

1 STATE OF GEORGIA
2 COUNTY OF DEKALB
3 CITY OF STONECREST

ORDINANCE 2017- 08-11

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6 **AN ORDINANCE TO ADOPT ARTICLE III – GAS FRANCHISES, IN CHAPTER 8 –**
7 **FRANCHISES, GRANTING TO ATLANTA GAS LIGHT COMPANY, A GEORGIA**
8 **CORPORATION, HEREINAFTER DESIGNATED AS “COMPANY”, ITS**
9 **SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO USE AND**
10 **OCCUPY THE STREETS, AVENUES, ROADS, PUBLIC HIGHWAYS, ALLEYS,**
11 **LANES, WAYS, PARKS, AND OTHER PUBLIC PLACES OF THE CITY OF**
12 **STONECREST, GEORGIA, FOR CONSTRUCTING, MAINTAINING, RENEWING,**
13 **REPAIRING, AND OPERATING A GAS WORKS AND GAS DISTRIBUTION**
14 **SYSTEM, AND OTHER NECESSARY MEANS FOR MANUFACTURING,**
15 **TRANSMITTING, DISTRIBUTING AND SELLING OF MANUFACTURED, NATURAL**
16 **OR COMMINGLED GAS WITHIN AND THROUGH THE CITY OF STONECREST,**
17 **GEORGIA; AND FIXING THE TERMS AND CONDITIONS OF SUCH GRANT; TO**
18 **PROVIDE PROVISIONS GOVERNING THE FRANCHISE FEE CALCULATION; TO**
19 **PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES**
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21 WHEREAS, there is no franchise in force and effect granted by the City of Stonecrest,
22 Georgia (the “City”) relating to the installation of gas service, and the City is under no contract
23 or obligation to any other person, firm or corporation in anywise relating to the installation of gas
24 service in the City of Stonecrest, Georgia; now, therefore:

25 BE IT ORDAINED by the Mayor and Council of the City of Stonecrest, Georgia, and it
26 is hereby ordained by authority of same, Division I – *Atlanta Gas Light Company* of Article III –
27 *Gas Franchises* in Chapter 8 – *Franchises* is hereby adopted as follows:

28
29 **“ARTICLE III. – GAS FRANCHISES**

30 DIVISION I. – Atlanta Gas Light Company.

31 Sec. 8-3-1. – Definitions.

32 a. *Franchise Fee Factor (“FFF”)* means \$14.62, as periodically adjusted pursuant to

33 Section 8-3-4.

- b. *Dedicated Design Day Capacity or "DDDC"* means the sum of the individual capacity in Dekatherms attributable to all Firm Customers, as defined below, located within the city limits of the City, which as of the date hereof is 20,445.754.
- c. *Firm Customers* means all residential and business customers who purchase gas service that ordinarily is not subject to interruption or curtailment.
- d. *Fiscal Year* means the 12 month period ending September 30th of each year.
- e. *GPSC* means the Georgia Public Service Commission or such successor regulatory body, having general regulatory authority over the Company.
- f. *Franchise Fee Factor Adjustment ("FFFA")* means the percent change in the cost of service as explicitly or implicitly determined by the GPSC as a result of a rate case.

Sec. 8-3-2. – Grant of franchise.

In exchange for making the franchise fee payments as provided in this Agreement, the City grants to the Company, its successors and assigns a non-exclusive right to lay, construct, extend, maintain, renew, replace and repair gas pipes, valves, manholes, service boxes, posts, lamps, structures, appliances and all appurtenances and appendages under, along, through and across any streets, avenues, roads, public highways, alleys, lanes, ways, parks, rights-of-way and other public places in the City (hereinafter collectively referred to as the "City's Property") and to use and occupy the City's Property for the purpose of therein laying, constructing, extending, maintaining, renewing, replacing and repairing mains, pipes, valves, manholes, service boxes, posts, lamps, structures, appliances and all appurtenances and appendages thereto, used and useful for the manufacture, transmission, distribution and sale of gas within and through the present or future territorial limits of the City, such right, when exercised as herein provided, to

commence as of July 1, 2017 and to continue for a term of thirty (30) years from the date of the effective date of this ordinance.

Sec. 8-3-3. – Rates.

Company shall be entitled to charge for gas distribution services furnished by it such rates as are prescribed by the GPSC or other lawful regulatory bodies of the State of Georgia.

Sec. 8-3-4. – Franchise fee.

The total dollar amount of franchise fees paid by the Company to the City shall be calculated as follows:

The following formula quantifies this payment: $FF = FFF \times DDDC \times FFFA$

Where,

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

FFF = the Franchise Fee Factor

DDDC = the Dedicated Design Day Capacity in the City as of the last day of the previous Fiscal Year

The Company shall adjust the Franchise Fee Factor by Franchise Fee Factor Adjustment only when the Company changes its rates as a result of a rate case with the GPSC.

As the holder of the franchise privilege hereunder, the Company is responsible for the payment of all franchise fees payable hereunder, and shall file such reports and returns as required by this franchise ordinance. Company shall make the franchise fee payments to City on the same schedule and with such supporting documentation as Company provides to other municipalities in Georgia. As of the effective date of this ordinance, franchise payments are made on a quarterly basis.

86 The franchise fee payments required hereunder shall be in lieu of any franchise fee,
87 license fee, permit fee, administrative fee, occupation tax or other payment for the use of the
88 rights-of-way by the Company for the provision of gas service, but shall not prohibit imposition
89 of a license fee or an occupation tax on gas marketers. The Company shall comply with the
90 City's utility right-of-way permitting process, as enacted, so long as such process does not
91 conflict with O.C.G.A. §32-4-92 and is not more restrictive than rules and regulations as
92 promulgated by the Georgia Department of Transportation. The City will not charge the
93 Company any other franchise fee, occupation tax, or regulatory fee as prohibited by O.C.G.A.
94 §48-13-16, or any other fee prohibited by state law. Company reserves the right to reduce the
95 annual franchise fee payable to the City for any and all fees, taxes or charges assessed by the
96 City in contravention of this Section in connection with the granting of permits to perform
97 Company's work on City's Property during such Fiscal Year.

98 Sec. 8-3-5. – Powers retained by city.

99 All rights herein granted and authorized by the City shall be subject to and governed only
100 by this ordinance; provided, however, that the City expressly reserves unto itself all of its police
101 power to adopt general ordinances necessary to protect the safety and welfare of the general
102 public in relation to the rights hereby granted not inconsistent with the provisions of this
103 ordinance.

104 Sec. 8-3-6. – Excavation.

105 Company, upon making an opening in the City's Property, for the purpose of laying,
106 repairing or maintaining gas facilities, shall use due care and caution to prevent injury to persons,
107 shall replace and restore the City's Property to its former condition as nearly as practicable

within a reasonable time, and shall not unnecessarily obstruct or impede traffic upon the streets, avenues, roads, public highways, alleys, lanes, ways, parks and other places of the City.

Sec. 8-3-7. – Liability of grantee.

Company shall save and keep harmless the City from any and all liability by reason of damage or injury to any person or persons whomsoever, on account of negligence or intentional act or omission of the Company in the installation, maintenance and repair of its mains and pipe lines located in the City's Property, provided the Company shall have been notified in writing of any claim against the City on account thereof and shall have been given ample opportunity to defend the same.

Sec. 8-3-8. – When effective.

This ordinance shall become effective on the date of its adoption.

Sec. 8-3-9. – Insurance requirements.

Throughout the term of this Franchise Agreement, the Company shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and shall, upon request, provide the City certificates of insurance designating the City as additional insured and demonstrating that the Company has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death to any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days' prior written notice to the City. The Company shall provide workers' compensation coverage in accordance with applicable law. The Company shall indemnify and hold harmless the City from any workers'

131 compensation claims to which the Company may become subject during the term of this
132 Franchise Agreement. Alternatively, and in lieu of the foregoing insurance requirements, the
133 Company may elect to self-insure or insure through its captive insurance carrier, provided that
134 Company or its parent company have sufficient net worth to do so, as determined by customary
135 practice in the natural gas utility industry.

136 Sec. 8-3-10. - Renewal, term.

137 Unless 90 days written notice is given by one party to the other prior to the expiration of
138 this agreement, this franchise shall be considered as renewed and binding in all its provisions for
139 ten (10) years after such expiration, and this franchise shall so continue in operation and effect
140 for a further and second term of ten (10) years unless such notice be given by either party prior to
141 the expiration of the first such renewed term.

142 Sec. 8-3-11. – Granting of additional franchise.

143 If the City grants a franchise to any other person, firm or corporation for the distribution
144 and selling of gas, or if the City elects to establish a municipal system for the distribution and
145 selling of gas, any proposed facilities within the certificated area of Company must receive prior
146 approval by the GPSC. City shall notify or shall require any other person, firm or corporation
147 franchised for the distribution and selling of gas to notify the GPSC and Company of their
148 intent to install facilities parallel to and within the rights-of-way with Company facilities at least
149 thirty (30) days prior to installation, and such installation shall not be initiated without the
150 written consent of the GPSC provided, however, that the GPSC shall act on such notice within a
151 reasonable amount of time and such consent shall not be unreasonably withheld.

152 Sec. 8-3-12. – Severability.

In the event that any provision of this ordinance should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, the remaining provisions of this ordinance shall survive and be applied, and together with the invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

Sec. 8-3-13. – Notices.

Any and all notices required to be given under this agreement shall be in writing and shall be delivered by U.S. Mail, return receipt requested, commercial overnight courier or hand delivery and shall be deemed delivered when received or rejected for receipt by the recipient. The parties' addresses are set forth below and can be changed upon thirty (30) days' notice to the other:

City of Stonecrest, Georgia

3120 Stonecrest Blvd.

Stonecrest, GA 30038

Attn: City Manager

Atlanta Gas Light Company

P.O. Box 4569

Atlanta, GA 30302-4569

Attn: Rates and Regulatory

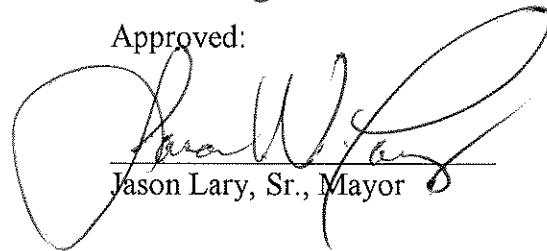
Sec. 8-3-14. – General repealer.

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

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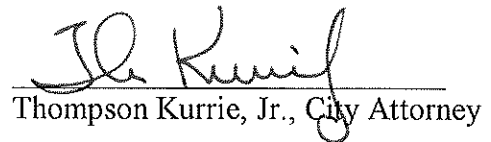
SO ORDAINED AND EFFECTIVE this the 26th day of August, 2017.

Approved:



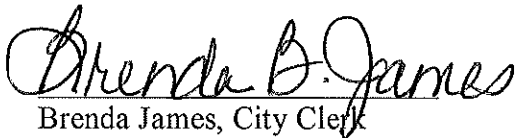
Jason Lary, Sr., Mayor

As to form:



Thompson Kurrie, Jr., City Attorney

Attest:



Brenda James, City Clerk