

FRANCHISE AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of October, 1992, by and between THE CITY OF BEATTYVILLE, KENTUCKY, a municipal corporation, (hereinafter the "City") and DELTA NATURAL GAS COMPANY, INC., a Kentucky corporation (hereinafter the "Franchisee").

W I T N E S S E T H :

THAT, WHEREAS, pursuant to Ordinance No. 128, the City advertised for and received bids for a franchise for the use and occupation of certain parts of the streets, alleys and public grounds in the City of Beattyville, Kentucky, for the transmission and distribution of natural gas energy; and

WHEREAS, the Franchisee has submitted the only bid for such franchise, which bid is satisfactory to the City in all respects; and

WHEREAS, pursuant to Ordinance No. 129, the City has accepted the bid of the Franchisee and both parties hereto now desire to enter this Franchise Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth the parties hereto do hereby agree as follows:

Section 1. Subject to the conditions hereinafter contained, Franchisee is hereby authorized and empowered to acquire, purchase, construct, maintain and operate through parts of the present and future corporate limits of this City a system or works for the transmission, distribution

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sale of natural gas from points either within or without the corporate limits of this City, to said parts of the City and the inhabitants thereof, and from and through said parts of this City to persons and corporations beyond the limits thereof, and for the sale of same for light, heat, power and other purposes; and for such purposes to construct and maintain a system of mains, pipe lines, feeders, conduits, appurtenances, and other facilities necessary or convenient for the operation of said system, upon, across, under, and along each and all of the streets, alleys and public grounds, within the City; to have and to hold, as by law authorized, any and all real estate, easements, water and other rights necessary or convenient for its said purpose; to use any and all such streets, alleys and public grounds within said parts of this City while constructing or operating said natural gas system or works; and to cross any and all streets and public ways in the said parts of the City for the purpose of constructing, maintaining or extending such system of mains, pipe lines, feeders, conduits, appurtenances, and such other facilities as may be necessary or convenient for the proper distribution of natural gas in and through the City. If, after any main, pipe line, feeder, conduit or other structure or facility has once been constructed or placed, in exercise of the authority herein granted, the City Council shall order the removal of said main, pipe line, feeder, conduit or other structure or facility to another location, the City shall pay the cost of making such relocation; except that, if the relocation is made necessary due to widening, regrading,

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reconstruction of a street or highway and a main, pipe line, feeder, conduit, appurtenance or other facility was originally installed in public right-of-way and is in public right-of-way immediately prior to the relocation, Franchisee will pay the cost of the relocation.

Section 2. The Franchisee shall immediately begin negotiations to secure an adequate supply of gas, and shall begin to construct and lay pipe line and conduits from its source of gas of a capacity sufficient to begin to supply gas to the City. However, the Franchisee shall not be liable for any delays, failures or defaults in the construction, maintenance, and operation of the gas system or for interruptions or fluctuations in service occasioned by acts of God, strikes, the public enemy, or any other event of force majeure which by the exercise of due diligence the Franchisee is unable to avoid or overcome.

Section 3. If the Franchisee contracts or has contracted with a third party for a source of gas supply and a copy of such contract is forwarded to the Council of the City and if the contract between Franchisee and third party excuses the third party from supplying gas to the Franchisee for causes beyond the control of the third party, then the Franchisee shall be excused for its failure to furnish gas as herein required to the same extent and for like causes as are specified in the contract between the Franchisee and third party.

Section 4. Franchisee shall have the right to break, take up and remove such portion or part of any pavement to make



such excavation in the streets and public ways of the City as may be deemed necessary to provide service so franchised hereby; provided, however, that any such work shall be performed in accordance with applicable ordinances of the City; and further provided that any such work or project so commenced by Franchisee hereunder be promptly and diligently prosecuted to completion and upon such completion the streets, alleys, sidewalks and public ways of the City shall exist in as good condition and repair as before such work was commenced.

Section 5. The Franchisee shall indemnify the City for all damages to its streets and public ways and public places caused and brought about by the negligence of the Franchisee, its agents, and servants, and the Franchisee shall defend any and all actions caused or brought about or arising out of the construction and laying of said gas mains, pipe lines, and conduits in, under, along, and across the streets and public ways of said City and in the construction and operation of said system of gas mains, pipes, and appliances.

Section 6. The franchise created hereby shall not be transferred, assigned, nor delegated without the written consent of the City.

Section 7. The Franchisee, its successors and assigns, shall have the right to sell gas to the consumers of City and to receive for its service just and reasonable compensation subject to the terms and at the rates specified by the Public Service Commission of the Commonwealth of Kentucky. The Franchisee shall serve its consumers in the City in accordance with the

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rules, regulations, control, and supervision of the Public Service Commission of the Commonwealth of Kentucky and such other state or federal agency as may be authorized and empowered by law to regulate the Franchisee and its service.

Section 8. In addition to any other franchise requirements hereunder or made or adopted herein as provided, the following requirements shall apply to the franchise granted hereunder.

a) Franchise Fee - In consideration of the granting and exercise of a franchise herein, and in further consideration of the grant to the Franchisee the right to make use of public streets, alleys or other public ways in the City, since such public properties are valuable properties acquired and maintained at great expense to the taxpayers of the City, and the grant to Franchisee of the right to use same is a valuable property without which the Franchisee would be required to invest substantial capital in right-of-way costs and acquisitions, Franchisee shall pay to the City during the entire life of the franchise a sum equal to a maximum of three (3%) percent of the Franchisee's gross service revenues, for sales generated within the corporate limits. Franchisee shall pay such sum quarterly, on the 30th day after the end of each quarter and shall furnish to the City a statement setting forth the amount of its gross revenues received. The franchise fee shall not apply to gross revenues received by the Franchisee attributable to the sale, use, storage or

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sale of natural gas to customers who use it in the course of manufacturing or industrial processing to the extent that the cost of energy or energy producing fuels used by the customer exceeds three (3%) percent of the cost of production.

b) Any franchise payments to the City by Franchisee shall not be in lieu of any occupational, income, license, or property tax, or similar levy, assessment, fee, or charge which would otherwise be payable by Franchisee.

c) Upon acceptance of such franchise, Franchisee shall during the entire term of such franchise, maintain in full force and effect a single limit comprehensive liability policy of insurance with limits of not less than \$500,000 each occurrence and \$1,000,000 aggregate, and which shall insure Franchisee.

Section 9. Any other provision of this Ordinance to the contrary notwithstanding, if gas is not available under said franchise within the City on or before twelve (12) months after February 11, 1991, then the franchise may be revoked by the Council of the City of Beattyville, at its option.

Section 10. The consideration paid by Franchisee hereunder shall be the full and complete consideration for the franchise, privilege, and right granted by the City of Beattyville, and shall be expressly in lieu of any street or alley rental or of any charge for the use or occupancy of streets, alleys, or public places in the City.



Section 11. If at any time the powers of the Council of the City of Beattyville are transferred by law to any other body or authority, then such other body or authority shall have the rights, powers, and duties herein reserved to and prescribed by the Council of the City of Beattyville.

Section 12. The period of this franchise shall extend for five (5) years from February 11, 1991.

Section 13. If any Article, Section, sentence, clause or phrase of this Agreement is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Agreement or any of the remaining portions. The invalidity of any portion of this Agreement shall not abate, reduce, or otherwise affect any consideration or other obligations of this franchise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their duly authorized officers the day and year first above written.

THE CITY OF BEATTYVILLE, KENTUCKY

By Charles Beach
Its Mayor

DELTA NATURAL GAS COMPANY, INC.

By Robert C. Hensley
Its VP Marketing and Sales

