

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this 6th day of June, 2016, by and between the **CITY OF OWINGSVILLE**, a municipal corporation and political subdivision of the Commonwealth of Kentucky (hereinafter "Owingsville"), and **DELTA NATURAL GAS COMPANY, INC.**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at 3617 Lexington Road, Winchester, Ky. 40391 (hereinafter "DELTA").

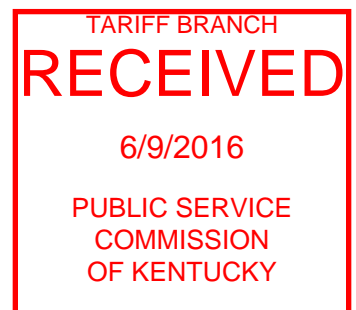
WITNESSETH:

WHEREAS, by Ordinance No. 2-2016 adopted March 18, 2016, Owingsville provided for the creation and sale of a non-exclusive franchise, for an initial term of ten (10) years for the transmission, distribution and sale of natural gas with in the public-rights-of-way in the City of Owingsville.

WHEREAS, Ordinance No. 2-2016 authorized the advertising for bids on said franchise, and DELTA submitted a timely bid to acquire said franchise; and

WHEREAS, by Resolution No. 2016-14 adopted May 9, 2016, Owingsville accepted the bid of DELTA to acquire said franchise; and

WHEREAS, Owingsville and DELTA have entered into this Franchise Agreement to memorialize the sale by Owingsville to DELTA of said franchise subject to the terms and conditions reflected in Ordinance No. 2-2016 and Resolution No. 2016-14.



NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of which are hereby acknowledged, Owingsville and DELTA hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Ordinance No. 2-2016, which is attached hereto as Exhibit "A", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of DELTA for said franchise, which is attached hereto as Exhibit "B", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

3. Resolution No. 2016-14, which is attached hereto as Exhibit "C", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

4. Owingsville has granted unto DELTA a non-exclusive franchise, for a term of ten (10) years, for the transmission, distribution and sale of natural gas within the public-right-of-way within the corporate boundaries of Owingsville subject to the provisions of Ordinance No. 2-2016 and Resolution No. 2016-14.

5. The franchise memorialized in this Franchise Agreement shall commence September 1, 2016, and shall expire as provided in the terms and provisions of Ordinance No. 2-2016.

6. DELTA does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this Agreement, and further to faithfully perform all acts required of it as the purchaser of said franchise.

7. This Franchise Agreement memorializes the agreement between the parties contained and embodied in Ordinance No. 2-2016 and Resolution No. 2016-14 and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.



IN WITNESS WHEREOF, Owingsville and DELTA have executed this Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

CITY OF OWINGSVILLE

BY: Gary Hunt
MAYOR

ATTEST:

Cheryl [Signature]
CITY CLERK

DELTA NATURAL GAS COMPANY, INC.

BY: John B. Brown
John B. Brown
Chief Operations Officer, Treasurer & Secretary

STATE OF KENTUCKY)

COUNTY OF Mark)

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by John Brown as COO, DELTA NATURAL GAS COMPANY, INC., on this the 6th day of June, 2016.
Treasurer/Secretary

My commission expires: July 11, 2016

Donna K. Fuller

NOTARY PUBLIC
KENTUCKY, STATE-AT-LARGE



Exhibit List

- A Ordinance No. 2-2016
- B Bid
- C Resolution No. 2016-14



ORDINANCE # 2-2016

AN ORDINANCE OF THE CITY OF OWINGSVILLE, KENTUCKY, AMENDING ORDINANCE NO. 2006-1, PROVIDING FOR THE CREATION OF A FRANCHISE FOR THE OPERATION & MAINTENANCE OF A NATURAL, MANUFACTURED, AND/OR MIXED, GAS DISTRIBUTION SYSTEM WITHIN THE CITY OF OWINGSVILLE, KENTUCKY, DEFINING THE TERMS AND CONDITIONS THEREOF AND PROVIDED FOR A BID PROCEDURE THEREFORE.

WHEREAS, pursuant to Ordinance No. 2006-1, the City of Owingsville created a non-exclusive natural gas distribution system franchise, pursuant to Kentucky Constitution Section 163 and KRS 96.010, within the City of Owingsville, Kentucky, and requested bids therefore; and

WHEREAS, Delta Natural Gas Company, Inc. (Delta) submitted a bid and was granted a franchise in Ordinance 2006-1 ; and

WHEREAS, Delta's franchise for a natural gas distribution system within the corporate limits of the City of Owingsville, Kentucky, has expired; and

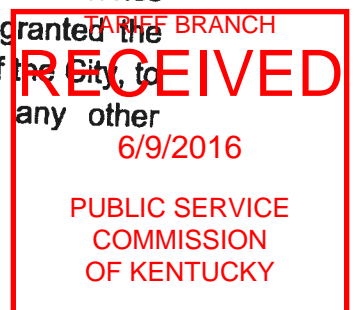
WHEREAS, the City desires to ensure that natural gas distribution services continues to be furnished to its citizens in a reliable and efficient manner; and

WHEREAS, the City desires to amend Ordinance No. 2006-1 to update the provisions thereof, and to provide for the sale of natural gas distribution system franchise;

NOW, THEREFORE, be it ordained by the City Council of the City of Owingsville, Kentucky as follows:

SECTION I

RESTATEMENT FRANCHISE. The franchise created by Ordinance 2006-1 is hereby restated to grant the right, privilege and franchise for furnishing and to furnish to the City of Owingsville, Kentucky, and to its citizens, residents, and industries, and to operate and maintain, a natural gas distribution system, by one or more persons, companies, or corporations, or other entities capable and willing to provide such service by and through a non-exclusive franchise, and such franchisee shall be granted the right to go upon or under the streets, alleys, or other public ways or places of the City, to lay, maintain, operate and remove gas mains, pipelines, feeders, or any other



appurtenances necessary to operate and maintain a gas transmission system. This franchise, granted herein by the City, shall not be exclusive and the City reserves the right to grant a similar franchise to any other person or entity at any time. Any franchise granted hereunder shall be extended to newly annexed territory upon the same terms and conditions as herein, subject to approval of the state regulatory authorities as applicable.

SECTION II

TERMS OF FRANCHISE. The franchise hereby created shall be for a set term of ten (10) years from and after the date the same shall become effective, but is not exclusive, and the City reserves the right to sell similar franchises to others. This franchise shall not restrict in any manner the right of the City of Owingsville in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by law.

SECTION III

OPERATION AND MAINTENANCE. When the franchisee shall enter upon any street for the purpose of constructing, erecting, operating, maintaining, and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the streets in reasonably the same condition as prior to its entry. All such repairs shall be maintained by the franchisee for one (1) year in as good condition as the remainder of said street. In the event the franchisee fails, refuses, or neglects to comply with the above provisions, the City shall have the right, after notice in writing having first been given to the franchisee or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the City by the franchisee within thirty (30) days from the date on which an itemized bill is presented to the franchisee.

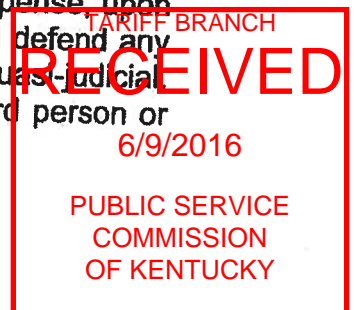
In the construction, reconstruction, maintenance, or removal of any of said equipment and apparatus, the franchisee shall have due regard for the rights of the City and others, and shall avoid interference with and injury to the property of the City or others. The franchisee shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the City as to placing lights, danger signals, or warning signs. Such work by the franchisee shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said streets.



SECTION IV

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

- a) Franchise fee - In consideration of the granting and exercise of the franchise herein, and in further consideration of the grant to the Franchisee the right to make use of the 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 right 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 three percent (3%) of the franchisees' gross revenues received from natural gas distribution services generated within the corporate limits of the City, to be paid as set out in the Franchise Agreement.
- 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 apply to be payable by Franchisee.
- c) Upon acceptance of such franchise, Franchisee shall file with the City Clerk of the City of Owingsville, Kentucky, and shall thereafter during the entire term of such franchise, maintain in full force and effect a Comprehensive General Liability Insurance policy with limits of not less than \$1,000,000.00 each occurrence and \$3,000,000.00 aggregate, for both bodily injury and property damage, and which shall insure Franchisee, and shall provide primary coverage for the City, its officers, boards, commissions, agents, and employees against liability for loss or damage occasioned by any activity or operation of Franchisee under such franchise and which shall contain and include a standard cross-liability endorsement thereto.
- d) Franchisee shall indemnify and hold harmless, the City, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to persons or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, costs, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to actions of Franchisee in the exercise or the enjoyment of any privilege hereunder by Franchisee, of the granting thereof by the City.
- e) Defense of litigation. Franchisee shall, at its sole risk and expense, upon demand of the City made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third person or



duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to action of Franchisee in the exercise or the enjoyment of such franchise, or the granting thereof by the City.

Franchisee shall pay, and satisfy, and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against Franchisee, the City, its officers, boards, commissions, agents, or employees, and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking, or other assurance required hereunder, or otherwise; provided, that neither Franchisee nor City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceeding, without first obtaining the written consent of the other.

f) Franchisee shall abide by all provisions of this franchise ordinance, and shall further agree that it will not, at any future time, set up as against the City the claim that the provisions of this franchise ordinance are unreasonable, arbitrary or void.

SECTION V

The purchaser or purchasers of any franchise created hereby 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 the service to customers; provided, however, that any such work first be properly approved pursuant to Chapter 91 of the Owingsville City Code, 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, pursuant to Chapter 91 of the Owingsville City Code. Further, the franchisee shall, upon request by the City, move and adjust any of its facilities or properties as shall be located on City property on right of way at its own expense, during construction or reconstruction of the improvements on such property or right-of-way, and such movement or adjustment shall be accomplished within thirty (30) days after request by the City; provided, however, if franchisee shall not be able to accomplish such movement or adjustment within said time period, franchisee shall notify the City of the reason that compliance will be delayed, and will thereafter effect compliance as soon as practicable. In the event of non-compliance with the foregoing, the franchisee shall be liable to the City or the contractor, as the case may be, for damages for delay in construction occasioned thereby.



SECTION VI

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

SECTION VII

The franchise created hereby shall not be transferred, assigned, nor delegated without the written consent of the City, which consent shall not be unreasonably withheld.

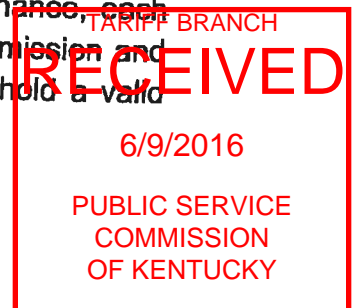
SECTION VIII

It shall be duty of the Mayor as soon as practical after the passage of this ordinance to offer for sale at public auction the franchise and privileges involved herein. Said franchise shall be sold to the best available bidder on the 9th day of May, 2016, at 7 P.M. The City Clerk shall give notice by advertising pursuant to KRS Chapter 424 for request for bids and the time for receipt of same. Any utility subject to the terms and provisions of this ordinance may provide for in its bid any special or extraordinary matters or circumstances which relate or apply to its particular business; all subject, however to the right of rejection of any such bid by the City.

After the time set for receipt of bids hereunder, the Mayor shall report and submit to the City Council at the time of its next regular meeting the bids and proposals for its approval. The City Council reserves the right for and on behalf of the City to reject any and all bids for said franchises and privileges, and the City Council may direct by resolution or ordinance said franchise or franchises to be again offered for sale from time to time until a satisfactory bid or bids shall be received and approved. Each such bid shall be accompanied by a deposit and each bidder shall post bond in accordance with the provisions of KRS 96.020; provided, however, that such deposit and bond need not be made by any bidder which owns and operates an existing natural gas transmission and distribution system within the corporate limits of the City, the plant and equipment sufficient to render the service or services required by this ordinance.

SECTION X

In the event that no bids are received for the franchise hereunder, or in the event that the City does not accept any bids received hereunder, then beginning on the 1st day of September, 2016, and continuing thereafter until modified by ordinance, each and every person or corporation engaged in operating a natural gas transmission and distribution system within the corporate limits of the City which does not hold a valid



current franchise from the City to operate within the corporate limits shall have imposed upon it the terms, conditions, and payment of franchise fees set out hereunder, for the right, power and privilege of engaging and operating its business within the corporate limits and the right, power and privilege of using the streets, alleys, and other public ways or places in the City for and on behalf of the operation of its business.

SECTION XI

Any utility, agency, or other entity providing services herein contemplated which is owned and operated by the City or a subordinate agency thereof is excluded from the terms and provisions hereof.

SECTION XII

All ordinances or parts of ordinances in conflict herewith are repealed. This ordinance shall be published according to law.

FIRST READING: March 14, 2016.

SECOND READING AND ENACTMENT: March 18, 2016

APPROVED BY:

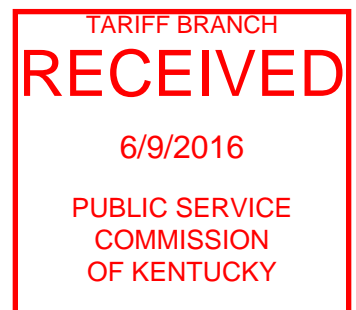

Gary Hunt, Mayor

ATTEST:


Clerk of the City Council

Published this 24th day of March, 2016

Bath County News-Outlook





Delta Natural Gas Company, Inc.

3617 Lexington Road
Winchester, Kentucky 40391-9797

PHONE: 859-744-6171

FAX: 859-744-3623



April 22, 2016

Ms. Cathy Conway, City Clerk
Owingsville City Hall
19 Goodpaster Avenue
Owingsville, KY 40360

Re: Ordinance # 2-2016

Dear Ms. Conway:

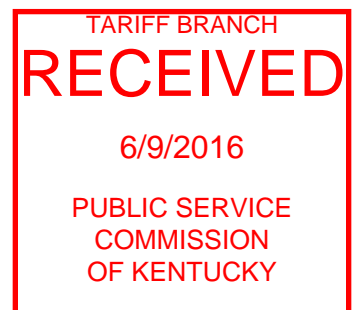
In response to the City of Owingsville's Request for bids on the natural gas franchise in Ordinance # 2-2016 Delta Natural Gas Company, Inc. ("Delta" and/or the "Company") submits the following bid:

1. Delta accepts the conditions set forth in Ordinance #2-2016.
2. Delta is exempt from the cash deposit and bond requirement specified in section VIII of the Ordinance. The infrastructure to serve the City of Owingsville is already in place and owned by the Company.

If there are any questions concerning Delta's bid please feel free to contact me or our legal counsel, Robert Watt III at Stoll Keenon Ogden PLLC (859-231-3043).

Sincerely,

Jeff Steele
Director – Administrative Services



RESOLUTION 2016- 14

RESOLUTION AWARDING A NON-EXCLUSIVE FRANCHISE TO DELTA NATURAL GAS COMPANY, INC. FOR A TERM OF TEN (10) YEARS FOR THE OPERATION AND MAINTENANCE OF A NATURAL, MANUFACTURED, AND/OR MIXED, GAS DISTRIBUTION SYSTEM WITHIN THE CONFINES OF THE CITY OF OWINGSVILLE, KENTUCKY

WHEREAS, by Ordinance No. 2-2016 adopted April 11, 2016, the City of Owingsville, Kentucky (“the City”) created a ten (10) year, non-exclusive franchise for the operation and maintenance of a natural, manufactured, and/or mixed, gas distribution system within the confines of the City; and

WHEREAS, The City offered at bid a non-exclusive franchise for the operation and maintenance of a natural, manufactured, and/or mixed, gas distribution system within the confines of the City pursuant to Ordinance 2-2016; and

WHEREAS, after publication of said advertisement on April 14, 2016, the City received a bid from Delta Natural Gas Company, INC.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY AS FOLLOWS:

Section 1. That a ten (10) year, non-exclusive natural gas franchise, created by Ordinance No. 2-2016, be and it hereby is, awarded to Delta Natural Gas Company, INC.

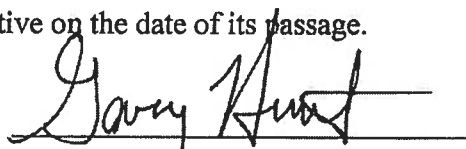
Section 2. All prior ordinances, or resolutions, or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

Section 3. That the statements set forth in the Preamble to this Resolution are hereby incorporated in this Resolution by reference, the same as if set forth at length herein.


Section 4. That if any section, sentence, clause or phrase of this Resolution is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Resolution.

Section . That this Resolution shall be effective on the date of its passage.

PASSED: May 9, 2016


MAYOR

ATTESTED:


CLERK

