

MEMORANDUM

To: Honorable Mayor and Council Members

From: William E. Reischmann, City Attorney

Date: July 20, 2009

Re: Ordinance No.402 - Florida Public Utilities Company –
Most Favored Nation Agreement.

Purpose:

The “Most Favored Nation Agreement”, attached to this Ordinance, supplements that Gas Franchise Agreement which was attached to Ordinance No. 396, considered by Council on 1st Reading at its last meeting. The “Most Favored Nation Agreement” protects the City in the event that Florida Public Utilities Company enters into a franchise agreement with another local government with a franchise fee greater than that franchise fee that it is paying to the City of Orange City, pursuant to that authorized by Ordinance No. 396.

Background:

This Council is currently considering Ordinance No. 396 authorizing the granting of a franchise to Florida Public Utilities Company for a gas franchise within the public rights-of-way within the City of Orange City. That “primary” Franchise Agreement, that authorized by Ordinance No. 396, and this “Most Favored Nation Agreement” work together to provide for the entire agreement between the parties pertaining to this franchise.

Recommendation:

Staff requests that the City Council of the City of Orange City consider and approve the “Most Favored Nation Agreement” between the City of Orange City and the Florida Public Utilities Company and this Ordinance No. 402, attached to this Memorandum.

ORDINANCE NO. 402

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA APPROVING AN AGREEMENT WITH THE FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS RELATING TO AND SUPPLEMENTING, A NON-EXCLUSIVE ARTIFICIAL, NATURAL, AND/OR MIXED GAS FRANCHISE TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF ORANGE CITY, FLORIDA; MAKING FINDINGS; PROVIDING FOR NON-CODIFICATION, CONFLICTS, SEVERABILITY AND EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE.

WHEREAS, the Florida Public Utilities Company and the City of Orange City have entered into a Franchise Agreement, authorized by Ordinance No. 396; and

WHEREAS, the Florida Public Utilities Company and the City of Orange City desire to simultaneously enter into an agreement, representing a further understanding between the parties, clarifying and supplementing that Franchise Agreement, authorized and approved by Ordinance No. 396; and

WHEREAS, the agreement entered into between Florida Public Utilities Company and the City of Orange City by this Ordinance, also known as a "Most Favored Nation Agreement", protects the interest of the City of Orange City in the event that Florida Public Utilities Company negotiates and enters into a separate agreement, during the term of the franchise, with any other party, for a franchisee fee payable above the six percent (6%) provided for in the Franchise Agreement between the City of Orange City and Florida Public Utilities Company; and

WHEREAS, the City Council hereby approves and adopts by this reference those findings contained in Ordinance No. 396; and

WHEREAS, the City, after public hearings and due evaluations, has determined that it is in the best interests of the public health, safety and welfare of the City and its residents to approve this Agreement with Florida Public Utilities Company.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AS FOLLOWS:

SECTION 1. The City Council of the City of Orange City, Florida hereby approves the Most Favored Nation Agreement with Florida Public Utilities Company, which is attached hereto as Exhibit "A", and authorizes its execution by the Interim City Manager, Chester Murray.

SECTION 2. Non-Codification. It is the intention of the City Council of the City of Orange City, Florida, given the temporary nature and effect of this Ordinance, that this Ordinance not be codified.

SECTION 3. Conflicts: All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 4. Severability: If any section, part of a section, paragraph, clause, phrase or word of this ordinance is declared invalid, the remaining provisions of this ordinance shall not be affected.

SECTION 4. Effective Date: This ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida, and approval as provided by law.

ROLL CALL VOTE AS FOLLOWS:

First Reading this _____ day of _____, 2009.

Jim Mahoney	_____	Don Sherrill	_____
R. Paul Rasch	_____	Thomas Abraham	_____
Tom Laputka	_____	Jeff H. Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

ROLL CALL VOTE AS FOLLOWS:

Second Reading this _____ day of _____, 2009.

Jim Mahoney	Don Sherrill
R. Paul Rasch	Thomas Abraham
Tom Laputka	Jeff H. Allebach, Vice Mayor
Harley Strickland, Mayor	

PASSED and ADOPTED this _____ day of _____, 2009.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

W. E. Reischmann, City Attorney

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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, and the CITY OF ORANGE CITY, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter the City, and agree:

1. That the City has agreed to adopt, and the Company has agreed to accept, an ordinance granting a franchise 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 Grantee of any special tax, assessment or charge 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, 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 Grantor or its successors, for the purpose of distributing, supplying and selling gas to Grantor or its successors, and to persons and corporations inhabitants thereof, as well as to persons or corporations beyond the present or future corporate limits thereof.

2. That contemporaneously with the adoption of the franchise by the City and the acceptance of that franchise by the Company, the City 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% provided by the ordinance, the City 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 City 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 City 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% provided by the amended ordinance, the City, may in its sole discretion, elect to amend the existing franchise ordinance 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:

- a. apply only to a change in the applicable franchise fee percentage and not to any change in class of service to which it applies.
- b. apply only to gas franchises negotiated by the Company after the date set forth above and not to gas franchises acquired by the Company through acquisition, purchase or merger.

DATED this ____ day of _____, 200__.

FLORIDA PUBLIC UTILITIES COMPANY

CITY OF ORANGE CITY

By: _____

Mayor

Witness: _____

Attest:

APPROVED AS TO FORM AND LEGALITY:

City Attorney