

**ORDINANCE NO. 801**

**AN ORDINANCE REPEALING ORDINANCE NO. 781 AND ADOPTING ORDINANCE NO. 801 FOR THE PURPOSE OF ENACTING CHAPTER 5 OF PART 7 OF THE CODE OF ORDINANCES OF THE CITY OF WESTLAKE IN ORDER TO PROVIDE FOR CERTAIN REVISED RATES, TERMS AND CONDITIONS IN CONNECTION WITH THE CITY PROVIDING NATURAL GAS SERVICE TO LARGE VOLUME COMMERCIAL AND INDUSTRIAL USERS; TO PROVIDE FOR AN EFFECTIVE DATE; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE SUBJECT**

**WHEREAS**, the City of Westlake, State of Louisiana (“City”) deems it advisable and economically feasible to encourage the increased use of its gas utility services by Large Volume Commercial and Industrial Users (as hereinafter defined), residential users that reside in a house or apartment and users consisting of businesses, professionals or entities involved in commercial activities not involving large volumes of Gas; and

**WHEREAS**, Section 7-3001 of the Code of Ordinances of the City of Westlake provides the rate schedules currently applicable to residential users and small volume commercial users of the gas utility, which rate schedules may be amended by separate action of the City on and after the date City commences delivery of Gas to the Large Volume Commercial and Industrial Users; and

**WHEREAS**, City’s Gas utility is currently able to offer its services to Large Volume Commercial and Industrial Users subject to the terms and conditions set forth herein; and

**WHEREAS**, the Mayor and the City Council have previously adopted Ordinance No. 781 whereby the City of Westlake amended and supplemented Part 7 of the Code of Ordinances of the City of Westlake in order to enact a new Chapter 5, which creates a new category of Large Volume Commercial and Industrial Users and provides the rates, terms and conditions and other matters relating to such Large Volume Commercial and Industrial Users;

**WHEREAS**, the Mayor and the City Council deem it necessary to repeal Ordinance No. 781 and adopt Ordinance No. \_\_\_ in order to enact a new Chapter 5 of Part 7 of the Code of Ordinances of the City of Westlake, which provides for certain revised rates, terms and conditions and other matters relating to Large Volume Commercial and Industrial Users; and

**WHEREAS**, all rates and charges of the City's Gas utility for Gas service to Large Volume Commercial and Industrial Users (as well as rates and charges to residential users and small volume commercial users) are to be based on revenue requirements allocated among all customer categories.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTLAKE, STATE OF LOUISIANA:**

**Section 1.** The facts and matters set forth in the preambles of this Ordinance are hereby found to be true and correct. Unless otherwise specified, any reference in this Ordinance to time shall refer to the then prevailing Central Time.

**Section 2.** Ordinance No. 781 is hereby repealed and Chapter 5, Section 7-501 of Part 7 of the Code of Ordinances of the City of Westlake is hereby enacted as follows with Section 7-501 set forth in full below:

**SECTION 1. DEFINITIONS.** The following terms shall have the meanings set forth below.

1.1 "Additional Charges" shall mean the Additional Charges set forth under Schedule 2 attached to this Ordinance.

- 1.2 “Adequate Assurance Deposit Amount” shall mean, as of any time and with respect to an LVU, the amount provided by such LVU (or LVU’s Guarantor on behalf of such LVU), as Adequate Assurance of Performance pursuant to Section 11 of this Ordinance. The Adequate Assurance Deposit Amount shall be funded with (i) a cash payment by LVU (or LVU’s Guarantor) in U.S. dollars and/or (ii) a Letter of Credit from a Qualified Institution. For purposes of determining compliance with Section 11 by an LVU on each Valuation Date, the amount then held by or on behalf of City as such LVU’s Adequate Assurance Deposit Amount shall be calculated as the actual face value of any cash collateral and, for any Letter of Credit, the product of the Letter of Credit Valuation Percentage times the undrawn portion of such Letter of Credit.
- 1.3 “Adequate Assurance of Performance” shall mean collateral for the performance by an LVU of its payment obligations under its contract(s) with City which shall be in an amount, (i) with respect to an LVU (A) with a Minimum Credit Rating or (B) whose payment obligations under a Contract are secured by a Guarantee from a Guarantor with a Minimum Credit Rating, equal to the positive difference, if any, obtained by subtracting the applicable Adequate Assurance Threshold Amount under Schedule 1 attached to this Ordinance from the Adequate Assurance Valuation Amount; provided that (ii) the Adequate Assurance Threshold Amount for any LVU not described in clause (i) above shall be \$0.00 and its Adequate Assurance Deposit Amount shall be equal to the Adequate Assurance Valuation Amount; and provided further (iii) with respect to (A) an LVU or LVU’s Guarantor which fails to make any two (2) payments within any twelve (12) month period on or before the applicable date for payment as provided for under a Contract (and subject to the provisions of Section 11.1.1 and Section 11.1.3 hereof) or (B) an Event of Default has occurred and is continuing, such LVU’s Adequate Assurance

Threshold Amount shall be \$0.00 and its Adequate Assurance Deposit Amount shall be equal to the Adequate Assurance Valuation Amount.

- 1.4 “Adequate Assurance Threshold Amount(s)” shall have the meaning as set forth under Schedule 1 to the Ordinance.
- 1.5 “Adequate Assurance Valuation Amount” shall be the amount calculated by City for an LVU as the LVU Exposure pursuant to Section 11.1, or Section 11.1.1 and/or 11.6 of this Ordinance as of the date set forth in the demand made by City for such Adequate Assurance of Performance, and thereafter the amount calculated by City for such LVU as the LVU Exposure pursuant to Section 11.1.4 of this Ordinance on each Valuation Date.
- 1.6 “Affiliate” shall mean, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For purposes of the foregoing definition, “control” shall mean, with respect to entities with outstanding capital stock or other equity interests having ordinary voting power, the direct or indirect ownership of more than fifty percent (50%) of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.7 “British thermal unit” or “Btu” shall mean the International BTU, which is also called the Btu (IT).
- 1.8 “Business Day” shall mean any Day excluding: (a) Saturday, Sunday and any Day on which banks located in the State of New York are required or authorized by law or other governmental action to close and (b) any Day on which the New York Mercantile Exchange or the Qualified Institution designated by City under Section 11.1.7 of this Ordinance is closed.
- 1.9 “Capacity Charges” shall mean the Capacity Charges set forth under Schedule 2 attached to this Ordinance.

- 1.10 “City” shall mean the City of Westlake, State of Louisiana.
- 1.11 “Confidentiality Agreement” shall mean an agreement between LVU and each LVU Plant Sale Notice Party which provides that LVU Plant Sale Notice Party shall not disclose the terms of a Notice of LVU Plant Sale to a third party, except for certain disclosures permitted under the terms and conditions thereof. The form of the Confidentiality Agreement is attached as Exhibit “C” to the Local Services Agreement.
- 1.12 “Contract” shall mean the legally-binding relationship established between City and an LVU by (i) this Ordinance and (ii) the respective Local Services Agreement between City and such LVU, whereby this Ordinance and the Local Services Agreement together shall form a single integrated agreement between City and such LVU. With respect to any Local Services Agreement-Service Option 4, a Contract shall not become effective until the requirements under Part 1.4 of such Local Services Agreement-Service Option 4 have been met.
- 1.13 “Contract Quantity” shall mean, with respect to an LVU, the quantity of Gas to be delivered and taken pursuant to all of such LVU’s Contracts with City.
- 1.14 “Contract Year” shall mean each period from January 1 of a calendar year to and including December 31 of such calendar year.
- 1.15 “Cover Standard”, as referred to in Section 6 of this Ordinance, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to a Contract, then the performing party shall use commercially reasonable efforts to (i) if LVU is the performing party, obtain Gas (or an alternate fuel if elected by LVU and replacement Gas is not available), or (ii) if City is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of Notice provided by the nonperforming party; the immediacy of LVU's Gas consumption needs or City's Gas sales requirements, as applicable; the quantities

involved; and the anticipated length of failure by the nonperforming party. The parties acknowledge and agree that City's providing for the sale of Gas to other LVUs under the Ordinance or in a manner consistent with any remarketing guidelines or other related requirements as may be provided for under its arrangements with its Gas supplier(s) or with other parties to remarketing agreements under its natural Gas acquisition programs is a sale under the Cover Standard.

- 1.16 "Credit Rating" shall mean a rating currently assigned to a party's unsecured and senior long-term debt (not supported by third party credit enhancement) by Moody's or S&P. In the event of a split rating the lower shall prevail. In the event an LVU or a Guarantor has only one (1) unsecured and senior long-term debt rating (not supported by third party credit enhancement) by either Moody's or S&P that single rating shall be the Credit Rating.
- 1.17 "Day" shall mean a period of twenty-four (24) consecutive hours, beginning at midnight on a calendar day and ending immediately before midnight on the next succeeding calendar day.
- 1.18 "Delivery Period" shall mean, with respect to a Local Services Agreement, the period during which deliveries are to be made as agreed to by the parties under such Local Services Agreement.
- 1.19 "Delivery Point" shall mean, with respect to a Local Services Agreement, each such point as is agreed to by the parties under such Local Services Agreement.
- 1.20 "Event of Default" shall have the meaning as set forth under Section 11.2 of this Ordinance.
- 1.21 "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, each party shall be obligated to make

certain payments as provided for under Section 12.1 of this Ordinance, including, but not limited to, Imbalance Charges as set forth in Section 7.3 of this Ordinance for which the party invoking Force Majeure may be responsible related to such party's interruption after the nomination is made to the Transporter and until a change in deliveries and/or receipts is confirmed by the Transporter.

- 1.22 "Force Majeure" shall have the meaning as set forth under Section 12 of this Ordinance.
- 1.23 "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 1.24 "Gas Utility Service Application" shall mean that document whereby an LVU applies for Gas service from City and selects its desired option for service from those provided in the application form. The form of such Gas Utility Service Application is attached hereto as Exhibit "A" and incorporated fully herein.
- 1.25 "Guarantee" shall mean a guarantee of the payment obligations of an LVU under all of its Contracts with the City which is provided by any entity that is an Affiliate of such LVU. The form of such Guarantee is attached hereto as Exhibit "C".
- 1.26 "Guarantor" shall mean, with respect to an LVU, any entity that is an Affiliate of such LVU and has provided a Guarantee.
- 1.27 "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 1.28 "Initial Valuation Date" shall mean the date set forth in the demand made by City to an LVU for Adequate Assurance of Performance pursuant to Part 13.10 of a Local Services Agreement.
- 1.29 "Index Price" shall mean, with respect to an LVU, the price set forth under Part 4 of the applicable Local Services Agreement.

- 1.30 “Initial Delivery Month” shall mean, with respect to each Contract, the first Month in which an LVU receives Gas service under such Contract.
- 1.31 “Investor Owned Utility” shall mean a privately-owned utility which provides services to the general public and whose stock is publically traded or privately held, which is regulated by the Louisiana Public Service Commission, and which does not include a utility owned and operated by a political subdivision of the State of Louisiana.
- 1.32 “Large Volume Commercial and Industrial User” or “LVU” shall mean a retail Gas customer whose business shall be involved either in the commercial purchase or sale of goods or the manufacture or processing of products for sale or resale and which has been approved for Gas service by City pursuant to Section 3 of this Ordinance and has entered into a Local Services Agreement for Gas service with City.
- 1.33 “Letter of Credit” shall mean an irrevocable, transferable, standby letter of credit, issued by a Qualified Institution utilizing a form acceptable to City and its counsel.
- 1.34 “Letter of Credit Default” shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the relevant Contract; or (v) any event analogous to an event specified in Section 11.2 (i) – (v) of this Ordinance shall occur with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of

Credit is required to be canceled or returned to LVU in accordance with the terms of the relevant Contract.

- 1.35 “Letter of Credit Valuation Percentage” shall mean 100% of the undrawn portion of the Letter of Credit unless (i) a Letter of Credit Default shall apply with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in either of which case the Letter of Credit Valuation Percentage shall be zero (0).
- 1.36 “Local Services Agreement” shall mean the Local Services Agreement and/or Local Services Agreement-Service Option 4, each by and between City and an LVU required by Section 1326 (A)(1)(a) of the Local Services Law, Part VII, Subpart A of Title 33 of the Louisiana Revised Statutes of 1950, as amended, as such Local Services Agreement and/or Local Services Agreement-Services Option 4 may be amended from time to time pursuant to the provisions thereof, whereby City agrees to provide Gas service to such LVU pursuant to the respective Contract and such LVU agrees to accept Gas service pursuant to the provisions of the respective Contract. The form of the Local Services Agreement is attached hereto as Exhibit “B-1” and incorporated fully herein. The form of the Local Services Agreement-Service Option 4 is attached hereto as Exhibit “B-2” and incorporated fully herein.
- 1.37 “LVU Discount” shall mean, with respect to each Service Option and as of any time, the LVU Discount for such Service Option specified in Exhibit A to the Application for Gas Utility Service attached to this Ordinance as Exhibit A hereto. LVU Discount shall be subject to adjustments in accordance with the provisions of Schedule 2 attached to this Ordinance under the heading “Adjustments to LVU Discount and Ordinance Price.”
- 1.38 “LVU Exposure” shall mean, as for any Valuation Date, the Projected Receivables.

- 1.39 “LVU Ordinance Utility Fund” shall be the fund of City established pursuant to Section 5 of this Ordinance.
- 1.40 “LVU Plant” shall mean, with respect to an LVU, the LVU plant identified by such LVU under its Gas Utility Service Application and as further agreed to by the parties under Part 9 of the applicable Local Services Agreement.
- 1.41 “LVU Plant Sale Notice Parties” shall mean the LVU Plant Sale Notice Parties initially listed under Exhibit “B” to the applicable Local Services Agreement. To the extent that City replaces or adds transportation or remarketing agents or Gas suppliers in connection with City providing Gas service under this Ordinance, City may supplement Exhibit “B” to the applicable Local Services Agreement(s) to include such parties as LVU Plant Sale Notice Parties.
- 1.42 “Market Disruption Event” means, with respect to an index, any of the following events: (i) the failure of the index to announce or publish information necessary for determining the applicable index price; (ii) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (iii) the temporary or permanent discontinuance or unavailability of the index; (iv) the temporary or permanent closing of any exchange acting as the index; or (v) a material change in the formula for or the method of determining the applicable index price.
- 1.43 “Minimum Credit Rating” shall mean a Credit Rating no lower than Baa3 by Moody's or no lower than BBB- by S&P. In the event of a split rating the lower shall prevail. For clarity, a party shall not have a Minimum Credit Rating if it has a Credit Rating of below Baa3 by Moody's or below BBB- by S&P.
- 1.44 “MMBtu” shall mean one million British thermal units, which is equivalent to one dekatherm.

- 1.45 “Month” or “Monthly” shall mean a period beginning at 9:00 a.m. central time on the first Day of a calendar month and ending immediately preceding 9:00 a.m. central time on the first Day of the next succeeding calendar month. If, through standardizing business practices in the industry, or for any other reason, either Federal Energy Regulatory Commission (“FERC”) or Transporter(s) change the definition of month, such change shall apply to the definition of month in this Ordinance; provided that in the event a Transporter changes the definition of a month as applicable to the delivery of Gas hereunder, the definition of Month herein shall be changed only with respect to Gas delivered through such Transporter.
- 1.46 “Monthly Quantity” means, with respect to a Contract, that quantity of Gas scheduled to be delivered by City in a particular Month to the applicable LVU under such Contract.
- 1.47 “Monthly Rates” shall have the meaning as set forth in Section 2 of this Ordinance, shall be as provided for in Schedule 2 attached to this Ordinance, and shall be subject to any changes in such Monthly Rates as may be provided for under the terms and conditions set forth under Schedule 2 attached to this Ordinance, including but not limited to, adjustments or changes in accordance with the provisions of Schedule 2 attached to this Ordinance under the heading “Adjustments to LVU Discount and Ordinance Price.
- 1.48 “Moody’s” shall mean Moody’s Investor Services, Inc., or its successor.
- 1.49 “Natural Gas Demand Forecast” shall mean, with respect to any LVU, the initial natural Gas demand forecast provided by such LVU to City hereunder and any subsequent natural Gas demand forecast provided by such LVU to City pursuant to Part 9.2 of the applicable Local Services Agreement.
- 1.50 “Notice” or “Notices” shall have the meaning as set forth under Part 12 to the Local Services Agreement.

- 1.51 “Notice of LVU Plant Sale” shall mean a written notice provided by an LVU to LVU Plant Sale Notice Parties pursuant to Part 13.2(a) of the applicable Local Services Agreement.
- 1.52 “Ordinance Agreements” shall mean all agreements executed by City in connection with providing Gas service hereunder or in connection with or relating to City acquiring or delivering Gas supplies used to provide Gas service hereunder including, but not limited to, each Contract, any agreement with Gas suppliers providing Gas to be used by City to provide Gas service under the provisions of this Ordinance, any agreement with a Transporter or other third party providing for the delivery of Gas pursuant to Section 7.1 of this Ordinance, each Local Services Agreement, any agreement providing for remarketing of Gas supplies relating to Gas service hereunder and any other agreement with a third party providing for administrative, accounting or other related services in connection with providing Gas service under this Ordinance. An executed copy of each Ordinance Agreement shall be maintained on file with City.
- 1.53 “Ordinance Expenses” shall mean (i) fees, payments and other expenses incurred or otherwise payable under the Ordinance Agreements which are incurred by City in connection with City providing Gas service to LVUs under the Contracts, or in connection with or relating to City acquiring or delivering Gas supplies used to provide Gas service under the Contracts and all or any other amounts payable by City in connection therewith, and (ii) any expenses incurred or otherwise payable under the Ordinance Agreements which are incurred by City in connection with the remarketing of Gas supplies relating to Gas service hereunder.
- 1.54 “Ordinance Price” shall mean, with respect to each MMBtu of Gas to which this Ordinance applies, the Index Price for the Month in which Gas is delivered minus the applicable LVU Discount. The Ordinance Price may be adjusted or changed in

accordance with the provisions of Schedule 2 attached to this Ordinance under the heading “Adjustments to LVU Discount and Ordinance Price.”

- 1.55 “Ordinance Revenues” shall mean all amounts received by City under the Ordinance Agreements, including all amounts which are received by City in connection with City providing Gas service to LVUs under the Contracts or in connection with or relating to City acquiring or delivering Gas supplies used to provide Gas service under the Contracts and all other amounts received by City in connection therewith, together with any interest or other income received on any moneys or securities required to be paid into the LVU Ordinance Utility Fund.
- 1.56 “Payment Date” shall mean, with respect to payments under a Contract, the 25<sup>th</sup> Day of the Month following the Month in which Gas is delivered or deemed delivered under such Contract or, if such Day is not a Business Day, the next succeeding Business Day.
- 1.57 “Permitted Investments” shall mean (i) direct United States Treasury obligations, and (ii) investments under the Louisiana Asset Management Pool (“LAMP”), a voluntary custody investment pool which is administered by Louisiana Asset Management Pool, Inc. so long as LAMP is rated at least AAm category by S&P and amounts deposited in LAMP are withdrawable with one (1) Day notice.
- 1.58 “Projected Monthly Rate” shall mean for any Month the sum of (i) the Ordinance Price for such Month under the Monthly Rate with respect to a Contract and (ii) the Capacity Charges for such Month under the Monthly Rate with respect to the applicable LVU under such Contract. In the event that City is providing Gas service to an LVU under two (2) or more Contracts, the Projected Monthly Rate shall be calculated separately for each Contract with such LVU.
- 1.59 “Projected Receivables” shall mean (i) with respect to the Initial Valuation Date, the sum of (x) the product of the Projected Monthly Rate and the Monthly Quantity for the Initial

Delivery Month as calculated with respect to each Contract with such LVU and (y) the product of the Monthly Quantity for the month immediately following the Initial Delivery Month and the Projected Monthly Rate for the Initial Delivery Month as calculated with respect to each Contract with such LVU and (ii) with respect to a Valuation Date, other than the Initial Valuation Date, the sum of the (x) actual amount of the receivables due (whether billed or unbilled) from LVU to City for the Contract Quantity delivered prior to the first Day of the Month in which the Valuation Date occurs and (y) the product of the Contract Quantity for the Month in which the Valuation Date occurs and the Projected Monthly Rate for such Month.

- 1.60 “Qualified Institution” shall mean a U.S. commercial bank or a United States branch office of a foreign bank which is not an LVU (or Affiliate of an LVU) having assets of at least \$10 Billion which has a Credit Rating of at least “A-” by S&P and “A3” by Moody’s.
- 1.61 “S&P” shall mean the Standard & Poor’s Rating Services (a division of McGraw-Hill, Inc.) or its successor.
- 1.62 “Scheduled Gas” shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 1.63 “Service Option” shall mean one of the service option(s) under Exhibit “A” to the Gas Utility Service Application. The Service Option applicable to a Contract shall be the Service Option specified in the Local Services Agreement for such Contract.
- 1.64 “Spot Price” shall mean the “Daily Midpoint” price set forth in Gas Daily (published by Platt’s Inside FERC’s Gas Market Report) for such Day, or any successor publication, in the column “Daily Price Survey” under the listing applicable to the geographic location closest in proximity to the delivery point applicable to the Index Price. If there is no single “Daily Midpoint” price published for such location for such Day, but there is

published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

1.65 “Transporter(s)” shall mean, with respect to an LVU, all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for City to the Delivery Point pursuant to such LVU’s Local Services Agreement.

1.66 “Valuation Date(s)” shall mean, with respect to the Initial Delivery Month, the Initial Valuation Date and thereafter (i) the first Business Day of each Month or (ii) any Day on which a downgrade in the Credit Rating of an LVU or an LVU’s Guarantor, or an increase of the volume of Gas to be delivered under Contracts with such LVU, or an adjustment in the Ordinance Price as consistent with the provisions in Schedule 2, would result in an adjustment in Adequate Assurance of Performance; provided, however, Valuation Date (other than an Initial Valuation Date) shall not include any Date in the Initial Delivery Month.

**SECTION 2. MONTHLY RATES.** There shall be and there are hereby established for the use of LVU customers, located both inside and outside the corporate limits of City, the monthly rates and charges (the “Monthly Rates”) for Gas service provided by the Gas utility of City as set forth in Schedule 2 attached to this Ordinance, which are hereby deemed to be reasonable, equitable, and based on cost of providing Gas service and reasonably calculated to provide, together with the other revenues of the Gas utility, the revenue for the Gas utility of City necessary to meet the ongoing budgetary requirements of the Gas utility of City.

**SECTION 3. APPLICATION.** Each applicant for Gas service pursuant to a Contract with City shall submit a Gas Utility Service Application to City. All applicants meeting the requirements of this Ordinance will be eligible for Gas service under the terms and conditions hereof. However, City has a limited Gas supply and City shall have no obligation to approve any application hereunder and enter into any Local Services Agreement if City does not have sufficient Gas supply. The Gas Utility Service Application shall be considered by City after submission by the applicant and, if granted, Gas service shall be provided pursuant to a Contract. City may approve a Gas Utility Service Application of an LVU and agree to provide Gas service subject to Gas being available to City at a later date and subject to City and LVU entering into (i) a Local Services Agreement Addendum pursuant to Part 1.4 of a Local Services Agreement-Service Option 4 and/or (ii) a Local Services Agreement providing for Gas service under a Service Option (other than Service Option #4). An applicant being provided Gas service under a Contract entered into pursuant to this Ordinance may make application for additional Gas service by submitting a supplement to its Gas Utility Service Application, and upon approval by City consistent with the requirements of this Section 3, City and LVU may enter into an amendment to its Local Services Agreement (or a separate Local Services Agreement) to provide for additional Gas service by City.

**SECTION 4. PERFORMANCE OBLIGATION AND CONTRACT QUANTITY.**

4.1 City shall agree to provide Gas service to each LVU subject to the terms and conditions set forth under the applicable Contract. In accordance therewith, City shall agree to sell and deliver, and the applicable LVU shall agree to receive and purchase, the Contract Quantity set forth under the Contract. Sales and purchases will be on a Firm basis, subject to the terms and conditions under this Section 4 and Part 9.2 of the Local Services Agreement.

4.2 In the event an LVU determines that its Gas requirements at the LVU Plant will be less than the Contract Quantity for any Month for all Contracts with such LVU, LVU may reduce the Contract Quantity for all such Contracts to equal LVU's requirements for such Month by Notice to City of such reduced Contract Quantity no later than forty-five (45) Days (or such other notice period as agreed to by City and the applicable LVU, provided that in no event shall such Notice be later than 20 days prior to the first day of the applicable Month) prior to the first Day of the applicable Month, and such reduced Contract Quantity will be the applicable Contract Quantity for such Month. To be eligible for this reduction, LVU shall provide (i) such affidavit or certificate as City may reasonably require to support the need for the reduction in Gas requirements at its LVU Plant and the quantity of such reductions and, (ii) a revised Natural Gas Demand Forecast for the remainder of the Delivery Period. In determining any reduction in its Gas requirements at the LVU Plant for a Month pursuant to this Section 4.2, an LVU shall first reduce the quantity of Gas that it receives under other agreements prior to reducing the Contract Quantity that it is to receive under its Contracts for use at the LVU Plant for such Month. Any reduction in Contract Quantity for a Month under this Section 4.2 of the Ordinance shall be on a pro rata basis based on the applicable Monthly Quantity for each Contract.

4.3 Each LVU will have the right, upon ninety (90) days Notice to City to terminate its obligations under Contracts for Gas at the LVU Plant prior to the end of the applicable Delivery Period(s) without liability to either City or LVU under Section 6 of this Ordinance in the event that LVU permanently (as defined below) shuts down and ceases operation of its LVU Plant; provided, however, with respect to the Contract Quantity to be delivered and received under the Contracts through the date of termination under this Section 4.3, the parties shall pay all amounts owed thereunder and all other applicable

charges relating to Gas service under the Contracts (including any amounts owed under Section 6 of this Ordinance). Further, LVU shall be responsible to reimburse City for all applicable transportation fees and charges paid or to be paid for the right to transport the originally agreed Contract Quantity to LVU's Delivery Point regardless of the operation of the LVU Plant as provided for under Capacity Charges under Schedule 2 attached to this Ordinance. Any termination of a Contract pursuant to this Section 4.3 shall be effective when LVU permanently ceases operating at the LVU Plant. To be eligible for termination under the provisions of this Section 4.3, an LVU shall provide such affidavit or certificate as City may reasonably require whereby LVU certifies that it will permanently shut down and cease operations of its LVU Plant. To meet the requirement for a permanent shut down under this Section 4.3, LVU must certify that it shall shut down and cease operations at the LVU Plant for at least one (1) year after the relevant termination date.

4.4 In accordance with the provisions of Schedule 2 attached to this Ordinance under the heading “Adjustments to LVU Discount and Ordinance Price” City, from time to time, may provide for adjustments to the LVU Discount and the Ordinance Price. Under the terms and conditions set forth under this Section 4.4, each LVU will have the right to terminate its obligations under a Contract prior to the end of the Delivery Period without liability to either City or LVU under Section 6 of this Ordinance in the event that City adjusts its rates and charges for Gas service as provided for under Schedule 2 attached to this Ordinance under the heading “Adjustments to LVU Discount and Ordinance Price” and as a result thereof, the originally agreed LVU Discount as set forth under Part 4 of the applicable Local Services Agreement is reduced by an amount greater than \$0.06 per MMBtu; provided, however, with respect to the Contract Quantity to be delivered and received under the Contract through the date of termination under this Section 4.4, the

parties shall pay all amounts owed thereunder and all other applicable charges relating to Gas service under the Contract and the Ordinance Agreements (including any amounts owed under Section 6 of this Ordinance). Further, LVU shall be responsible to reimburse City for all applicable transportation fees and charges paid or to be paid by City for the right to transport the originally agreed Contract Quantity to LVU's Delivery Point as provided for under Capacity Charges under Schedule 2 attached to this Ordinance. To be eligible to terminate a Contract under the provisions of this Section 4.4, LVU must provide its Notice to terminate pursuant to this Section 4.4 within fifteen (15) days after receipt of City's Notice of adjustments to LVU Discount and Ordinance Price provided by City pursuant to the provisions of Schedule 2 attached to this Ordinance under the heading "Adjustments to LVU Discount and Ordinance Price" with the Contract terminating on the last Day of the Month in which such Notice of termination is received by City unless such Notice of termination is received after the 10<sup>th</sup> Day of a Month, in which case the Contract shall terminate on the last Day of the Month following the Month in which the Notice of termination was received by City.

**SECTION 5. LIMITED OBLIGATION OF CITY.**

- 5.1 City's obligation to make any payments required to be made by it under any Contract shall be a special and limited obligation of City payable solely from amounts in the LVU Ordinance Utility Fund. City shall establish a separate fund as the LVU Ordinance Utility Fund and shall deposit into the LVU Ordinance Utility Fund all Ordinance Revenues; provided, however, each LVU's Adequate Assurance Deposit Amount shall only be deposited into the applicable LVU Adequate Assurance Fund (as defined in Section 11.1.5 of this Ordinance) and invested and applied in accordance with the provisions of Section 11 of this Ordinance. Subject to the further requirements set forth in the immediately succeeding sentence, amounts within the LVU Ordinance Utility Fund

will be used first to pay Ordinance Expenses then due and owing and second to pay any other expenditures of the City Gas utility as permitted by law consistent with the provisions of City's Gas utility budget which may include, but not be limited to administrative costs, professional fees, repair and replacements to the City's Gas utility, security, fire protection and such other costs and expenses as may be approved in City's budgetary process. Prior to paying any other Ordinance Expenses during any Month, City shall first pay Ordinance Expenses then due and owing by City necessary to pay the cost of Gas supplies and any other amounts under the terms and conditions of its natural gas supply agreement(s) with its Gas suppliers and transportation and delivery charges incurred by the City in connection with providing Gas service hereunder. Any amounts on deposit in the LVU Ordinance Utility Fund shall be invested in Permitted Investments. Any investment earnings on amounts deposited in the LVU Ordinance Utility Fund shall be retained therein and expended in accordance with the provisions of this Section 5.1. City may establish separate sub-funds or accounts within the LVU Ordinance Utility Fund.

5.2 THE OBLIGATIONS OF CITY UNDER THIS ORDINANCE OR ANY CONTRACT DO NOT CONSTITUTE A PLEDGE OF THE FULL FAITH AND CREDIT OF CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION BUT RATHER CITY'S OBLIGATIONS UNDER THIS ORDINANCE OR ANY CONTRACT ARE SPECIAL AND LIMITED OBLIGATIONS OF CITY PAYABLE SOLELY FROM THE LVU ORDINANCE UTILITY FUND. THE OBLIGATIONS OF CITY UNDER THIS ORDINANCE OR ANY CONTRACT ARE NOT A GENERAL OBLIGATION OF CITY BUT ARE A SPECIAL AND LIMITED OBLIGATION OF CITY PAYABLE SOLELY FROM THE LVU ORDINANCE UTILITY FUND. NOTWITHSTANDING ANY AMENDMENT,

SUPPLEMENT, DEFAULT, REMEDY, TERMINATION OR ANY OTHER EVENT OR TRANSACTION UNDER (A) ANY CONTRACT TO PROVIDE GAS SERVICE HEREUNDER, (B) ANY AGREEMENT BETWEEN CITY AND ITS GAS SUPPLIERS TO SUPPLY, TRANSPORT OR OTHERWISE DELIVER GAS TO BE USED BY CITY TO PROVIDE GAS SERVICE UNDER ANY CONTRACT, OR (C) ANY OTHER ORDINANCE AGREEMENT WITH A THIRD PARTY WITH RESPECT TO CITY TRANSPORTING, DELIVERING OR OTHERWISE PROVIDING GAS SERVICE HEREUNDER, EACH LVU'S RECOURSE AGAINST CITY UNDER A CONTRACT, OR OTHERWISE, FOR CITY'S FAILURE TO MAKE ANY PAYMENTS UNDER A CONTRACT SHALL BE LIMITED TO AMOUNTS ON DEPOSIT IN THE LVU ORDINANCE UTILITY FUND.

**SECTION 6. FAILURE TO DELIVER OR RECEIVE GAS.**

Subject to the provisions of the immediately succeeding paragraph, the sole and exclusive remedy of City and each LVU under a Contract in the event of a breach of an obligation to deliver or receive Gas under the terms and conditions of such Contract, including Section 4 of this Ordinance, shall be recovery of the following: (i) in the event of a breach by City on any Day(s), payment by City to the respective LVU in an amount equal to the positive amount, if any, by which the purchase price paid by LVU utilizing the Cover Standard exceeds the Ordinance Price, adjusted for any additional transportation and related charges as a result of breach by City, multiplied by the difference between the Contract Quantity and the quantity actually delivered by City for such Day(s) excluding any quantity for which no replacement is obtained; or (ii) in the event of a breach by LVU on any Day(s), payment by LVU to City in the amount equal to the positive amount, if any, by which the Index Price exceeds the price received by City utilizing the Cover Standard for the resale of such Gas, adjusted for any additional transportation and related charges incurred as a result of breach by LVU (and including any

applicable Capacity Charges and/or Additional Charges incurred with respect to such Gas), multiplied by the difference between the Contract Quantity and the quantity actually taken by LVU for such Day(s) excluding any quantity for which no Cover Standard sale is made; and (iii) in the event that LVU has used commercially reasonable efforts to replace the Gas or City has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is made for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Ordinance Price and the Spot Price in the event of a claim by LVU for City's breach of its obligation to deliver Gas, or between the Index Price and the Spot Price in the event of a claim by City for LVU's breach of its obligation to accept Gas, as adjusted for any transportation and related charges (and including with respect to LVU any Capacity Charges and/or Additional Charges incurred with respect to such Gas), multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 6, but City and/or LVU shall be responsible for Imbalance Charges, if any, as provided in Section 7.3 of this Ordinance. The amount of such unfavorable difference shall be payable as provided in Section 9.3 of this Ordinance.

Notwithstanding the provisions of the immediately preceding paragraph, with respect to an Event of Default (as defined in Section 11.2 of the Ordinance) by LVU under Section 11.2(xi), or with respect to an Event of Default by City under Section 11.2(x), the Non-Defaulting Party (as defined under Section 11.2 of this Ordinance) shall have the right to exercise all remedies as provided for under Section 11.2 of this Ordinance.

## **SECTION 7. TRANSPORTATION, NOMINATIONS, AND IMBALANCES.**

7.1 In providing Gas service under this Ordinance, City shall have the responsibility for transporting the Gas to the Delivery Point under each Contract and may contract with one

or more Transporters for this function. Transporting Gas to the Delivery Point under each Contract shall be controlled by City. City may contract with one or more third parties to perform services necessary to deliver Gas to Delivery Point(s) under the provisions of this Ordinance including, but not limited to, arrangements for transportation, nominations, scheduling, balancing, confirmations, storage, Gas remarketing and other delivery and/or load management services. Title to Gas delivered hereunder shall pass from City to an LVU at the Delivery Point under the Contract with such LVU, and each LVU shall have the sole responsibility for distribution and delivery of the Gas delivered hereunder from the Delivery Point under the Contract with such LVU to such LVU's Plant. City shall have no responsibility or liability for distribution or delivery of Gas by an LVU, or on behalf of an LVU by third parties, from the Delivery Point under the Contract with such LVU, and each LVU shall make City whole for any financial costs incurred by City caused by or resulting from such distribution or delivery. Each LVU acknowledges and agrees that Gas purchased by such LVU from City under the provisions of this Ordinance will be consumed by LVU at the LVU Plant as provided under Part 9 of the Local Services Agreement with such LVU.

Upon written request by an LVU, City shall provide to such LVU copies of agreements which City has executed with Transporters to provide for transportation and delivery of Gas under the Contract with such LVU to the Delivery Point specified in such Contract. An LVU may make recommendations to City with respect to any proposed transportation arrangements providing for transportation and delivery of Gas under the Contract with such LVU to the relevant Delivery Point. City and each LVU shall use commercially reasonable efforts to communicate periodically and consistently with one another to discuss such LVU's recommendations and other alternatives with respect to transportation and delivery of Gas under the Contract with such LVU to the relevant

Delivery Point. Provided, however, City, in its sole discretion, may accept or reject any such LVU recommendations or proposed transportation and delivery alternatives as City shall retain control for transporting Gas to the relevant Delivery Point and have responsibility for transporting Gas to the relevant Delivery Point under each Contract consistent with the provisions of this Section 7.1. City shall follow customary industry practices in contracting for transportation with Transporters to provide for delivery of Gas under each Contract. Each LVU acknowledges that, as of the date of enactment of this Ordinance, customary industry practices with Transporters provide for transportation agreements with terms which do not exceed 5 years (not including any renewal terms). In the event of an amendment, supplement, modification or termination with respect to (i) any agreement with any Transporter or (ii) any agreement with City's Gas suppliers which will result in any curtailment in City providing for delivery of Gas under a Contract with an LVU, City shall provide Notice of such event to such relevant LVU.

7.2 City and each LVU shall coordinate with respect to City's nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). City and each LVU shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either City or an LVU become aware that actual deliveries at a Delivery Point under a Contract are greater or lesser than the Scheduled Gas, City and each LVU shall promptly notify the other party.

7.3 City and each LVU shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If City receives an invoice from a Transporter that includes Imbalance Charges with respect to a Contract with an LVU, City and each LVU shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of LVU's actions or inactions, then LVU shall pay City

the amount of such Imbalance Charges. If the Imbalance Charges were incurred as a result of City's actions or inactions, then City shall pay for such Imbalance Charges.

#### **SECTION 8. QUALITY AND MEASUREMENT.**

All Gas delivered by City shall conform to the pressure, quality and heat content requirements of the Transporter for such Gas. The unit of quantity measurement for purposes of this Ordinance shall be one MMBtu dry. Gas sold under a Contract shall be measured through Transporter's existing measurement facilities at the Delivery Point under such Contract in accordance with provisions of Transporter's applicable FERC Gas Tariff and the measurement standards and procedures in any applicable transportation agreement between City and Transporter.

#### **SECTION 9. BILLING, PAYMENT, AND AUDIT.**

- 9.1 City, or a third party acting on behalf of City, shall invoice each LVU on or before the fifteenth (15<sup>th</sup>) Day of each Month at rates and charges for Gas service in accordance with the Monthly Rates included in Schedule 2 attached to this Ordinance for Gas delivered and received hereunder in the preceding Month and for any other applicable charges (including Capacity Charges, Additional Charges and any other charges under the Monthly Rate). If requested by an LVU, City shall provide supporting documentation acceptable in industry practice to support the amount charged such LVU. If the actual quantity delivered under a Contract is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas for such Contract. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing for such Contract or as soon thereafter as actual delivery information is available.
- 9.2 Each LVU shall remit the amount due from it under Section 9.1 of this Ordinance in the manner specified in the applicable Contract, in immediately available funds to be paid in U.S. dollars, on or before the later of (i) the Payment Date or (ii) 10 Days after receipt of

the invoice by LVU; provided that if the later of (i) or (ii) immediately above is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due to an LVU under a Contract, payment to such LVU shall be made in a manner consistent with this Section 9.2. Each LVU shall remit the amount due under each invoice sent to such LVU in immediately available funds to be paid on or before 10:00 a.m. Central Time on the relevant date for payment as provided under this Section 9.2. In the event that City is providing Gas service to an LVU under two (2) or more Contracts, and to the extent that the LVU makes a partial payment under the provisions of Section 9.1 of the Ordinance, then City shall allocate payments remitted by the LVU under Section 9.1 of this Ordinance pro rata based on the Contract Quantity for the invoiced period for each Contract.

9.3 In the event any payment becomes due pursuant to Section 6 of this Ordinance, the performing party may submit an invoice to the nonperforming party setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due on or before five (5) Business Days after receipt of the invoice by the nonperforming party. In the event that City is providing Gas service to an LVU under two (2) or more Contracts, and to extent that LVU makes a partial payment under the provisions of this 9.3 of the Ordinance, then City shall allocate payments remitted by LVU under this Section 9.3 pro rata based on the invoiced quantity of Gas billed under this Section 9.3 for each Contract.

9.4 If City or an LVU, in good faith, disputes the amount of any such invoice delivered under a Contract pursuant to this Section 9, or any part thereof, the invoiced party will pay such amount invoiced; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount disputed without undue delay. The parties shall then confer and attempt to

resolve the disputed amount by agreement. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to the Contract.

- 9.5 If City or an LVU fails to remit the full amount of any invoice delivered under a Contract pursuant to this Section 9 when due (other than disputed amounts), interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under “Money Rates” by The Wall Street Journal, plus two percent (2%) per annum; or (ii) the maximum applicable lawful interest rate. In addition, if an LVU fails to remit the full amount payable when due under a Contract pursuant to Section 9.2 of this Ordinance for rates and charges invoiced by City each Month under Section 9.1 of this Ordinance, then LVU shall pay a late payment fee equal to the product of (i) the Contract Quantity under such Contract for a Month and (ii) the ratio of the unpaid amount over the total amount billed to the LVU under such Contract for such Month, multiplied by twenty (20) cents per MMBtu. Provided, however, in the event that City exercises its right to setoff any Adequate Assurance Deposit Amount provided by an LVU against any amount due and owing by such LVU to City pursuant to the provisions of Section 11.1.2 of this Ordinance, City shall assess a late payment fee in a reduced amount equal to the product of (i) the Contract Quantity under the Contract with such LVU for a Month and (ii) the ratio of the unpaid amount over the total amount billed to LVU under such Contract for such Month, multiplied by five (5) cents per MMBtu. A late payment fee shall be assessed by City against each LVU for each failure by such LVU to make the applicable Monthly payment when due under Section 9.2 of this Ordinance. In the event any late payment fee becomes due from an LVU pursuant to this Section 9.5, City shall submit an invoice to such LVU setting forth the basis upon which the late payment fee was

calculated. Payment of each amount due from an LVU under this Section 9.5 will be due on or before five (5) Business Days after receipt of the invoice by the LVU.

- 9.6 An invoice delivered pursuant to Section 9 shall constitute Notice of the amount payable by a party for purposes of Section 11.2

**SECTION 10. TITLE AND WARRANTY.**

- 10.1 Title to the Gas delivered to an LVU under a Contract shall pass from City to such LVU at the Delivery Point under such Contract. City shall have responsibility for and assume any liability with respect to the Gas to be delivered to an LVU under a Contract prior to its delivery to the LVU at the specified Delivery Point under such Contract. Each LVU shall have responsibility for and assume any liability with respect to Gas to be delivered to such LVU under a Contract after its delivery to such LVU at the Delivery Point under such Contract.

- 10.2 City warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to an LVU, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 10.2 AND IN PART 13.11 OF EACH LOCAL SERVICES AGREEMENT, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

- 10.3 Notwithstanding the other provisions of this Section 10, as between City and each LVU, City will be liable for all claims to the extent that such claims arise from the failure of Gas delivered by City to meet the quality requirements of Section 8 of this Ordinance.

**SECTION 11. FINANCIAL RESPONSIBILITY.**

- 11.1 With respect to the initial Adequate Assurance of Performance for an LVU under a Local Services Agreement, LVU or LVU's Guarantor shall provide Adequate Assurance of

Performance as set forth in the initial demand for Adequate Assurance of Performance under Part 13.10 of the applicable Local Services Agreement on or before the Initial Valuation Date. Throughout the term of each Contract, the applicable LVU or such LVU's Guarantor shall maintain Adequate Assurance of Performance at all times. The initial Adequate Assurance of Performance shall be as provided for in Part 13.10 of the Local Services Agreement and the Adequate Assurance Deposit Amount shall be deposited, invested and applied in accordance with Section 11.1.5 of this Ordinance. As provided for under Section 11.1.7 of this Ordinance, City shall designate a Qualified Institution(s) to act as a custodian and fiduciary on behalf of City with respect to depositing, investing and/or applying Adequate Assurance Deposit Amounts under the provisions of this Ordinance. Such funds may only be invested in the Permitted Investments. Each LVU hereby grants to City, and City's designee, a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance Deposit Amounts transferred by such LVU to City. Upon the return by City (or City's designee) to an LVU of any Adequate Assurance Deposit Amount, the security interest and lien granted hereunder on that Adequate Assurance Deposit Amount shall be released automatically and, to the extent possible, without any further action by either party.

- 11.1.1 If at any time (i) an LVU or an LVU's Guarantor fails to make any two (2) payments within any twelve (12) month period on or before the applicable date for payment as provided for under a Contract with such LVU or (ii) an Event of Default has occurred or is continuing, City shall demand such LVU provide an Adequate Assurance of Performance which shall be an Adequate Assurance Deposit Amount equal to the Adequate Assurance Valuation Amount. Within three (3) Business Days after such demand is made by City to an LVU, such LVU or LVU's Guarantor shall provide Adequate Assurance of Performance which shall be an Adequate Assurance Deposit

Amount provided by LVU to City (or City's designee) in an amount equal to the Adequate Assurance Valuation Amount.

11.1.2 City shall have the right, in its sole discretion, to setoff against any Adequate Assurance Deposit Amount provided by an LVU or LVU's Guarantor any amounts due and owing by such LVU under the terms of a Contract(s) with such LVU including, but not limited to, any amounts due and owing by such LVU under Section 9.1, Section 9.2., Section 11.3.1 or Section 11.3.2 of this Ordinance. Within one (1) Business Day after City exercises its right of setoff under this Section 11.1.2 and applies funds from LVU's Adequate Assurance Deposit Amount against any amounts due and owing by such LVU under the terms of a Contract with such LVU, City, or a third party acting on behalf of City, shall provide Notice to LVU which shall include the amount that LVU shall be required to provide to City (or its designee) so that the Adequate Assurance Deposit Amount shall be replenished. Within three (3) Business Days after receipt of such notice by an LVU, such LVU shall provide to City (or City's designee) the amount necessary to replenish the Adequate Assurance of Performance as set forth in such notice provided by City to LVU.

11.1.3 In the event that (i) an LVU or an LVU's Guarantor with a Minimum Credit Rating has provided Adequate Assurance of Performance pursuant to Section 11.1.1 of this Ordinance and thereafter has made all payments under all Contracts of such LVU on or before the applicable dates for payment for twelve (12) consecutive Months and (ii) such LVU or LVU's Guarantor has not caused or permitted to occur an Event of Default under Section 11.2 of this Ordinance, then City shall return (or cause its designee to return) to LVU all or a portion of the Adequate Assurance Deposit Amount. Provided, however, such LVU shall continue to provide and maintain Adequate Assurance of Performance under Section 11.1 of this Ordinance, including any Adequate Assurance Deposit

Amount provided for under part (i) of the definition of Adequate Assurance of Performance. In the event that LVU subsequently fails to meet the requirements of Section 11.1.1 of this Ordinance, LVU shall again provide Adequate Assurance of Performance with an Adequate Assurance Threshold Amount of zero in accordance with the provisions of Section 11.1.1 of this Ordinance.

11.1.4 City (or its designee) shall calculate the Adequate Assurance of Performance for each LVU with a Contract as of each Valuation Date and City (or its designee) shall provide each LVU a statement within five (5) Business Days after such Valuation Date setting forth the Adequate Assurance Valuation Amount, the Adequate Assurance Threshold Amount, the amount of investment earnings on deposit in the relevant LVU Adequate Assurance Fund, the undrawn portion of any Letter of Credit, the Letter of Credit Valuation Percentage, and the Adequate Assurance Deposit Amount in determining such LVU's Adequate Assurance of Performance. Within three (3) Business Days after receipt of such statement provided by City, or a third party acting on behalf of City, to an LVU under the provisions of this Section 11.1.4, such LVU shall provide any additional Adequate Assurance Deposit Amount to City (or its designee) set forth in such statement so that the Adequate Assurance Deposit Amount held by City or its designee for the LVU shall meet the LVU's requirements for Adequate Assurance of Performance as of such Valuation Date. To the extent City (or its designee) as of any Valuation Date has on deposit amounts (including any investment earnings) in the relevant LVU Adequate Assurance Fund, plus any Adequate Assurance Deposit Amount funded with a Letter of Credit from a Qualified Institution, in excess of Adequate Assurance of Performance for the applicable LVU, such excess shall be returned by City (or its designee) to the applicable LVU within three (3) Business Days after the delivery of the applicable statement by City to LVU.

11.1.5 For each Adequate Assurance Deposit Amount provided by an LVU under this Ordinance, City (or its designee) shall establish a separate fund or account for such LVU (each such fund or account an “LVU Adequate Assurance Fund”) within the LVU Ordinance Utility Fund. City (or its designee) shall make deposits to each LVU Adequate Assurance Fund, invest amounts therein and apply amounts thereunder consistent with the provisions of this Section 11. City shall not deposit, invest or apply any amounts within an LVU Adequate Assurance Fund except as provided for under the provisions of this Section 11. Moneys contained in each LVU Adequate Assurance Fund shall be held by City (or its designee) and shall be continuously invested and reinvested by City (or its designee) in Permitted Investments, which shall be readily convertible to cash not later than the respective dates, as estimated by City (or its designee), when the moneys in the relevant LVU Adequate Assurance Fund shall be required for the purposes intended. No such investment shall be required to be made unless the cash at the time available therefor is at least equal to one thousand dollars (\$1,000). City (or its designee) shall be authorized, to the extent necessary to enable City (or its designee) to apply an LVU’s Adequate Assurance Deposit Amount in accordance with this Section 11, at any one or more times to sell any part or all of the investments on deposit in such LVU’s Adequate Assurance Fund whenever it may, for any reason or purpose whatsoever, deem any such sale to be desirable. Any income derived from any profit or loss on any such investment of moneys on deposit in any such LVU Adequate Assurance Fund shall be credited or debited as the case may be, to the respective fund or account in which earned. City (or its designee) shall in no event have any liability for any loss resulting from the investment of monies in accordance with the provisions of this Section 11.1.5. On each Valuation Date, City (or its designee) shall furnish LVU with a written copy of the types,

amounts, yield and maturities of all such investments. Investments shall be valued by City (or its designee) as of each Valuation Date.

11.1.6 With respect to an LVU which provides a Letter of Credit from a Qualified Institution as Adequate Assurance of Performance, upon the occurrence of a Letter of Credit Default, LVU shall deliver to City a substitute Letter of Credit from a Qualified Institution or cash in an amount at least equal to the stated amount of the Letter of Credit to be substituted on the first (1) Business Day after written demand by City or its designee, with failure by LVU to provide such Letter of Credit or cash to be deemed to be an Event of Default under Section 11.2 (vii) of this Ordinance. Notwithstanding any provision of the relevant Contract, the issuer of a Letter of Credit shall not be relieved of any liability it may have to any party resulting from the occurrence of a Letter of Credit Default with respect to it.

11.1.7 City shall designate a Qualified Institution(s) to act as a custodian and fiduciary on behalf of City with respect to depositing, investing and/or applying Adequate Assurance Deposit Amounts in accordance with the provisions of this Ordinance. In connection therewith, City shall contract with such Qualified Institution(s) with respect to depositing, investing and/or applying Adequate Assurance Deposit Amounts in accordance with the provisions of this Ordinance.

11.2 In the event (each an “Event of Default”) either City or an LVU (the “Defaulting Party”) or an LVU’s Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all

of its assets; (vi) fail to perform any obligation to the other party with respect to any Adequate Assurance of Performance relating to a Contract; (vii) with respect to LVU (or its Guarantor) only, fail to provide and maintain Adequate Assurance of Performance to City (or its designee) under a Contract as required by Section 11.1 of this Ordinance or fail to provide, replenish and/or maintain, as applicable, any Adequate Assurance Deposit Amount to City (or its designee) under a Contract as required by Section 11.1.1, Section 11.1.2, Section 11.1.3, Section 11.1.4 and/or Section 11.1.6 of this Ordinance; (viii) not have paid any amount due the other party under a Contract on or before the second Business Day following written Notice that such payment is due, including a failure by City to make a payment to LVU as permitted under the provisions of Section 5 of the Ordinance; (ix) with respect to LVU only, fail to comply with the representations and covenants set forth under Part 9 to the Local Services Agreement; (x) with respect to City only, for reasons other than (A) Force Majeure, (B) an Event of Default by LVU under this Section 11.2 or (C) a default by LVU under Section 11.6 of this Ordinance, fail to deliver to LVU for five (5) consecutive Days the Contract Quantity required to be delivered by City under the relevant Contract for such Days or fail to deliver to LVU under the relevant Contract more than fifty percent (50%) of the Contract Quantity required to be delivered by City on any particular Day for fifteen (15) cumulative Days during any Contract Year; (xi) with respect to LVU only, for reasons other than (A) Force Majeure or (B) an Event of Default by City under this Section 11.2, fail to accept delivery from City for five (5) consecutive Days of the Contract Quantity required to be received by LVU under the relevant Contract for such Days, or fail to accept delivery from City of more than fifty percent (50%) of the Contract Quantity required to be received by LVU under the relevant Contract on any particular Day for fifteen (15) cumulative Days during any Contract Year; or (xii) with respect to LVU (or LVU's Affiliate) only, cause or

permit to occur a default or event of default under other contract(s) as set forth under the provisions of Part 13.12 of the Local Services Agreement, then the other party to the relevant Contract (the “Non-Defaulting Party”) shall have the right, at its sole election, to immediately suspend its obligations to deliver or accept Gas upon Notice and/or to terminate and liquidate all Contracts between City and the applicable LVU then in effect in the manner provided in Section 11.3 of this Ordinance, in addition to any and all other remedies available under such Contracts; provided, however, that upon the occurrence of an Event of Default by an LVU or an LVU’s Guarantor described in this Section 11.2, City shall immediately withhold and/or suspend deliveries of Gas under all Contracts then in effect with the applicable LVU.

11.3 If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than twenty (20) Days after such Notice is given, as an early termination date (the “Early Termination Date”) for the liquidation and termination pursuant to Section 11.3.1 of this Ordinance of all Contracts between City and the applicable LVU. On the Early Termination Date, Contracts between City and the applicable LVU will terminate.

11.3.1 As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received under all Contracts between the parties on and before the Early Termination Date and all transportation charges and other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 6 of this Ordinance), for which payment has not yet been made by the party that owes such payment under the applicable Contracts. With respect to an LVU only, if the LVU or the LVU’s Guarantor is the

Defaulting Party, such LVU shall reimburse City for all applicable transportation fees and charges paid or to be paid by City for the right to transport the originally agreed Contract Quantity to the LVU's applicable Delivery Point as provided for under Capacity Charges under Schedule 2 attached to this Ordinance under all Contracts between City and such LVU.

11.3.2 The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 11.3.1 of this Ordinance, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to LVU, City may setoff any Net Settlement Amount owed to City by LVU under the Contracts between the parties against any Adequate Assurance Deposit Amount held by City (or its designee) with respect to such Contracts.

11.3.3 If the amount of any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 11.3.2 of this Ordinance is unascertained, the Non-Defaulting Party may in good faith estimate the amount of that obligation and net, aggregate or setoff, as applicable, in respect of the estimated amount, subject to the Non-Defaulting Party accounting to the Defaulting Party when the amount of the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 11.3.2 of this Ordinance shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

11.4 As soon as practicable after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity

or enforceability of the termination of the Contract between City and the applicable LVU or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount, as adjusted by any setoffs applied against such amount pursuant to Section 11.3.2 of this Ordinance, shall be paid by the close of business on the second (2<sup>nd</sup>) Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount, as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under “Money Rates” by The Wall Street Journal, plus two percent (2%) per annum; or (ii) the maximum applicable lawful interest rate.

11.5 The Non-Defaulting Party's remedies under this Section 11 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Event of Default under a Contract. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising under the applicable Contracts.

11.6 Upon City withholding and/or suspending deliveries of Gas under Contracts with an LVU pursuant to the provisions of Section 11.2 of this Ordinance, City thereafter shall have the right to (or cause its designee to) remarket the Gas to be delivered to the LVU under such Contracts for such period of time as City in its sole discretion may determine. In the event City takes all or any of the actions authorized by this Section 11.6, LVU shall remain fully liable for payment of all amounts in default and interest thereon, and shall not be relieved of any of its obligations under the Contracts, including LVU's obligation to pay amounts under Section 6 of this Ordinance with respect to Gas which City has withheld or suspended deliveries pursuant to Section 11.2 of this Ordinance which shall be Gas deemed to be delivered to such LVU and not received by LVU. If

City has withheld and/or suspended deliveries of Gas under the provisions of this Section 11.6 and Section 11.2 of this Ordinance but has not terminated the Contracts with the applicable LVU, and such LVU subsequently cures all Events of Default by such LVU and such LVU provides Adequate Assurance of Performance with an Adequate Assurance Deposit Amount equal to the Adequate Assurance Valuation Amount and such LVU agrees to maintain Adequate Assurance of Performance for the remaining term of its Contracts with an Adequate Assurance Deposit Amount equal to the Adequate Assurance Valuation Amount, City shall, within three (3) months of City receiving Notice from LVU of all Events of Default being cured, either (A) reinstate Gas deliveries under all Contracts with such LVU or (B) exercise its right to terminate and liquidate all Contracts with such LVU in the manner provided in Section 11.3 of this Ordinance.

**SECTION 12. FORCE MAJEURE.**

- 12.1 Except with regard to City's and each LVU's obligation to make payment(s) due under Section 9 and/or Section 11 of this Ordinance and to pay Imbalance Charges due under Section 7 of this Ordinance, neither party to a Contract shall be liable to the other for failure to perform an obligation pursuant to Section 4 of this Ordinance to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 12.2 and Section 12.3 of this Ordinance.
- 12.2 Force Majeure shall mean: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm

transportation and/or storage by Transporters and of non-Firm transportation or storage where Firm service is not available; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction; and (vi) any other causes, whether of the kind herein enumerated or otherwise (but not including economic hardship or other exclusions described in Section 12.3), not caused by the negligent or intentional act or omission of the party claiming suspension and which, by exercise of due diligence, such party is unable to overcome. City and each LVU shall make reasonable efforts to avoid the adverse impacts of a Force Majeure event and to resolve the impacts of an event of Force Majeure once it has occurred in order to resume performance.

- 12.3 Neither party to a Contract shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed, or unless Firm transportation service is not available from the affected Transporter; (ii) the party claiming excuse failed to remedy the condition or its effects and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, City's ability to sell Gas at a higher or more advantageous price than the Ordinance Price, LVU's ability to purchase Gas at a lower or more advantageous price than the Ordinance Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from a Contract; (iv) the loss of LVU's market(s) or an LVU's inability to use Gas purchased under the Contract, except, in either case, as provided in Section 12.2 of this Ordinance; or (v) the loss or failure of City's Gas supply or depletion of

reserves, except, in either case, as provided in Section 12.2 of this Ordinance; or (vi) breakage or accident or necessity of repairs to machinery within LVU's facilities, unless such incident is the result of other events listed in Section 12.2 of this Ordinance.

12.4 Notwithstanding anything to the contrary herein, the parties to each Contract agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

12.5 The party to a Contract whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

12.6 In claiming a Force Majeure event under a Contract as provided in this Ordinance, City shall not discriminate against an LVU as compared to other LVUs, and unless otherwise agreed to by LVU with respect to a Force Majeure event under its Contract, will apply available resources and facilities to the delivery of Gas to such LVU and the delivery of Gas to other LVUs on at least a pro rata basis. Provided, however, no application and delivery of Gas by City under this Section 12.6 will be inconsistent with any agreement with Gas suppliers providing Gas to be used by City to provide Gas service under the provisions of this Ordinance.

12.7 The party not claiming Force Majeure under a Contract will have the right, upon forty-five (45) days Notice to the party claiming Force Majeure, to terminate all of its Contracts with the other party prior to the end of the applicable Delivery Period(s)

without liability to either party under Section 6 of this Ordinance in the event of the suspension of the obligation to deliver or receive Gas under such Contracts for a period in excess of 180 consecutive Days due to a continuing Force Majeure event; provided, however, with respect to any Contract Quantity to be delivered and received under the Contracts through the date of termination under this Section 12.7, the parties shall pay all amounts owed thereunder and all other applicable charges relating to Gas service under the Contract (including any amounts owed under Section 6 of this Ordinance) and LVU shall be responsible to reimburse City for all applicable transportation fees and charges paid or to be paid by City for the right to transport the originally agreed Contract Quantity to LVU's Delivery Point under each Contract between City and such LVU as provided for under Capacity Charges under Schedule 2 attached to this Ordinance in the manner and at the times such payments are required pursuant to Section 11 in the event an Early Termination Date is established.

### **SECTION 13. TERM.**

Each Contract shall remain in effect until the expiration of the Delivery Period set forth under the respective Local Services Agreement; provided, however, any Contract may be terminated as of an Early Termination Date in accordance with the terms and conditions under Section 11.3 of this Ordinance. Further, LVU shall have the right to terminate its obligations under all Contracts in accordance with the provisions of Sections 4.3 or 4.4 of this Ordinance and either party to a Contract shall have the right to terminate its obligations under all Contracts in accordance with the provisions of Section 12.7 of this Ordinance. The rights of either party to a Contract pursuant to Part 11 of its Local Services Agreement, Section 11 of this Ordinance, Section 14 of this Ordinance, and the obligations to make all accrued payments under such Contract shall survive the termination of the Contract.

### **SECTION 14. LIMITATIONS.**

For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy. A party's liability under a Contract shall be limited as set forth in such provision, and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided for under a Contract, a party's liability under a Contract shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived. Unless expressly herein provided, neither party under a Contract shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the parties to each Contract that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive. To the extent any damages required to be paid hereunder are liquidated, the parties to each Contract acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient, and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

#### **SECTION 15. MARKET DISRUPTION AND PRICE CORRECTION.**

15.1 If a Market Disruption Event has occurred with respect to the Index Price, then the replacement price shall be determined in accordance with the market disruption procedures set forth in the 1992 ISDA Master Agreement (Multicurrency – Cross Border) subject to and governed by the 2000 ISDA Definitions and the 2005 ISDA Commodity Derivatives Definitions as the same may be amended, supplemented, updated and restated from time to time (collectively, the “Definitions”) as if the following elections had been made: (i) the “Market Disruption Events” specified in Section 7.4(d)(i) of the

Commodity Definitions shall apply; (ii) “Additional Market Disruption Events” shall not apply; and (iii) the following “Disruption Fallbacks” specified in Section 7.5(c) of the Commodity Definitions shall apply in the following order: (a) “Fallback Reference Price”; (b) “Negotiated Fallback”; (c) “Delayed Publication or Announcement”; (d) “Fallback Reference Dealers”; and (e) “No Fault Termination”. If a Market Disruption Event has occurred with respect to the Spot Price, the parties shall negotiate in good faith to agree on a replacement price (or a method for determining the price at issue), and if the parties have not so agreed on or before the 14th Business Day following the first trading day on which the Market Disruption Event occurred or existed, then the replacement price shall be determined by the majority of a panel of three independent dealers in the Gas market or other recognized experts in the field of pricing natural gas. The parties shall each select one dealer or other expert and the two dealers or other experts selected by the parties shall mutually agree on the third dealer or expert.

- 15.2 For purposes of determining the relevant prices for any Day, if the Index Price or the Spot Price published is corrected no later than thirty (30) Days after the original publication and the correction is published or announced by the person responsible for that publication or announcement, City or an LVU may give Notice to the other party (i) of that correction and (ii) the amount (if any) that is payable under each Contract between City and such LVU as a result of that correction. If City or an LVU gives Notice that an amount is so payable under a Contract between City and such LVU, the party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that Notice, pay, subject to any applicable conditions precedent, to the other party that amount, together with interest at the prime rate of interest published under “Money Rates” by The Wall Street Journal for the period from

and including the Day on which payment originally was (or was not) made to but excluding the Day of payment of the refund or payment resulting from that correction.

**SECTION 16. NO IMMUNITY CLAIM.**

City warrants and covenants that, with respect to its contractual obligations under each Contract, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or the assets of the LVU Ordinance Utility Fund from (a) suit, (b) jurisdiction of court, or (c) execution or enforcement of judgment.

**SECTION 17. PRIOR ORDINANCES.**

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

**SECTION 18. SEVERABILITY.**

If any section, sub-section, sentence, clause, phrase or portion of this Ordinance shall for any reason be 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 thereof.

**SECTION 19. AMENDMENTS OR SUPPLEMENTS TO ORDINANCE.**

In accordance with the provisions of Louisiana law, City may from time to time amend or supplement this Ordinance and the corresponding provisions of the Code of Ordinances of the City of Westlake. Provided, however, such amendment or supplement to this Ordinance and the corresponding provisions of the Code of Ordinances of the City of Westlake shall not be enforceable by City against an LVU which has a Contract with City prior to the effective date of such amendment/supplement, unless such LVU provides its written consent to such amendment or supplement; and provided further, however, that any adjustments to LVU Discount and Ordinance Price in accordance with the provisions of Schedule 2 attached to this Ordinance under the heading "Adjustments to LVU Discount and Ordinance Price" shall not require any consent by any LVU. City shall provide Notice to each LVU which then has a Contract with

City of any amendment /supplement to this Ordinance at least ten (10) days prior to the effective date thereof, provided, however, no such 10 day Notice shall be required in the event the City has previously provided the 60 day Notice under Schedule 2 attached to this Ordinance under the heading "Adjustments to LVU Discount and Ordinance Price."

**SECTION 20. EFFECTIVE DATE.**

This ordinance shall be in full force and effect from and after \_\_\_\_\_, 2010 or \_\_\_\_\_.

**SECTION 21. ENACTMENT.**

Be it ordained by the Mayor and City Council of the City of Westlake, Louisiana, that the provisions of this Ordinance No. \_\_ shall become and be made a party of the Code of Ordinances of the City of Westlake, Louisiana, and the sections of this Ordinance may be renumbered to accomplish this intention.

This Ordinance having been introduced on March 15, 2010, publication of proposed Ordinance having been published, the title having been read with opportunity for discussion and the Ordinance considered, on motion of Councilmen Racca and seconded by Councilmen Hardey to adopt the Ordinance a record vote was taken and the following result was had:

YEAS: Cradure, Peterson, Anderson, Racca and Hardey

NAYS: None.

ABSENT: None.

This Ordinance adopted and passed on this 19th day of April, 2010.

\_\_\_\_\_  
DANIEL W. CUPIT, Mayor

ATTEST:

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ANDREA MAHFOUZ  
City Clerk

**Exhibit "A"**

**To the Ordinance**

**Form of Gas Utility Service Application**

**LARGE VOLUME COMMERCIAL AND INDUSTRIAL USER  
GAS UTILITY SERVICE APPLICATION**

**CITY OF WESTLAKE**

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**(“Applicant”)**

The undersigned (“Applicant”) hereby makes application as a Large Volume Commercial and Industrial User (“LVU”) for Gas utility services to be supplied by City of Westlake, Louisiana (“City”) to LVU’s Plant identified below. Applicant has read Ordinance No. \_\_\_\_, which repeals Ordinance No. 781 and enacts a new Chapter 5 of Part 7 of the Code of Ordinances of the City of Westlake by (the “Ordinance”), prior to making this application. Applicant understands that the City will review and consider this application in accordance with the provisions of the Ordinance. If City decides to grant this application, Applicant further understands it will be required to enter into the Local Services Agreement with incorporated terms and conditions as provided for under the Ordinance. Capitalized terms used herein, and not otherwise defined herein, shall have the meanings assigned to them in the Ordinance.

1. Applicant hereby makes application for Service Option(s) \_\_\_\_\_ from the choices made available to LVUs by City and listed under Exhibit “A” hereto, and Applicant further requests a term under the Local Services Agreement(s) of \_\_\_\_\_ years and a Contract Quantity of \_\_\_\_\_.

2. Applicant has submitted a request for service which is included under Exhibit “B” hereto.

3. Applicant supplies the following additional information to assist the City with its consideration of this application:

A. Applicant Name: \_\_\_\_\_

B. Applicant Address for LVU Plant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Applicant Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Guarantor Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_

E. Applicant Emergency Contact Number: \_\_\_\_\_

F. Guarantor Emergency Contact Number: \_\_\_\_\_

G. Credit references for Applicant:

(1) \_\_\_\_\_  
(Name) (Account Number)

(2) \_\_\_\_\_  
(Name) (Account Number)

(3) \_\_\_\_\_  
(Name) (Account Number)

H. Applicant's Delivery Point at LVU Plant:

\_\_\_\_\_  
\_\_\_\_\_

I. Applicant's proposed Adequate Assurance of Performance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. In connection with its review of this Application, City may require that Applicant provide the following:

A. Any financial and/or operating information reasonably required by City in connection with its review of Applicant or LVU's Guarantor credit including, but not limited to, financial statements for last three (3) years and current credit rating report;

B. The initial Natural Gas Demand Forecast and such additional documentation and other information as may be reasonably required by the City in

connection therewith; and

C. Any additional information reasonably required by City for City to determine Applicant's eligibility under the Ordinance.

5. Certifications:

A. Applicant is not currently being provided gas service at the LVU Plant by an Investor Owned Utility.

B. The information contained in this Application and related attachments is, to the best of our knowledge, true, complete and accurate.

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(Signature of Applicant)

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(Title)

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(Date)

## EXHIBIT "A"

### To Application for Gas Utility Service

#### Service Options

1. A Delivery Period of less than 1 year – over 1,000 MMBtu per day/Ordinance Price shall be "Index Price" minus the LVU Discount of \$0.\_\_\_\_.\*
2. Minimum 1 year Delivery Period but less than 10 years – over 1,000 MMBtu per day/Ordinance Price shall be "Index Price" minus the LVU Discount of \$0.\_\_\_\_.\*
3. Minimum 10 year Delivery Period but less than 20 years – over 1,000 MMBtu per day/Ordinance Price shall be "Index Price" minus the LVU Discount of \$0.\_\_\_\_.\*
4. In addition to service options set forth under 1 through 3 immediately above, to the extent City may from time to time have excess Gas supplies available, City may provide Gas service to any LVU which has made application for Gas service and has been approved for Gas service by City in accordance with the provisions of the Ordinance, for a delivery period as may be provided for in a Local Services Agreement Addendum under a Local Services Agreement-Service Option 4. With respect to Gas which is priced on a date prior to the applicable Monthly Notice Time, Ordinance Price shall be as set forth in the Local Services Agreement Addendum but in no event shall such price be lower than Index Price minus the LVU Discount of \$0.\_\_\_\_\*. With respect to any other Gas service provided by City to an LVU under this Service Option 4, Ordinance Price shall be as set forth in the Local Services Agreement Addendum but in no event shall such price be lower than the Spot Price minus the LVU Discount of \$0.\_\_\_\_\*.

For Purposes of Paragraph 4 above, Monthly Notice Time means, with respect to a Month: (i) 5:00 p.m., central time, on the Day which is seven (7) Days prior to the close of the last Day of exchange trading on the New York Mercantile Exchange (NYMEX) for Henry Hub Natural Gas Futures Contracts for delivery during such Month and if such seventh Day is not a Business Day, 5:00 p.m., central time, on the Business Day next preceding such seventh Day; or (ii) such other Day and time as shall be agreed to by the City and the LVU under a Contract.

\* Upon pricing of Gas supplies, City shall take further action by resolution or other action to revise or otherwise supplement this Exhibit "A" with respect to Service Options set forth above which may include providing amounts for the LVU Discount under each service option above. In accordance with the provisions of Schedule 2 to the Ordinance, under the heading Adjustments to LVU Discount and Ordinance Price, City may adjust its rates and charges for Gas service including any adjustments to the LVU Discount.

**EXHIBIT “B”**

**To Application for Gas Utility Service**

**Applicant's Request for Service**

**EXHIBIT “B”**

**To the Ordinance**

**Form of Local Services Agreements**

**EXHIBIT “B-1”**

**To the Ordinance  
Form of Local Services Agreement  
with respect to Service Options  
1, 2 and/or 3**

## Local Services Agreement\*

THIS LOCAL SERVICES AGREEMENT dated as of \_\_\_\_ 1, 20\_\_ (together with any amendments or supplements hereto, the “Local Services Agreement”) is made by and between the CITY OF WESTLAKE, STATE OF LOUISIANA, a political subdivision duly organized and existing under the laws of the State of Louisiana (the “City”), and [NAME OF LARGE VOLUME COMMERCIAL AND INDUSTRIAL USER] (hereinafter “Large Volume Commercial and Industrial User” or “LVU”). City and LVU are sometimes hereinafter referred to collectively as the “Parties” or individually as a “Party.”

### WITNESSETH:

WHEREAS, City is a political subdivision of the State of Louisiana; and

WHEREAS, LVU is a \_\_\_\_\_; and

WHEREAS, City owns and operates a natural Gas utility system, including distribution facilities and transport facilities (which transport facilities may be provided pursuant to contracts with one or more Gas gathering or pipeline companies, or local distribution companies) (collectively, the “Gas System”), which constitutes a “revenue producing public utility” within the meaning of La. R.S. 33:4161; and

WHEREAS, pursuant to La. R.S. 33:4162, any municipality may construct, acquire, extend or improve any revenue producing utility and property necessary thereto, either within or without its boundaries, and may operate and maintain the utility in the interest of the public; and

WHEREAS, pursuant to La. R.S. 33:4163, any municipal corporation may provide Gas service of the public utility to its customers within or without its corporate boundaries and may establish rates, rules and regulations with respect to the sale and distribution thereof;

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\* This is form of Local Services Agreement which will apply with respect to Service Options 1,2 and/or 3.

WHEREAS, pursuant to Section 1326(A)(1)(a) of the Local Services Law, Part VII, Subpart A of Title 33 of the Louisiana Revised Statutes of 1950, as amended, La. R.S. 33:1321-1337, inclusive (the “Local Services Law”), any municipality operating a Gas system may extend such services to persons or business organizations located outside its territorial bounds and, pursuant to Section 1326(A)(1)(b) of the Local Services Law, such extension shall be in accordance with the terms of a service agreement entered into between the municipality and such persons or business organizations receiving the service; and

WHEREAS, City has duly adopted Ordinance No. \_\_\_\_, to repeal Ordinance No. 781 and enact Chapter 5 of Part 7 of the Code of Ordinances of the City of Westlake (the “Ordinance”). Pursuant to the Ordinance, City has agreed to provide Gas service to Large Volume Commercial and Industrial Users (as defined in the Ordinance) which have been approved for Gas service under the terms and conditions of the Ordinance; and

WHEREAS, LVU, which operates a [manufacturing facility] [Must meet requirements for Large Volume Industrial and Commercial User] outside of the corporate limits of City but within the corporate boundaries of the Parish of Calcasieu, State of Louisiana, has requested City to provide natural Gas service through its Gas System to LVU, by submitting its Gas Utility Service Application requesting Gas service under the Ordinance and City has approved LVU's Gas Utility Service Application; and

WHEREAS, subject to the terms and conditions set forth in the Ordinance and herein, City now desires to provide Gas service to LVU and enter into this Local Services Agreement with LVU; and

WHEREAS, the City Council, acting as governing authority of the City, on \_\_\_\_\_, 20\_\_ adopted a Resolution authorizing the City to provide Gas service to LVU through its Gas System, and also authorized the execution and delivery of this Local Services Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and LVU agree as follows:

## PART 1.

### PURPOSE AND PROCEDURES

1.1 This Local Services Agreement incorporates by reference for all purposes the terms and conditions of the Ordinance, which is attached hereto as Exhibit “A”. This Local Services Agreement is intended to facilitate City providing Gas service to LVU at the LVU Plant identified below under the provisions of the Ordinance and this Local Services Agreement. City and LVU hereby agree to the terms and conditions set forth under the Ordinance. The parties hereby further agree to the provisions under this Local Services Agreement. The entire agreement between the parties with respect to City’s providing Gas service to LVU (the “Contract”) shall be the legally-binding relationship established by (i) the Ordinance and (ii) this Local Services Agreement, which Ordinance and this Local Services Agreement together shall form a single integrated agreement between City and LVU. In the event of any conflict between the terms and conditions of the Ordinance and this Local Services Agreement, then the terms and conditions of the Ordinance shall control.

1.2 In accordance with the provisions of the Local Services Law, specifically La. R.S. 33:1326(A)(1)(a) which provides that any municipality operating a Gas system may extend such services to persons or business organizations located outside its territorial bounds, and, pursuant to Section 1326(A)(1)(b) of the Local Services Law, provides that such extension of service shall be pursuant to a service agreement entered into between the municipality and such persons or business organizations receiving the service, City hereby agrees to provide Gas service through its Gas System to LVU and LVU agrees to accept such Gas service, subject to the terms and

conditions of this Local Services Agreement and the Ordinance. In furtherance thereof and pursuant to the terms and condition of this Local Services Agreement and the Ordinance, City agrees to sell and deliver natural gas through its Gas System to LVU, including the transport thereof, and LVU hereby agrees to receive and purchase such natural gas from City from its Gas System and pay City for such Gas, including the transport thereof to the Delivery Point identified below, in order to operate its manufacturing facility located outside the corporate limits of City but within the corporate boundaries of the Parish of Calcasieu, State of Louisiana.

1.3 This Local Services Agreement evidences City's obligation to LVU to provide Gas services to LVU, including the transport of Gas to the Delivery Point, through its Gas System, and LVU's obligation to City to purchase such Gas services from City through its Gas System and to pay City for the purchase and transport of such Gas services.

## PART 2.

### DEFINITIONS

Capitalized terms used herein, and not otherwise defined herein, shall have the meanings assigned to them in the Ordinance.

## PART 3.

### PERFORMANCE OBLIGATION

City agrees to sell and deliver, and LVU agrees to receive and purchase, the Contract Quantity identified below in accordance with the terms of the Contract.

## PART 4.

### MONTHLY RATES

The Monthly Rates for Gas service provided by City to LVU under the terms and conditions of the Contract shall be the Monthly Rates as defined in Section 2 of the Ordinance

and as further provided in Schedule 2 attached to the Ordinance. The Ordinance Price shall be determined as set forth under Schedule 2 attached to the Ordinance. The LVU Discount and the Ordinance Price may be adjusted or changed from time to time in accordance with the provisions of Schedule 2 attached to the Ordinance under the heading “Adjustments to LVU Discount and Ordinance Price.” Under its Gas Utility Service Application, LVU has selected service option #\_\_\_ and therefore the initial Ordinance Price under this Contract is the Index Price minus the LVU Discount of \$0.\_\_\_\_.

“Index Price” shall mean the Index Price for “Henry Hub” published in the first issue of Platt's *Inside FERC's Gas Market Report* for each month in the section entitled “Market Center Spot Gas Prices” under the heading “South Louisiana”. Should Platt's *Inside FERC's Gas Market Report* cease publication, or should it fail to publish first of the Month spot prices for delivery in South Louisiana at Henry Hub, City and LVU shall agree to a substitute price to be determined in accordance with the provisions of Section 15 of the Ordinance. [Or alternatively, LVU and City may agree to definition of Index Price with respect to a mutually agreeable City initial receipt/delivery point consistent with the following - Index Price shall mean the Index Price published in the first of issue of *Inside FERC's Gas Market Report* for each Month in the section entitled “Market Center Spot Gas Prices” under the heading “\_\_\_\_\_”.]

#### PART 5.

#### CONTRACT QUANTITY

The Contract Quantity shall be Firm \_\_\_\_\_ MMBtu per day, subject to the provisions of Section 4 of the Ordinance and Part 9.2 of this Local Services Agreement.

#### PART 6.

#### DELIVERY PERIOD

The Delivery Period shall be the period which shall begin on \_\_\_\_\_ and end on \_\_\_\_\_.

## PART 7.

### DELIVERY POINT

7.1 The initial Delivery Point shall be \_\_\_\_\_.

7.2 Subject to LVU's prior written approval, in LVU's sole discretion, and subject to the provisions of Paragraph 9 of this Local Services Agreement, City may deliver Gas pursuant to the terms of this Local Services Agreement at alternate delivery points other than the Delivery Point(s) set forth immediately above; provided, however, that any time that the applicable Transporter or Transporters have imposed any limitations upon deliveries of Gas at such alternate delivery points, City shall be obligated to deliver Gas to the Delivery Point(s) set forth immediately above. All incremental basis, incremental index premium and additional transportation costs, if any, in connection with LVU's approval of such alternate delivery points and any additional incremental basis, incremental index premium and additional transportation costs reasonably incurred as a result of City delivering quantities of Gas at such alternate delivery points shall be included as a Capacity Charge under the Monthly Rate unless otherwise agreed to by the parties hereto.

7.3 LVU may request, subject to City's written approval, in City's sole discretion, and subject to the provisions of Paragraph 9 of this Local Services Agreement, delivery of Gas pursuant to the terms of this Local Services Agreement at alternate delivery points other than the Delivery Point(s) set forth immediately above; provided, however, that at anytime that the applicable Transporter or Transporters have imposed any limitations upon deliveries of Gas at such alternate delivery points, LVU shall be obligated to receive Gas at the Delivery Point(s) set forth immediately above. All incremental basis, incremental index premium and additional transportation costs, if any, specified by City in connection with its approval of such alternate delivery points and any additional incremental basis, incremental index premium and additional

transportation costs reasonably incurred by City as a result of City delivering quantities of Gas at such alternate delivery points shall be included as a Capacity Charge under the Monthly Rate.

7.4 Title to the Gas shall pass from City to LVU at the Delivery Point, and LVU shall have the sole responsibility for the transport of the Gas from the Delivery Point to the point of consumption at LVU's Plant.

7.5 Irrespective of any change in a Delivery Point under the provisions of this Part 7, LVU shall continue to comply with the provisions of Part 9 hereof.

#### PART 8.

##### LATE PAYMENT FEE

Late payment fees shall be as provided for under Section 9.5 of the Ordinance.

#### PART 9.

##### USE OF GAS BY LARGE VOLUME USER

9.1. LVU represents and covenants that it will purchase Gas solely for its own consumption at its plant located at \_\_\_\_\_ (the "LVU Plant"), shall not remarket or sell, or have remarketed or sold by a third party, any Gas purchased under this Local Services Agreement. If the LVU will use the Gas received under the Contract to generate [electricity/hydrogen] solely for its consumption at its LVU Plant, such use shall meet the requirements of the immediately preceding sentence. Further, with respect to any excess of its requirements at the LVU Plant, LVU may only reduce the Contract Quantity to equal LVU's requirements as provided for under the terms and conditions set forth under Section 4.2 or Section 4.3 of the Ordinance. LVU shall provide to City any additional certifications or other documentation as may be reasonably requested by City to support or confirm the representations and covenants of LVU under this Part 9. [To be revised with respect to LVU which uses Gas purchased under the Ordinance to generate electricity or hydrogen, etc. which is consumed on

the same premises as the LVU Plant]

9.2 Prior to LVU receiving any Gas under this Contract or any subsequent Contract(s) entered into pursuant to the Ordinance, LVU shall provide City with a Natural Gas Demand Forecast that demonstrates that the total Gas to be received under the Contract(s) in any Month is not expected to constitute more than 60% of average natural gas usage for that Month (as derived from 5-year historicals) over the remaining term of the Contract(s). Should it be determined by City that LVU's historical monthly natural gas usage is consistent throughout each year (i.e., a flat burn profile), then City will use the five-year annual average for the 60% test. If, in City's judgment, the LVU's historical natural gas usage does not demonstrate a flat burn profile, the calculation of the 5-year average, to be applied against the 60% test, will be based on the preceding five (5) years on a month specific basis. On or before January 31 of each year during the term of this Local Services Agreement, City will request that LVU provide to City an updated 5-year history of LVU's monthly natural gas usage, on a month specific basis or annual average basis as applicable, along with an updated Natural Gas Demand Forecast projecting the total natural gas it reasonably expects to use at its LVU Plant for the remaining term of the Contract(s). LVU shall provide an updated Natural Gas Demand Forecast (together with supporting documentation provided for in the immediately preceding sentence) within thirty (30) days after the request is made by City. Natural Gas Demand Forecasts will incorporate any planned shutdowns, plant turnarounds, expansions or the like. LVU shall provide explanations for updated historical usage reports and demand forecasts that deviate significantly (as determined by City) from prior information provided by LVU to City. If, in City's judgment, updated Natural Gas Demand Forecasts indicate that the Contract gas usage at the LVU Plant will be above the 60% threshold for any or all Months (as compared to most recent historical usage reports), then City shall have the right to reduce Gas deliveries under the Contract(s) to a level that does not exceed the 60% threshold for any and all months that are out of compliance

with this Part 9.2.

## PART 10.

### NO GAS SERVICE PROVIDED BY INVESTOR OWNED UTILITY

LVU represents and covenants that as of the date of execution of this Local Services Agreement LVU is not being provided Gas service at the LVU Plant by an Investor Owned Utility.

## PART 11.

### AUDIT

A Party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under the Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for underpayments or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two (2) years after the Month of Gas delivery. All retroactive adjustments under Section 9 of the Ordinance shall be paid in full by the Party owing payment within thirty (30) Days of Notice and substantiation of such inaccuracy.

## PART 12.

### NOTICES

12.1 All invoices, payment instructions, and other communications made pursuant to the Contract (“Notices”) shall be made to the respective parties at the addresses specified in

writing by the respective parties from time to time with initial addresses specified in Exhibit "B" hereto.

12.2 All Notices required under the Contract shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

12.3 Notice shall be deemed given to a Party when received on a Business Day by such Party. In the absence of proof of the actual receipt date, the following presumptions will apply. If the day on which such facsimile is received is not a Business Day or is after 5:00 p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notices sent by facsimile or electronic means shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's or electronic equipment's confirmation of successful transmission. Notice by overnight courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as receipt is confirmed by the receiving Party. Notice via first class mail shall be considered delivered five (5) Business Days after mailing.

12.4 The Party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten (10) Business Days after receipt of such Notice.

## PART 13.

### MISCELLANEOUS

13.1 This Local Services Agreement shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective Parties hereto, and the covenants, conditions, rights and obligations of this Local Services Agreement shall run for the full term of this Local Services Agreement. No assignment of this Local Services Agreement, in whole

or in part, will be made without the prior written consent of the non-assigning Party, which consent will not be unreasonably withheld or delayed; provided, either Party may (i) transfer, sell, pledge, encumber, or assign accounts, revenues, or proceeds hereof as provided in Section 13.15 and/or in connection with any financing or other financial arrangements, or (ii) transfer its interest to any Affiliate by assignment, merger or otherwise without the prior approval of the other Party. Notwithstanding any such assignment, transfer and assumption under the immediately preceding clauses (i) and (ii), the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

13.2 (a) With respect to any sale of the LVU Plant, LVU shall provide a Notice of LVU Plant Sale to the LVU Plant Sale Notice Parties setting forth (i) the date of the proposed sale of the LVU Plant (the "LVU Plant Sale Date"), (ii) the name of the purchaser of the LVU Plant (the "LVU Plant Purchaser"), and (iii) whether or not the LVU Plant Purchaser has confirmed to LVU that it is willing or may be willing to agree to an assignment of this Contract under the provisions of Part 13.2(b) hereof. Such Notice of LVU Plant Sale shall be provided by LVU to LVU Plant Sale Notice Parties at least sixty (60) Days prior to the LVU Plant Sale Date. Provided, however, LVU shall not be required to provide a Notice of LVU Plant Sale to a LVU Plant Sale Notice Party unless LVU Plant Sale Notice Party has entered into a Confidentiality Agreement with LVU. In the event that the LVU sells the LVU Plant to the LVU Plant Purchaser on the LVU Plant Sale Date the Contract evidenced by this Local Services Agreement shall terminate prior to the end of the Delivery Period without liability to either City or LVU under Section 6 of the Ordinance; provided, however, with respect to the Contract Quantity to be delivered and received under this Contract through the date of termination under this Part 13.2, the Parties shall pay all amounts owed hereunder and all other applicable charges relating to Gas service under this Contract and the Ordinance (including any amounts owed under Section 6 of the Ordinance). Further, but only in the event that this Contract is not assigned by the LVU

pursuant to the provisions of Part 13.2(b) below, LVU shall be responsible to reimburse City for all applicable transportation fees and charges paid or to be paid by City for right to transport originally agreed Contract Quantity to LVU's Delivery Point as provided for under Capacity Charges under Schedule 2 attached to the Ordinance for the then remainder of the durational term of the transportation agreement commitment made for such Gas. Any termination of the Contract pursuant to the provisions of this Part 13.2(a) shall be effective on the LVU Plant Sale Date.

(b) In the event that City and LVU Plant Purchaser agree that this Local Services Agreement evidencing this Contract shall be assigned to LVU Plant Purchaser then this Contract may be assigned by LVU to LVU Plant Purchaser under the terms and conditions of this Part 13.2(b) and shall not terminate under Part 13.2(a). With respect to such assignment under this Part 13.2(b), LVU shall cooperate with City and LVU Plant Purchaser to provide for such assignment of this Contract and LVU shall execute documentation reasonably necessary to provide for such assignment; provided, under the terms of any such assignment, and unless otherwise agreed to by LVU and City, the effective date shall be no later than the LVU Plant Sale Date and the LVU shall not be obligated to purchase Gas under this Contract after the effective date of the assignment.

13.3 If any one or more of the terms, provisions, promises, covenants or conditions of this Local Services Agreement shall to any extent be adjudicated invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Local Services Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

13.4 This Local Services Agreement may be simultaneously executed in several

counterparts, each of which shall be an original and all of which will constitute but one and the same instrument.

13.5 No waiver of any breach of this Local Services Agreement shall be held to be a waiver of any other or subsequent breach.

13.6 This Local Services Agreement and the Ordinance set forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Local Services Agreement and the Ordinance. This Local Services Agreement may be amended only by a writing executed by both Parties; provided, however, City may amend or supplement the Ordinance in accordance with the provisions of Section 19 of the Ordinance.

13.7 The interpretation and performance of the Contract, including this Local Services Agreement, shall be governed by the laws of the State of Louisiana, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

13.8 The Contract, including the Local Services Agreement and all provisions thereof and hereof, are subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the Parties, their facilities, or the Gas System, the Contract, including this Local Services Agreement or any provisions thereof and hereof.

13.9 There is no third party beneficiary to this Local Services Agreement.

13.10 The City hereby makes its initial demand for Adequate Assurance of Performance as set forth in Exhibit "D" hereto. This initial Adequate Assurance of Performance required by City and provided by LVU pursuant to Section 11.1 of the Ordinance shall be as set forth under Exhibit "D" hereto.

13.11 Each Party to this Local Services Agreement represents and warrants that it has full

and complete authority to enter into and perform this Local Services Agreement. Each person who executes this Local Services Agreement on behalf of either Party represents and warrants that it has full and complete authority to do so and that such Party will be bound thereby.

13.12 [This Section is intentionally left blank]

13.13 The City and the LVU may agree to establish a storage program whereby LVU and City would agree that LVU would pay for Gas in the month such Gas is initially scheduled to be delivered, plus any applicable Capacity Charges and Additional Charges. However, by mutual agreement by the parties hereto, Gas would not be delivered on date initially scheduled, but rather injected into storage and delivered to LVU at the LVU Plant on a subsequent date. Under this storage program, LVU shall be responsible for all storage costs and transportation and delivery costs in connection therewith. Any amendment to this Local Services Agreement to provide for this storage program as provided for under this Part 13.13 shall comply with Part 13.8.

13.14 The headings and subheadings contained in this Local Services Agreement are used solely for convenience and do not constitute a part of this Local Services Agreement between the Parties and shall not be used to construe or interpret the provisions of this Local Services Agreement.

13.15 LVU recognizes and agrees that City's rights to payment under the Contract, and the Adequate Assurance Deposit Amount provided by or on behalf of LVU under the Contract, and City's interest therein, may be assigned by City in connection with securing a supply of Gas for the Gas System. LVU consents to such assignment and agrees, upon notice of such assignment, to pay amounts due under the Contract directly to City's assignee and that such assignee shall have the right to collect and apply the Adequate Assurance Deposit Amount provided by or on behalf of LVU to amounts due and unpaid under the Contract. LVU agrees to take all actions and to execute all instruments requested by City's assignee, to evidence and enforce City's assignee's rights to payments under the Contracts and to collect and apply such Adequate Assurance Deposit Amount.

IN WITNESS WHEREOF, the parties hereto have executed this Local Services Agreement in duplicate originals, each of which shall constitute and be an original contract, as of the date herein above first written.

**City**

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST**

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**[Name of Large Volume Commercial and Industrial User]**

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit "A"**

**To the Local Services Agreement**

**Ordinance**

**Exhibit "B"**

**To the Local Services Agreement**

**Notice Addresses for Notices provided for under Part 12 of the Local Services Agreement**

**City:**

Correspondence, notices, and payments:

City of Westlake  
1001 Mulberry Street  
Westlake, LA 70669  
Attn: \_\_\_\_\_  
Telephone: 337.433.0691  
Facsimile: 337.433.9350  
Payments to City:  
\_\_\_\_\_  
\_\_\_\_\_  
ABA # \_\_\_\_\_  
A/C # \_\_\_\_\_

With a copy to:

Conoco Phillips  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**LVU:**

Correspondence, notices, and payments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Payments to LVU:  
\_\_\_\_\_  
\_\_\_\_\_

ABA # \_\_\_\_\_  
A/C # \_\_\_\_\_  
Attention: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Payments to LVU:  
\_\_\_\_\_

\_\_\_\_\_  
ABA # \_\_\_\_\_  
A/C # \_\_\_\_\_  
Attention: \_\_\_\_\_

**Notice Parties and Notice Addresses for Notice of LVU Plant Sale under Part 13.2(a) of the  
Local Services Agreement**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exhibit “C”**

**To the Local Services Agreement**

**Form of Confidentiality Agreement**

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”) is entered into by and between the undersigned (the “Recipient”) and [ \_\_\_\_\_ ] (“LVU”) pursuant to Part 13.2 of the Local Services Agreement between City of Westlake, Louisiana (the “City”) and LVU (the “Local Services Agreement”). The Local Services Agreement incorporates by reference for all purposes the terms and conditions of Ordinance No. \_\_ (the “Ordinance”) of Chapter 5 of Part 7 of the Code of Ordinances of the City. In connection with LVU providing a Notice of LVU Plant Sale (as defined in the Local Services Agreement) (the “Notice of LVU Plant Sale”) to Recipient, certain confidential terms and information contained in the Notice of LVU Plant Sale will be disclosed to Recipient. As a condition to LVU's providing to Recipient the Notice of LVU Plant Sale and furnishing such terms and information, Recipient agrees to comply with the terms and conditions set forth below:

1. Confidential Information. All terms and information contained in the Notice of LVU Plant Sale provided to Recipient or its affiliates or their respective representatives, counsel, accountants, directors, officers, employees or agents (each, a “Recipient Representative” and collectively, the “Recipient Representatives”) shall at all times be kept strictly confidential and Recipient or any Recipient Representative shall not be disclose directly or indirectly (without the prior written consent of LVU) the terms of the Notice of LVU Plant Sale to a third party; provided, however, that disclosure of such Notice of LVU Plant Sale (i) may be made in order to comply with any applicable law, order, regulation, or exchange rule, rule or request of any judicial, administrative or legislative body or committee or any self-regulatory body and (ii) may be made to the City and American Public Energy Agency (“APEA”) no earlier than twenty (20) Days (as defined in the Ordinance) prior to the LVU Plant Sale Date (as defined in the Ordinance). Recipient shall notify LVU of any proceeding of which it is aware which may result in disclosure of the terms of the Notice of LVU Plant Sale. Recipient will be responsible for any breach of this Agreement by its affiliates and any of their respective affiliates’ directors, officers or employees.

In the event that disclosure is required by a governmental body or applicable law, Recipient may disclose the material terms of the Notice of LVU Plant Sale to the extent so required, but shall promptly notify LVU, prior to disclosure if permissible, reasonably practical and other than if such disclosure is to a bank examiner, and shall cooperate (consistent with Recipient’s legal obligations at LVU’s expense) with LVU efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of LVU.

Nothing under the provisions of this Agreement shall prevent Recipient from (i) disclosing to City and APEA, or any of their respective representatives, counsel, accountants, directors, officers employees or agents, that City and APEA may have excess Gas (as defined in the Ordinance) to remarket on certain dates (including the amount of such excess Gas which may be remarketed) with respect to any Gas relating to the Notice of LVU Plant Sale and (ii) beginning efforts to remarket such excess Gas with respect to any Gas relating to the Notice of LVU Plant Sale.

2. Remedies. The parties to this Agreement shall be entitled to seek all remedies available at law or in equity to enforce, or seek relief in connection with the obligations under this Agreement.

3. Term. This Agreement will commence on \_\_\_\_\_ and will continue for a period of twenty-four (24) months (“Initial Term”). After the Initial Term, this Agreement will automatically renew for subsequent twelve (12) month periods (each a “Renewal Term”) unless either Party provides the other Party with not less than sixty (60) days written notice of its intention to terminate before the end of the Initial Term or then-current Renewal Term.

4. The obligation set forth in paragraph 1 hereof shall not apply to information which (i) is or becomes part of the public domain other than as a result of breach of this Agreement by Recipient or Recipient Representatives, (ii) was known or acquired by Recipient or Recipient Representatives prior to receipt from LVU, (iii) is subsequently obtained by Recipient or Recipient Representatives from a third party, not known by Recipient or Recipient Representatives to have an obligation to LVU to maintain the confidentiality of the information, (iv) is developed independently by or for Recipient or Recipient Representatives, without reference to information contained in the Notice of LVU Plant Sale or (v) is generally known by persons in the energy, banking or securities industries.

5. Miscellaneous. It is further understood and agreed that no failure or delay by LVU in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right power or privilege hereunder. This Agreement is for the benefit of LVU and shall be governed by the laws of the State of New York without giving effect to choice of law doctrines. The parties hereto waive all rights to a trial by jury. Each of the parties hereto consents to the exclusive jurisdiction of, and venue in, any federal court of competent jurisdiction located in New York.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of this the \_\_\_ day of [\_\_\_\_\_], 20\_\_.

— LVU —

— Recipient—

---

---

By:

By:

---

---

Name:

Name:

---

---

Title:

Title:

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**Exhibit “D”**

**To the Local Services Agreement**

**Adequate Assurance of Performance**

**EXHIBIT “B-2”**

**To the Ordinance**

**Form of Local Services Agreement-Service Option 4**

**Local Services Agreement\***

**Service Option 4**

THIS LOCAL SERVICES AGREEMENT-SERVICE OPTION 4 dated as of \_\_\_\_ 1, 20\_\_ (together with any amendments or supplements hereto, the “Local Services Agreement-Service Option 4”) is made by and between the CITY OF WESTLAKE, STATE OF LOUISIANA, a political subdivision duly organized and existing under the laws of the State of Louisiana (the “City”), and [NAME OF LARGE VOLUME COMMERCIAL AND INDUSTRIAL USER] (hereinafter “Large Volume Commercial and Industrial User” or “LVU”). City and LVU are sometimes hereinafter referred to collectively as the “Parties” or individually as a “Party.”

**WITNESSETH:**

WHEREAS, City is a political subdivision of the State of Louisiana; and

WHEREAS, LVU is a \_\_\_\_\_; and

WHEREAS, City owns and operates a natural Gas utility system, including distribution facilities and transport facilities (which transport facilities may be provided pursuant to contracts with one or more Gas gathering or pipeline companies, or local distribution companies) (collectively, the “Gas System”), which constitutes a “revenue producing public utility” within the meaning of La. R.S. 33:4161; and

WHEREAS, pursuant to La. R.S. 33:4162, any municipality may construct, acquire, extend or improve any revenue producing utility and property necessary thereto, either within or without its boundaries, and may operate and maintain the utility in the interest of the public; and

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\*This is form of Local Services Agreement-Service Option 4 which will apply with respect to Service Option 4.

WHEREAS, pursuant to La. R.S. 33:4163, any municipal corporation may provide Gas service of the public utility to its customers within or without its corporate boundaries and may establish rates, rules and regulations with respect to the sale and distribution thereof;

WHEREAS, pursuant to Section 1326(A)(1)(a) of the Local Services Law, Part VII, Subpart A of Title 33 of the Louisiana Revised Statutes of 1950, as amended, La. R.S. 33:1321-1337, inclusive (the “Local Services Law”), any municipality operating a Gas system may extend such services to persons or business organizations located outside its territorial bounds and, pursuant to Section 1326(A)(1)(b) of the Local Services Law, such extension shall be in accordance with the terms of a service agreement entered into between the municipality and such persons or business organizations receiving the service; and

WHEREAS, City has duly adopted Ordinance No. \_\_\_\_, to repeal Ordinance No. 781 and enact Chapter 5 of Part 7 of the Code of Ordinances of the City of Westlake (the “Ordinance”). Pursuant to the Ordinance, City has agreed to provide Gas service to Large Volume Commercial and Industrial Users (as defined in the Ordinance) which have been approved for Gas service under the terms and conditions of the Ordinance; and

WHEREAS, LVU, which operates a [manufacturing facility] [Must meet requirements for Large Volume Industrial and Commercial User] outside of the corporate limits of City but within the corporate boundaries of the Parish of Calcasieu, State of Louisiana, has requested City to provide natural Gas service through its Gas System to LVU, by submitting its Gas Utility Service Application requesting Gas service under the Ordinance and City has approved LVU's Gas Utility Service Application; and

WHEREAS, subject to the terms and conditions set forth in the Ordinance and herein, City now desires to (i) provide Gas service to LVU under Service Option 4 as set forth under Exhibit “A” to the Gas Utility Service Application, and (ii) enter into this Local Services

Agreement-Service Option 4 with LVU in connection therewith; and

WHEREAS, the City Council, acting as governing authority of the City, on \_\_\_\_\_, 20\_\_ adopted a Resolution authorizing the City to provide Gas service to LVU through its Gas System, and also authorized the execution and delivery of this Local Services Agreement-Service Option 4.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and LVU agree as follows:

#### PART 1.

#### PURPOSE AND PROCEDURES

1.1 This Local Services Agreement-Service Option 4 incorporates by reference for all purposes the terms and conditions of the Ordinance, which is attached hereto as Exhibit “A”. This Local Services Agreement-Service Option 4 is intended to facilitate City providing Gas service to LVU at the LVU Plant identified below under the provisions of the Ordinance and this Local Services Agreement-Service Option 4. City and LVU hereby agree to the terms and conditions set forth under the Ordinance. The parties hereby further agree to the provisions under this Local Services Agreement-Service Option 4. The entire agreement between the parties with respect to City’s providing Gas service to LVU (the “Contract”) shall be the legally-binding relationship established by (i) the Ordinance and (ii) this Local Services Agreement-Service Option 4 (including a Local Services Agreement Addendum(s) executed pursuant to Part 1.4 hereof), which Ordinance and this Local Services Agreement-Service Option 4 (including the Local Services Agreement Addendum(s)) together shall form a single integrated agreement between City and LVU. In the event of any conflict between the terms and conditions of the Ordinance and this Local Services Agreement-Service Option 4, then the terms and conditions of the Ordinance shall control.

1.2 In accordance with the provisions of the Local Services Law, specifically La. R.S. 33:1326(A)(1)(a) which provides that any municipality operating a Gas system may extend such services to persons or business organizations located outside its territorial bounds, and, pursuant to Section 1326(A)(1)(b) of the Local Services Law, provides that such extension of service shall be pursuant to a service agreement entered into between the municipality and such persons or business organizations receiving the service, City hereby agrees to provide Gas service through its Gas System to LVU and LVU agrees to accept such Gas service, subject to the terms and conditions of this Local Services Agreement-Service Option 4 and the Ordinance. In furtherance thereof and pursuant to the terms and condition of this Local Services Agreement-Service Option 4 and the Ordinance, City agrees to sell and deliver natural gas through its Gas System to LVU, including the transport thereof, and LVU hereby agrees to receive and purchase such natural gas from City from its Gas System and pay City for such Gas, including the transport thereof to the Delivery Point identified below, in order to operate its manufacturing facility located outside the corporate limits of City but within the corporate boundaries of the Parish of Calcasieu, State of Louisiana.

1.3 This Local Services Agreement-Service Option 4 evidences City's obligation to LVU to provide Gas services to LVU, including the transport of Gas to the Delivery Point, through its Gas System, and LVU's obligation to City to purchase such Gas services from City through its Gas System and to pay City for the purchase and transport of such Gas services.

1.4 Notwithstanding anything herein to the contrary, the provisions of this Local Services Agreement-Service Option 4 shall not become effective until (i) through (iii) as follows have occurred: (i) the City has provided a Notice to the LVU setting forth (x) the excess Gas supplies which the City proposes to use to provide Gas service to the LVU under Service Option 4, (y) the proposed Contract Quantity under Part 5 hereof, and (z) the proposed Delivery Period

under Part 6 hereof; (ii) the LVU, in its sole discretion, has approved the terms and conditions for Gas service as provided for in (i) immediately above; and (iii) the City and the LVU have executed an addendum to this Local Services Agreement-Service Option 4 (the “Local Services Agreement Addendum”) which includes the provisions under Part 1.4 (i) and the City’s initial demand for Adequate Assurance of Performance as provided for under Part 13.10 hereof. In connection with the City providing Gas service to an LVU under Service Option 4, the City and the LVU may execute one or more Local Services Agreement Addendum(s) pursuant to this Part 1.4. The purchase and sale of Gas under the terms of each such Addendum is herein referred to as a “Transaction”.

1.5 This Local Service Agreement-Service Option 4 shall have a term of \_\_\_\_ ( ) years unless (i) renewed by mutual agreement of the parties hereto, (ii) terminated by mutual agreement of the parties hereto or (iii) City and the LVU have executed a Local Services Agreement Addendum(s) pursuant to Part 1.4, in which case this Local Services Agreement-Service Option 4 shall have such term as provided in such Local Services Agreement Addendum(s). In the event this Local Services Agreement-Service Option 4 is terminated by mutual agreement of the parties hereto and City and the LVU have not executed a Local Services Agreement Addendum(s) pursuant to Part 1.4, this Local Services Agreement-Service Option 4 shall be deemed null and void, the Delivery Period shall be deemed not to have commenced and no Gas service shall be provided by City under this Local Services Agreement-Service Option 4.

## PART 2.

### DEFINITIONS

Capitalized terms used herein, and not otherwise defined herein, shall have the meanings assigned to them in the Ordinance.

PART 3.

PERFORMANCE OBLIGATION

City agrees to sell and deliver, and LVU agrees to receive and purchase, the Contract Quantity identified in each Local Services Agreement Addendum(s).

PART 4.

MONTHLY RATES

The Monthly Rates for Gas service provided by City to LVU under the terms and conditions of the Contract shall be the Monthly Rates as defined in Section 2 of the Ordinance and as further provided in Schedule 2 attached to the Ordinance. The Ordinance Price shall be determined as set forth under Schedule 2 attached to the Ordinance. The LVU Discount and the Ordinance Price may be adjusted or changed from time to time in accordance with the provisions of Schedule 2 attached to the Ordinance under the heading “Adjustments to LVU Discount and Ordinance Price.” Under its Gas Utility Service Application, LVU has selected service option #4 and the initial Ordinance Price for a Transaction shall be set forth in the related Local Services Agreement Addendum.\*\*

[“Index Price” shall mean the Index Price for “Henry Hub” published in the first issue of Platt's *Inside FERC's Gas Market Report* for each month in the section entitled “Market Center Spot Gas Prices” under the heading “South Louisiana”. Should Platt's *Inside FERC's Gas Market Report* cease publication, or should it fail to publish first of the Month spot prices for delivery in South Louisiana at Henry Hub, City and LVU shall agree to a substitute price to be determined in accordance with the provisions of Section 15 of the Ordinance. [Or alternatively, LVU and City may agree to definition of Index Price with respect to a mutually agreeable City

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\*\* Ordinance Price shall be calculated based on either the Index Price or the Spot Price less the applicable LVU Discount in accordance with the provisions under Service Option # 4 and a Local Services Agreement Addendum.

initial receipt/delivery point consistent with the following - Index Price shall mean the Index Price published in the first of issue of *Inside FERC's Gas Market Report* for each Month in the section entitled "Market Center Spot Gas Prices" under the heading "\_\_\_\_\_".]

[Spot Price shall have the meaning as set forth in the Ordinance subject to any further provisions as may be included in a Local Services Agreement Addendum]

#### PART 5.

#### CONTRACT QUANTITY

The Contract Quantity for a Transaction shall be Firm MMBtu per day as set forth in the related Local Services Agreement Addendum (but will not exceed \_\_\_\_\_ MMBtu per day), subject to the provisions of Section 4 of the Ordinance and Part 9.2 of this Local Services Agreement.

#### PART 6.

#### DELIVERY PERIOD

The Delivery Period for a Transaction shall be the period which shall begin on the date set forth in the related Local Services Agreement Addendum and end on the date set forth in the related Local Services Agreement Addendum, but in no event shall the Delivery Period end after \_\_\_\_\_, \_\_\_\_\_.

#### PART 7.

#### DELIVERY POINT

7.1 The initial Delivery Point shall be \_\_\_\_\_.

7.2 Subject to LVU's prior written approval, in LVU's sole discretion, and subject to the provisions of Paragraph 9 of this Local Services Agreement-Service Option 4, City may deliver Gas pursuant to the terms of this Local Services Agreement-Service Option 4 at alternate

delivery points other than the Delivery Point(s) set forth immediately above; provided, however, that any time that the applicable Transporter or Transporters have imposed any limitations upon deliveries of Gas at such alternate delivery points, City shall be obligated to deliver Gas to the Delivery Point(s) set forth immediately above. All incremental basis, incremental index premium and additional transportation costs, if any, in connection with LVU's approval of such alternate delivery points and any additional incremental basis, incremental index premium and additional transportation costs reasonably incurred as a result of City delivering quantities of Gas at such alternate delivery points shall be included as a Capacity Charge under the Monthly Rate unless otherwise agreed to by the parties hereto.

7.3 LVU may request, subject to City's written approval, in City's sole discretion, and subject to the provisions of Paragraph 9 of this Local Services Agreement-Service Option 4, delivery of Gas pursuant to the terms of this Local Services Agreement at alternate delivery points other than the Delivery Point(s) set forth immediately above; provided, however, that at anytime that the applicable Transporter or Transporters have imposed any limitations upon deliveries of Gas at such alternate delivery points, LVU shall be obligated to receive Gas at the Delivery Point(s) set forth immediately above. All incremental basis, incremental index premium and additional transportation costs, if any, specified by City in connection with its approval of such alternate delivery points and any additional incremental basis, incremental index premium and additional transportation costs reasonably incurred by City as a result of City delivering quantities of Gas at such alternate delivery points shall be included as a Capacity Charge under the Monthly Rate.

7.4 Title to the Gas shall pass from City to LVU at the Delivery Point, and LVU shall have the sole responsibility for the transport of the Gas from the Delivery Point to the point of consumption at LVU's Plant.

7.5 Irrespective of any change in a Delivery Point under the provisions of this Part 7, LVU shall continue to comply with the provisions of Part 9 hereof.

#### PART 8.

##### LATE PAYMENT FEE

Late payment fees shall be as provided for under Section 9.5 of the Ordinance.

#### PART 9.

##### USE OF GAS BY LARGE VOLUME USER

9.1 LVU represents and covenants that it will purchase Gas solely for its own consumption at its plant located at \_\_\_\_\_ (the "LVU Plant"), shall not remarket or sell, or have remarketed or sold by a third party, any Gas purchased under this Local Services Agreement-Service Option 4. If the LVU will use the Gas received under the Contract to generate [electricity/hydrogen] solely for its consumption at its LVU Plant, such use shall meet the requirements of the immediately preceding sentence. Further, with respect to any excess of its requirements at the LVU Plant, LVU may only reduce the Contract Quantity to equal LVU's requirements as provided for under the terms and conditions set forth under Section 4.2 or Section 4.3 of the Ordinance. LVU shall provide to City any additional certifications or other documentation as may be reasonably requested by City to support or confirm the representations and covenants of LVU under this Part 9. [To be revised with respect to LVU which uses Gas purchased under the Ordinance to generate electricity or hydrogen, etc. which is consumed on the same premises as the LVU Plant]

9.2 Prior to LVU receiving any Gas under this Contract or any subsequent Contract(s) entered into pursuant to the Ordinance, LVU shall provide City with a Natural Gas Demand Forecast that demonstrates that the total Gas to be received under the Contract(s) in any Month is not expected to constitute more than 60% of average natural gas usage for that Month (as derived

from 5-year historical(s) over the remaining term of the Contract(s). Should it be determined by City that LVU's historical monthly natural gas usage is consistent throughout each year (i.e., a flat burn profile), then City will use the five-year annual average for the 60% test. If, in City's judgment, the LVU's historical natural gas usage does not demonstrate a flat burn profile, the calculation of the 5-year average, to be applied against the 60% test, will be based on the preceding five (5) years on a month specific basis. On or before January 31 of each year during the term of this Local Services Agreement, City will request that LVU provide to City an updated 5-year history of LVU's monthly natural gas usage, on a month specific basis or annual average basis as applicable, along with an updated Natural Gas Demand Forecast projecting the total natural gas it reasonably expects to use at its LVU Plant for the remaining term of the Contract(s). LVU shall provide an updated Natural Gas Demand Forecast (together with supporting documentation provided for in the immediately preceding sentence) within thirty (30) days after the request is made by City. Natural Gas Demand Forecasts will incorporate any planned shutdowns, plant turnarounds, expansions or the like. LVU shall provide explanations for updated historical usage reports and demand forecasts that deviate significantly (as determined by City) from prior information provided by LVU to City. If, in City's judgment, updated Natural Gas Demand Forecasts indicate that the Contract gas usage at the LVU Plant will be above the 60% threshold for any or all Months (as compared to most recent historical usage reports), then City shall have the right to reduce Gas deliveries under the Contract(s) to a level that does not exceed the 60% threshold for any and all months that are out of compliance with this Part 9.2.

## PART 10.

### NO GAS SERVICE PROVIDED BY INVESTOR OWNED UTILITY

LVU represents and covenants that as of the date of execution of this Local Services

Agreement-Service Option 4 LVU is not being provided Gas service at the LVU Plant by an Investor Owned Utility.

## PART 11.

### AUDIT

A Party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under the Contract-Service Option 4. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for underpayments or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two (2) years after the Month of Gas delivery. All retroactive adjustments under Section 9 of the Ordinance shall be paid in full by the Party owing payment within thirty (30) Days of Notice and substantiation of such inaccuracy.

## PART 12.

### NOTICES

12.1 All invoices, payment instructions, and other communications made pursuant to the Contract (“Notices”) shall be made to the respective parties at the addresses specified in writing by the respective parties from time to time with initial addresses specified in Exhibit “B” hereto.

12.2 All Notices required under the Contract shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier

service, first class mail or hand delivered.

12.3 Notice shall be deemed given to a Party when received on a Business Day by such Party. In the absence of proof of the actual receipt date, the following presumptions will apply. If the day on which such facsimile is received is not a Business Day or is after 5:00 p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notices sent by facsimile or electronic means shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's or electronic equipment's confirmation of successful transmission. Notice by overnight courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as receipt is confirmed by the receiving Party. Notice via first class mail shall be considered delivered five (5) Business Days after mailing.

12.4 The Party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten (10) Business Days after receipt of such Notice.

## PART 13.

### MISCELLANEOUS

13.1 This Local Services Agreement-Service Option 4 shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective Parties hereto, and the covenants, conditions, rights and obligations of this Local Services Agreement-Service Option 4 shall run for the full term of this Local Services Agreement-Service Option 4. No assignment of this Local Services Agreement-Service Option 4, in whole or in part, will be made without the prior written consent of the non-assigning Party, which consent will not be unreasonably withheld or delayed; provided, either Party may (i) transfer, sell, pledge, encumber, or assign

accounts, revenues, or proceeds hereof as provided in Section 13.15 and/or in connection with any financing or other financial arrangements, or (ii) transfer its interest to any Affiliate by assignment, merger or otherwise without the prior approval of the other Party. Notwithstanding any such assignment, transfer and assumption under the immediately preceding clauses (i) and (ii), the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

13.2 (a) With respect to any sale of the LVU Plant, LVU shall provide a Notice of LVU Plant Sale to the LVU Plant Sale Notice Parties setting forth (i) the date of the proposed sale of the LVU Plant (the “LVU Plant Sale Date”), (ii) the name of the purchaser of the LVU Plant (the “LVU Plant Purchaser”), and (iii) whether or not the LVU Plant Purchaser has confirmed to LVU that it is willing or may be willing to agree to an assignment of this Contract under the provisions of Part 13.2(b) hereof. Such Notice of LVU Plant Sale shall be provided by LVU to LVU Plant Sale Notice Parties at least sixty (60) Days prior to the LVU Plant Sale Date. Provided, however, LVU shall not be required to provide a Notice of LVU Plant Sale to a LVU Plant Sale Notice Party unless LVU Plant Sale Notice Party has entered into a Confidentiality Agreement with LVU. In the event that the LVU sells the LVU Plant to the LVU Plant Purchaser on the LVU Plant Sale Date the Contract evidenced by this Local Services Agreement shall terminate prior to the end of the Delivery Period without liability to either City or LVU under Section 6 of the Ordinance; provided, however, with respect to the Contract Quantity to be delivered and received under this Contract through the date of termination under this Part 13.2, the Parties shall pay all amounts owed hereunder and all other applicable charges relating to Gas service under this Contract and the Ordinance (including any amounts owed under Section 6 of the Ordinance). Further, but only in the event that this Contract is not assigned by the LVU pursuant to the provisions of Part 13.2(b) below, LVU shall be responsible to reimburse City for

all applicable transportation fees and charges paid or to be paid by City for right to transport originally agreed Contract Quantity to LVU's Delivery Point as provided for under Capacity Charges under Schedule 2 attached to the Ordinance for the then remainder of the durational term of the transportation agreement commitment made for such Gas. Any termination of the Contract pursuant to the provisions of this Part 13.2(a) shall be effective on the LVU Plant Sale Date.

(b) In the event that City and LVU Plant Purchaser agree that this Local Services Agreement evidencing this Contract shall be assigned to LVU Plant Purchaser then this Contract may be assigned by LVU to LVU Plant Purchaser under the terms and conditions of this Part 13.2(b) and shall not terminate under Part 13.2(a). With respect to such assignment under this Part 13.2(b), LVU shall cooperate with City and LVU Plant Purchaser to provide for such assignment of this Contract and LVU shall execute documentation reasonably necessary to provide for such assignment; provided, under the terms of any such assignment, and unless otherwise agreed to by LVU and City, the effective date shall be no later than the LVU Plant Sale Date and the LVU shall not be obligated to purchase Gas under this Contract after the effective date of the assignment.

13.3 If any one or more of the terms, provisions, promises, covenants or conditions of this Local Services Agreement-Service Option 4 shall to any extent be adjudicated invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Local Services Agreement-Service Option 4 shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

13.4 This Local Services Agreement-Service Option 4 may be simultaneously executed in several counterparts, each of which shall be an original and all of which will

constitute but one and the same instrument.

13.5 No waiver of any breach of this Local Services Agreement-Service Option 4 shall be held to be a waiver of any other or subsequent breach.

13.6 This Local Services Agreement-Service Option 4 and the Ordinance set forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Local Services Agreement-Service Option 4 and the Ordinance. This Local Services Agreement-Service Option 4 may be amended only by a writing executed by both Parties; provided, however, City may amend or supplement the Ordinance in accordance with the provisions of Section 19 of the Ordinance.

13.7 The interpretation and performance of the Contract, including this Local Services Agreement-Service Option 4 shall be governed by the laws of the State of Louisiana, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

13.8 The Contract, including the Local Services Agreement-Service Option 4 and all provisions thereof and hereof, are subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the Parties, their facilities, or the Gas System, the Contract, including this Local Services Agreement-Service Option 4, or any provisions thereof and hereof.

13.9 There is no third party beneficiary to this Local Services Agreement-Service Option 4.

13.10 The City shall make its initial demand for Adequate Assurance of Performance for a Transaction under the provisions of the related Local Services Agreement Addendum. This initial Adequate Assurance of Performance required by City and provided by LVU pursuant to Section 11.1

of the Ordinance for a Transaction shall be included in the related Local Services Agreement Addendum.

13.11 Each Party to this Local Services Agreement-Service Option 4 represents and warrants that it has full and complete authority to enter into and perform this Local Services Agreement-Service Option 4. Each person who executes this Local Services Agreement-Service Option 4 on behalf of either Party represents and warrants that it has full and complete authority to do so and that such Party will be bound thereby.

13.12 [This Section is intentionally left blank]

13.13 The City and the LVU may agree to establish a storage program whereby LVU and City would agree that LVU would pay for Gas in the month such Gas is initially scheduled to be delivered, plus any applicable Capacity Charges and Additional Charges. However, by mutual agreement by the parties hereto, Gas would not be delivered on date initially scheduled, but rather injected into storage and delivered to LVU at the LVU Plant on a subsequent date. Under this storage program, LVU shall be responsible for all storage costs and transportation and delivery costs in connection therewith. Any amendment to this Local Services Agreement to provide for this storage program as provided for under this Part 13.13 shall comply with Part 13.8.

13.14 The headings and subheadings contained in this Local Services Agreement-Service Option 4 are used solely for convenience and do not constitute a part of this Local Services Agreement-Service Option 4 between the Parties and shall not be used to construe or interpret the provisions of this Local Services Agreement-Service Option 4.

13.15 LVU recognizes and agrees that City's rights to payment under the Contract, and the Adequate Assurance Deposit Amount provided by or on behalf of LVU under the Contract, and City's interest therein, may be assigned by City in connection with securing a supply of Gas for the

Gas System. LVU consents to such assignment and agrees, upon notice of such assignment, to pay amounts due under the Contract directly to City's assignee and that such assignee shall have the right to collect and apply the Adequate Assurance Deposit Amount provided by or on behalf of LVU to amounts due and unpaid under the Contract. LVU agrees to take all actions and to execute all instruments requested by City's assignee, to evidence and enforce City's assignee's rights to payments under the Contracts and to collect and apply such Adequate Assurance Deposit Amount.

IN WITNESS WHEREOF, the parties hereto have executed this Local Services Agreement-Service Option 4 in duplicate originals, each of which shall constitute and be an original contract, as of the date herein above first written.

**City**

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST**

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**[Name of Large Volume Commercial and Industrial User]**

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit “A”**

**To the Local Services Agreement-Service Option 4**

**Ordinance**

**Exhibit "B"**

**To the Local Services Agreement-Service Option 4**

**Notice Addresses for Notices provided for under Part 12 of the Local Services Agreement**

**City:**

Correspondence, notices, and payments:

City of Westlake  
1001 Mulberry Street  
Westlake, LA 70669  
Attn: \_\_\_\_\_  
Telephone: 337.433.0691  
Facsimile: 337.433.9350  
Payments to City:  
\_\_\_\_\_  
\_\_\_\_\_  
ABA # \_\_\_\_\_  
A/C # \_\_\_\_\_

With a copy to:

Conoco Phillips  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**LVU:**

Correspondence, notices, and payments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Payments to LVU:  
\_\_\_\_\_  
\_\_\_\_\_  
ABA # \_\_\_\_\_  
A/C # \_\_\_\_\_

Attention: \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Payments to LVU:

\_\_\_\_\_

ABA # \_\_\_\_\_

A/C # \_\_\_\_\_

Attention: \_\_\_\_\_

**Notice Parties and Notice Addresses for Notice of LVU Plant Sale under Part 13.2(a) of the**

**Local Services Agreement**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Exhibit “C”**

**To the Local Services Agreement – Service Option 4**

**Form of Confidentiality Agreement**

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”) is entered into by and between the undersigned (the “Recipient”) and [ \_\_\_\_\_ ] (“LVU”) pursuant to Part 13.2 of the Local Services Agreement between City of Westlake, Louisiana (the “City”) and LVU (the “Local Services Agreement”). The Local Services Agreement incorporates by reference for all purposes the terms and conditions of Ordinance No. \_\_ (the “Ordinance”) of Chapter 5 of Part 7 of the Code of Ordinances of the City. In connection with LVU providing a Notice of LVU Plant Sale (as defined in the Local Services Agreement) (the “Notice of LVU Plant Sale”) to Recipient, certain confidential terms and information contained in the Notice of LVU Plant Sale will be disclosed to Recipient. As a condition to LVU's providing to Recipient the Notice of LVU Plant Sale and furnishing such terms and information, Recipient agrees to comply with the terms and conditions set forth below:

1. Confidential Information. All terms and information contained in the Notice of LVU Plant Sale provided to Recipient or its affiliates or their respective representatives, counsel, accountants, directors, officers, employees or agents (each, a “Recipient Representative” and collectively, the “Recipient Representatives”) shall at all times be kept strictly confidential and Recipient or any Recipient Representative shall not be disclose directly or indirectly (without the prior written consent of LVU) the terms of the Notice of LVU Plant Sale to a third party; provided, however, that disclosure of such Notice of LVU Plant Sale (i) may be made in order to comply with any applicable law, order, regulation, or exchange rule, rule or request of any judicial, administrative or legislative body or committee or any self-regulatory body and (ii) may be made to the City and American Public Energy Agency (“APEA”) no earlier than twenty (20) Days (as defined in the Ordinance) prior to the LVU Plant Sale Date (as defined in the Ordinance). Recipient shall notify LVU of any proceeding of which it is aware which may result in disclosure of the terms of the Notice of LVU Plant Sale. Recipient will be responsible for any breach of this Agreement by its affiliates and any of their respective affiliates’ directors, officers or employees.

In the event that disclosure is required by a governmental body or applicable law, Recipient may disclose the material terms of the Notice of LVU Plant Sale to the extent so required, but shall promptly notify LVU, prior to disclosure if permissible, reasonably practical and other than if such disclosure is to a bank examiner, and shall cooperate (consistent with Recipient’s legal obligations at LVU’s expense) with LVU efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of LVU.

Nothing under the provisions of this Agreement shall prevent Recipient from (i) disclosing to City and APEA, or any of their respective representatives, counsel, accountants,

directors, officers employees or agents, that City and APEA may have excess Gas (as defined in the Ordinance) to remarket on certain dates (including the amount of such excess Gas which may be remarketed) with respect to any Gas relating to the Notice of LVU Plant Sale and (ii) beginning efforts to remarket such excess Gas with respect to any Gas relating to the Notice of LVU Plant Sale.

2. Remedies. The parties to this Agreement shall be entitled to seek all remedies available at law or in equity to enforce, or seek relief in connection with the obligations under this Agreement.

3. Term. This Agreement will commence on \_\_\_\_\_ and will continue for a period of twenty-four (24) months (“Initial Term”). After the Initial Term, this Agreement will automatically renew for subsequent twelve (12) month periods (each a “Renewal Term”) unless either Party provides the other Party with not less than sixty (60) days written notice of its intention to terminate before the end of the Initial Term or then-current Renewal Term.

4. The obligation set forth in paragraph 1 hereof shall not apply to information which (i) is or becomes part of the public domain other than as a result of breach of this Agreement by Recipient or Recipient Representatives, (ii) was known or acquired by Recipient or Recipient Representatives prior to receipt from LVU, (iii) is subsequently obtained by Recipient or Recipient Representatives from a third party, not known by Recipient or Recipient Representatives to have an obligation to LVU to maintain the confidentiality of the information, (iv) is developed independently by or for Recipient or Recipient Representatives, without reference to information contained in the Notice of LVU Plant Sale or (v) is generally known by persons in the energy, banking or securities industries.

5. Miscellaneous. It is further understood and agreed that no failure or delay by LVU in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right power or privilege hereunder. This Agreement is for the benefit of LVU and shall be governed by the laws of the State of New York without giving effect to choice of law doctrines. The parties hereto waive all rights to a trial by jury. Each of the parties hereto consents to the exclusive jurisdiction of, and venue in, any federal court of competent jurisdiction located in New York.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of this the \_\_\_ day of [\_\_\_\_\_], 20\_\_.

— LVU —

— Recipient—

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By:

By:

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Name:

Name:

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Title:

Title:

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**Exhibit “D”**

**To the Ordinance**

**Form of Guarantee**

## FORM OF LVU GUARANTEE

### GUARANTEE OF [NAME OF GUARANTOR]

**FOR VALUE RECEIVED**, receipt of which is hereby acknowledged, [NAME OF GUARANTOR], a corporation duly organized and existing under the laws of the State of \_\_\_\_\_ (“Guarantor”), hereby unconditionally guarantees to the **CITY OF WESTLAKE, LOUISIANA** (the “City”) and its assigns, the due and punctual payment of any and all amounts payable by [LVU], a corporation organized under the laws of the State of \_\_\_\_\_ (“LVU”), its successors and permitted assigns, under the terms of the **Local Services Agreement** between the City and LVU, dated as of \_\_\_\_\_, which incorporates Ordinance No. \_\_\_\_\_ of the City (the “Agreement”), including, in case of default, interest on any amount due, when and as the same shall become due and payable, whether on the scheduled payment dates, at maturity, upon declaration of termination, demands for Adequate Assurance of Performance (as defined in the Agreement) or otherwise, according to the terms thereof. In case of the failure of LVU punctually to make any such payment, Guarantor hereby agrees to make such payment, or cause such payment to be made, promptly upon demand made by the City to Guarantor; provided, however that delay by the City in giving such demand shall in no event affect Guarantor’s obligations under this Guarantee. This Guarantee shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed hereunder, in whole or in part, is rescinded or must otherwise be returned by the City or its assigns upon the insolvency, bankruptcy or reorganization of LVU or otherwise, all as though such payment had not been made.

Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Agreement; the absence of any action to enforce the same; any waiver or consent by the City concerning any provisions thereof; the rendering of any judgment against LVU or any action to enforce the same; or any other circumstances that might otherwise constitute a legal or equitable discharge of a guarantor or a defense of a guarantor. Guarantor covenants that this guarantee will not be discharged except by complete payment of the amounts payable under the Agreement. This Guarantee shall continue to be effective if LVU merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist.

Guarantor hereby waives diligence; presentment; protest; notice of protest, acceleration, and dishonor; filing of claims with a court in the event of insolvency or bankruptcy of LVU; all demands whatsoever, except as noted in the first paragraph hereof; and any right to require a proceeding first against LVU.

Guarantor hereby certifies and warrants that this Guarantee constitutes the valid obligation of Guarantor and complies with all applicable laws. This Guarantee guarantees only payment obligations of LVU and does not guarantee the performance of any other obligations of, including, but not limited to, physical delivery or, to the extent applicable, reporting obligations of LVU. This Guarantee constitutes a guarantee of payment and not of collection.

This Guarantee shall be governed by, and construed in accordance with, the laws of [the State of New York or the State of incorporation of Guarantor].

This Guarantee shall continue in full force and effect, and shall be irrevocable, with respect to any payment obligation of LVU under the Agreement entered into prior to the effectiveness of such notice of termination.

This Guarantee becomes effective concurrent with the effectiveness of the Agreement, according to its terms.

The Guarantor hereby grants to City, and City's designee, a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance Deposit Amounts (as defined in the Agreement) transferred by Guarantor to City under the provisions of the Agreement. Upon the return by City (or City's designee) to the Guarantor of any Adequate Assurance Deposit Amount, the security interest and lien granted hereunder on that Adequate Assurance Deposit Amount shall be released automatically and, to the extent possible, without any further action by either party.

Guarantor recognizes and agrees that City's rights to payment under the Contract, and the Adequate Assurance Deposit Amount provided by or on behalf of LVU under the Contract, and City's interest therein, may be assigned by City in connection with securing a supply of Gas for the Gas System. Guarantor consents to such assignment and agrees, upon notice of such assignment, to LVU paying amounts due under the Contract directly to City's assignee and that such assignee shall have the right to collect and apply the Adequate Assurance Deposit Amount provided by or on behalf of LVU to amounts due and unpaid under the Contract. Guarantor agrees to take all actions and to execute all instruments requested by City's assignee, to evidence and enforce City's assignee's rights to payments under the Contracts and to collect and apply such Adequate Assurance Deposit Amount.

IN WITNESS WHEREOF, Guarantor has caused this Guarantee to be executed in its corporate name by its duly authorized representative.

**[NAME OF GUARANTOR]**

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

Name: \_\_\_\_\_

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

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

**SCHEDULE 1**

**To the Ordinance**

**Adequate Assurance Threshold Amount(s)**

1. With respect to calculating Adequate Assurance of Performance, below are the Adequate Assurance Threshold Amount(s):

<b>Standard &amp; Poor's Rating Services</b>	<b>Moody's Investor Services, Inc.</b>	<b>Adequate Assurance Threshold Amount</b>
AA- or above	Aa3 or above	\$25 Million
A- to A+	A3 to A1	\$20 Million
BBB+	Baa1	\$15 Million
BBB	Baa2	\$10 Million
BBB-	Baa3	\$5 Million

In determining the Adequate Assurance Threshold Amount, the Credit Rating to be used shall be the greater of the Credit Rating of LVU or LVU's Guarantor. In the event of a split rating the lower shall prevail.

2. Notwithstanding the provisions of paragraph 1 immediately above, the Adequate Assurance Threshold Amount for an LVU included under part (ii) or part (iii) of the definition of Adequate Assurance of Performance shall be \$0.00.

## **SCHEDULE 2**

### **To the Ordinance**

#### Monthly Rates

The following rates and charges shall be the Monthly Rates under Section 7-501 of Part 7 of the Code of Ordinances of the City of Westlake (the “Ordinance”). Capitalized terms used in this Schedule 2, and not otherwise defined herein, shall have the meanings assigned to them in the Ordinance.

The Monthly Rates for Gas service are set forth below and shall include charges for Gas delivered each Month based on the Ordinance Price. Capacity Charges incurred during each Month, and any Additional Charges incurred in connection with each Contract shall be added to the Monthly Rate for Gas service under such Contract. Billing and payment of Monthly Rates shall be in accordance with Section 9.1 and Section 9.2 of the Ordinance. The rates and charges for gas service to all City customers (including Monthly Rates charged to LVUs hereunder) are reasonably calculated (i) to meet the costs associated by providing Gas to such customers and (ii) to provide revenue to the Gas utility of City necessary to meet the ongoing budgetary requirements of the Gas utility of City. The rates and charges hereunder are subject to change in accordance with the provisions of this Schedule 2.

**Ordinance Price:** For Gas delivered during each Month, the Ordinance Price shall be based on the category of Gas service provided by the City Gas utility, which categories shall be Service Option 1, Service Option 2, Service Option 3 and Service Option 4. The Service Option for each Contract shall be included under Part 4 of the Local Services Agreement for such Contract. The Ordinance Price for each category of Service Option for Gas delivered in a Month shall be the Index Price for such Month (or may be the applicable Spot Price for Service Option 4) less the LVU Discount applicable to that Service Option. In the event of a Market Disruption

Event, the Ordinance Price shall be determined using the replacement price for the Index Price as provided for under Section 15 of the Ordinance.

**Adjustments to LVU Discount and Ordinance Price:** The rates and charges for Gas service to all City customers (including Monthly Rates charged to LVUs hereunder) are reasonably calculated (i) to meet the costs associated with providing Gas service to such users and (ii) to provide the revenue to the Gas utility of City necessary to meet the ongoing budgetary requirements of the Gas utility of City. By further action of the Mayor and City Council of City, City, from time to time, may change its rates and charges for Gas service so that rates and charges for Gas service to all City customers (including Monthly Rates to LVUs hereunder) continue to be reasonably calculated (i) to meet the costs associated with providing Gas service to such users and (ii) to provide the revenue to the Gas utility of City necessary to meet ongoing budgetary requirements of the Gas utility of City. Consistent with the provisions set forth in the immediately preceding sentence, City may from time to time adopt procedures for adjusting rates and charges (including adjustments to the LVU Discount which shall result in an adjustment to the Ordinance Price) which may include provisions for the calculation of the weighted average cost of Gas for all retail customers served by the Gas utility of City. In the event that City adjusts the LVU Discount and Ordinance Price pursuant to the provisions of this paragraph, City shall provide each LVU which then has a Contract(s) with City Notice of any such adjustment to LVU Discount and to the Ordinance Price which results in an adjustment to the Monthly Rate charged to the LVU under its respective Contract(s) at least sixty (60) days prior to the effective date thereof. Such adjusted LVU Discount and Ordinance Price shall be binding against LVU and City on the effective date thereof as set forth in the Notice provided by City without any further action required to be taken by City or LVU. The Capacity Charges and Additional Charges shall not be subject to adjustment or change under provisions of this paragraph but shall

be determined over the term of the respective Contract in accordance with the provisions set forth below.

**Capacity Charges:** Capacity Charges shall be determined and billed Monthly for each LVU which has a Contract with City and shall include the following:

1. All applicable transportation fees and all other applicable fees and expenses to provide for the delivery of Gas to such LVU under the terms and conditions of the applicable Contract(s) including, but not limited to, any Imbalance Charges owed by LVU pursuant to Section 7.3 of the Ordinance, any demand fees, commodity fees, fees in connection with any exchange/balancing agreement, fuel charges and associated fees to transport or otherwise provide for the delivery of Gas supply to the Delivery Point under the applicable Contract(s), and any storage, transportation or other related costs incurred by the City in connection with the storage of Gas and the transportation and delivery of Gas under Part 13.13 of the Local Services Agreement with such LVU; and
2. All applicable transportation fees or charges paid for the right to transport the originally agreed Contract Quantity per day to the Delivery Point under the applicable Contract(s) regardless of any reduction in such Contract Quantity under Section 4.2 of the Ordinance and any related imbalance charges or other transportation charges incurred in connection therewith, any termination of LVU's obligations under Sections 4.3, 4.4, 11.3 or 12.7 of the Ordinance or Part 13.2 of a Local Services Agreement, any event of Force Majeure under Section 12 of the Ordinance, or any withholding, suspension or other reduction in Gas deliveries under Section 11.2 or Section 11.6 of the Ordinance or Part 9 of the Local Services Agreement, and shall include any amounts necessary to reimburse City for such fees and charges.

**Additional Charges:** Additional Charges shall be determined and billed Monthly for each LVU which has a Contract with City and shall include all taxes, fees, levies, penalties, licenses or charges imposed by any governmental authority on or with respect to the Gas which are in any way related to providing Gas service to the applicable LVU under the applicable Contract(s). Provided, however, in the event that LVU provides to City an exemption certificate or direct pay permit, and such other documentation as reasonably required by City with respect to any LVU sales/use tax exemption, then LVU shall not be required to pay to City any amounts for sales/use taxes. However, if a government agency determines that such exemption certificate or direct pay permit is invalid or for any other reason determines that LVU should have paid sales/use taxes on transactions provided for in the Ordinance, LVU shall remit the amount of such sales/use taxes due and any related penalties and interest to City or government agency, whichever is appropriate in the circumstances. LVU shall also remit sales/use taxes on future transactions provided for in the Ordinance that are deemed taxable by the government agency.

In addition to the rates and charges set forth above, LVU shall pay any other amounts owed by LVU under the Contract in accordance with the terms and conditions of the Contract including, but not limited to, any amounts necessary to provide for and fund Adequate Assurance of Performance.