

ORDINANCE NO. 92-06

AN ORDINANCE OF THE CITY OF WEST MIAMI, FLORIDA, GRANTING TO CITY GAS COMPANY OF FLORIDA, A DIVISION OF ELIZABETHTOWN GAS COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE THIRTY YEAR FRANCHISE IN THE CITY OF WEST MIAMI; PROVIDING SEVERABILITY; AND, PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WEST MIAMI, FLORIDA:

Section 1. There is hereby granted to City Gas Company of Florida, a division of Elizabethtown Gas Company (herein called the "Grantee"), its successors and assigns, the non-exclusive right, privilege and franchise, to construct, maintain and operate in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places of West Miami, Florida (herein called the "Grantor"), and its successors, in accordance with Federal, State and local laws, ordinances, rules, regulations and established practice with respect to such construction, maintenance and operation of facilities for the sale, and distribution of gas, including conduits, mains, pipes, laterals and fixtures for the purpose of supplying gas to the Grantor and its successors, and the inhabitants thereof, and persons and corporations beyond the limits thereof, for the term of thirty (30) years from the 2nd day of September, 1989 to the 2nd day of September 2019.

The above grant is made in consideration of the Grantee constructing, maintaining and continuously operating the above facilities for the sale and distribution of gas to residents of

West Miami, as well as for the benefits and conveniences to said inhabitants as a result thereof.

Section 2. Grantor reserves the right at and after the expiration of this grant to purchase the property of the Grantee used under this grant, as provided by the Laws of Florida, in effect at the time of the Grantee's acceptance hereof, and any amendments to such laws, and as a condition precedent to the taking effect of this grant, Grantee gives and grants to the Grantor the right to purchase so reserved. The Grantee shall accept this franchise within thirty (30) days after this Ordinance takes effect by filing with the City Clerk a written acceptance of the franchise.

Section 3.

(a) The facilities shall be so located or relocated and so erected as not to interfere with traffic over streets, alleys, bridges and public places and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of the City Engineer or such representatives as the City Manager of Grantor may designate for the purpose, but not so as to unreasonably interfere with the proper operation of Grantee's facilities and service unless such failure by the City to approve location or relocation of the Grantee's facilities and service is by reason that health and safety factors are involved, which determination shall be at the sole discretion of the City Manager or his qualified designee. When any portion of a street is excavated by Grantee in the location or relocation of any of its

facilities, the street so excavated shall within a reasonable time and as early as practicable after such excavation, be replaced in accordance with the requirements of Article V. of the West Miami Code and any amendments from time to time thereof, by the Grantee at its expense and in as good condition as it was at the time of such excavation.

(b) The mains, service pipes, and gas system - constructed under this grant shall be constructed, maintained and operated in accordance with established practice in respect to such construction, operation and maintenance. Before the commencement of the construction of the mains, service pipes and gas system, the Grantee shall make application to the City of West Miami for a permit, to designate the lines and grades to which, and places where the said gas mains or pipes shall be laid, and thereafter when additional mains or pipes are laid, a like application and designation shall be made as to such additional mains and pipes. All such gas mains and service pipes to be installed shall conform accurately to the lines, grades, and places so designated by the City Manager or his designee. No excavation of any street or other public place shall be made unless Grantee shall beforehand notify the City Manager or his designee and obtain his approval, unless such excavation should be necessary because of an emergency requiring immediate action. All expense of the designee selected by the City Manager for the services described above incurred in pursuance of the provision of this section shall be paid by the Grantee. All construction made under the provisions of this ordinance shall be of first class

material and all gas mains and service pipes shall have an adequate capacity to supply the full requirements of gas, for service to the City of West Miami and its inhabitants, of the proper pressure and quality required by this ordinance.

(c) The Grantee shall upon request of the City Manager or his designee locate horizontally and vertically all facilities, mains, laterals and service pipes which may be in an area where the City will be cutting underground tree roots. Where such location made by the Grantee shows that such facilities, mains, laterals and service pipes are not a minimum of 30" below ground level, the Grantee shall promptly remove, lower, relocate or replace any facilities, mains, laterals and service pipes upon demand of the City Manager or his designee so that same is located a minimum of 30" below ground level.

(d) The Grantee shall promptly make such reasonable and feasible extensions of mains and service pipes as may be ordered by the City Commission of the City of West Miami. Such extensions shall be made at the cost and expense of Grantee. Extensions shall be made in accordance with the extension and feasibility policy provided in Grantee tariff as approved by the Florida Public Service Commission. The gas mains and equipment, and all appurtenances included in such extension shall be and remain the property of the Grantee. As a temporary expedient in the event gas mains cannot be laid as aforesaid, and with the consents of the user thereof and the Grantee, the Grantee may install in lieu of mains and pipe lines such fixtures and appurtenances as will serve the householder, business, factory, or

otherwise with the gas from tanks placed upon the individual premises and generally known as "bottled gas" assemblies, but such service may at any time be changed by the Grantee upon the laying of mains as set forth in this franchise.

(e) In the event the Grantee shall fail to replace and repair streets in accordance with this Section within ten (10) working days, the City, after written notice to the Grantee, may take steps reasonably necessary to replace and make required repairs to the street, and the Grantee shall forthwith reimburse the City for such costs; and upon failure to reimburse the City within ten (10) days after written notice thereof, the costs thereof shall become a lien against all of the facilities of Grantee located within the limits of the City.

Section 4. Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of Grantee, to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage or expense, including but not limited to reasonable attorney fees in all trial and appellate proceedings and in the enforcement of this section by Grantor, which may accrue to Grantor by the reason of the neglect, default, or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5. All rates and rules and regulations established by Grantee from time to time shall at all times be

reasonable and Grantee's rates for gas shall at all times be subject to all applicable Federal, State and local laws, ordinances, rules and regulations as may be from time to time enacted or promulgated.

Section 6. Grantee, its successors and assigns, shall pay to Grantor, its successors and assigns, within thirty (30) days from March 2, 1992, a sum equal to ten percent (10%) of Grantee's gross revenues from the sale of gas to resident and commercial customers within the corporate limits of the Grantor for the period commencing on September 2, 1989 to March 2, 1992, less all franchise fees paid to the Grantor by the Grantee since September 2, 1989.

Section 7. Within thirty (30) days after September 2, 1992, and within thirty (30) days after each succeeding six (6) months thereafter, the Grantee, its successors and assigns, shall pay to Grantor and its successors, an amount equal to ten percent (10%) of Grantee's gross revenues from the sale of gas to resident and commercial customers within the corporate limits of the Grantor during the applicable six months period until the expiration of thirty (30) years from September 2, 1989.

Section 8. Grantor may at any time after September 2, 1992, and from time to time increase the amount of the franchise fee described in Section 7, by passage of a resolution of the City Commission, which resolution shall not become effective until six (6) months from the semi-annual payment of the franchise fees next becoming due.

Section 9. Failure on the part of Grantee to comply in any substantial respect with any of the provisions 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 Grantee, until a court of competent jurisdiction (with right of appeal in either party) shall have found that Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and Grantee shall have six (6) months after the final determination of the question, 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.

Section 10. All gas furnished hereunder shall be of standard quality and uniformity and shall be of such quality as meets the minimum requirements under applicable State and Federal regulations. In addition, said gas shall be furnished at the point of consumption at the usual and customary standard pressure. It shall be the responsibility of the City Engineer, or such other official as the City Commission might designate, to determine whether or not said standards of quality, uniformity and pressure are complied with. Suitable instruments and equipment to conduct the necessary tests shall be furnished at the expense of the Grantee. In the event the quality of gas produced shall, in any calendar month, for an aggregate period of 72 hours, fall below said applicable minimum State and Federal standards, the charges for that month for gas consumed shall be reduced directly in the

proportion that the average number of British Thermal Units produced shall fall below such standard, during any such aggregate period of 72 hours; provided, however, that the Grantee be immediately notified that the gas has so fallen below said standard so as to allow Grantee to correct said condition without delay.

Section 11. This franchise and all work that may be done hereunder shall be subject to such regulations, rules, laws, and ordinances as may be in force or which may hereafter be enacted or adopted for the regulation and use of the streets and highways of the City of West Miami, and for the general welfare and safety of its citizens and the protection and safeguarding of their lives and property.

Section 12. The Grantee shall at all times keep an accurate map showing the location of all gas mains and service pipes laid and maintained by the Grantee under the provisions of this ordinance, and the map shall be accessible for public inspection at all times during reasonable hours. On the first day of January and the first day of June, during each and every year of the term of this franchise, the Grantee shall furnish the City Manager of the City of West Miami or his designee, with a copy of the map of said gas mains and service pipes last made by the Grantee. In the event the Grantor has not received the copy of the map as provided herein, by the 20th day of the month that same had to be furnished, then and in that event the Grantor shall notify Grantee of such failure to receive the copy of the map, and

Grantee shall immediately provide Grantor with such copy or be in default of this Franchise Agreement.

Section 13.

(a) The Grantee shall, at its own cost and expense, construct and maintain service to consumer's property line, and, for the measurement of gas consumed, furnish, install and maintain gas meters which shall be of standard make, tested and sealed, and subject at all times to reasonable inspection by the City of West Miami through such officers or agents as may be designated by the City. A competent gas engineer may be employed by the City, and his duties, as well as the inspection of gas meters herein provided, may be defined by ordinance, and the inspection by such gas engineer may be made once a day or more often, as may be necessary or proper to ascertain the accuracy and efficiency of the gas meters, and whether the heat-unit quality of the gas furnished conforms to the standards provided by this ordinance, and it shall be and become the duty of Grantee to replace any meter in the event of its over registration of two percent (2%) or more. Provided, however, the gas meters shall be and remain the property of the Grantee, and provided the Grantee shall have the right by reasonable rule and regulations to govern the furnishing and maintenance of such gas meters.

(b) The Grantee agrees that during the term of this franchise and any extensions thereof, it will, subject to approval of the Federal and Florida Public Service Commission, and where not inconsistent with the rules and regulations of said commissions, furnish to the ultimate consumers service lines from

mains without costs to the consumers and will without costs to the consumer convert appliances of the consumer from artificial to natural gas. In the event the aforesaid commissions require charges for customer service lines or conversions, the Grantee agrees to charge the actual cost of installation or conversions or the amount required by said commissions.

Section 14. While this franchise is non-exclusive, the Grantor specifically agrees that it shall not, during the terms of this grant, or any extension thereof, engage in the business of distributing and selling gas in competition with the Grantee, its successors or assigns.

Section 15. Grantee shall indemnify, hold harmless and defend grantor, its commissions, boards, members, officers, agents and employees, and any and all other public agencies and their members, officers, agents and employees, against any and all liabilities for injury to or death of any person or any damage to any property caused by grantee, its officers, agents, or employees, in the construction, operation or maintenance of its property, or arising out of the exercise of any right or privilege under the franchise. Such indemnification shall include but not be limited to indemnity for any attorney fees and expenses incurred by the Grantor for enforcement of this agreement in all proceedings including both trial and appellate courts and tribunals.

Section 16. Comprehensive Liability Insurance. At all times during the term of the franchise Grantee will, at its own expense, maintain in force general comprehensive liability

insurance with a best-rated insurance company approved by the City Manager or designee, the policy or policies to be in form satisfactory to the City Attorney of Grantor. The coverage represented by such policy or policies shall be for the protection of Grantor, members of its boards and commissions, and its officers, agents, and employees against liability for loss or damages for bodily injury, death, and property damage occasioned by the activities of Grantee under the franchise. Minimum liability limits under the policy or policies are to be Five Million Dollars (\$5,000,000.00) for personal injury or death of any one person and Five Million Dollars (\$5,000,000.00) for personal injury or death of two or more persons, in any one occurrence, and One Million Dollars (\$1,000,000.00) for damage to property resulting from any one occurrence. Additional public agencies and their personnel shall be added as insureds, subject to the same terms and conditions, at the request of Grantor.

The policies mentioned in the foregoing paragraph shall each contain a provision that a written notice of any cancellation or reduction in coverage of the policies shall be delivered to Grantor Ninety (90) days in advance of the effective date thereof. If any such insurance is provided by a policy that also covers Grantee or any entity or person other than those named above, then such policy shall contain the standard cross-liability endorsement.

Section 17. The Grantee shall fully comply with all rules and regulations promulgated by resolution of the City Commission of the City of West Miami from time to time relating to

the construction, maintenance and operation of the facilities of gas, including conduits, mains, pipes, laterals and fixtures for the purpose of supplying gas to Grantor and its successors and persons and corporations within the City limits.

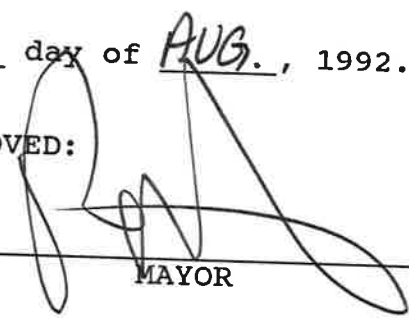
The Grantee shall be notified of any such changes prior to City Commission action and shall be allowed to take part in discussions relative thereto.

Section 18. If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

Section 19. This Ordinance shall take effect on September 2, 1989.

PASSED AND ADOPTED this 19 day of AUG., 1992.

APPROVED:



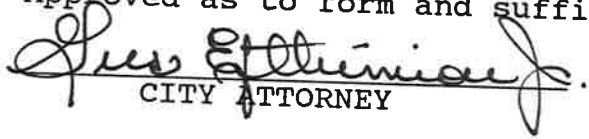
MAYOR

ATTEST:



CITY CLERK

Approved as to form and sufficiency



CITY ATTORNEY

Roll Call Vote:

Mayor Reboredo yes

Vice Mayor Diaz Padron yes

Commissioner Sosa yes

Commissioner Herbert yes

Commissioner Trigo yes

Date of 1st reading: 7/15/92

Date of Publication: 8/4/92

Date of 2nd Reading: 8/19/92