

## **ORDINANCE NUMBER 2013-03**

AN ORDINANCE ENTITLED, AN ORDINANCE GRANTING A FRANCHISE TO THE CITY OF MARIANNA, FLORIDA, A MUNICIPAL CORPORATION, INC., IN THE TOWN OF GREENWOOD, FLORIDA, FOR THE DISTRIBUTION AND SALE OF NATURAL GAS AND FIXING THE TERMS, CONDITIONS AND LIMITATIONS RELATIVE TO THE CONSTRUCTION, OPERATION AND MAINTENANCE OF NATURAL GAS UTILITIES WITHIN THE MUNICIPAL BOUNDRIES OF THE TOWN OF GREENWOOD.

WHEREAS, the Town Council desires to facilitate the provision of natural gas to the citizens of the Town of Greenwood; and

WHEREAS, the City of Marianna is willing to install, maintain and operate a natural gas distribution system within the municipal boundaries of the Town of Greenwood.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GREENWOOD, FLORIDA, IN DULY ASSEMBLED SESSION AS FOLLOWS:

**Section 1. Grant.** The Town of Greenwood, Florida (herein called the "Grantor") hereby grants to The City of Marianna, (herein call "Grantee"), the non-exclusive right, privilege and authority of franchise to construct or otherwise acquire, at Grantee's sole expense, and to own, maintain, equip and operate a natural gas distribution system and all necessary or desirable appurtenances thereto for the transmission, distribution, supply and sale of natural gas and to use and occupy the present and future streets and other public places including avenues, roads, alleys, lanes, bridges, parts, and rights of way within the present and any future corporate limits of Grantor, for erecting, constructing, installing, maintaining, renewing, replacing, repairing, owning and operating all necessary facilities, including but not limited to meters, regulator stations and other appendages thereto, used or useful for the purpose of distributing natural gas and for distributing, supplying and selling natural gas within the present or future corporate limits of Grantor.

**Section 2. Scope and Costs.** At all times during the term of this franchise the Grantee is hereby granted the right to supply natural gas in, through, and across the said town by and from sources situated outside of said town, provided that Grantee, shall at all times supply adequate natural gas to

said town and its inhabitants at rates that shall be fair and reasonable, subject to the economic necessities of the Grantee. At all times during the term of this franchise Grantee shall promptly and without discrimination furnish an adequate supply of natural gas at standard pressures within approved limits to Grantor and, within a reasonable period of time and when economically feasible, subject to the economic realities of Grantee, to all persons or entities within Grantor's corporate limits who request the same and agree to abide by Grantee's reasonable rules and regulations. Grantee shall use due care to construct and maintain its facilities in a manner that will not unreasonably interfere with the proper use by the public of the streets and other public places of the Grantor and shall use care and caution in erecting, repairing and/or maintaining its facilities to prevent injury to persons and property. Nothing in this section shall be construed to make the Grantor liable to the Grantee for any cost or expense in connection with the construction, reconstruction or relocation of the Grantee's facilities in streets, avenues, alleys, highways, bridges, easements, and other public places of the Grantor made necessary by widening, paving, or otherwise improving such streets, avenues, alleys, highways, bridges, easements, and other public places. 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. The distribution system shall be erected, placed, or laid, in such manner as will, consistent with necessity, least interfere with other public uses of the present and future streets and other public places including avenues, roads, alleys, lanes, bridges, parts, and rights of way within the present and any future corporate limits of Grantor, and said streets shall not be unnecessarily obstructed, and before, except in an emergency situation, Grantee makes any excavation or disturbs the surface of any of the streets, alleys, or public rights-of-way, it shall make application for permit to the appropriate officer of Grantor. The Grantor shall issue, or if appropriate, deny, permits pursuant to its ordinances and policies in place at the time of application. Permits will not be unreasonably denied, but the Grantee's refusal of Grantor's choice of alternate ways and means that do not create burdensome expense for Grantee shall be a reasonable basis for denial. Grantee shall, at its own cost and expense, replace or repair, without



delay, any street, sidewalk, public way, alleyway, highway, waterway, bridge, or any other public place that has been excavated, broken, removed, displaced, or disarranged by the Grantee in the conduct of its construction, maintenance, and operation of any portion of the system, or as a result of the deterioration of any portion of the system, and restore the same to as good a condition as it existed prior to Grantee commencing its work. Upon failure of the Grantee to do so after thirty (30) days written notice by the Grantor, the Grantor may make such repairs and replacements as it deems reasonably necessary and the Grantee shall pay the Grantor, upon demand, all costs of such repairs and replacements. If the Grantor notifies the Grantee in writing of a defect directly attributable to Grantee's faulty workmanship, then the Grantee shall timely correct the restoration work in a workmanlike manner.

**Section 3. Rules and Regulations.** To the extent consistent with Florida law, the Grantee hereby agrees to abide by all the rules, regulations, and ordinances which the Grantor has passed or might pass in the future, and further agrees to abide by any established policy which the Grantor or its duly authorized representative has passed, established, or will establish; provided, however, the Grantor shall not pass any ordinance or regulation that results in a material change of the rights or obligations of the Grantee under the franchise agreement. All rates, rules and regulations established by Grantee from time to time shall be reasonable, and they shall not differ from the rates, rules and regulations imposed by Grantee on the citizens of the City of Marianna.

**Section 4. Liability for Interruptions.** Grantee shall not be liable for any interruption of service or failure of supply of natural gas due to accidents unconnected with negligence on the part of Grantee, its agents or assigns, or to causes beyond the reasonable control of Grantee and such interruptions shall not constitute a breach of this franchise, provided Grantee shall use due diligence to restore service within a reasonable time.

**Section 5. Grantor's Reservation of Police Power.** All rights herein granted and authorized shall be subject to and governed by this Ordinance, the laws of the State of Florida, and applicable

regulations and rulings of the Florida Public Service Commission and the Grantor expressly reserves unto itself all its police power to adopt general ordinances necessary to protect the safety and welfare of the general public in relation to the rights hereby granted not inconsistent with the provisions of this ordinance.

**Section 6. Indemnity.** Grantee shall save and keep Grantor harmless from any and all liability by reason of damage or injury to any person or property whatsoever on account of negligence of Grantee in the installation, maintenance and operation of its natural gas facilities. The forgoing shall not be construed or interpreted to increase the dollar limit of Grantee's liability beyond that which is set forth in Section 768.28(5) Florida Statutes as the maximum liability "per person" or "per occurrence" or to require Grantee to indemnify Grantor or any other person, corporation or legal entity of any kind or nature for injury or loss resulting from any acts other than the negligent acts of Grantee's agents, officers or employees. Grantee shall not indemnify any party for attorney fees or costs other than those court costs which are set forth by Florida Statute or rule as recoverable costs.

**Section 7. Insurance Coverages by Grantee.** Grantee shall carry in full force and effect during the entire term of this agreement, and any extension period thereof, 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 at least One Million Dollars (\$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 Grantee.

**Section 8. Meters - Right of Ingress and Egress.** Grantee shall install and maintain meters for measuring natural gas and shall have the right of ingress and egress on private property, from time to time, for the purpose of reading, repairing, testing and maintaining Grantee's meters and appurtenances. Such meters and appurtenances shall at all times remain the property of Grantee and shall be removable at any time.



**Section 9. Franchise Fee.** As consideration for the granting of the rights, privileges and franchises set forth herein, the Grantee shall charge and collect from all purchasers of natural gas within the city limits of Grantor, and pay to the Grantor within thirty (30) days after the first day of each month, a franchise fee in an amount not to exceed six percent (6%) of Grantee's gross revenue from the furnishing of natural gas to customers served within the corporate limits of the Grantor collected during the preceding month. Grantor may suspend or reduce this fee from time to time in order to lower the cost of natural gas to its residents, but any such suspension or reduction is only temporary and shall not waive Grantor's right to increase the franchise fee, not to exceed six percent (6%) of Grantee's revenue, at any future time with reasonable notice.

**Section 10. Term.** The term of this grant of franchise shall be for 10 years. If these terms are not extended by agreement of both parties by the expiration of this term, Grantee may continue to provide natural gas service within the corporate limits of the Town of Greenwood only at Grantor's will and shall continue to be bound by all of the terms and provisions herein for so long as the service is provided.

**Section 11. Failure to Comply.** Failure on the part of Grantee 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, provided the Grantee shall have six (6) months after the notice to make good the default before a forfeiture shall result, with the right in Grantor at its discretion to grant such additional time to Grantee for compliance as necessities in the case require. No such forfeiture shall take effect if the reasonableness or propriety thereof is protested by Grantee until a court of competent jurisdiction shall have found that Grantee has failed to comply in a substantial respect with any of the provisions of this franchise.

**Section 12. Grantee's Acceptance of Terms.** Grantee by its acceptance hereof, which shall be filed with the Grantor's City Clerk within thirty (30) days after the final passage of this ordinance, agrees to observe, perform and keep all of the agreements, covenants, terms and conditions hereof to be

observed, performed and kept by Grantee.

**Section 13. Assignment or Transfer.** No assignment or transfer of the franchise rights granted hereby shall be effective unless the Grantee shall have notified the Grantor in writing prior to the scheduled date of said assignment or transfer, and unless, after the filing of said notice, the Grantor shall have by ordinance approved and consented to such assignment or transfer. 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 14. Written Modification.** Minor changes in the terms and conditions hereof 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 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. Repealer.** All ordinances and portions of ordinances in conflict herewith are hereby repealed.

**Section 16. Effective Date.** This ordinance shall become effective and shall be in full force and effect from its passage by the Town Council of Greenwood, Florida, and its acceptance in writing by the Grantee filed with the Town Clerk in the Town of Greenwood, Florida.

PRESENTED in open meeting to the Town Council of the Town of Greenwood, Florida, and read in full this 10th day of December, 2013.

PASSED by the Council of the Town of Greenwood, Florida, this 8th day of January, 2014.

ATTEST:

Cindy Croxton  
CINDY CROXTON, Town Clerk

TOWN COUNCIL OF THE  
TOWN OF GREENWOOD, FLORIDA

Charles Sanders  
CHARLES SANDERS, Mayor

ACCEPTED by the City Commission of the City of Marianna, Florida this 4th day of  
February, 2014.

CITY OF MARIANNA, FLORIDA

BY:

MAYOR

Charles Sanders

ATTEST:

Kelly J. Smith  
CITY CLERK