

## GAS FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** (“Agreement”) made and entered into as of the 13th day of April, 2006, pursuant to Ordinance Number 2006-12 (“the Ordinance”), by and between the City of High Springs, Florida, a Florida municipal corporation and the City of Gainesville, Florida, a Florida municipal corporation d/b/a Gainesville Regional Utilities.

**WHEREAS**, the City of High Springs finds it in the public interest that residences and businesses within the City limits have the opportunity to be provided with high-quality and reliable natural gas service; and

**WHEREAS**, the City of High Springs finds it in the public interest to retain control over the use of public rights-of-way by providers of natural 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 interest in right-of-way property; and

**WHEREAS**, the City of High Springs finds it in the public interest to ensure that high quality, responsive gas service is maintained in accordance with State and Federal regulations; and

**WHEREAS**, Gainesville Regional Utilities is well qualified and experienced in the provision of natural gas service.

In consideration of the mutual covenants set forth herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

### **SECTION 1: DEFINITIONS**

- a. “City” shall mean the City of High Springs, its successors and assigns.
- b. “GRU” shall mean Gainesville Regional Utilities, its successors and assigns.
- c. “Gas system facilities” or “facilities” shall mean and include, but not be limited to, gas pipes, pipelines, tubes, mains, traps, vents, ducts, vaults, manholes, meters, gauges, regulators, valves, conduits and any other hardware, appliances, attachments, structures, systems and appurtenances used or useful in the distribution and/or other means of supplying and delivering natural, manufactured and other gas.
- d. “Base Rate Revenues” shall mean revenues derived from the customer charge, non-fuel charges and transportation charges. GRU’s tariffs are on file with the Florida Public Service Commission. Base Rate Revenues shall not include any taxes, franchise fees or other governmental fees, charges, or surcharges on gas or services collected by GRU which are paid in full to the City or other tax authority or authorities. Notwithstanding anything to the contrary, Base Rate Revenues shall not include contributions made in aid to construction, bad debt, accounts written off as uncollectible by

GRU, interest, returned check charges, late fees nor any revenue derived from the provision of services within the customer's premise. Such services include, but are not limited to, the installation, repair, maintenance, removal of appliances or other customer owned property.

## **SECTION 2: FRANCHISE**

GRU is hereby given the non-exclusive right, privilege and franchise to construct, maintain and operate its gas facilities in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places of the City. This franchise applies to the corporate limits of the City of High Springs currently existing and as amended from time to time.

The franchise term is for a period of 25 years, commencing on the date of execution of this Agreement. At the end of said period, this Agreement and the franchise granted hereby shall be automatically renewed for up to 3 five (5) year periods unless either party sends written notice of non-renewal to the other party one (1) year prior to the then effective expiration date.

The franchise granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior, express, written consent of the City, which written consent shall not be unreasonably withheld. Notwithstanding the foregoing, GRU may, without the consent of the City, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of its gas facilities or upon its merger or consolidation with any other corporation, or pledge or mortgage such Franchise in connection with the physical property owned and used by it in the operation of its gas system facilities for the purpose of securing payment of funds borrowed by GRU. GRU shall provide City with notice relating to the lease or sale of its gas facilities.

## **SECTION 3: GAS SYSTEM**

GRU agrees to construct, maintain and operate its gas system in accordance with a) established industry practices with respect to gas system construction, operation, and maintenance, b) practices, orders, rules, and regulations any regulatory body having jurisdiction, and c) the City's installation and maintenance standards (to the extent they are not inconsistent with such), for the purpose of supplying natural, manufactured and other gas to City, its successors and assigns, and the citizens of the City.

GRU's facilities shall be located or relocated and so constructed as to interfere as little as possible with existing with existing sewers, water pipes, electrical conduits, communications cables or other public utility service facilities. GRU's facilities shall not be set so as to obstruct or interfere with the public uses of streets, roads, highways or alleys. The location or relocation of all gas system facilities shall be made, except in an emergency situation, only after GRU has received all required permits and approvals and permissions from City and any other governmental entities having jurisdiction. GRU and City shall cooperate and coordinate their efforts to make the most efficient and economical use of gas system facilities.

GRU shall, at its own expense, replace, repair and restore without delay any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil or dirt that may be damaged or displaced by GRU in the conduct of its operations, and shall restore the same to a condition equivalent

to the condition thereof immediately prior to the work and or changes made by GRU. GRU shall notify the City Manager or other designated representative of the City, when repair, replacement or other work is being conducted and is completed. GRU shall take appropriate safety precautions to alert the public of such work.

The City shall not be liable to GRU for any cost or expense in connection with such location or relocation of GRU's gas system facilities made necessary by the City's improvement of any of the present and future public rights-of-way used or occupied by GRU; provided, however, that if the City requires GRU to adapt or conform any portion of GRU's facilities, or in any way to alter, to temporarily or permanently relocate, or to change any portion of same to enable any person (other than the City) to use a street, avenue, alley, sidewalk, highway, bridge, easement or other public place of the City, the City as part of its permitting or approval process, shall require the person or entity desiring or occasioning such alteration, relocation or change to reimburse GRU for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of GRU's facilities.

#### **SECTION 4: INDEMNIFICATION**

City shall not be liable or responsible for any accident or damage that may occur in the course of the construction, operation or maintenance by GRU, its employees, agents, contractors, subleases or licensees of any of its facilities. In consideration of the permissions granted to GRU by this Agreement, GRU hereby agrees to indemnify and hold harmless, to the extent permissible under Florida law, the City, its officers, agents and employees from and against any and all claims, suits, actions, and causes of action whatever, arising during the term of this franchise and resulting in personal injury, loss of life or damage to authorized or the failure to do work herein required, and including all cost, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgement or decree which may be entered in any such action or proceeding or as a result thereof, except that neither the City nor any of its employees, agents, contractor, licensees, or sub lessee shall be liable under this section for damages arising out of injury, loss of life or damage to persons or employees. Nothing in this Agreement shall be construed to affect in any way the City's and GRU's rights, 768.28, Florida Statutes. The provisions of this section shall survive this Agreement.

#### **SECTION 5: COMPENSATION**

GRU, its successors and assigns shall pay quarterly to the City, or its successors and assigns, for the privilege of operating a gas system under this franchise a fee equal to Six (6%) percent of the Base Rate Revenues received by GRU for the delivery of gas to customers within the City's corporate limits. No deductions from or offsets to Base Rate Revenues shall be permitted. Payment for each quarter shall become due thirty (30) days after the end of the quarter.

Nothing herein shall be construed to be a limitation on the assessment and collection of valid taxes, licenses and other impositions by the City and by GRU. The collection of all such assessments shall not be considered a part of the Base Rate Revenue and therefore shall not be subject to the franchise fee.

The City shall have the right to re-open this Agreement for the sole purpose of negotiating a change to the franchise fee percentage rate within the 90 day window following the 15<sup>th</sup> year anniversary of this Agreement and every 5<sup>th</sup> year thereafter. In order to exercise this right, the City must give GRU notice to that effect within the prescribed 90 day window. A modification to the franchise fee rate shall require the execution of amendment to this Agreement. The new rate will become effective the first day of the next calendar quarter following the date of execution of the amendment.

#### **SECTION 6: ACCOUNTS AND RECORDS: RIGHTS TO AUDIT**

GRU shall establish and maintain appropriate accounts in accordance with generally accepted accounting methods, and records in such detail that revenues within the limits of the City are consistently declared and identified separately from all other revenues. All records shall be maintained for minimum of three (3) years, or longer if required by the applicable regulatory bodies. If the City wishes to verify Base Rate Revenues and the computation of the payments made to the City, GRU shall permit a representative of the City to review GRU's billing records at GRU's office where these records are housed, during normal business hours, given advance notice of thirty (30) days. In the event that the audit of GRU's books determines that GRU made underpayment in any month and that the underpayment exceeded five percent (5%) of the amount due in said month, GRU shall pay interest at the rate of five percent (5%) per annum on the amount underpaid or not paid calculated from the date the amount was due to the date it was finally paid.

#### **SECTION 7: CITY COVENANT**

As a further consideration of this franchise, said City agrees not to engage in the business of distributing and selling natural, manufactured or other gas during the life of this franchise or any extension thereof in competition with GRU, its successors and assigns.

#### **SECTION 8: ANNEXATION BY CITY**

Upon the annexation by the City of any territory not within any incorporated city or town, the portion of GRU's gas system that may be located within such annexed territory and upon the streets, alleys or public grounds thereof, shall thereafter be subject to all the terms of this grant as though it were an extension made thereunder.

#### **SECTION 9: FORFEITURE OR REVOCATION OF FRANCHISE**

The failure on the part of GRU to comply in any substantial respect with any of the provisions of this Agreement after written notice from City and a reasonable time, not less than ninety (90) days, in which to cure the default, shall be grounds for forfeiture of this franchise, and the City shall have the right to revoke and cancel all franchise rights.

**SECTION 10: DESIGNATED REPRESENTATIVES**

The following individuals are designated to represent the City and GRU respectively on all matters concerning the franchise. All communications for which provision is made by the Agreement shall be in writing and shall be given by mail, either regular or certified with return receipt requested, to the addresses provided herein, or at such other address as either party may advise the other in writing:

For the City:                      City Manager  
    City of High Springs  
    110 N.W. 1<sup>st</sup> Avenue  
    High Springs, FL 32643

For GRU:                              Assistant General Manager, Energy Delivery  
    Gainesville Regional Utilities  
    301 S.E. 4<sup>th</sup> Avenue  
    PO Box 147117, Station A126  
    Gainesville, FL 32614-7117

**SECTION 11: NO WAIVER BY CITY**

Nothing in this Agreement shall be construed as surrender or waiver by the City of its police powers or the authority to regulate the use of the public streets and/or other public places.

**SECTION 12: RIGHT TO ENFORCE**

In the event of a material breach of any obligation of either party hereto or such party's failure to perform any substantial obligation pursuant to this franchise or such party's failure to comply in any substantial respect with any material provision thereof, either party shall have the right to enforce its rights hereunder. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in Alachua County, Florida, or, if a federal claim, the U.S. District in and for the Northern District of Florida, Gainesville Division.

**SECTION 13: ENTIRE AGREEMENT, MODIFICATION**

This Agreement constitutes the entire agreement between the City and GRU and any changes, alterations, or amendments hereto shall be null and void unless the same are reduced to writing and approved by the City and GRU.


**SECTION 14: SEVERABILITY**

Should any section or provision of this Agreement or any portion thereof be declared by a court of competent jurisdiction to be invalid or void, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid or void; except that, the City may elect to declare that the entire Agreement is invalidated if the portion declared invalid or void is, in the sole judgment of the City, an essential part of the Ordinance.

**SECTION 15: POLICE POWER**

The right is hereby reserved to the City to adopt, in addition to the provisions contained in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the GRU and shall not materially interfere with the benefits conferred on GRU hereunder.

For the City:

  
Bryan Williams, Mayor  
City of High Springs  
110 N.W. 1<sup>st</sup> Avenue  
High Springs, FL 32643

For GRU:

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General Manager  
Gainesville Regional Utilities  
301 S.E. 4<sup>th</sup> Avenue  
Gainesville, FL 32614-7117