

ACCEPTANCE OF FRANCHISE

PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS, hereby accepts the Franchise contained in Ordinance No. 49-2024, and agrees to be bound by said Franchise, in accordance with the terms and provisions of said Franchise Ordinance.

DATED this 6th day of May, 2025.

PIVOTAL UTILITY HOLDINGS, INC. D/B/A
FLORIDA CITY GAS

BY: _____

Print Name

Title

ATTEST:

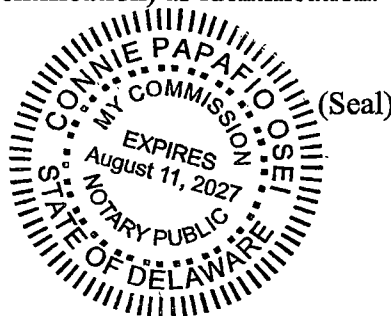
Secretary

STATE OF DELAWARE
COUNTY OF KENT

The foregoing instrument was acknowledged before me by means of ☒ physical presence ☐ online notarization, this 6th day of May, 2025, by _____ (Name of Officer or Agent, Title of Officer or Agent) of Pivotal Utility Holdings, Inc. d/b/a Florida City Gas, a _____ (State or Place of Incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (Type of Identification) as identification.

Signature of Notary Public

CONNIE PAPAIO OSEI
Print, Type or Stamp Name of Notary



ORDINANCE NO. 49 -2024

AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA, GRANTING TO PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE GAS FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENT OF A FRANCHISE FEE TO THE CITY; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Titusville ("City") desires to grant a non-exclusive franchise to permit the construction, maintenance and operation of natural gas facilities within the City; and

WHEREAS, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the City does not desire to undertake to provide such services; and

WHEREAS, Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG") is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, the City adopted Ordinance number 4-1993, effective January 26, 1993, that granted a franchise to City Gas Company of Florida, a division of FCG's predecessor, Elizabethtown Gas Company, for 30 years, from the date of acceptance of the Ordinance by City Gas which was on April 28, 1993; and

WHEREAS, the City finds it in the public interest to ensure that all areas within its limits are adequately provided with high-quality gas service; and

WHEREAS, the City finds it in the public interest to retain control over the use of public rights of way by providers of gas to ensure against interference with the public

convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right of way space, and to protect the public investment in right of way property; and

WHEREAS, FCG and the City desire to enter into a franchise agreement providing for the payment of fees to the City in exchange for the nonexclusive right and privilege of supplying natural gas and other services within the City free from competition from the City, pursuant to certain terms and conditions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TITUSVILLE, FLORIDA, AS FOLLOWS:

Section 1. Incorporation of Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Definitions.

(a) "City" shall mean City of Titusville, a political subdivision of the State of Florida.

(b) "Customers" shall mean all residences, businesses, governmental entities and industrial establishments located within the City purchasing natural gas from Franchisee.

(c) "FPSC" shall mean the Florida Public Service Commission or its successor agency or agencies.

(d) "Franchise" shall mean this Agreement and the rights granted to Franchisee hereunder.

(e) "Franchise Fee" shall mean the fees described in Section 11 of this agreement.

(f) "Franchisee" shall mean Pivotal Utility Holdings, Inc., a New Jersey corporation d/b/a Florida City Gas, and its successors and approved assigns.

(g) "Gas System Facilities" or "Facilities" shall mean and include, but not be limited to, gas mains, pipes, supply pipes, conduits, ducts, service connections, manholes, regulators, drip pots, control devices and any other hardware or other appurtenances used as a means of conveying, distributing or selling natural gas for the purpose of supplying natural gas to the meter of the Customer, constructed both prior to and during the term of this Agreement.

(h) "Gross Revenues" shall mean all revenues received by Franchisee from any customer from the sale, transportation, distribution or delivery of gas.

(i) "Natural Gas" shall mean natural gas in a gaseous state unmixed or a mixture of natural and artificial gas, whether manufactured, "landfill" or otherwise.

(j) "Uncollectible Accounts" shall mean any account where the customer is unwilling or unable to pay.

Section 3. Franchise.

The City hereby grants to the Franchisee, and the Franchisee hereby accepts, the non-exclusive right, privilege and franchise, for the period of thirty (30) years from the effective date hereof, to construct, maintain and operate only Gas System Facilities in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public rights-of-way within the City. The Franchisee shall construct, maintain and operate Gas System Facilities in accordance with established industry practices, and applicable federal, state and local law, including the orders, rules and regulations of the FPSC or any other regulatory body having jurisdiction over the Franchisee and, to the extent permitted by law, the City's installation, maintenance and operation standards in respect of natural gas.

The City acknowledges that the rates, fees, and charges that Franchisee charges its Customers are determined by the FPSC.

This grant of authority to Franchisee is strictly limited to the provision of natural gas service only. It is explicitly recognized that this Franchise does not limit the Franchisee's ability to operate a liquefied petroleum (commonly referred to as LP gas, bottled gas, or propane) business within the City, similar to any other liquefied petroleum business, nor does it limit the City's ability to assess a franchise fee upon the liquefied petroleum business within the limits permitted under Florida law.

Limits of Franchise.

This franchise covers the following geographical area: the City limits of the City of Titusville, Florida, as they may change from time to time.

Section 4. Annexation or Contraction.

Franchisee agrees that the geographical limits of the franchise area are subject to expansion or reduction by annexation and that the Franchisee has no vested right in the franchise area, and that this franchise is awarded subject to the provisions of general or special laws of Florida now enacted or hereinafter enacted. The portion of Franchisee's Facilities that may be located within such annexed territory and upon such streets, alleys or public grounds shall be subject to all the terms of this Franchise Agreement.

Section 5. Use and Maintenance of Public Rights-of-Way.

Franchisee's Gas System Facilities shall be located or relocated and so constructed as not to interfere with, including but not limited to, sanitary sewers, drainage systems, water pipes, electrical conduits, communication cables or other public utility service facilities, existing at the time of such location, relocation or construction. The Franchisee's Facilities shall not obstruct or interfere with the public uses of streets, roads, highways or alleys, or create any conditions which are or may become dangerous to the traveling public. Franchisee shall attempt to minimize above grade facilities, and such facilities shall be installed near the outer boundaries of the public rights-of-way when appropriate. The location or relocation of all Facilities shall be made after Franchisee has received all applicable permits, approvals and permissions from the City and such other governmental entities as may be necessary, and the location(s) or relocation(s) shall be subject to the City's approval. In consideration for the Franchise Fee paid under this Agreement, the Franchisee will not be assessed any permit fees associated with the installation, construction, repair or maintenance of any Gas System Facilities within the public rights-of-way. In the event that Franchisee is acting in its proprietary function as a retail provider of gas equipment or appliances, Franchisee shall seek the appropriate permits from the City. Franchisee shall cooperate with the City at all times by providing timely and complete information regarding the location of its Facilities. Franchisee and City shall cooperate and coordinate their efforts to make the most efficient and economical use of the public rights-of-way and the Gas System Facilities.

If any street, highway or avenue is to be paved by the City, the City shall give written notice to the Franchisee not less than ninety (90) days prior to the commencement of paving. Provided the Franchisee does not already have a main in the street, highway or avenue to provide natural gas service to the surrounding houses and other structures, Franchisee shall survey the surrounding houses and other structures to determine whether, in its sole discretion, construction of Gas System Facilities in the street, highway or avenue in question is economically feasible. Where such construction is determined to be economically feasible, the Franchisee shall construct such Gas System Facilities in the street, highway, or avenue in question prior to paving by the City. However, in the event the Franchisee believes that such construction may not be completed prior to City's planned paving schedule, the Parties will attempt to negotiate a revised paving schedule satisfactory to both Parties; provided, however, that if a delay in paving will cause additional expense to the City, in any way impact the City's ability to pave as budgeted/funded, or cause demonstrable inconvenience to the residents of the City, the City may proceed with its original paving schedule.

The Franchisee shall, at its own expense, replace, repair and restore in a timely manner any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature, that may be damaged or displaced by the Franchisee in the conduct of its operations, and shall, at a minimum, restore all property to a condition equivalent to the condition immediately prior to the work and/or changes made by the Franchisee. All repairs or replacements as described must comply with all applicable City and state regulations and permitting requirements, with written notice to the City. Franchisee shall

take safety precautions to alert the public of work, which may include, but is not limited to, the use of barricades and signs.

The City may require the relocation of any of the Franchisee's Facilities installed before or after the effective date hereof in public rights-of-way in the event of widening, reconfiguration, repair or reconstruction of any street, road, alley or other right-of-way in the city, where necessary to complete such work, at no cost to the City.

Section 7. Insurance.

At all times during the term of this Franchise, Franchisee shall file with the City and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a liability insurance policy or policies as required herein, which shall provide for the protection and indemnification of the City with respect to any and all legally valid claims of any persons suffering injury, loss or damage to person or property by reason of the construction, repair, replacement, maintenance, or operation of a natural gas distribution system within the limits of this franchise.

The Franchisee shall, on a primary basis and at its sole expense, maintain in full force and effect at all times during the exercise of this Franchise, insurance coverage, limits, including endorsements, as described herein, which shall provide for the protection and indemnification of the City with respect to any and all legally valid claims of any persons suffering injury, loss or damage to person or property by reason of the construction, repair, replacement, maintenance, or operation of a natural gas distribution system within the limits of this franchise. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by Franchisee are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Franchisee under this Agreement.

- (1) **Workers Compensation Insurance & Employer's Liability:** The Franchisee shall maintain Worker's Compensation Insurance Employers' Liability in accordance with Section 440, Florida Statutes. Should scope of work performed by Franchisee qualify its employees for benefits under Federal Workers' Compensation Statute (example, U. S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.
- (2) **Commercial General Liability Insurance:** The Franchisee shall maintain Commercial General Liability or similar insurance coverage issued under an Occurrence or claims made form. If policy is on a claims made basis, Franchisee will agree to provide a 90 day extended reporting period. If policy is cancelled or non-renewed, or changed to an Occurrence form, Franchisee will agree to purchase an extended reporting period for a minimum of three (3) years. Commercial General Liability Insurance shall include Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$2,000,000
Personal/advertising injury	\$2,000,000
Products/completed operations aggregate	\$4,000,000
General aggregate	\$4,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$100,000 any 1 person
Excess Liability	\$5,000,000

- (3) **Additional Insured:** An Additional Insured endorsement **must** be attached to the certificate of insurance under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the City. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability, said Certificates(s) and policies shall clearly state that coverage required by this Agreement has been endorsed to include the "City of Titusville, a municipality of the State of Florida, its officers, agents and employees" as Additional Insured added to its Commercial General Liability policy and Business Auto policy. The Policy shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance.

- (4) **Automobile Liability Insurance:** The Franchisee shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 each accident covering any auto, owned, non-owned and hired automobiles. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary basis.
- (5) **Pollution Insurance:** The Franchisee shall provide Pollution Liability insurance to cover damages to water, air, soil, vegetation, City property, and all persons due to the construction, maintenance, and operation of natural gas facilities within the City as described in this Agreement, and in the scope of their business operations, in limits not less than \$1,000,000 each occurrence. The City shall be listed as additional insured on said policies.
- (6) **Waiver of Subrogation:** The Franchisee hereby agrees to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement, then Franchisee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of

Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Franchisee enter into such an Agreement on a pre-loss basis.

- (7) Deductibles: All deductible amounts shall be paid for and be the responsibility of the Franchisee for any and all claims under this Agreement.

It shall be the responsibility of the Franchisee to ensure that all independent contractors and/or subcontractors comply with the same insurance requirements referenced above.

In the event that any claim or suit is filed or action brought against the City, either severally or jointly with the Franchisee, by any person or corporation seeking to recover damages resulting from or attributable to the operations or to the existence of the Franchisee under this franchise or within City's geographical jurisdiction, or arising in any manner whatsoever out of the operations or existence of the Franchisee within the City's geographical jurisdiction, whether due to the Franchisee's negligence or otherwise, the Franchisee shall, upon written notice by the City defend said claim, suit or action and, in the event any judgment therein should be rendered against the City, the Franchisee shall promptly pay the sum together with all costs, including all attorney's fees including appellate fees, resulting therefrom.

The Franchisee may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under any combination of captive coverage, self-insurance, Umbrella or Excess Liability coverage. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, "the City shall be endorsed as an "Additional Insured." All insurance carriers must have an AM Best rating of at least A:VII or better. In the event Franchisee elects to meet the insurance minimum using, in part or whole, any combination of self-insurance or captive insurance, the Franchisee shall provide the City with documentation attesting to its qualified status. To insure that the amount of liability insurance or self-insurance is consistent with industry standards, as such standards may change during the lengthy term of the Franchise (including renewals or extensions), the Parties agree to meet approximately every five years to evaluate whether the amount of liability insurance or self-insurance provided under this Agreement is consistent with then-existing industry standards. If the Parties determine in good faith that the amount of liability insurance or self-insurance is less than the then-existing industry standard, the amount of such insurance shall be increased to be consistent with such standard.

Section 8. Accidents or Damages; Emergencies.

The City shall not be liable or responsible in any manner whatsoever for any accident, personal injury, property damage or any claim or damage that may occur in the

course of the construction, operation or maintenance of any of its Facilities by Franchisee, and its employees, agents, contractors, and any third parties hired by Franchisee to perform any aspect of Franchisee's responsibilities under this Agreement, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City. Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges, and immunities under the doctrine of "sovereign immunity" as set forth in Section 768.28, Florida Statutes.

Section 9. Non-Competition by City.

While this franchise is non-exclusive, the City specifically agrees that it shall not, during the term of this grant, or any extensions thereof, engage in the business of distributing and selling gas in competition with the Franchisee, its successors or assigns.

Section 10. Indemnification.

Franchisee shall indemnify, defend and hold harmless the City, its mayor and council members, officers, agents and employees from and against any and all claims, suits, actions, regulatory or administrative proceedings (including reasonable attorney's fees, including appeals), liabilities and expenses arising during the term of this Franchise and resulting in personal injury, loss of life or damage to property, or loss of use of any property or assets sustained by any person or entity (collectively "Claims") caused, in whole or in part, by or arising out of Franchisee's negligence, intentional torts, strict liability, or breach of applicable law in connection with the construction, operation or maintenance of its Gas System Facilities within the City, except to the extent such Claims are caused by or arise out of the negligence, strict liability, intentional torts, breach of applicable law or breach of this Agreement by the City. In regards to these Claims, the Franchisee agrees to pay the reasonable cost of the City's legal defenses, including fees of attorneys as may be selected by the City. Such payment on behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy. Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges, and immunities under the doctrine of "sovereign immunity" as set forth in Section 768.28, Florida Statutes. The provision of this Section shall survive the termination of this Agreement.

Section 11. Franchise Fee.

Within sixty (60) days after the close of the first full billing month (payment for which shall include any prior partial month) following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Franchisee shall pay to the City a Franchise Fee equal to six percent (6%) of Franchisee's gross revenues, less actual write-offs, from the sale, transportation, distribution or delivery of natural gas to Customers within the City. For purposes of this section, the term "write-offs" refers to uncollectable billed revenues from the sale, transportation, distribution or delivery of natural gas to Customers within the City. In the event any uncollectable account becomes collectible and/or is collected, an adjustment in amount due the City shall be

made in the next monthly payment.

Nothing herein shall be construed to be a limitation on the assessment and collection of all other valid taxes, licenses, and other impositions by the City on and from the Franchisee in excess of the applicable percentage of revenues to be paid. Failure to pay said fee when due shall be a default and Franchisee shall pay interest of one and one-half percent (1.5%) per month monthly on any delinquent payment.

Section 12. Increased Benefits Clause.

In the event the Franchisee enters into a franchise agreement with another Florida municipality or government entity in Brevard County that contains substantially similar terms and conditions as this Franchise and that provides for a franchise fee calculation that would provide a Franchise Fee higher than that promised hereunder, then the Franchisee shall so notify City and, at the City's option, the Franchise Fee hereunder will be adjusted so as to be consistent with the franchise fee calculation extended to such Florida municipality or government entity.

Section 13. Accounts and Records; Rights to Audit.

The City may, at its own expense, upon reasonable notice, examine the Franchisee's records relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at Franchisee's office where such records are maintained. Records not prepared by Franchisee in the ordinary course of business or as required herein may be provided at the City's expense and as the City and Franchisee may agree in writing. Information identifying Franchisee's customers by name or their gas consumption shall not be taken from Franchisee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the City, shall be reported to Franchisee. At the City's request, Franchisee will provide to the City an electronic version of a billing list of all Franchisee customer addresses within the incorporated areas of the City. The City will respect Franchisee's confidential documents. The City will be given access to confidential documents while on Franchisee premises, but shall not remove those confidential documents from Franchisee premises unless expressly authorized to do so by Franchisee. Information relative to this audit and likely to be deemed confidential by Franchisee includes, but is not limited to, nonpublic customer or customer account information, nonpublic policies and procedures, and any other nonpublic information that gives Franchisee an opportunity to gain an advantage over its competitors.

The City shall have access to examine, at all reasonable hours, all of the Franchisee's plans, contracts, and engineering, accounting, finance, statistical, customer and service records relating to the property and the operations of the Franchisee under this Franchise, and to all records required to be kept hereunder.

The Franchisee shall keep complete accounts showing dates and payments received. A monthly summary report showing gross revenues received by the Franchisee from its operations within the franchise area during the preceding month and year and such

other information as the City shall request with respect to properties and expenses related to the Franchisee's service incurred within the franchise area. The duly authorized agent of the City shall have the right, power and authority to inspect and audit the current records of gross revenue of the Franchisee for any annual period at any reasonable time within five (5) years after the expiration of such annual anniversary. The records will be made available at Franchisee's office nearest the City. In the event the City audits the franchise fees paid by Franchisee to the City and said audit reveals that said fees have been underpaid to the City by more than five percent (5%) in any monthly time period, the costs of the audit including administrative costs associated with said audit will be paid by Franchisee to the City. Any underpayment of the franchise fee revealed by an audit shall be immediately paid to the City; provided that for any underpayments that correspond with under-collections of the franchise fee from customers located within the City limits, such payment will not exceed twelve (12) months of underpayments. Any overpayment of the franchise fee revealed by an audit shall be immediately paid to Franchisee.

Section 14. Identification of City Boundaries.

Within thirty (30) days of receipt by City of a written request from Franchisee, the City shall deliver to the Franchisee such information (including City limit streets and block numbers) as is needed by the Franchisee to determine which of its customers are located within the City limits. The City shall notify Franchisee of any change to its City limits as soon as practical. Only upon the City's notification to Franchisee of such changes to its City limits shall the Franchisee be obligated to pay franchise fees on the revenues from any customers added by such change to its limits.

Section 15. Use of Streets.

The Franchisee shall file with the City for its approval, plans, and specifications for the location or relocation of all facilities. The Franchisee's facilities shall be so located or relocated and so erected or installed as not to obstruct or interfere with any water pipes, sewers, storm drains, or other utilities or structures already installed or hereafter to be installed. The Franchisee's facilities shall interfere as little as possible with traffic over said streets, avenues, alleys, bridges and public places with reasonable egress from and ingress to abutting property, subject at all times to the lawful police power of the City. The Franchisee shall not unnecessarily or unreasonably obstruct the use of or damage any sidewalk, driveway, curb, street, alley, avenue, bridge, easement or other public place or way of the City which shall have been opened by the Franchisee for the purpose of laying, placing or repairing its facilities or equipment, and shall upon completion of such construction or repair, be restored by the Franchisee to as good or better order and condition as they were before the excavation was made and maintain the restoration in an approved condition for a period of one (1) year. Any obstruction of any street, alley, avenue, bridge, easement or other public place or way of the City not removed by the Franchisee after a proper notice of twenty-four hours by the City demanding removal thereof, and any such public way or place of the City not restored by the Franchisee after its excavation thereof, may be restored by the City and the reasonable cost thereof plus

twenty-five percent (25%) of such cost for administration and expenses, shall be charged against Franchisee and if so charged, shall be paid by the Franchisee and shall be collectible by the City in any lawful manner, together with attorney's fees and costs of collection; provided that if said removal requires notification to Sunshine 811 – State One Call of Florida, then the Franchisee shall have the additional time necessary to comply with Chapter 556, Florida Statutes, the Underground Facility Damage Prevention and Safety Act.

Section 16. Maintenance.

All works, pipes, pipelines, apparatus, structures, appurtenances, the entire plant and system of Franchisee shall be constructed and maintained in such condition as will enable it to furnish adequate and continuous service and shall be constructed, installed, and maintained in accordance with accepted good practice and in accordance with the orders, rules and regulations of the City, the Florida Public Service Commission and any other state or federal regulatory agency having jurisdiction over the Franchisee.

Section 17. Service Standards.

The Franchisee shall maintain and operate its plant and system and render efficient service in accordance with this Ordinance, other regulations of the City, the Florida Public Service Commission and any other state or federal regulatory agency having jurisdiction over the Franchisee.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs or installations, the Franchisee shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such repairs are unforeseen and immediately necessary, it shall give reasonable notice thereof to the consumers.

Section 18. Laying of Pipe.

All main pipelines shall be laid at least two feet (2') and all lateral pipelines not less than eighteen inches (18") below the established grade of said streets, avenues, alleys, easements, and other public ways and places as such grades now exist or may hereafter be established, unless otherwise specifically authorized by the City.

All construction made under the provisions of this Ordinance shall be of first class material, and all piping in the system shall be protected externally from corrosion by approved methods and materials. The Franchisee shall file with City, for its approval, plans and specifications for the location or relocation of all facilities or equipment. All construction and permitting shall comply with applicable codes and ordinances of the City.

Section 19. Construction Work.

City reserves the right to lay and permit to be laid electric conduits, water, gas,

cable, and other pipelines or cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City or other governmental entity having jurisdiction, across, along, or under any street, alley, public way, easement, place, or other public ground, in accordance with § 556, Fla. Stat. In permitting such work to be done by third parties, the City shall not be liable to the Franchisee herein for any damage so occasioned, nor shall the City in doing such work be liable to the Franchisee for any damages not caused by or arising out of the City's negligence. Whenever, by reason of establishing a grade or by reason of changes in the grades of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, or other public ways and places, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure, it shall be deemed necessary by the City or other governmental entity having jurisdiction to alter, change, adapt, or confirm the mains, pipelines, service pipe, or other apparatus or appurtenances of the Franchisee hereto, such alterations, or changes, shall be made by the Franchisee as ordered in writing by the City or other governmental entity having jurisdiction without claim for reimbursement or compensation for damages against the City. If the City shall require the Franchisee to adapt or conform its pipelines, pipes, structures, or apparatus, appurtenances, or other appliances, or in any way to alter, relocate or change its property to enable any other person or corporation, except the City, the State of Florida, or other governmental entity of the State, to use said street, alley, easement, highway, the Franchisee shall be reimbursed by the person or corporation desiring or occasioning such change for any loss, costs, or expense caused by or arising out of such change, alterations, or relocation of Franchisee's property. The Franchisee further agrees that it shall not interfere with, change, or injure any water pipes, drains, or sewers unless it has received specific permission from the City in writing.

Section 20. Forfeiture or Revocation of Franchise.

Violation by the Franchisee of any of the covenants, terms or conditions hereof, or default by the Franchisee in observing or carrying into effect any of said covenants, terms, and conditions, shall authorize and empower the City to declare a forfeiture of and to revoke and cancel all rights granted hereunder, provided, however, that before such action by the City shall become operative and effective, the Franchisee shall have been provided by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and Franchisee shall have had a period of one hundred and twenty (120) days after such notice within which to rectify such violation or default; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Franchisee shall not constitute grounds for revoking and cancelling any rights hereunder. In the event that the Franchisee, upon receipt of said written notice from the City, does not desist from such violation within the one hundred and twenty (120) day period, then the Franchisee shall be deemed to have forfeited all grants, privileges, rights, licenses, and immunities given by this franchise.

The Franchisee shall not enter into any verbal or written agreement with any

person, firm, corporation, or other organization which agreement is conditioned upon the Franchisee receiving tax relief or any other relief from the City. Nothing herein contained shall prevent the Franchisee from negotiating with any person, firm, corporation, association, or other entity, except Franchisee is prohibited from entering into any agreement with any person, firm, corporation, association, or other entity receiving compensation from the City for the issuance of this franchise or the continuance thereof under its provisions. The Franchisee is required to make every effort to maintain operation and service at all times even in the event of work stoppage by its employees.

Notwithstanding any provision to the contrary, Franchisee acknowledges that nothing contained in this Agreement shall constitute a waiver by the City of any rights it may possess at law (including, but not limited to the power of eminent domain), or as afforded under Chapter 166, Florida Statutes.

Section 21. Designated Representatives.

The following individuals are designated to represent the City and Franchisee respectively on all matters concerning the Franchise. All written communications shall be given by nationally recognized overnight courier or by certified mail with return receipt requested, to the addresses provided, or at such other address as either Party may advise the other in writing:

For the City: City Manager
 Scott Larese
 555 S. Washington Ave.
 Titusville, FL 32796

For the Franchisee: General Manager
 Florida City Gas
 4045 NW 97th Avenue
 Doral, FL 33178

With copies to: Vice President
 External Affairs
 700 Universe Blvd.
 Juno Beach, FL 33408

 General Counsel
 700 Universe Blvd
 Juno Beach, FL 33408

Section 22. Assignment.

No sale, assignment, or transfer by Franchisee of the rights granted hereby, even to an affiliate of Franchisee, shall be effective unless the Franchisee shall have filed written notice thereof with the City at least sixty (60) days prior to the scheduled date of such sale,

assignment, or transfer, and unless, after the filing of such notice, the City shall have by Resolution approved and consented to such sale, assignment, or transfer, which consent shall not be unreasonably withheld. The sale or transfer of the franchise shall be subject to all provisions and conditions set forth in this Ordinance and the Resolution granting the franchise to the assignor/transferor. Provided, however, that such sale, assignment, or transfer decreed by a court of competent jurisdiction in any receivership or bankruptcy proceedings shall not be governed by the provisions of this Section.

Section 23. No Waiver.

Nothing in this Agreement shall be construed as a surrender or waiver by the City of (a) its police powers or the authority to regulate the use of the public streets and/or other public places, provided no regulation contravenes the material terms of this Franchise, and (b) its right to sovereign immunity.

Section 24. Right to Enforce.

Except as expressly provided herein, each Party shall have all rights and remedies available in law or in equity in the event of a material breach of any obligation set forth in this Agreement by the other Party.

Section 25. Entirety.

This writing embodies the entire agreement and understanding between the Parties, and there are no other agreements and understandings, oral or written, with reference to this subject matter that are not merged and superseded.

Section 26. Governing Law.

This Agreement shall be governed by and construed according to the laws of the State of Florida. Venue and jurisdiction for any action concerning this franchise or this ordinance shall be in Brevard County, Florida.

Section 27. Compliance with Applicable Laws and Ordinances.

The Franchisee hereby agrees to abide by all the rules and regulations and ordinances which the City has enacted or might enact in the future, and further agrees to abide by any established policy which the City or its authorized representative has established or will establish provided, however, it is not intended hereby that City shall have the right of unilaterally modifying the terms of this franchise other than as herein provided and as is required by the execution of the City's police powers. It is also expressly recognized that the authority of the City is subject to preemption by the State of Florida and by and through the Florida Public Service Commission and by the United States Government.

Section 28. Severability.

If any provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 29. Repeal of conflicting ordinances.

All ordinances or parts of ordinances, and all resolutions and parts of resolutions, in conflict herewith are hereby repealed to the extent of such conflict.

Section 30. Effective Date.

As a condition precedent to the taking effect of this Franchise, the Franchisee shall file its acceptance hereof with the City's Clerk within thirty (30) days of adoption of this Franchise. The effective date of this Franchise shall be the date upon which the Franchisee files such acceptance.

PASSED AND ADOPTED this 10th day of December, 2024.

CITY OF TITUSVILLE, FLORIDA

By: _____

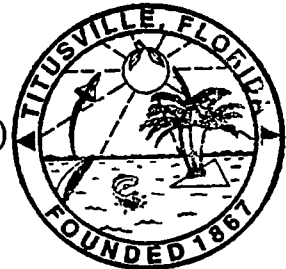
Andrew Connors, Mayor

ATTEST:

By: _____

Wanda F. Wells, City Clerk

(SEAL)



CC:

Chelsea Farrell
Vanessa Pittman
Kevin Cook
Sandy Reller
Wanda Wells