

# Holland & Knight

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D. Bruce May, Jr.  
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June 1, 2012

*Via Hand-Delivery*

Ms. Ann Cole  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, FL 32399-0850

120167-GU

RECEIVED-FPSC  
12 JUN - 1 PM 12:50  
COMMISSION  
CLERK

Re: *In re: Petition of the City of Marianna to Resolve a Territorial Dispute with Chesapeake Utilities Corporation/Florida Public Utilities Company*

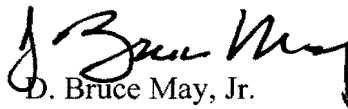
Dear Ms. Cole:

On behalf of the City of Marianna (the "City"), enclosed for filing are the original and seven (7) copies of the City's Petition to Resolve a Territorial Dispute.

Please acknowledge receipt of this filing by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance.

Sincerely,

HOLLAND & KNIGHT LLP

  
D. Bruce May, Jr.

DOCUMENT # 120167-GU  
03560 JUN - 1 2  
FPSC-COMMISSION CLERK

COM \_\_\_\_\_ DBM:kjg  
APA \_\_\_\_\_ Encls.  
ECR 5  
GCL 2 cc: Frank Bondurant (w/encl.)  
RAD \_\_\_\_\_ Jim Dean (w/encl.)  
SRC \_\_\_\_\_ Beth Keating (w/encl.)  
ADM \_\_\_\_\_ Patti Daniel (w/encl.)  
OPC \_\_\_\_\_  
CLK \_\_\_\_\_

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of the City of  
Marianna to resolve a territorial  
dispute with Chesapeake Utilities  
Corporation/Florida Public Utilities  
Company.

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Docket No. 120167-GU

Filed: June 1, 2012

**PETITION OF THE CITY OF MARIANNA  
TO RESOLVE A TERRITORIAL DISPUTE**

Pursuant to Section 366.04(3)(b), Florida Statutes and Rule 25-7.0472, Florida Administrative Code, the City of Marianna (the "City") respectfully petitions the Commission to resolve a territorial dispute between the City and Chesapeake Utilities Corporation ("Chesapeake")<sup>1</sup>, together with its wholly-owned subsidiary, Florida Public Utilities Company ("FPUC"), in order to avoid unnecessary and uneconomic duplication of facilities and preserve the public benefits to be derived from the community development grant awarded to the City for the expansion of its natural gas system. In support of its Petition, the City states:

1. The Petitioner's name and address are:

The City of Marianna, Florida  
Attention: Jim Dean, City Manager  
City Hall  
2898 Green Street  
Marianna, Florida 32446  
Telephone: 850-482-4353

2. The names, addresses, and telephone numbers of the persons to whom all notices and other documents should be sent are:

D. Bruce May, Jr.  
Kevin Cox  
Holland & Knight LLP  
Post Office Drawer 810  
Tallahassee, FL 32302-0810

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<sup>1</sup> Chesapeake operates in Florida under the fictitious name Central Florida Gas Company.

DOCUMENT NUMBER DATE

03560 JUN-1 2012

FPSC-COMMISSION CLERK

Telephone: 850-224-7000  
Facsimile: 850-224-8832

and

Frank E. Bondurant  
City Attorney  
Bondurant & Fuqua, P. A.  
4450 Lafayette Street (32446)  
Post Office Box 1508  
Marianna, Florida 32447  
Telephone: 850-526-2263  
Facsimile: 850-526-5947

3. Section 366.04(3), Florida Statutes confers on the Commission the jurisdiction to resolve territorial disputes between natural gas utilities. To implement this authority, the Commission has adopted Rule 25-7.0472, Florida Administrative Code.

4. The City is a political subdivision of the State of Florida, with a population of approximately 6,200 persons. The City operates natural gas utility systems as well as police and fire departments, water and wastewater systems, and provides other municipal services to its citizens and others. The City is a natural gas utility within the meaning of Section 366.04(3)(c) and is subject to the Commission's statutory jurisdiction to resolve territorial disputes.

5. Chesapeake and its wholly-owned subsidiary, FPUC, are investor-owned natural gas utilities whose rates and services are regulated by the PSC under Chapter 366, Florida Statutes. Chesapeake and FPUC are natural gas utilities within the meaning of Section 366.04(3)(c) subject to the Commission's statutory jurisdiction to resolve territorial disputes.

**SERVICE PROVIDED AND PROPOSED BY THE CITY**

6. The City has been providing natural gas service to customers within its municipal limits and in unincorporated areas of Jackson County for over 50 years.

7. In March 2009, the City began a project (the "Expansion Project" or "Project") that would extend its natural gas distribution system as depicted in Composite Exhibit "A." The

Expansion Project is designed to serve industrial and commercial customers in nearby areas south of the City and around the interchange of Interstate 10 and State Road 71 in Jackson County (the "I-10 Interchange").

8. In March 2009, the City engaged Florida Gas Utility to perform a feasibility study of the Expansion Project. That feasibility study was followed with a more detailed engineering study of the Project. After reviewing the results of those studies and upon determining that the Expansion Project was feasible and would benefit the Greater Marianna area, the City has moved ahead with the Project and obtained all permits and licenses to extend service to the I-10 Interchange area. For example, the City has obtained: a natural gas franchise and license in Jackson County; a right-of-way use permits from Jackson County; approval from the U.S. Department of Army to install the pipeline under the Chipola River; a Florida Department of Transportation utility permit to run the pipeline along Highway 90; and a consolidated Environmental Resource Permit/Sovereignty Submerged Land Authorization to run the pipeline under the Chipola River. As the permitting process progressed, the City also moved forward with engineering plans and construction. More specifically, the City has solicited bids and awarded construction contracts, purchased pipe and equipment, and launched full scale construction work. The City also has entered into exclusive contracts to provide natural gas to customers located along the Project's path. Furthermore, as will be described in more detail below, the City has extensively explored the most cost-effective means of financing the Project, including obtaining federally-funded community development grants.

9. On December 9, 2011, the City formally notified the Commission of the Expansion Project by letter which is attached as Exhibit "B". Commission staff has subsequently inspected the Project and continues to do so.

10. The initial phase of the Expansion Project is well underway and involves extending a 6" natural gas pipeline southeast from Marianna for approximately 2 miles along U.S. Highway 90 and State Road 71 to reach the Anderson Columbia Asphalt Plant ("Asphalt Plant"). The Asphalt Plant has signed an exclusive agreement to purchase natural gas supplied from the City and is expected to use in excess of 24,000 therms of natural gas monthly. This phase was fully permitted by early 2012 and construction began in the spring of 2012. This part of the Project is expected to be completed by July 28, 2012. The cost of this initial phase will be funded entirely from the City's general reserve fund with no impact on its existing or future customers. The construction contract which the City has entered to complete this phase is attached as Exhibit "C".

11. The next phase of the Expansion Project involves extending the pipeline from the Asphalt Plant for approximately 1.5 miles south to the I-10 Interchange area, which includes a variety of commercial, retail, and service establishments. Presently, there is no existing natural gas service in this area. Because of the potential economic development advantages that the natural gas pipeline will bring to the area, the City applied to the Florida Department for Economic Opportunity for a federally funded community development block grant ("CDBG", or the "Grant") to finance the total cost of this project phase, which will be approximately \$700,000. The engineer's opinion of probable costs, which accompanied the City's Grant application, is attached hereto as Exhibit "D". A Dairy Queen franchise south of the interchange has signed an exclusive agreement to purchase gas from the City, and has agreed to be a participating partner under the CDBG program.

12. In January 2012, the City was awarded the Grant. Because the \$700,000 Grant will cover the entire cost of this phase of the Project, the City expects to incur no costs to serve the I-

10 Interchange area. In May 2012, the City began initial construction and expects it to be completed by January 19, 2013.

13. Upon completion of the Expansion Project, it is estimated that the City will have added 1 industrial customer and 23 commercial customers with a total annual gas consumption of approximately 466,824 therms, which is estimated to produce \$183,048.00 in annual revenue. Exhibit "E" shows the numbers and types of customers anticipated to be connected and the estimated natural gas throughput. The City presently holds contractual rights to Firm Transportation Capacity on the Florida Gas Transmission ("FGT") transmission system, which are sufficient to permit the City to provide all of the natural gas services required as a result of the Expansion Project.

14. Once the Expansion Project is completed, the City has designed an option to extend the pipeline from its terminus to the west for 2 miles to State Road 73 to complete the looping of its system by either connecting to an existing FGT lateral, or installing additional pipe north along State Road 73, to reconnect with its system in Marianna. The Commission has expressly recognized that system looping enables a utility to enhance the reliability and the integrity of its natural gas system. Order No. PSC-09-0715-FOF-EI (Oct. 28, 2009) ("... FPL's pipeline would lack the looping, interconnects, and other redundancies found on the FGT system, making it less reliable in the event of system failures."); and Order No. PSC-94-0680-FOF-GU (June 6, 1994) ("The looping will enable City Gas to enhance the reliability and integrity of the . . . distribution system."). Moreover, in resolving a territorial dispute among natural gas utilities, the Commission has expressly considered the fact that a proposed expansion would enhance the ability of a natural gas utility to loop its system. Order No. 25809 (Feb. 25, 1992) ("If we were

to award the disputed area to Sebring, this expansion would bring Sebring nearly a mile closer to the eventual closing of its loop, thus enhancing Sebring's feasibility of looping its system.").

**SERVICE PROPOSED BY CHESAPEAKE/FPUC**

15. Neither Chesapeake nor FPUC provides natural gas service or operates natural gas systems anywhere near any of the area to be served by the City's Expansion Project. Upon information and belief, FPUC does not provide natural gas service anywhere in Jackson County. Furthermore, upon information and belief, Chesapeake has only one customer in Jackson County which is located approximately 20 miles from the area to be served by the City's Expansion Project.

16. The City recently became aware that FPUC has been soliciting potential natural gas customers in the I-10 Interchange area and has advised those potential customers that it intended to expand its service into the precise area to be served by the City's ongoing Expansion Project (the "Disputed Area"). The Disputed Area principally overlays the second phase of the Expansion Project as depicted in the insets on pages 1 and 2 of Composite Exhibit "A." The Disputed Area is a rectangular parcel approximately one-and-a-half miles long and a half-mile wide. The length of Disputed Area extends along the State Road 71 corridor from .9 miles north of the I-10 Interchange to .6 miles south of the I-10 Interchange, and its width extends from .25 miles west of State Road 71 to .25 miles east of State Road 71.

17. As of the date of this filing, neither Chesapeake nor FPUC has obtained a franchise agreement and license from Jackson County that would authorize the extension of their systems into the Disputed Area. The City has no detailed knowledge with respect to the actual configuration of Chesapeake's or FPUC's system expansion into the Disputed Area, the number or types of customers to be served thereby, the expansion timetable, or the cost of the extension. Further, the City has no present knowledge with respect to whether Chesapeake or FPUC holds

sufficient Firm Transportation Capacity on the FGT transmission system necessary to supply the expansion into the Disputed Area.

**RELIEF REQUESTED**

18. Section 366.04(3)(b), Florida Statutes, empowers the Commission to resolve territorial disputes between natural gas utilities. Rule 25-7.0472, Florida Administrative Code, implements that statute by specifying the matters which the Commission shall consider in resolving such disputes.

19. Service by both the City and FPUC (or its parent, Chesapeake) within the Disputed Area would result in an uneconomic duplication of facilities required for the provision of natural gas service.

20. Because the City has been awarded a Grant to finance the cost of serving the Disputed Area, the City's existing and future customers will not be required to shoulder the cost of extending facilities to serve the Disputed Area. Furthermore, the Disputed Area is a logical area into which the City should be expected to make feasible extension of its facilities for the purposes of acquiring incremental natural gas throughput for the benefit of the City's future and existing customers, and potentially looping its existing distribution system to ensure stability and reliability. On the other hand, the extension of facilities into the Disputed Area proposed by FPUC (or its parent Chesapeake) would not be prudent or cost-effective given the fact that neither FPUC nor Chesapeake have any existing facilities anywhere near the Disputed Area. Moreover, upon information and belief, FPUC and Chesapeake do not have access to federally-funded grants to fund expansion into the Disputed Area as does the City.

21. By applying for and obtaining the Grant to fund all of the costs of extending service to the Disputed Area, the City has taken significant and elaborate steps to supply natural gas to customers in the Disputed Area in the most cost-effective manner possible. Awarding the



Disputed Area to FPUC or its parent Chesapeake would require the Commission to essentially unwind the federally-funded community development block grant that has already been awarded to and is being used by the City. Thus, the territorial encroachment threatened by FPUC and Chesapeake not only constitutes unnecessary and uneconomic duplication of facilities, it also jeopardizes the award of the Grant itself and, if allowed to continue, could deprive the citizens of the Greater Marianna community of the economic benefits which the Grant is designed to achieve. The City has particularly strong interests and standing in seeing that these public interest objectives are realized.

22. The Commission should be aware that the City and FPUC are involved in a civil lawsuit over an electric service franchise agreement currently pending in the Circuit Court of the Fourteenth Judicial Circuit in Jackson County, Florida, Case No. 11-198CA (the “Franchise Litigation”). Formal mediation in the Franchise Litigation is ongoing and the next mediation session is scheduled for July 6, 2012. The issues underlying this territorial dispute may be subject to resolution within the context of the mediation. While the City is prepared to attempt in good faith to resolve the territorial dispute issues as part of that mediation, there is no guarantee that mediation will produce an amicable resolution. Therefore, the City has no alternative but to file this Petition to prevent unnecessary and uneconomic duplication of service and protect its vital interest in serving the Disputed Area.

WHEREFORE, to avoid unnecessary and uneconomic duplication of facilities and to preserve the public benefits of the City’s community development grant, the City respectfully requests:

(1) That the Commission assert jurisdiction over the territorial dispute alleged herein and, if the parties cannot amicably resolve these differences in the course of the ongoing

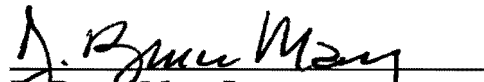
mediation, conduct an evidentiary hearing and enter an order finding that the City, and not FPUC or Chesapeake, is the appropriate natural gas utility to provide service to customers within the Disputed Area;

(2) That FPUC and Chesapeake be ordered not to extend its facilities for the purpose of providing service to customers within the Disputed Area; and

(3) That the Commission grant the City such other and further relief as it deems appropriate.

Dated this 1st day of June, 2012.

**HOLLAND & KNIGHT LLP**

  
Bruce May, Jr.

Florida Bar No. 354473  
[bruce.may@hklaw.com](mailto:bruce.may@hklaw.com)


**Kevin Cox**

Florida Bar No. 034020  
[kevin.cox@hklaw.com](mailto:kevin.cox@hklaw.com)  
Holland & Knight, LLP  
Post Office Drawer 810  
Tallahassee, Florida 32302-0810  
(850) 224-7000 (Telephone)  
(850) 224-8832 (Facsimile)

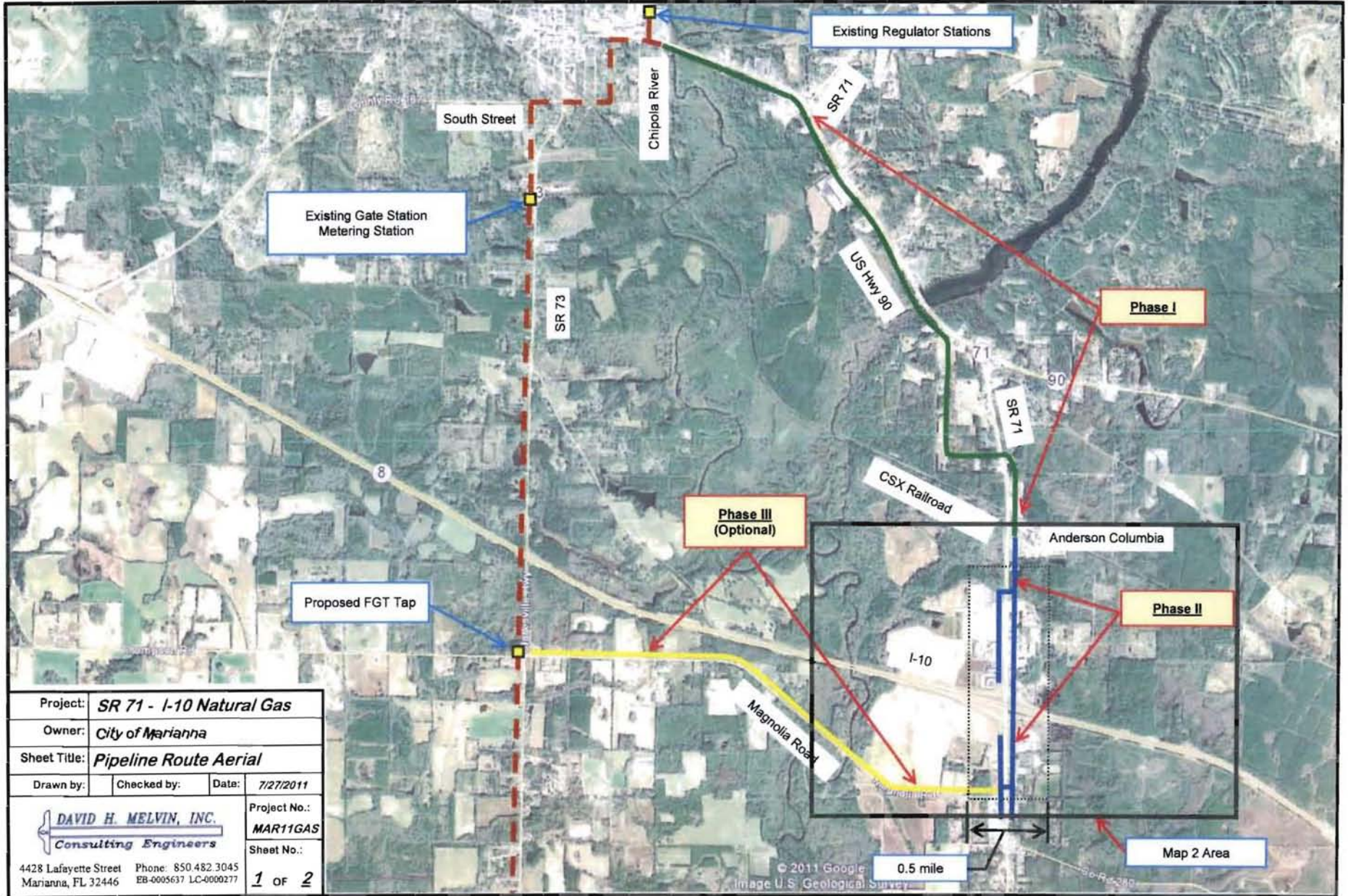
*Counsel for City of Marianna*

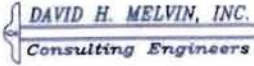
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail this 1st day of June, 2012 to: Florida Public Utilities Company, 1641 Worthington Road, Suite 220, West Palm Beach, FL 33409-6703 and Florida Division of Chesapeake Utilities Corporation, P. O. Box 960, Winter Haven, FL 33882-0960.

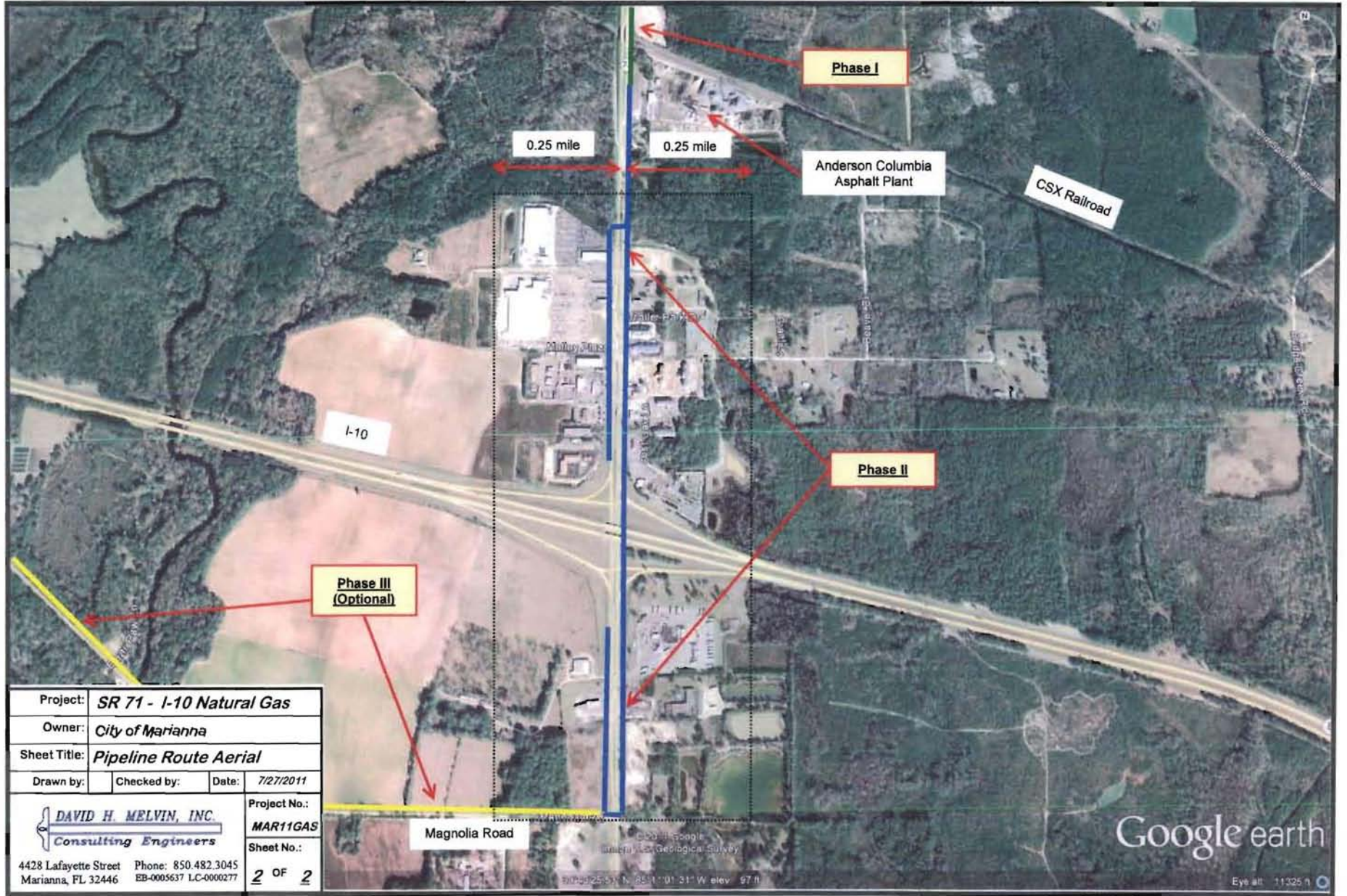
  
\_\_\_\_\_  
Attorney

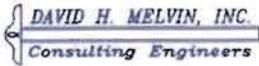
# COMPOSITE EXHIBIT A



Project: <b>SR 71 - I-10 Natural Gas</b>		
Owner: <b>City of Marianna</b>		
Sheet Title: <b>Pipeline Route Aerial</b>		
Drawn by:	Checked by:	Date: <b>7/27/2011</b>
		Project No.: <b>MAR11GAS</b>
4428 Lafayette Street Marianna, FL 32446		Phone: 850.482.3045 EB-0005637 LC-0000277
		Sheet No.: <b>1 of 2</b>

© 2011 Google  
 Image U.S. Geological Survey



Project:	<b>SR 71 - I-10 Natural Gas</b>		
Owner:	<b>City of Marianna</b>		
Sheet Title:	<b>Pipeline Route Aerial</b>		
Drawn by:	Checked by:	Date:	7/27/2011
		Project No.:	<b>MAR11GAS</b>
4428 Lafayette Street Marianna, FL 32446		Phone: 850.482.3045	EB-0005637 LC-0000277
		Sheet No.:	<b>2 OF 2</b>

Google earth

Eye alt: 11325 ft

# **EXHIBIT B**



**CITY OF MARIANNA**  
**OFFICE OF THE CITY MANAGER**  
Post Office Box 936  
Marianna, FL 32447  
(850) 482-4353 Fax (850) 482-2217  
Email: deanj@cityofmarianna.com

COPY

December 9, 2011

Mr. Ronald A. Brise, Chairman  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**RE: NOTICE OF INTENT – City of Marianna  
Natural Gas Expansion Project**

Dear Mr. Brise:

The City of Marianna is a small rural community located in the panhandle of Florida approximately 70 miles West, of the City of Tallahassee on the Interstate 10 corridor. The City owns and operates its Water, Wastewater and Natural Gas Utility Systems.

Over a year ago the City began the planning process, completed the initial design work, and is now prepared to go under construction of the expansion of its Natural Gas System. This letter is written for information purposes to formally notify the Public Service Commission (PSC) of its Intent to serve unincorporated areas of Jackson County.

The following steps and accomplishments represent the actions taken by the City of Marianna to serve Interstate Ten and Highway 71 Interchange as well as the surrounding area which is considered the greater Marianna service area:

- Natural Gas Franchise, in October 2010, a year ago, Jackson County approved/granted a franchise to the City of Marianna to serve the Area described below a copy of the Franchise is attached as **Exhibit B**
- **Exhibit A** attached is a 11" x 17" aerial photo showing all portions of the Project;
  - Improvement A – Natural Gas line from the Eastern boundary of Marianna East along Highway 90 to Highway 71 traveling South on Highway 71 to the Anderson Columbia Asphalt Plant
  - Improvement B – Natural Gas line from Anderson Columbia Asphalt Plant traveling South on Highway 71 to Magnolia Road (County Road)
  - Improvement C-1 – Natural Gas line from the Intersection of Highway 71 and Magnolia Road West to State Highway 73
- Improvement A will be funded from the City's reserve funds. This was approved by the City Commission once Anderson Columbia entered into an "Exclusive" Agreement with the City of Marianna to purchase natural gas, see attached **Exhibit C**

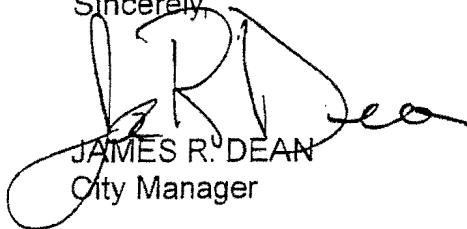


- Improvement A has been designed and engineered, the City has already advertised for bids and bids will be opened December 28, 2011, see advertisement attached Exhibit D
- Improvement B is being designed by the City's Contract Engineer, this portion of the overall project will be funded by the State of Florida, Community Development Block Grant, Federal Funds a copy of the Grant Agreement is attached as Exhibit E
- Improvement C-1 is also being funded by the City and construction will soon begin, the City has obtained a Right of Way Use Permit from Jackson County which is attached as Exhibit F

As you can see the City and the State of Florida have committed a large amount of resources to bring natural gas to this area. This **Notice of Intent** is provided to ensure that should any other provider of natural gas notify the Public Service Commission of the intent to provide natural gas service the Commission would have knowledge of existing natural gas service in this area.

Should you have any questions or if you would like to discuss any aspect of the project please do not hesitate to contact me at 850-482-4353.

Sincerely,



JAMES R. DEAN  
City Manager

Attachments

cc: Frank Bondurant, City Attorney

# **EXHIBIT C**

AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)  
FUNDING AGENCY EDITION

THIS AGREEMENT is by and between City of Marianna ("Owner") and  
R.A.W. Construction, LLC ("Contractor").

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The construction of a 6" Steel Natural Gas Pipeline along Hwy 90 and S.R. 71 to Anderson Columbia asphalt plant.

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by David H. Melvin, Inc. (Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

*The Work will be substantially completed within 180 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 210 days after the date when the Contract Times commence to run.*

4.03 *Liquidated Damages*

*Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$425 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$200 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.*

**ARTICLE 5 – CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, and 5.01.B below:

One million ninety seven thousand six hundred forty dollars and zero cents	\$1,097,640.00
(words)	(figure)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the bid proposal, Section 410, Part A:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

B. For all Unit Price Work, established for future projects as indicated in the bid proposal, Section 410, Part C:

UNIT PRICE WORK

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Estimated Price</u>
As per bid proposal Section 410, Part C.					

ESTIMATED TOTAL OF ALL UNIT PRICE WORK      \$ \_\_\_\_\_ (use words)      \$( \_\_\_\_\_ ) (figure)

*For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.*

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on a monthly basis as per receipt of funds from the funding agency during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
  - a. 95 percent of Work completed (with the balance being retainage); and
  - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions.

### 6.03 *Final Payment*

- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay Contractor as provided in Paragraph 14.07 of the General Conditions the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages.

## ARTICLE 7 – INTEREST

- 7.01 The Owner will endeavor to make prompt payments based upon release of agency funds. No interest will be paid to the Contractor due to late payments.

## ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 6, inclusive).
  - 2. Performance bond (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - 3. Payment bond (pages \_\_\_\_ to \_\_\_\_, inclusive):
  - 4. Certificate of Insurance (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - 5. General Conditions Section 700 (pages 1 to 41, inclusive).
  - 6. Supplementary Conditions Section 710 (pages 1 to 7, inclusive).
  - 7. Specifications as listed in the table of contents of the Project Manual.
  - 8. Drawings consisting of 36 sheets with each sheet bearing the following general title: City of Marianna Natural Gas Extension to Anderson Columbia
  - 9. Addenda (numbers 1 to 1, inclusive).
  - 10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid Section 410 (pages 1 to 19, inclusive).
    - b. Documentation submitted by Contractor prior to Notice of Award Section 300 (pages 1 to 9, inclusive) and Section 430 (pages 1 to 4, inclusive).
  - 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed Section 550 (pages 1 to 1, inclusive).
  - b. Work Change Directives.
  - c. Change Order(s).
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 – MISCELLANEOUS

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in four copies. One counterpart each has been delivered to Owner, Contractor, Engineer, and Agency. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Contractor or identified by Engineer on their behalf.

This Agreement is dated \_\_\_\_\_ This Agreement shall not be effective unless and until Agency's designated representative concurs.

OWNER: City of Marianna

CONTRACTOR: R.A.W. Construction, LLC.

By: James R. Dean

By: Don White

Title: City Manager

Title: Manager / Partner

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: Ky J Appleton

Attest: Don White / T. White

Title: City Clerk

Title: Partner

Address for giving notices:

Address for giving notices:

2898 Green St.

710 Lewis Blvd. South

Marianna, FL 32446

Tallahassee, FL 32305

Agent for service of process:

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_



# **EXHIBIT D**

**DAVID H. MELVIN, INC.**  
**Consulting Engineers**

August 15, 2011

Mr. Steve Fellerman, Program Specialist  
Department of Community Affairs – CDBG Section  
2555 Shumard Oak Drive  
Tallahassee, FL 32399-2100

RE: Engineering Certification  
City of Marianna - 2011 CDBG economic Development Project

Dear Mr. Fellerman:

Please find attached our opinion of probable cost for the infrastructure improvements required for the proposed City of Marianna 2011 CDBG Economic Development Project. The cost estimates are based upon recent bids on similar projects within the same geographical area. The proposed route, scope, cost and size of the proposed infrastructure improvements are the minimum necessary to provide for the needs of the participating party development.

I hereby certify that the infrastructure proposed to be funded by CDBG funds is the minimum necessary to provide for the needs of the City of Marianna 2011 CDBG Economic Development Project.

Sincerely,

  
Leon E. Nobles, P.E.  
Vice-President

cc: City of Marianna

Reply To:  4428 Lafayette Street • P.O. Box 840 • Marianna, Florida 32447 • 850.482.3045  
 2541-1 Barrington Circle • Tallahassee, Florida 32308 • 850.671.7221  
a *CharacterFirst!* Company

Marianna Natural Gas Transmission Line Extension  
CDBG Economic Development Project

Cost Estimate:

Construction

2" Natural Gas Line	7200 L.F./\$50	\$360,000.00
Road Bore and Casing	550 L.F. /\$150	\$82,500.00
Valves and Fittings	Lump Sum	\$18,500.00
Regulator Stations	2 Each /\$45,000	\$90,000.00
Total		\$551,000.00

Engineering \$93,000.00

Administration \$56,000.00

Total CDBG Funding \$700,000.00

# **EXHIBIT E**

## Natural Gas Customer Use Conversion Table

### Marianna Natural Gas Main Extension (East)

Customer	Monthly Use (Therms)	City Markup per Therm	Estimate of Monthly Revenue including \$16 meter charge	Estimate of Annual Revenue
Asphalt Plant - Hot Oil Heater	3,300	\$ 0.3500	\$ 1,171.00	\$ 14,052.00
Asphalt Plant - Dryer	21,450	\$ 0.3500	\$ 7,523.50	\$ 90,282.00
<b>Asphalt Plant Sub-Total</b>	<b>24,750</b>		<b>\$ 8,694.50</b>	<b>\$ 104,334.00</b>
Sonny's	360	\$ 0.4375	\$ 173.50	\$ 2,082.00
Beef O'Bradys	636	\$ 0.4375	\$ 294.25	\$ 3,531.00
Burger King	350	\$ 0.4375	\$ 169.13	\$ 2,029.50
Wal-Mart	410	\$ 0.4375	\$ 195.38	\$ 2,344.50
Lowe's	0	\$ 0.4375	\$ -	\$ -
Waffle House	181	\$ 0.4375	\$ 95.19	\$ 1,142.25
Po Folks	410	\$ 0.4375	\$ 195.38	\$ 2,344.50
KFC/Long John Silver	555	\$ 0.4375	\$ 258.81	\$ 3,105.75
Mcdonalds	1,200	\$ 0.4375	\$ 541.00	\$ 6,492.00
Pizza Hut	444	\$ 0.4375	\$ 210.25	\$ 2,523.00
Ruby Tuesday	318	\$ 0.4375	\$ 155.13	\$ 1,861.50
Pilot/Arbys	212	\$ 0.4375	\$ 108.75	\$ 1,305.00
Travel Center	3,636	\$ 0.4375	\$ 1,606.75	\$ 19,281.00
Hampton Inn	500	\$ 0.4375	\$ 234.75	\$ 2,817.00
Quality Inn	545	\$ 0.4375	\$ 254.44	\$ 3,053.25
Comfort Inn	727	\$ 0.4375	\$ 334.06	\$ 4,008.75
Microtel Inn	363	\$ 0.4375	\$ 174.81	\$ 2,097.75
Country Inn & Suites	500	\$ 0.4375	\$ 234.75	\$ 2,817.00
Fairfield Inn	500	\$ 0.4375	\$ 234.75	\$ 2,817.00
Holiday Inn	500	\$ 0.4375	\$ 234.75	\$ 2,817.00
Super 8	550	\$ 0.4375	\$ 256.63	\$ 3,079.50
Superior Bank	0	\$ 0.4375	\$ -	\$ -
Panhandle Tractor	300	\$ 0.4375	\$ 147.25	\$ 1,767.00
Credit Union	0	\$ 0.4375	\$ -	\$ -
Strip Mall North		\$ 0.4375	\$ -	\$ -
Retail store	0	\$ 0.4375	\$ -	\$ -
Firehouse Sub	0	\$ 0.4375	\$ -	\$ -
Hong Kong Rest	250	\$ 0.4375	\$ 125.38	\$ 1,504.50
Shoe Store	0	\$ 0.4375	\$ -	\$ -
Retail Store	0	\$ 0.4375	\$ -	\$ -
cell Phone Store	0	\$ 0.4375	\$ -	\$ -
Strip Mall South		\$ 0.4375	\$ -	\$ -
Retail Store	0	\$ 0.4375	\$ -	\$ -
Retail Store	0	\$ 0.4375	\$ -	\$ -
Retail Store	0	\$ 0.4375	\$ -	\$ -
San Marcos Rest	705	\$ 0.4375	\$ 324.44	\$ 3,893.25
<b>TOTAL ESTIMATES</b>	<b>38,902</b>		<b>\$ 15,254.00</b>	<b>\$ 183,048.00</b>


**DAVID H. MELVIN, INC.**  
*Consulting Engineers*