges, sidewalks, easements, and other public places, except that the GRANTEE shall be entitled to seek reimbursement of such costs and expenses from funds available from sources other than the GRANTOR, as may be provided by law.

SECTION 3: At all times during the term of this Franchise, GRANTEE shall promptly and without discrimination, furnish an adequate supply of gas of

standard quality and pressure to GRANTOR, and to its residents and businesses who request the same and who agree to abide by GRANTEE's reasonable rules and regulations as set forth in GRANTEE's service contracts. GRANTEE 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 GRANTOR and its residents and businesses. In any case where there is interruption or impairment of service, or failure to supply gas or pressure, GRANTEE shall promptly remedy such condition; provided that any interruption or impairment of service resulting from a strike, accident, an act of God, if remedied within a reasonable time period agreed to by the parties, not constitute grounds for revoking and canceling any rights hereunder.

SECTION 4: GRANTEE shall have the right to adopt and enforce reasonable 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 GRANTEE'S rules and regulations. These rules and regulations shall be set forth in GRANTEE's service contracts. All rates charged for gas and all rules and regulations established by GRANTEE, shall be subject to the prior approval of the Town Commission, and all operations of the GRANTEE shall

be in accordance with the rules and regulations of the Florida Public Service Commission and Chapter 180, F.S.

SECTION 5: GRANTOR, and its officers, employees and agents shall not be liable or responsible for any and all claims, damages, losses, liabilities, expenses (direct, indirect or consequential), that may occur in the construction, operation, use, maintenance or repair by the GRANTEE of its facilities or services hereunder. The acceptance of this Franchise shall be deemed an agreement on the part of the GRANTEE to protect, indemnify, defend and hold harmless the GRANTOR, and its elected and appointed officers, employees and agents against any and all liabilities, claims, demands, damages, losses, expenses, fees, fines, penalties, suits, proceedings, actions and causes of actions, of whatsoever kind or nature arising out of, or alleged to have arisen out of, or in consequence of the GRANTEE in the construction, operation, use, maintenance or repair of its facilities or services hereunder. This provision shall survive the termination or expiration of this Franchise.

SECTION 6: GRANTEE shall carry in full force and effect during the entire term of this Franchise, the following insurance coverages: (a) Comprehensive General Liability Insurance, including bodily injury liability, property damage liability and product liability insurance, with a minimum combined single limit

of One Million Dollars (\$1,000,000), and (b) Workers Compensation Insurance, Employer=s Liability Insurance and (c) Comprehensive Automobile Liability Insurance as required under the Florida Statutes for all owned, non-owned, and hired automobiles and vehicles used by the GRANTEE. GRANTEE shall provide GRANTOR with a certificate of insurance evidencing the required coverages and providing that the GRANTOR is an additional insured under the policy.

GRANTEE shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnification, including but not limited to, reasonable attorney=s fees and costs. GRANTOR reserves the right to select it own legal counsel to conduct a defense in any such proceeding, and all costs and fees associated therewith, including any costs and fees of defense, including appeals, shall be and remain the responsibility of the GRANTEE. Nothing contained herein is intended, nor shall be construed, to waive the GRANTOR=s rights and immunities under the common law or Florida Statute Section 768.28, as amended from time to time. This obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party hereto. This indemnification provision shall survive the termination or expiration of this Franchise.

SECTION 7: Within thirty (30) days after the first anniversary date of this Franchise, and within thirty (30) days after each succeeding anniversary date during the term of this Franchise, the GRANTEE shall pay or have paid to the GRANTOR, a franchise fee. The franchise fee shall be equal to the amount of seven percent (7%) of its gross revenues from the sale of gas to all customers within the corporate limits of GRANTOR for the twelve calendar months preceding the applicable anniversary date. Gross revenues are defined as the amount billed less charge-off for uncollectible accounts and adjustments. The franchise fee shall be in addition to any and all other taxes, licenses or other impositions levied or imposed by GRANTOR or other taxing authorities with jurisdiction against GRANTEE'S property, business or operations for the tax year preceding the beginning of the applicable franchise fee year, except for any public service tax levied on the purchase of metered or bottled gas pursuant to F. S. ' 166.231, as amended from time to time.

Payment by the GRANTEE to GRANTOR of the franchise fee shall be made quarterly, and shall be paid no later than thirty (30) days before the end of each quarter. At the close of each fiscal tax year, an independent audit shall be conducted by an auditor of GRANTOR=s choice to determine whether GRANTEE owes additional monies. If the auditor determines that GRANTOR is entitled to additional monies, these shall be paid by GRANTEE not less than thirty (30) calendar days after the close of the fiscal tax year. If

the audit reveals that the GRANTEE is owed a refund, the GRANTOR shall offset the total amount of the refund from the next succeeding quarterly payment made to the GRANTOR.

SECTION 8: GRANTEE hereby grants to GRANTOR, the right to purchase the property of GRANTEE used under this Franchise at the expiration of this Franchise at a valuation to be determined by negotiations between the parties, provided however that if the valuation cannot be mutually agreed upon, the valuation will be determined in accordance with the provisions of Chapter 180, F.S., as amended from time to time.

SECTION 9: In consideration of the GRANTEE'S undertakings hereunder as evidenced by its written acceptance hereof, the GRANTOR agrees not to engage in the business of distributing and selling gas in competition with the GRANTEE during the term of this Franchise or any extension thereof.

SECTION 10: The failure of the GRANTEE to comply with any of the material provisions, covenants, terms or conditions of this Ordinance, shall be grounds for the forfeiture and termination of this Franchise.

SECTION 11:

All of the terms, covenants and conditions hereof shall inure to and be binding upon the respective successors and assigns of the GRANTOR and the GRANTEE.

SECTION 12:

No assignment or transfer of the Franchise granted herein, shall be effective unless the GRANTEE notifies the GRANTOR in writing prior to the assignment or transfer, and the GRANTOR approves and consents to the assignment or transfer by passage of an Ordinance. The GRANTOR'S approval and consent shall not be unreasonably withheld. The assignment or transfer of the Franchise rights shall be subject to any additional provisions and conditions, as agreed to between the parties, and as set forth in the ordinance approving the assignment or transfer.

SECTION 13:

In the event of a final adjudication of bankruptcy of the GRANTEE, the GRANTOR shall have full power and authority to terminate, revoke, and cancel any and all rights granted under the provisions of this Ordinance.

SECTION 14:

Minor changes in the terms and conditions of this Franchise may be made by written agreement between the GRANTOR and the GRANTEE, provided, however, that this section shall

not be construed as conferring authority to make changes in, or modifications of, the provisions of this Ordinance which would be repugnant to, or inconsistent with, the basic Franchise grant, and factors or principles underlying the terms and conditions hereof.

SECTION 15:

The accounts and records of the GRANTEE pertaining to gas service rendered under this Franchise shall be maintained within the State of Florida, and GRANTOR may, at its option, upon reasonable notice to GRANTEE, at any time during the term of this franchise, and for a period of three (3) years after termination of the Franchise and any renewal term hereof, examine and audit the accounts and records of the GRANTEE as they relate to the calculation of payments to the GRANTOR. The inspection, examination, review and audit of the accounts and records of GRANTEE by GRANTOR shall be made during the regular business hours of the GRANTEE at the general office of the GRANTEE. The GRANTEE shall maintain its records in sufficient detail so that revenues within the corporate limits of the GRANTOR are readily discernible from other revenues for auditing purposes. All examinations shall be at the sole expense of the GRANTOR. However, if the GRANTOR conducts an audit of the GRANTEE'S books and records, and substantial discrepancies are discovered which result in sums which should have been paid to GRANTOR, then the cost of such audit will be paid by GRANTEE.

SECTION 16: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 17: 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 18: This Ordinance shall take effect upon the first day of the first full calendar month following the date of the Town Commission=s adoption of this Ordinance.

Upon First Reading this 5th day of February, 2003 the foregoing ORDINANCE was offered by Vice Mayor Chuck Balius, who moved its approval. The motion was seconded by Commissioner Otterson, and upon being put to a vote, the result was as follows:

	YES	NAY
MAYOR PAUL CASTRO	<u> X </u>	_____
VICE MAYOR CHUCK BALIUS	<u> X </u>	_____
COMMISSION PAUL GARRETSON	<u> X </u>	_____
COMMISSIONER JEANIE LONGTIN	<u> X </u>	_____
COMMISSIONER BILL OTTERSON	<u> X </u>	_____

Upon Second Reading this 19th day of February, 2003 the foregoing ORDINANCE was offered by Commissioner Garretson, who moved its adoption. The motion was seconded by Vice Mayor Balius, and upon being put to a vote, the result was as follows:

	YES	NAY
MAYOR PAUL CASTRO	<u> X </u>	_____
VICE MAYOR CHUCK BALIUS	<u> X </u>	_____
COMMISSION PAUL GARRETSON	<u> X </u>	_____
COMMISSIONER JEANIE LONGTIN	<u> X </u>	_____
COMMISSIONER BILL OTTERSON	<u> X </u>	_____

The Mayor thereupon declared Ordinance 04-2003 duly passed and adopted this 19th day of February, 2003.

TOWN OF LAKE PARK, FLORIDA

By: _____, Paul Castro, Mayor

ATTEST:

Approved as to form and
legal sufficiency:

Carol Simpkins, Town Clerk

By: _____

Thomas J. Baird, Town Attorney