



CITY OF DUNWOODY
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MEMORANDUM

To: Honorable Mayor and City Council

From: Warren Hutmacher, City Manager

Date: February 12, 2009

Subject: Atlanta Gas Light Franchise Fee Budget Estimate

Staff was requested at the February 9th, 2009 Council meeting to research the original budgetary estimate for the revenue anticipated from the Atlanta Gas Light (AGL) franchise fee payment.

\$260,656 was the anticipated revenue from the AGL franchise fee payment. The AGL franchise fee ordinance you are discussing on February 16th has an estimated 2009 fee of \$332,071. This results in unexpected revenue totaling \$71,415.

AN ORDINANCE, GRANTING TO ATLANTA GAS LIGHT COMPANY, A GEORGIA CORPORATION, HEREINAFTER DESIGNATED AS "COMPANY", ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, ROADS, PUBLIC HIGHWAYS, ALLEYS, LANES, WAYS, PARKS, AND OTHER PUBLIC PLACES OF THE CITY OF DUNWOODY, GEORGIA, FOR CONSTRUCTING, MAINTAINING, RENEWING, REPAIRING, AND OPERATING A GAS WORKS AND GAS DISTRIBUTION SYSTEM, AND OTHER NECESSARY MEANS FOR MANUFACTURING, TRANSMITTING, DISTRIBUTING AND SELLING OF MANUFACTURED, NATURAL OR COMMINGLED GAS WITHIN AND THROUGH THE CITY OF DUNWOODY, GEORGIA; AND FIXING THE TERMS AND CONDITIONS OF SUCH GRANT; TO PROVIDE PROVISIONS GOVERNING THE FRANCHISE FEE CALCULATION; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the City of Dunwoody, Georgia, hereinafter referred to as the City, and the undersigned warrant and represent that there is no franchise granted by the City and in force and effect, to any other person, firm or corporation and that the City is under no contract or obligation to any other person, firm or corporation, in anywise relating to the installation of gas service in the City of Dunwoody, Georgia; now, therefore:

BE IT ORDAINED by the Mayor and Council of the City of Dunwoody, Georgia, as follows:

SECTION 1.

- (a) *Base Year* means the fiscal year ending September 30, 2009.
- (b) *Base Year Franchise Fee Factor* means \$13.86.
- (c) *Base Year Dedicated Design Day Capacity or "DDDCbY"* means 23,959, which is the Designated Design Day Capacity, as of the date hereof.
- (d) *Dedicated Design Day Capacity or "DDDC"* means the sum of the individual capacity in Dekatherms attributable to all firm customers located within the city limits of the City.

(e) *Firm Customers* means all residential and business customers who purchase gas service that ordinarily is not subject to interruption or curtailment.

(f) *Fiscal Year* means the 12 month period ending September 30, of each year.

(g) *GPSC* means the Georgia Public Service Commission or such successor regulatory body, having general regulatory authority over the Company.

(h) *Inflation Index* means the percentage change in the Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics, or any successor index, for the period from September 30, 2008, to the beginning of the then current fiscal year, as reduced by any productivity factor adjustment for the same time period determined by the GPSC for the Company.

(i) *Productivity Factor Adjustment* or PFA means the percent change in the cost of service due to productivity, either explicitly or implicitly determined by the GPSC.

SECTION 2

The right is hereby granted to the Company, its successors and assigns, to lay, construct, extend, maintain, renew, replace and repair gas pipes, valves, manholes, service boxes, posts, lamps, structures, appliances and all appurtenances and appendages under, along, through and across any streets, avenues, roads, public highways, alleys, lanes, ways, parks, rights-of-way and other public places in the City (hereinafter collectively referred to as the "City's Property") and to use and occupy the City's Property for the purpose of therein laying, constructing, extending, maintaining, renewing, replacing and repairing mains, pipes, valves, manholes, service boxes, posts, lamps, structures, appliances and all appurtenances and appendages thereto, used and useful for the manufacture, transmission, distribution and sale of gas within and through the present or future territorial limits of the City, such right, when exercised as herein provided, to commence as of December 1, 2007 and to continue for a term for thirty (30) years from the date of approval of this ordinance.

SECTION 3.

Company shall be entitled to charge for gas furnished by it such rates as are prescribed by the Public Service Commission or other lawful regulatory Body of the State of Georgia.

SECTION 4.

The total dollar amount of franchise fees paid by the Company to the City shall be calculated as follows:

The current Fiscal Year total franchise fee shall equal the product of the Current Franchise Fee Factor and the Design Day Capacity.

The Current Franchise Fee Factor shall be equal to the product of the Base Year Franchise Fee Factor and one plus the Inflation Index expressed as a decimal to three significant digits.

The following formula quantifies this payment:
$$\text{FF} = \text{FFFbY} \times (1 + (\text{CPI-PFA})) \times \text{DDDC}$$

Where,

FF = total franchise fees due City for the current Fiscal Year

FFFby = the Base Year Franchise Fee Factor = FFbY / DDDCbY

FFbY = the total franchise fees paid in the Base Year

DDDCbY = the Dedicated Design Day Capacity of the Base Year

CPI-PFA = the Inflation Index

DDDC = the Dedicated Design Day Capacity in the City as of the last day of the previous fiscal year

The Company as the holder of the franchise privilege hereunder is responsible for the payment of all franchise fees payable hereunder, and shall file such reports and returns as required by this franchise ordinance. In addition, the Company shall report annually to the City the names of all gas marketers for which Company is transporting natural gas on the distribution system within the City.

The franchise fee payments required hereunder shall be in lieu of any franchise fee, license fee, permit fee, administrative fee, occupation tax or other payment for the use of the rights-of-way by the Company for the provision of gas service, but shall not prohibit imposition of a license fee or an occupation tax on gas marketers. The Mayor and Council of the City through its authorized representative or representatives shall have the right to inspect and audit the books and records of Company for the purpose of determining the amount of its revenues received from the sale of gas as set forth above within said territorial limits. The Company shall comply with the City's utility right-of-way permitting process, as enacted, so long as such process does not conflict with O.C.G.A. §32-4-92 and is not more restrictive than rules and regulations as promulgated by the Georgia Department of Transportation. The City will not charge the Company any other franchise fee, occupation tax, or regulatory fee, as prohibited by O.C.G.A. §48-13-16, or any other fee prohibited by state law. Company reserves the right to reduce the annual franchise fee payable to the City for any and all fees, taxes or charges assessed by the City in contravention of this section in connection with the granting of permits to perform Company's work on City's Property during such Fiscal Year.

SECTION 5.

All rights herein granted and authorized by the City shall be subject to and governed only by this ordinance; provided, however, that the City expressly reserves unto itself all of 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.

Company, upon making an opening in the City's Property, for the purpose of laying, repairing or maintaining gas facilities, shall use due care and caution to prevent injury to

persons, and shall replace and restore the City's Property to their former condition as nearly as practicable, and within a reasonable time, and shall not unnecessarily obstruct or impede traffic upon the streets, avenues, roads, public highways, alleys, lanes, ways, parks and other places of said City.

SECTION 7.

Company shall save and keep harmless the said City from any and all liability by reason of damage or injury to any person or persons whomsoever, on account of negligence of the Company in the installation, maintenance and repair of its mains and pipe lines located in the City's Property, provided the Company shall have been notified in writing of any claim against the City on account thereof and shall have been given ample opportunity to defend the same.

SECTION 8.

This ordinance, after its passage according to law, in writing duly filed with the City Clerk, shall be effective and in full force after the date of acceptance by Atlanta Gas Light Company.

SECTION 9.

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the City certificates of insurance designating the City as additional insured and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death to any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days' prior written notice to

the City. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers' compensation claims to which the Grantee may become subject during the term of this Franchise Agreement. ~~Alternatively, and in lieu of the foregoing insurance requirements, the Grantee may elect to self-insure, if it can provide evidence of its ability to do so upon request.~~ Alternatively, and in lieu of the foregoing insurance requirements, the Grantee may elect to self-insure or insure through its captive insurance carrier, provided that Grantee or its parent company have sufficient net worth to do so, as determined by customary practice in the natural gas utility industry.

SECTION 10.

Unless 90 days written notice is given by one party to the other prior to the expiration of this agreement, this franchise shall be considered as renewed and binding in all its provisions for ten (10) years after such expiration and this franchise shall so continue in operation and effect for a further and second term of ten (10) years unless such notice be given by either party prior to the expiration of the first such renewed term.

SECTION 11.

If the City grants a franchise to any other person, firm or corporation, for the distribution and selling of gas, or if the City elects to establish a municipal system for the distribution and selling of gas, any proposed facilities within the certificated area of Atlanta Gas Light Company must receive prior approval by the GPSC. City shall notify, or shall require any other person, firm or corporation franchised for the distribution and selling of gas to notify, the GPSC and Company of their intent to install facilities parallel to and within the rights-of-way with Company facilities at least thirty (30) days prior to installation and such installation shall not be initiated without the written consent of the GPSC provided,

however, that the GPSC shall act on such notice within a reasonable amount of time and such consent shall not be unreasonably withheld.

SECTION 12.

In the event that any provision of this ordinance should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, the remaining provisions of this ordinance shall survive and be applied, and together with the invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

SECTION 13.

Any and all notices required to be given under this agreement shall be in writing and shall be delivered by U.S. Mail, return receipt requested, commercial overnight courier or hand delivery and shall be deemed delivered when received or rejected for receipt by the recipient. The parties' addresses are set forth below and can be changed upon thirty (30) days' notice to the other:

City:

_____, Dunwoody, GA _____, Attn: _____

Company:

P.O. Box 4569, Atlanta, GA 30302-4569, Attn: Rates and Regulatory

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SECTION 13.

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

SO ADOPTED by the City Council of the City of Dunwoody, Georgia, at a meeting held on _____.

Approved:

Ken Wright, Mayor

I, _____, Clerk of the City of Dunwoody, Georgia, hereby certify that I was present at the meeting of the Mayor and Council of the City of Dunwoody, Georgia, held on _____, 2009, which meeting was duly and legally called and held, and at which a quorum was present, and that an ordinance, a true and correct copy of which I hereby certify the foregoing to be, was duly passed and adopted by the Mayor and Council of the City of Dunwoody, Georgia, at said meeting.

IN WITNESS WHEREOF, I hereunto set my hand and the seal of the City of Dunwoody, State of Georgia, this _____ day of _____, 2009.

Clerk

(SEAL)

Accepted on behalf of Atlanta Gas Light Company, this _____ day of _____,
2009.

Atlanta Gas Light Company

By: _____

Name: _____

Title: _____