

AN ORDINANCE

AN ORDINANCE, GRANTING TO ATLANTA GAS LIGHT COMPANY, A GEORGIA CORPORATION, HEREINAFTER DESIGNATED AS "GRANTEE", 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 SANDY SPRINGS, GEORGIA, FOR CONSTRUCTING, MAINTAINING, RENEWING, REPAIRING, AND OPERATING A GAS DISTRIBUTION SYSTEM, AND OTHER NECESSARY MEANS FOR MANUFACTURING, TRANSMITTING, DISTRIBUTING AND SELLING MANUFACTURED, NATURAL OR COMMINGLED GAS WITHIN AND THROUGH THE CITY OF SANDY SPRINGS, GEORGIA; AND FIXING THE TERMS AND CONDITIONS OF SUCH GRANT.

WHEREAS, the City of Sandy Springs, Georgia, hereinafter referred to as 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 Sandy Springs, Georgia; now, therefore:

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

SECTION 1.

- (a) *Base Year* means the fiscal year ending September 30, 2006.
- (b) *Base Year Franchise Fee Factor* shall mean \$13.85.
- (c) *Design Day Capacity* shall mean 51,972.767 dckatherms, which represents the sum of the individual capacity attributable to all firm customers located within the city limits of the City, as of the last day of the date hereof.

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

(e) *Fiscal Year* means the 12 months ending September 30, of each year.

(f) *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, 2006, to the beginning of the then current fiscal year, as reduced by any productivity factor adjustment for the same time period determined by the Georgia Public Service Commission for the Grantee.

(g) *Productivity Factor Adjustment* or *PFA* means the percent change in the cost of service due to productivity either explicitly or implicitly determined by the Georgia Public Service Commission, or its successor body.

SECTION 2.

The right is hereby granted to the Grantee, 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 and other public places in the City (the "City's Rights-of-Way"), and to use and occupy the said City's Rights-of-Way 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, 2005 and to continue for ten (10) years after date of approval of this ordinance.

SECTION 3.

Grantee shall be entitled to charge for gas furnished by it such rates as are prescribed by the Georgia Public Service Commission ("GPSC") or other lawful regulatory body of the State of Georgia.

SECTION 4.

The total dollar amount of franchise fees paid by the Grantee 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: $FF = \frac{FFFbY}{DDCbY} \times (1 + (CPI-PFA)) \times DDC$

Where,

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

FFFby = the Base Year Franchise Fee Factor = $FFbY / DDCbY$

FFbY = the total franchise fees paid in the Base Year

DDCbY = the Design Day Capacity of the Base Year.

CPI-PFA = the Inflation Index

DDC = the Design Day Capacity as of the last day of the previous fiscal year.

The Grantee 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 Grantee shall report annually the names of all gas marketers for which Grantee is transporting natural gas on the distribution system within the City.

The Grantee shall remit to the City the franchise fee in installments on the same schedule as Grantee pays franchise fee payments to other municipalities which at the time of the execution of this Agreement is a quarterly basis.

The franchise fee payments required hereunder shall be in lieu of any franchise fee, license fee, permit fees, occupation tax or other payment for the use of the rights-of-way by the Grantee 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 Grantee for the purpose of determining the amount of its revenues received from the sale of gas as set forth above within said territorial limits.

SECTION 5.

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

Grantee upon making an opening upon any of the City's Rights-of-Way, for the purpose of laying, repairing or maintaining gas mains, shall use due care and caution to prevent injury to persons, and shall replace and restore said City's Rights-of-Way 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's Rights-of-Way. In an effort not to obstruct or impede traffic, Grantee shall,, except in case of emergency or extenuating circumstances, schedule and perform work on the major and secondary arterial roads listed on Exhibit A during those work hours promulgated by the Georgia Department of Transportation, which as of the date of this Ordinance are 9am to 4pm. The Grantee 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.

SECTION 7.

Grantee 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 Grantee in the installation, maintenance and repair of its mains and pipe lines along said streets, avenues, roads, public highways, alleys, lanes, ways, parks and other public places in the City provided the Grantee 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.

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 insureds 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.

SECTION 9.

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 10.

Unless ninety (90) days written notice is given by one party to the other prior to the expiration of the term of this Agreement, as renewed pursuant to this Section, this franchise shall be considered as renewed and binding in all its provisions for an additional term of five (5) years after such expiration and this franchise shall so continue in operation and effect for seven further terms (beyond the initial 5 year renewal term) of five (5) years each, unless such notice be given by either party prior to the expiration of

any such renewed term. The intent of this Section is that, if all franchise renewals occur, the full and complete term of this Agreement shall be fifty (50) years.

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 Grantee of their intent to install facilities parallel to and within the rights-of-way with Grantee 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.

All notices under this Ordinance shall be made in writing and shall be delivered or sent by: (i) first class, registered or certified mail, postage prepaid, return receipt requested, (ii) guaranteed overnight delivery (such as Federal Express or United Parcel Service Next Day Air), or (iii) by hand delivery addressed to the addresses of the party in question or to such other addresses as either party may designate by notice given pursuant to this Section. Notices shall be effective upon receipt or rejection by the notified party.

Initial notice addresses are:

Grantee: Atlanta Gas Light Company, P.O. Box 4569, Atlanta, GA 30302-4569

City: City of Sandy Springs, Attn: City Manager, 7840 Roswell Road, Building 500,
Sandy Springs, GA 30350.

SECTION 13.

In the event that any provision of this ordinance should be ruled void, invalid, unenforceable or contrary to public policy by any court or competent jurisdiction, the remaining provision 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 14.

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

This ordinance adopted by the Mayor and Council of the City of Sandy Springs,
Georgia, on the 20 day of January, 2007.

Approved this 20 day of January, 2007.

(SEAL)

Eva Calanellas
Mayor of the City of Sandy Springs, Georgia

ATTEST:

Christina Rowland
Clerk of the City of Sandy Springs, Georgia

Recorded in the Minutes of the City of _____, Georgia, on Page _____,
Book _____, on _____, 20____.

GDOT Functional Classification

Road Name
Abernathy Road
Barfield Road
Dalrymple Road
Dunwoody Club Drive
Dunwoody Place
Glenlake Parkway
Glenridge Connector
Glenridge Drive
Hammond Drive
Heards Ferry Road
High Point Road
Interstate North Parkway
Jett Road
Johnson Ferry Road
Lake Forrest Drive
Long Island Drive
Mount Vernon Highway
New Northside Drive
Northland Drive
Northridge Road
Northside Drive
Peachtree Dunwoody Road
Perimeter Center West
Pitts Road
Powers Ferry Road
River Valley Road
Riverside Drive
Roberts Drive
Roswell Road
Sandy Springs Circle
Spalding Drive
Windsor Parkway
Winters Chapel Road