

#34

AN ORDINANCE OF THE TOWN OF SEWALL'S POINT, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, GRANTING A FRANCHISE TO SOUTHERN GULF UTILITIES, INC., A FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, IN SAID CITY FOR THE OPERATION AND DISTRIBUTION AND/OR SALE OF POTABLE WATER AND FIXING THE TERMS, CONDITIONS, LIMITATIONS AND REGULATIONS RELATIVE TO THE CONSTRUCTION, OPERATION AND MAINTENANCE OF SAID WATER SYSTEM AND THIS FRANCHISE, PROVIDING FOR THE FIXING OF RATES AND FOR INDEMNITY AGAINST DAMAGE RESERVING THE RIGHT TO PURCHASE UNDER CERTAIN CONDITIONS, AND PROVIDING FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, MARTIN COUNTY, FLORIDA:

WHEREAS, SOUTHERN GULF UTILITIES, INC., a Florida corporation has made application to Sewall's Point, Martin County, Florida, for a water franchise, and

WHEREAS, Sewall's Point, has the necessary authority to grant such franchise by virtue of the Laws of the State of Florida, and its Charter, and

WHEREAS, Sewall's Point, finds that the granting of an exclusive franchise for the operation of central water supply and distribution systems and a license to lay water lines along Town roads and highways is necessary and useful to serve, for the benefit of the land owners and residents within the area, an area within Sewall's Point, described as follows, to-wit:

Beginning at a point where the east line of the west 66 feet of Government Lot 6, Section 35, Township 37 South, Range 41 East intersects with shore line of the St. Lucie River, thence run north along said east line of the west 66 feet of said Government Lot 6, to a point that is 156.44 feet south of the north line of said Government Lot 6, thence run

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east on a line parallel to said north line of said Government Lot 6, a distance of 150 feet to a point, thence run north on a line parallel to said east line of Government Lot 6 a distance of 156.44 feet to a point on the north line of said Government Lot 6, thence run east along the said north line of Government Lot 6 to the southwest corner of Government Lot 4, Section 26, Township 37 South, Range 41 East, thence run north along the west line of said Government Lot 4, Section 26, Township 37 South, Range 41 East, a distance of 700 feet to a point, thence run S. 88° 07' E. to a point in the centerline of Sewall's Point Road, thence run N. 21° 51' 30" W. along the centerline of Sewall's Point Road a distance of 19.3 feet to a point on the north line of the south 700 feet of Government Lot 5, Section 26, Township 37 South, Range 41 East, thence run S. 88° 47' 06" E. along the said north line of the south 700 feet of said Government Lot 5 to a point where said line intersects the westerly shore line of the Indian River, thence run southeasterly meandering the said westerly shore line of the Indian River to a point where said shore line intersects or converges with the St. Lucie River, thence meandering the said shore line of the St. Lucie River in a north westerly direction to the point or place of beginning.

WHEREAS, the said Town has the right and authority to use the utility easements in said area for the installation and maintenance of mains for the distribution and sale of potable water for human consumption and

WHEREAS, the petitioner requires said franchise for the sale and distribution of potable water for human consumption by individual consumers.

NOW, THEREFORE, Sewall's Point, Florida, herein-after referred to as the "Town," located within Martin County, acting by and through its Commission, does hereby grant unto SOUTHERN GULF UTILITIES, INC., a Florida corporation, its

successors and assigns, with its principal place of business in Miami, Dade County, Florida, and its mailing address at U. S. 441 at N. W. 202nd Street, Miami 69, Florida, hereinafter referred to as the "Utility," an exclusive franchise for the period of thirty (30) years from the date hereof, with the sole right to operate the systems herein provided for, said sole right being conditioned upon the faithful performance of the covenants herein by the Utility to acquire, own construct, maintain and operate within the area above described, a central water supply and distribution system to serve the inhabitants within said area with water for public and private uses, and to have, without charge therefor, so long as its franchise and license shall remain in effect, a right of way through, in, upon and across, and to use the streets, avenues, alleyways and public easements, except drainage and power easements, unless specific permission is obtained therefore, within said area for laying, placing, erecting, replacing, repairing, taking up, maintaining and operating water mains, pipes, valves, and the like, and to construct, maintain, repair, operate and remove pipe lines for the transmission of potable water for human consumption, under, on, over, across and along each and every one of the public roads and highways within the above described area subject to the following terms, conditions and provisions, as herein set forth.

1. SAFETY, WELFARE AND ACCOMMODATION OF THE PUBLIC:

The enumeration herein of special requirements and specific regulations shall not be taken or held to imply the relinquishment by the Town of its power to make other reasonable requirements for regulations, and the Town hereby expressly reserves the right to make all regulations which may be necessary or

proper to secure in the most ample manner, the safety, welfare and accommodation of the public, including among other things, the right to adopt and enforce reasonable regulations to protect the public from danger and inconvenience in the management and operation of the water system and to provide such service as is contemplated by this franchise.

2. AREAS OUTSIDE FRANCHISE TERRITORY:

Subject to the approval of the Town, the Utility may extend its water supply and distribution system to serve areas outside the franchised territory. The Utility shall have the right and privilege to alter, substitute, take up or extend its water system in such manner and to such extent from time to time as may be expedient and to the best interests of the Utility and the recipients of the services. The Utility from time to time, as circumstances and water demands reasonably require, shall have the right to construct, operate and maintain such additional pumps and lines as are necessary to produce and furnish an ample supply of water service for the use of the inhabitants of the area covered by this franchise and license.

3. FAILURE TO ESTABLISH WATER AND DISTRIBUTION SYSTEM:

Should the Utility fail to establish said water supply and distribution system, or, having established, fail to maintain and operate the same or to render to the public reasonable services as herein contemplated during any of the period of time for which this franchise and license is granted, or fail to perform the things set out in this agreement, then and in such instance this franchise, after thirty (30) days' notice in writing to the Utility of the grounds of its failure, and which are not corrected

within said period of time, or within a reasonable time under the circumstances, may be declared null and void by the Town, and the franchise and license of the Utility revoked, and such revocation shall be so declared by the Circuit Court in and for Martin County, Florida, in such manner and form as is now or may in the future be provided by law for the revocation of municipal franchises. It is understood, however, that Utility will purchase potable water from the City of Stuart and that failure of the City of Stuart to furnish a supply of potable water will not be grounds for revocation of this franchise. Utility agrees that it will secure reasonable guarantees from the City of Stuart with respect to a continuing supply of potable water.

4. INTERRUPTION OR STOPPAGE OF SERVICE:

In the event of the interruption or stoppage of the water service provided for herein, for any reason or substantial period of time, whatsoever, except for interruption or stoppage caused by the City of Stuart, or whenever such interruption or stoppage of service is imminent, except for necessary repairs which shall be promptly made, the Town reserves the right for itself and for any patron of the Utility of having a receiver immediately appointed by a court of competent jurisdiction for the purpose of operating the water system and preventing the interruption or stoppage of the service, and the Utility agrees that whenever, for any reason, it appears to the Utility that interruption or stoppage of service is threatened or appears to be imminent, it shall immediately give written notice thereof to the Town.

5. PROTECTION OF FRANCHISE RIGHTS:

The Town hereby agrees to pass such ordinances or resolutions as may be necessary from time to time, for the protection of the franchises, rights, privileges and property of the Utility.

6. PERMITS FOR CONSTRUCTIONS:

Permits shall be obtained by the Utility from the Town or its designee if required before constructing or doing any work on its water piping or facilities, except routine maintenance work done elsewhere than in public thoroughfares; and the Town reserves the right to determine the location of pipe lines and their depth below grade and the Utility agrees to abide by the decision of the Town. The Utility shall exercise due care so as to prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling public, in the use of the streets, avenues, alleys and other easements over which its privileges extend and shall cause no unnecessary obstruction or unnecessary interruption of public travel over or upon the same and shall use due diligence in making excavations or other repairs and after the completion of all such work, shall restore such streets, avenues, alleys and easements to their former condition.

7. RIGHT OF MUNICIPALITY TO PURCHASE WATER SYSTEM:

The right is reserved to the Town at any time after five years from the date of this franchise to purchase said water system at fair appraised value, less reasonable depreciation, or at a valuation which shall be fixed by arbitration in such manner and form as is now or as may in the future be provided by law.

8. REPAIR OF DAMAGE TO ROADS:

The Utility is required to repair any damage or injury to the roads or highways by reason of the exercise of the privileges hereby granted, and to repair said roads or highways promptly, restoring the same to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury.

9. HOLD CITY HARMLESS:

The Utility shall hold the Town and members of the Town Commission thereof, harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted hereby.

10. RESPONSIBILITY FOR MAINTENANCE:

That nothing herein contained shall be construed to mean that the Town shall be responsible for the maintenance or repair of any of the property of Utility in the streets, roads or highways within the franchise area, unless heretofore or hereafter accepted by the Town for maintenance.

11. TERM OF LICENSE:

The license herein granted to lay utility lines in Town rights of way shall be for a period of thirty (30) years, subject, however, to termination by the Town in the event any of the roads or highways in said area shall be closed, abandoned, vacated or discontinued.

12. UNREASONABLE INTERFERENCE TO PUBLIC ROADS:

Any facility placed by the Utility upon, under, over or along any public road in the Town that is found by the Town to be unreasonably interfering in any way with the convenient, safe or continuous use or maintenance, improvement, extension or expansion of such public road and related drainage, shall, upon thirty (30) days' written notice to the Utility or its agents, by the Town, be removed or relocated, adjusted as to positions and elevations of the pipes and other facilities as may be required in connection with future improvement to, or reconstruction of the roads and highways, by such Utility at its own expense; and in the event such Utility fails or neglects to do so,

such facility within the allotted time, the Town shall bear the expense of adjustment, removal or relocation, and shall have a lien on all property owned by such Utility located within the Town until such expense is reimbursed to the Town.

13. SPECIFICATIONS TO BE FILED WITH STATE BOARD OF HEALTH:

That no facilities shall be installed in any public Town right of way until a plan and specifications in writing have been filed with the State Board of Health, and permission from the State Board of Health first obtained. The granting of the franchise and license herein is in no way to be construed to constitute a permit to do any construction or any other type of work with respect to structures or buildings above ground, without the Utility meeting all of the Town's requirements relative to such construction or work and upon the payment of the prescribed permit fees. It is understood, however, that no permits or permit fees shall be required of Utility for the purpose of underground installation.

14. ASSIGNMENT OR TRANSFER OF FRANCHISE:

This franchise and license shall not be assigned or transferred without the consent of the Town, which consent, if given, shall be evidenced by ordinance or resolution of the Town. Such consent shall not be unreasonably withheld.

15. EFFECTIVE TIME OF FRANCHISE:

The franchise and license hereby granted shall become operative when the acceptance hereof, in accordance with the conditions and provisions herein contained, shall be endorsed hereon by said Utility.

16. DAMAGE TO PUBLIC ROADS:

The Utility, on the Town's demand, shall at its expense, promptly correct any facility that in the Town's opinion

caused or contributed to the damage or failure of any public road, street, alley, parking area, easement or the like, or the drainage facilities related thereto. The Utility shall in such case, also at its expense, repair the damage or failure sustained by the public road, street, alley, parking area, easement or the like, or the drainage facilities related thereto.

17. MAINTAINING PREMISES:

The Utility shall be required to keep up its premises in a condition compatible with the surroundings in which it is located and the surrounding area and facilities shall be landscaped. The buildings, fences, tanks, towers, equipment and facilities of all kinds that are visible to the public shall be kept clean, neat and painted. The grounds shall be kept mowed, signs and such items shall be kept freshly painted and shall be neat and in good taste with respect to the neighborhood. The Utility shall not let junk and debris get piled up on its premises, nor shall it let piles of dirt or holes or washouts or rough places in the pavement or any unsightly condition remain in connection with its work or with difficulties or failures that arise from time to time in connection with its system.

18. FRANCHISE TAX:

Within thirty (30) days after the first anniversary date of this grant and within thirty (30) days after each succeeding anniversary date during the existence of this grant, the Grantee, its successors and assigns, shall pay to the Grantor or its successors a privilege tax equal to the amount by which six per cent of the amount of its gross revenues from the sale of water service to customers within the corporate limits of Grantor for the twelve calendar months preceding the applicable anniversary date, shall exceed the amount of any other taxes, licenses or other impositions

levied or imposed by Grantor against Grantee's property, business or operations for the tax year preceding the beginning of the applicable privilege tax year.

19. FORFEITURE OF FRANCHISE:

In the event the franchise holder shall violate any of the terms, conditions or provisions of this franchise for a period of thirty (30) days or a reasonable period of time under the circumstances, after such franchise holder shall have been notified in writing by the Town to desist from such violation, then this franchise shall be deemed to have been forfeited and such forfeiture shall be so declared by the Circuit Court in and for Martin County, Florida, in such manner and as is now or may in the future be provided by law for the forfeiture of municipal franchises.

20. OWNERSHIP OF FACILITIES:

It is specifically agreed and understood that all water supply and distribution facilities installed, used, useful or held for use in connection with the supply of water service to any of the subject property, and installed and furnished by the Utility, shall at all times remain the sole, complete and exclusive property of the Utility, its successors and assigns, and under the exclusive, complete and sole ownership, title control and operation of the Utility, its successors and assigns. It is specifically agreed and understood that the Town, no person, firm, or corporation owning any part of the property within the franchised area or any building or residence constructed or located thereon, shall have any right, title, claim or interest in and to such facilities or any part of them, except that private lines installed on private property and maintained by the owner of that property shall remain

21. UTILITY TAXES:

Any tax or charge imposed by any governmental authority on the Utility which is a tax imposed solely because the Utility is a utility, as distinguished from other individuals, corporations or businesses in general, may be apportioned among the consumers as a direct tax upon the consumers without resort to the Town for permission to increase the Utility's rates, provided, however, such taxes or charges must be ratably and proportionately assessed against all the Utility's consumers in the franchised territory affected by such tax or charge.

22. RATES, CHARGES AND CONTRIBUTIONS:

The Utility, its successors and assigns, shall have the right to make, adopt and enforce reasonable rules and regulations not inconsistent with law and subject to approval thereof by the Town of Sewall's Point, or such other regulatory commission or tribunal lawfully invested with jurisdiction thereof, for the convenience and security of the Utility as well as that of the public in the operation of said water system, and shall have the right to require all consumers acquiring or desiring to acquire water service from the Utility to sign a contract agreeing to all such rules and regulations. The Utility shall have the right to require reasonable deposits, receive contributions in aid-of-construction, and to receive other security with respect to service from its customers or those requesting water service. The Utility agrees to provide water service within the franchise area in conformity with the Utility's rules and regulations, but shall not be obligated to do so without first receiving the rates, charges and contributions set forth in said rules and regulations.

The rates, charges or contributions in aid-of-construction that are to be assessed and collected by the Utility

when water service is provided under the terms of this franchise are prescribed and set forth in Exhibit "A" attached hereto and hereby made a part hereof as fully as if set out in this paragraph.

23, INSTALLATION OF LATERAL LINES:

If at the time an owner of property requests Utility to provide water service to the owner's property, it is necessary as determined by Utility for Utility to install a lateral line which will provide service to more than that owner's property, then that property owner shall make a contribution and pay to the Utility, in a manner acceptable to the Utility, all sums necessary to pay the cost of making the requested water line installation. The Utility shall use these non-interest bearing contributed sums to make the requested installations. Upon completion of the requested installation the Utility shall determine the total number of front feet of property that can be provided water service by the installation and prorate the total cost of the installation on a per front foot basis, thus establishing a per front foot cost for the installation. Then as each property owner requests water service and is connected to the installation, each such property owner shall pay to the Utility as a contribution, his pro rata share of the lateral line system, determined by applying to the total front footage of his property the per front foot cost determined as above. For a period of five (5) years after the completion of such an installation, when other property owners are connected to the installation and contribute their pro rata share as provided herein, that pro rata share shall be rebated to the property owner originally requesting the installation. After the five (5) years period the Utility shall retain all sums and make no rebates.

It is further agreed that the cost and expense of constructing, operating, repairing and maintaining the installation necessary to provide service from the prospective user's property line to his building shall be that of said user.

Property owners shall not have the right to install lines or interconnect to the water facilities of Utility until formal written application has been made to Utility and approval for such interconnection has been granted. Water meters shall be installed at the expense of the prospective user of water service.

24. It is understood that as part of its water main installation along Sewall's Point Road, Utility will install standard fire hydrants at intervals of one thousand feet. Any other fire hydrant installations will have to be made by individual property owners. The Town agrees to pay Utility an annual fee of \$50 per hydrant so long as this franchise or any renewal thereof, shall be in effect. The Town agrees that it will not use, or permit anyone else to use, water from said hydrants for purposes other than fire control and protection.

25. It is understood that the Town is granting this franchise on the basis that the Utility will exert every reasonable effort to negotiate arrangements for the rendering of water service to Hutchinson's Island. For its part, Utility agrees to consider and negotiate with Hutchinson's Island property owners, or any other parties concerned, any reasonable arrangement for the rendering of water service to Hutchinson's Island using the same types of formulas as have been used in contracting for providing service to the Town of Sewall's Point.

26. ACCEPTANCE BY UTILITY:

Utility by its acceptance hereby agrees to perform and keep all of the agreements, undertakings and conditions

hereof to be observed, performed and kept by the Utility. All of the terms, provisions and conditions hereof shall inure to and be binding upon the respective successors and assigns of Town and the Utility.

PASSED FIRST READING by Town Commission of the Town of Sewall's Point, the 12th day of July, 1963.

PASSED AND FINALLY ADOPTED by the Town Commission of the Town of Sewall's Point, the 14 day of August 14, 1963.

TOWN OF SEWALL'S POINT

ATTEST:

Town Clerk

Approved as to correctness
of form

Town Attorney

By: _____
Mayor

Vice Mayor

Commissioner

Commissioner

Commissioner

ACCEPTANCE OF FRANCHISE AND LICENSE

SOUTHERN GULF UTILITIES, INC., a Florida corporation, does hereby accept the foregoing Franchise and License, granted by the Town of Sewall's Point, Florida, and for itself and its successors and assigns, does hereby covenant and agree to comply with and abide by all of the terms, conditions and provisions therein set forth and contained.

DATED at Miami, Dade County, Florida, this 1963.

day of

SOUTHERN GULF UTILITIES, INC.

By: _____
President

ATTEST:

Secretary

Signed, sealed and delivered in the presence of:

*adopted -
- 8-14-63
see minutes
of that date*

STATE OF FLORIDA)
COUNTY OF DADE) SS

I, an officer authorized to take acknowledgments of instruments according to the laws of the State of Florida, duly qualified and acting, hereby certify that _____ respectively as President and Secretary of SOUTHERN GULF UTILITIES, INC., a Florida corporation, to me personally known, this day acknowledged before me that they executed the foregoing acceptance of Franchise and License, as such officers of said corporation, and that they affixed thereto the official seal of said corporation for and as the official act of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal at Miami, Dade County, Florida, this _____ day of 1963.

Notary Public,
State of Florida at Large

My Commission Expires:

EXHIBIT "A"

To that certain ordinance granting to Southern Gulf Utilities, Inc., a franchise for a water supply and distribution system adopted by the Town of Sewall's Point, Florida, on the
day of _____, 1963.

The following rates, charges or contributions in aid-of-construction that the Utility may assess and collect pursuant to the above-described franchise are as follows:

I. MONTHLY SCHEDULE OF CHARGES FOR WATER SERVICE

\$4.00 per month minimum, including use of 4,000 gallons.

.85 per thousand gallons for the next 6,000 gallons.

.65 per thousand gallons for the next 10,000 gallons.

.50 per thousand gallons for all over 20,000 gallons.

II. CONTRIBUTIONS IN AID-OF-CONSTRUCTION

Each property owner in the Town of Sewall's Point, Florida, shall pay a contribution in aid-of-construction to the Utility as a condition precedent to receiving water service through the water supply and distribution system to be installed by the Utility pursuant to the above-described franchise. The amount of the contribution payable by a particular property owner will depend upon the amount of property which he owns. The contribution due is based upon the proration of the sum of \$90,000 over all land in the Town of Sewall's Point, each particular piece of property being charged for that portion of the \$90,000 which the 1962 assessed value of said property, exclusive of improvements, bears to the total 1962 assessed value of all land in the Town of Sewall's Point. The mathematical formula for computing the contribution due as to any particular property is 3.6% of 1962 assessed values,

plus a 5% increase each year beginning January 1, 1964, and continuing for four years thereafter at which time the original contribution of 3.6%, together with the percentage increase, shall remain as the total contribution due thereafter, and the contribution shall be payable to Utility by a property owner, at the time water service is requested, based on the application of this formula to the particular property involved.