

**ORDINANCE NO. 2022-09**

**AN ORDINANCE GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF 30 YEARS TO SELL, DISTRIBUTE, TRANSPORT, AND TRANSMIT NATURAL, MANUFACTURED, OR MIXED GAS IN THE CITY OF WESTLAKE, FLORIDA; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING SEVERABILITY; PROVIDING AN EFFECTIVE DATE UPON FINAL PASSAGE.**

**WHEREAS**, Florida Public Utilities Company (the “Company”) has requested permission from the City of Westlake (“City”) to erect, construct, operate, and maintain a gas system; to import, transport, sell and distribute Gas (as defined herein) within the City; and for these purposes to establish the used or useful facilities and equipment and to lay and maintain gas mains, service pipes, and any other appurtenances, as are used or useful in the sale, transportation and distribution of Gas within the City Limits; and

**WHEREAS**, the City and the Company acknowledge that the rights-of-way and utility easements within the City are under the jurisdiction of Seminole Improvement District and the Company will obtain permits to construct, operate and occupy a portion of the rights-of-way and utility easements with its jurisdiction as provided in that certain Tri-Party Grant Agreement among the City, the Seminole Improvement District and Florida Public Utilities Related to Permitting of Facilities Per City Franchise Agreement (the “Tri-Party Agreement”), attached hereto as Exhibit “A”; and

**WHEREAS**, the rights-of-way, property, and utility easements owned by, or dedicated to, Seminole Improvement District to be used by the Company are properties acquired and maintained by the Seminole Improvement District at expense to the property owners within the City Limits, and the right to use Seminole Improvement District’s rights-of-way, property, or utility easements is a property right without which the Company would be required to invest capital and incur property acquisition costs; and

**WHEREAS**, the City desires to ensure that the rights-of-way, property, and utility easements used by the Company are promptly restored to a safe and secure condition to protect the health, safety, and welfare of the citizens and residents of the City; and

**WHEREAS**, state statutes and City ordinances authorize the City to grant a franchise for the purposes set forth herein; and

**WHEREAS**, the City finds that it is in the public interest of its citizens to enter into this Franchise Agreement as defined herein, with the Company.

**NOW, THEREFORE, BE IT ENACTED BY CITY COUNCIL OF THE CITY OF WESTLAKE, FLORIDA:**

1. **Definitions.** For the purposes of this Franchise Agreement as defined herein, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.
  - A. “Business Day” means a day other than a Saturday or Sunday or a day which is observed as a Federal holiday.
  - B. “City” shall mean the City of Westlake, Florida, a municipal corporation organized under the laws of the State of Florida.
  - C. “City Clerk” means the Person appointed, hired or otherwise designated or charged by the City to accept, organize, maintain and/or keep records of the City.
  - D. “City Engineer” means the Person appointed, hired or otherwise designated or charged by the City to perform professional and technical engineering duties for the City which may include, by example, performing supervisory and administrative duties in planning and coordinating the operation of engineering services on behalf of the City.
  - E. “City Limits” shall mean the incorporated limits of the City, including any such territory as may be hereafter added or annexed to, or consolidated with, the City.
  - F. “City Manager” means the Person appointed, hired or otherwise designated or charged by the City to implement municipal policy and/or otherwise serve as the administrator for the City in connection with day-to-day functions, or, in the absence of such individual, the local governing body.
  - G. “Commission” shall mean the Florida Public Service Commission.
  - H. “Company” shall mean Florida Public Utilities Company, a Florida corporation, its successors, and assigns.
  - I. “Customer” shall mean any Person supplied with Gas service by the Company within the City Limits.
  - J. “Distribution System” shall mean any and all transmission pipe lines, main pipe lines, and service pipe lines, together with all necessary and desirable appurtenances, including, but not limited to, all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures, as are used or useful in the sale, importation, distribution, transportation, and transmission of Gas within the City Limits.

- K. “Effective Date” shall mean the date this Franchise Agreement becomes effective as described in Section 3 below.
- L. “Expenses” means court costs, including taxed and untaxed costs, and reasonable attorneys’ fees, whether suit be brought or not, and includes, without limitation, expenses incurred in any appellate or bankruptcy proceeding (including reasonable legal and investigative expenses).
- M. “Franchise” or “Franchise Agreement” shall mean this ordinance as adopted by the City and accepted by the Company.
- N. “Franchise Fee” shall mean an amount equal to six percent (6%) of the Company’s Gross Revenues less Permit Fees paid by the Company to the City or SID.
- O. “Gas” shall mean natural gas and/or manufactured gas and/or a mixture of gases, including renewable natural gas and hydrogen gas, that are distributed in pipes and measured by meter on the Customer’s premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as “bottled gas”).
- P. “Gross Revenues” shall mean all revenues received by the Company from any Customer, excluding deposits, prepayments, turn on/off charges, meter installation charges, and any other revenue not generated directly and solely from the sale, distribution, transportation, and transmission of Gas. Gross Revenues shall also exclude revenues from those Customers designated by Company as “interruptible,” “industrial,” and “other”, until and unless a franchise or utility tax is imposed on such Customers by City, either independently or collectively, of all other competing utility services in the City Limits, including, without limitation, the imposition of franchise or utility taxes on all grades of fuel oils or gases used for such Customers at a relatively equal basis on the Franchise Fee plus utility taxes as levied on Gas pursuant to statute and/or rule.
- Q. “Permit Fees” means fees payable by Company in connection with permit applications, reviews and inspections for development and construction of the Distribution System, including connections to homes and other improvements.
- R. “Person” shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- S. “Rights-of-way” shall mean all rights-of-way, streets, alleys, highways, waterways, bridges, sidewalks, easements and other ways or places of whatever nature, publicly held or dedicated for public use and presently opened or to be opened to public use for vehicular or pedestrian movement, to include the space at, or below the right-of-way places located within the

City Limits, provided such area is suitable for utilization for the Gas Distribution system.

- T. "Seminole Improvement District", "District," and "SID" shall mean the independent improvement district created and existing pursuant to Chapter 2000-431, Laws of Florida which geographical boundaries that are co-terminus with the City's boundaries.
- U. "SID Engineer" means the Person appointed, hired or otherwise designated or charged by SID to perform professional and technical engineering duties for SID which may include, by example, performing supervisory and administrative duties in planning and coordinating the operation of engineering services on behalf of SID.
- V. "SID Manager" means the Person appointed, hired or otherwise designated or charged by SID to implement district policy and/or otherwise serve as the administrator for the district in connection with day-to-day functions, or, in the absence of such individual, the district's governing body.
- W. "Utility Easement" means those private, non-exclusive easements held by the Seminole Improvement District over which the District holds the power to grant utility providers the ability to use its easements in the District's sole discretion.

2. **Grant of Authority.** City hereby grants to the Company the non-exclusive franchise for the provision of natural gas service within the City Limits.
3. **Term.** This Franchise Agreement shall take effect and be in force from and after the first day of the month following the final passage of this Franchise Agreement, as required by applicable law, and upon filing of the acceptance by the Company with the City Clerk (the "Effective Date"). Except as provided in Section 4 herein, the Franchise hereby granted by the City to the Company shall be thirty (30) years from the Effective Date (the "Initial Term"). Unless either party provides notice in writing in compliance with Section 19 hereof to the other party at least thirty (30) days prior to the expiration of the Initial Term, upon expiration of the Initial Term, this Franchise Agreement shall continue on the same terms then in effect at the expiration of the Initial Term on a month-to-month basis.
4. **Termination by the City.** In the event that the Company commits a material breach of any of the material covenants, terms, and conditions of this Franchise Agreement, the City may terminate this Franchise Agreement; if the City shall have served the Company with a written notice pursuant to Section 19 herein, setting forth in reasonable detail all matters pertinent to such material violation or default, and the Company shall have failed within sixty (60) days after service of such notice or such longer period of time as may be reasonably necessary to present a plan to the City to effect such cure pursuant to such plan within a reasonable period of time after the City's approval of



the plan. Approval of the plan by the City shall not be unreasonably withheld, conditioned or delayed.

5. **Non-exclusive Franchise.** The City reserves the right to grant a similar Franchise to any other Person at any time during the period of this Franchise, so long as such grant shall not interfere with the Company's rights granted hereunder. This Franchise shall grant the privilege of carrying on the business in all of the City or in part of the City, and, except as provided in Section 6 below, with no promise that there will be no competition. In the event the City grants a franchise to the competitor of the Company, the grant shall not interfere with the Company's rights granted hereunder except as to matters that occur as a result of competition.
6. **Competition.** As further consideration of this Franchise Agreement, the City hereby agrees that during the term of this Franchise it shall not engage in the business of selling, importing, distributing, transporting, or transmitting Gas or otherwise compete with the Company within the City Limits.
7. **Assignment.** This Franchise hereby granted shall not be sold, leased, assigned or otherwise alienated or disposed of (each a "Transfer"; provided, however, in no event shall any transfer by operation of law be considered a "Transfer" under this Franchise, including, without limitation, by way of the merger of the Company with or into any other Person) except with the prior written consent of the City Manager, which shall not be unreasonably withheld or conditioned or unduly delayed (the "Consent"). In the event that the City neither grants nor denies the Consent forty-five (45) days after the Company's written request for Consent delivered pursuant to Section 19 below, then the Consent shall be deemed to have been granted by the City to the Company. No Transfer shall be effective until the Person to whom the Franchise is Transferred files a duly executed instrument reciting the fact of the Transfer, accepting the terms of the Franchise, and agreeing to perform all the conditions thereof in the office of the City Clerk whereupon the transferor shall be released of any further obligations under this Franchise Agreement without the necessity of any further action by any Person. Notwithstanding the foregoing, the Company may in its sole and absolute discretion, without consent, Transfer the Franchise in connection with: (i) the lease or sale of all or substantially all of the Distribution System, whether to a subsidiary or affiliate or unrelated Person; or (ii) the pledge or mortgage of this Franchise in connection with the physical property owned and used by the Company in the construction, maintenance, and operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.
8. **Compliance with Applicable Laws.** To the extent consistent with Florida law, the Company shall be subject to all lawful exercises of the City's police power and shall abide by all such reasonable rules, regulations, and ordinances which the City has passed or might pass in the future, which shall not conflict or be inconsistent with the Promulgated Safety Rules and Regulations of the Commission and the Federal and/or Florida Departments of Transportation. Notwithstanding the foregoing, the City shall not pass any ordinance, regulation, rule or take any other similar action or exercise its

police power or take any other action that results in a material change in or materially affects the rights or obligations of the Company under this Franchise Agreement.

- A. In the event the Company or any aspect of the Gas trade, as contemplated hereunder, is deregulated, the Company shall maintain and operate its Distribution System and render efficient service in accordance with the rules and regulations as are, or may be, promulgated by the City.
- B. In the event the City has not promulgated rules and regulations at the time of deregulation, then, the Company shall maintain and operate its Distribution System in compliance with the rules and regulations by which they were governed prior to deregulation until such time as the City has had an opportunity to promulgate rules and regulations or pass an ordinance governing those items regulated by the Commission, governing service standards, safety standards, and quality controls.
- C. In the event of deregulation, the City shall not regulate rates for the sale, distribution, transportation, or transmission of Gas.

9. **Distribution System.** The Distribution System shall be erected, placed, laid, and maintained in a manner consistent with the following:

- A. The Parties agree that SID shall have the authority to permit and supervise the construction, location, restoration, relocation and installation of the Distribution System, as determined by the Tri-Party Agreement.
- B. The Company shall at all times maintain reasonable egress from and ingress to abutting properties where any construction is occurring.
- C. While allowing the functioning of the Distribution System, the Distribution System shall be located in the Seminole Improvement District's Rights-of-way, property, or Utility Easements, by permit, so as not to unreasonably obstruct, disturb or interfere, on a permanent basis, with any traffic, water flow, water pipes, sewers, drains, catch basins, pavement, sidewalk, driveways, or any other structures installed or any other function of said structures of the delivery of municipal services by the Seminole Improvement District or the City.
- D. In the event drain, sewer, catch basins, water pipes, pavements or other like improvements or the function of said improvements are materially damaged solely by the Company by erecting, placing, laying or maintaining the Distribution System, the Company shall repair the damage at its sole cost and expense to substantially the condition that existed prior to said damage. In this regard, SID shall give written notice to the Company pursuant to Section 19 herein, of deficiencies that need to be cured by the Company. Said notice shall set forth a reasonable period of time, under the circumstances, in which the Company shall affect such repair.

- E. Applications for construction permits for all portions of the Distribution System shall be given to the SID Engineer or his designee accompanied by plan drawings showing the proposed work. District shall be responsible for the permit review, approval, and inspections during construction. As soon as practical, but no more than twenty (20) Business Days after completion of the work, the Company shall submit as-built drawings to the SID Engineer or his designee, which shall complete the notice and approval requirement for said work.
- F. In the event at any time during the period of this Franchise the Seminole Improvement District or City shall lawfully elect to alter, or change the grade of the Rights-of-way, property, or Utility Easement area the Company, upon reasonable notice from the SID or the City, shall remove, relay, and relocate any portion of the Distribution System as is necessary at the Company's own cost and expense.

**10. Right to Inspect.** During the term of this Franchise Agreement, the City or SID, through its designated agent, shall have the authority to inspect the Distribution System at a reasonable time and upon reasonable prior notice to insure compliance with governing law and the Commission's regulations at the City or SID's own cost and expense. Notwithstanding the above, the Company shall not be required to disclose information that contains trade secrets or is proprietary or confidential in nature, nor disclose books and records of any affiliate.

**11. Franchise Fee.** The Company shall pay the Franchise Fee to the City quarterly on January 1, April 1, July 1, and October 1 of each year during the term of this Franchise unless otherwise agreed. In the event that the Franchise Fee is more than twenty (20) days delinquent, the delinquent amount shall accrue interest at the highest rate allowable by law. In the event the Company makes any Franchise Fee payment in excess of the Franchise Fee due and owing to the City under this Franchise Agreement or if the City is otherwise indebted to the Company, the Company shall have the right to offset such overpayment and/or indebtedness against future payments of the Franchise Fee.

**12. Other Fees and Taxes.** Except as otherwise provided for herein, the Company shall pay to the City all legally authorized fees, taxes, assessments, and costs levied, imposed or validly adopted by the City during the term of this Franchise Agreement, which shall include, but are not limited to public service taxes, ad valorem taxes (intangible, personal, real), occupational taxes, and licensing fees, other than Permit Fees, which shall be payable to SID in accordance with the Tri-Party Agreement.

**13. Franchise Parity.** If, during the term of this Franchise Agreement, the City, by franchise agreement or ordinance, allows other Persons who sell, import, distribute, transport, and transmit Gas (the "Alternate Gas Providers") the right, privilege or franchise to erect, construct, operate, and maintain a Distribution System for the purpose of selling, importing, distributing, transporting, and transmitting Gas to Persons in the City Limits or receiving such Gas from Persons other than the Company

within the City Limits, and imposes a franchise compensation obligation or equivalent on such Alternate Gas Provider for any Person that is less than the Franchise Fee imposed with respect to the same Customer under this Franchise Agreement, the Franchise Fee under this Franchise Agreement shall be automatically reduced so that the Franchise Fee is no greater than the franchise compensation obligation or equivalent when compared on a dollars-per-term basis. In the event that the City does not impose a franchise compensation obligation or equivalent on said Alternate Gas Providers, the Company's obligation to pay the Franchise Fee under this Franchise Agreement shall terminate.

**14. Reciprocal Indemnification.**

- A. The Company shall indemnify and save the City, its servants, agents, employees, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and Expenses, which may be brought against or suffered, sustained, paid or incurred by the City, its servants, agents, employees, contractors, licensees and invitees, arising from, or otherwise caused by:
  - i. any breach by the Company of any of the provisions of this Franchise Agreement; or
  - ii. the gross negligence or willful misconduct of the Company, or any of its servants, agents, employees, licensees, contractors or invitees in carrying on its business within the City Limits.
  
- B. The City shall indemnify and save the Company, its servants, agents, directors, employees, stockholders, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and Expenses, which may be brought against or suffered, sustained, paid or incurred by the Company, its servants, agents, employees, contractors, licensees and invitees, arising from, or otherwise caused by:
  - i. any breach by the City of any of the provisions of this Franchise Agreement; or
  - ii. the gross negligence or willful misconduct of the City, or any of its servants, agents, employees, licensees, contractors or invitees, in carrying on the business of the City.
  
- C. Notwithstanding anything to the contrary herein contained, in no event shall the City or the Company be liable under this Franchise Agreement, in any way, for any reason, for any indirect, special or consequential damages (including damages for pure economic loss, loss of profits, loss of earnings or loss of contract), howsoever caused or contributed to.

- D. Indemnification is conditioned upon the indemnified party providing notice to the indemnifying pursuant to Section 19 herein, within thirty (30) days after the indemnified party knew of the claim.
- E. Nothing herein is intended to act as a waiver of the City's rights, privileges, and immunities under the doctrine of sovereign immunity and/or limits of liability set forth in Section 768.28 of the Florida Statutes.
- F. The provisions of this Section 14 shall survive this Franchise Agreement for a period of one year.

**15. Records.** The Company shall maintain accounts and records in a manner consistent with Section 368.108 of the Florida Statutes and Chapter 25-7 of the Florida Administrative Code and that the Gross Revenues within the City Limits are able to be calculated. Upon a good faith request, the Company shall provide to the City any accounts and records relevant to this Franchise Agreement pursuant to a duly executed confidentiality agreement within a commercially reasonable amount of time after said request.

**16. Governing Law; Venue; JURY WAIVER.** This Franchise Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Florida, without regard to the conflict of laws principles thereof. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts in the State of Florida (state or federal), with venue in the county in which the City is located, over any dispute arising out of this Franchise Agreement and agree that all claims in respect of such dispute or proceeding shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may have to the venue of such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER CAREFUL CONSIDERATION AND AN OPPORTUNITY TO SEEK LEGAL ADVICE, WAIVE THEIR RIGHT TO HAVE A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY OF THE PROVISIONS OF OR MATTERS RELATED TO THIS FRANCHISE.

**17. Entire Agreement.** This Franchise Agreement, and the schedules and exhibits hereto, contain the entire understanding and agreement of the parties hereto relating to the subject matter of this Franchise Agreement and all prior agreements relative hereto which are not contained herein.

**18. Attorneys' Fees and Expenses.** In the event either party initiates action to enforce its rights hereunder, the substantially prevailing party shall recover from the substantially non-prevailing party its Expenses. All such Expenses shall bear interest at the highest rate allowable under the laws of the State of Florida from the date the substantially prevailing party pays such Expenses until the date the substantially non-prevailing party repays such Expenses. Expenses incurred in enforcing this Section shall be covered by this Section. For this purpose, the court is requested by the parties to award



actual costs and attorneys' fees incurred by the substantially prevailing party, it being the intention of the parties that the substantially prevailing party be completely reimbursed for all such costs and fees. The parties request that inquiry by the court as to the fees and costs shall be limited to a review of whether the fees charged and hourly rates for such fees are consistent with the fees and hourly rates routinely charged by the attorneys for the substantially prevailing party.

- 19. Notices.** Whenever any notice, demand or request is required or permitted under this Franchise, such notice, demand or request shall be in writing and shall be deemed given when (a) delivered personally to the intended party, (b) sent by facsimile transmission (with automatic electronic "answerback" confirmation of successful transmission) to that party at the facsimile number for that party set forth below, (c) sent by electronic mail submission with a written confirmation from the receiving party confirming receipt of the electronic mail submission, (d) on the fifth (5th) Business Day after being mailed by certified mail (postage prepaid and return receipt requested) to that party at the address for that party set forth below, or (e) on the day delivered by Federal Express or any similar express delivery service for delivery to that party at that address. All notices shall be addressed as follows:

If to Company: Florida Public Utilities Company  
1635 Meathe Drive  
West Palm Beach, Florida 33411  
Attention: Director, Natural Gas Operations  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to: Baker & Hostetler LLP  
200 S. Orange Avenue, Suite 2300  
Orlando, Florida 32801  
Attention: Jeffrey E. Decker  
Facsimile: (407) 841-0168  
Email: [jdecker@bakerlaw.com](mailto:jdecker@bakerlaw.com)

with a copy to: Chesapeake Utilities Corporation  
Office of the General Counsel  
500 Energy Lane, Suite 400  
Dover, DE 19901  
Attention: James F. Moriarty  
Facsimile: (302) 734-6750  
Email: [jmoriarty@chpk.com](mailto:jmoriarty@chpk.com)

If to City: City of Westlake  
4001 Seminole Pratt Whitney Road  
Westlake, FL 33470  
Attention: Kenneth G. Cassel, City Manager  
Facsimile: (561)790-5466  
Email: [kcassel@westlakegov.com](mailto:kcassel@westlakegov.com)



with a copy to:

City of Westlake  
4001 Seminole Pratt Whitney Road  
Westlake, FL 33470  
Attention: City Attorney  
Facsimile: (561)790-5466  
Email: [ddoody@gorencherof.com](mailto:ddoody@gorencherof.com)

Notices and communications delivered to persons designated to receive copies shall not be effective notice. Any party may change its facsimile number or address for notices under this Franchise at any time by giving the other Parties at least ten (10) days' prior written notice of such change delivered in conformity with this Section 19.

- 20. Force Majeure.** Any prevention, delay or stoppage of work or other obligations to be performed by either party that are due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes, acts of nature, pandemics, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty or other causes beyond the reasonable control of the party shall excuse performance and other obligations by the party for a period equal to the duration of that prevention, delay or stoppage. In no event shall any material default by Company due to any of the foregoing constitute a grounds for termination of this Franchise.
- 21. Non-waiver.** The failure of any party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise Agreement shall not be construed as a waiver or relinquishment for future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by both parties.
- 22. Severability.** If any provision of this Franchise Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Franchise Agreement or the application of such provision to such Person or circumstances, other than as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and shall be enforced to the fullest extent permitted by law.
- 23. Scrivener's Error.** Sections of this Franchise Agreement may be renumbered or relettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or his designee, without need for a public hearing by filing a corrected or recodified copy of same with the City Clerk.
- 24. Ordinances Repealed.** All ordinances and parts of ordinances in conflict or inconsistent with the provisions of this Franchise Agreement are hereby repealed as of the Effective Date.

INTRODUCED on first reading this 2<sup>nd</sup> day of August, 2022.

PUBLISHED on this 23<sup>rd</sup> day of August, 2022 in the Palm Beach Post.

PASSED on second reading this 6<sup>th</sup> day of September, 2022.

CITY OF WESTLAKE FLORIDA



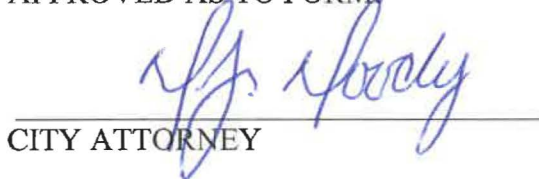
JOHNPAUL O'CONNOR, MAYOR

ATTEST:



ZOIE BURGESS, CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

**UNCONDITIONAL ACCEPTANCE BY THE COMPANY**

I, the undersigned official of Florida Public Utilities Company (the "Company"), am authorized to bind the Company and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. \_\_\_\_\_), which are hereby accepted by the Company this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Florida Public Utilities Company

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

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

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Notary Public in and for the State of Florida

My commission expires \_\_\_\_\_

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Received on behalf of the City this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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

**TRI-PARTY GRANT AGREEMENT AMONG CITY OF WESTLAKE, THE  
SEMINOLE IMPROVEMENT DISTRICT, AND FLORIDA PUBLIC UTILITIES  
COMPANY RELATED TO PERMITTING OF FACILITIES PER CITY FRANCHISE  
AGREEMENT**

This a Tri-Party Grant Agreement (“Agreement”) made and entered into by City of Westlake, a municipal corporation (“City”), The Seminole Improvement District, an independent special district created by Special Act of the Florida Legislature (“SID”), and Florida Public Utilities Company, a Florida corporation (the “Company”). City, SID, and the Company are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS:**

WHEREAS, the Company has requested permission from the City to erect, construct, operate, and maintain a Gas Distribution system and to import, transport, sell and distribute Gas within the City; and for these purposes to establish the used or useful facilities and equipment and to lay and maintain gas mains, service pipes, and any other appurtenances, as are used or useful in the sale, transportation and distribution of Gas within the City limits; and

WHEREAS, the City and the Company acknowledge that the Rights-of-way and utility easements within the City are held by and under the jurisdiction of SID and the Company will obtain permits from SID to construct, operate and occupy a portion of the utility easement with its facilities; and

WHEREAS, the utility easements owned by SID to be used by the Company are properties acquired and maintained by SID at expense to the property owners within the City limits, and the right to use SID’s utility easements is a property right without which the Company would be required to invest capital and incur property acquisition costs; and

WHEREAS, the City has enacted Ordinance No. 2022 - 09 granting to the Company and its successors and assigns, a non-exclusive franchise for a period of thirty (30) years to sell, distribute, transport, and transmit natural, manufactured or mixed gas in the City (the “Franchise Agreement), attached hereto as Exhibit “A”; and

WHEREAS, the Franchise Agreement provides, among other things, that the Company shall (i) obtain all required permits, approvals, licenses or consents in accordance with this Agreement prior to constructing or operating any facilities within the City; (ii) pay to SID any applicable fees in connection with the permit applications, reviews and inspections for development, and (iii) pay to the City all legally authorized fees, taxes, assessments, and costs levied, imposed or validly adopted by the City during the term of the Franchise Agreement, which shall include, but are not limited to public service taxes, ad valorem taxes (intangible, personal, real), occupational taxes, and licensing fees; and

WHEREAS, in February 2018, SID and the City entered into that certain Interlocal Agreement Regarding the Provision of Certain Services, Infrastructure, and Public Facilities in the City of Westlake and for Assurance of Non-Duplication of Services (“Interlocal Agreement”); and

WHEREAS, pursuant to Section 16(c)(vi) of the Interlocal Agreement, the City and SID agreed that consultation is required prior to any undertakings by City or SID for tangible or physical infrastructure including gas lines; and

WHEREAS the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local government to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as building permitting and inspection services; and

WHEREAS, the Parties desire to (i) acknowledge the Franchise Agreement granted to the Company, (ii) reflect the grant by SID to the Company of the right and privilege, to erect, construct, operate, and maintain a Distribution System in, on or under any Rights-of-ways within the City Limits, (iii) confirm SID and the City have engaged in the necessary consultation under the Interlocal Agreement, and (iv) establish the process by which the City and SID will coordinate the review and processing of permits applied for by the Company for the use of the Rights-of-way as contemplated in the Franchise Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree a unified approach to building permitting and inspection services for the Distribution System will result in a more efficient and cost effective method of service delivery, ultimately enhancing economic development and promoting the safety and welfare of all of the citizens of the City as follows:

1. Capitalized Terms; Recitals. All capitalized terms not defined herein shall be given the meanings ascribed thereto in the Franchise Agreement. The Recitals set forth above are true and correct and form a material part of this Agreement.

2. Grant of Rights. SID hereby grants the non-exclusive right, privilege, and easement to erect, construct, operate, and maintain a Distribution System in, on or under any Rights-of-way, utility easements, or property owned by SID as they now exist or maybe hereafter dedicated, purchased, constructed, opened, laid out or extended by SID within the City Limits. In the event the Rights-of-way are closed, vacated or otherwise abandoned, SID or the City under the Franchise Agreement, as applicable, shall provide the Company with an easement for the Distribution System in such form and content as is reasonably acceptable to the Company to the extent possible. This grant of right, privilege and easement does not relieve the Company from its obligation to obtain all necessary permits from SID or the City as further described herein.

3. Service Delivery Agreement.

a. SID shall serve as the single, unified point of service for permitting and inspections services for development by the Company of the Distribution System pursuant to the Franchise Agreement within the Rights-of-way located in the City Limits. This Agreement shall provide for the staffing and resources for all permit application processing, permit plan review, inspections, and permit compliance. The SID Engineer shall serve as the District Official with control over the use of the Rights-of-way and the development of the Distribution System. The construction permit processing, review, inspection services, and permit compliance shall be



provided consistent with State law, this Agreement and the Franchise Agreement. Building code enforcement to the extent applicable shall be enforced per City code.

b. SID shall be responsible for funding of the staff and operational costs of the services of this Agreement. The Company shall be responsible for paying, without duplication, a maximum of SID's regular published fees per development charged generally to applicants related to permit applications, reviews, and inspections for development and construction, currently set at \$2,500.

c. Other than as set forth above, no separate fees shall be due or payable to SID, the City or any department or agency thereof in connection with the application, permitting, and inspection process associated with the development and construction of the Distribution System.

d. SID and City agree to prepare and adopt unified operational procedures for construction permit processing, review, and inspections to assure a high level of service to customers without undue delay. Any such procedures shall require only one (1) application; one (1) set of permit drawings, and one (1) fee payable to SID. SID will coordinate any and all reviews that the City may require relative to the approval for construction of the Distribution System that may be the subject of a permit application.

4. Term. The term of this Agreement shall commence on the effective date of the Franchise Agreement (the "Effective Date") and shall terminate on the earlier of the date that (a) the Franchise Agreement terminates or expires, (b) SID cedes jurisdiction over the Rights-of-way, real property, and utility easements within the City to the City, and (c) such other date as the Parties agree in writing (the "Term").

5. Dispute Resolution.

a. The Parties agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this section. Any Party may initiate the dispute resolution process by providing written notice to the other Party(ies). Initiation of the dispute resolution process shall operate as a stay of the action which is the subject of the dispute.

b. Notwithstanding the foregoing, in the event that any Party determines, in its sole discretion and good faith that it is necessary to file a lawsuit or other formal challenge in order to meet a jurisdictional time deadline, to obtain a temporary injunction, or otherwise to preserve a legal or equitable right related to this Agreement, such lawsuit or challenge may be filed, but upon the filing and any other act necessary to preserve the legal or equitable right or to obtain the temporary injunction, the Parties shall thereafter promptly file a joint motion with the reviewing court or administrative law judge requesting that the case be abated in order to afford the Parties an opportunity to pursue the dispute resolution procedures set forth herein. If the abatement is granted, the Parties shall revert to and pursue the dispute resolution procedures set forth herein.

c. Within ten (10) days of the abatement order, the allegedly aggrieved Party shall then effect the transmittal of a notice of conflict, in the form of a certified letter, to all other Parties involved in the dispute at issue. Upon receipt of the notice, which shall specify the areas of disagreement, the Parties agree to conduct a conflict assessment meeting at a reasonable time and



place, as mutually agreed upon, within thirty (30) days of receipt of the notice of conflict. If discussions between the Parties at this meeting fail to resolve the dispute, the following Parties agree to pursue formal conflict resolution per the following provisions:

i. For a conflict between the Company, on the one hand, and the City and/or SID, on the other hand, within forty (40) days of the receipt of the notice described in subparagraph a. above, the Parties shall conduct a mediation in the presence of a neutral third party Florida Supreme Court certified mediator. If the Parties are unable to agree upon a mediator, the City or, if the City is not a Party to the Dispute, SID shall request appointment of a mediator by the Chief Judge of the Circuit Court in and for Palm Beach, Florida. The mediation contemplated by this Section is intended to be an informal and non-adversarial process with the objective of helping the Parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the Parties. The mediator shall assist the Parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. Costs of mediation shall be shared equally among the parties participating in mediation. Any Party to the mediation may terminate the mediation at any time. If the Parties are unable to reach a mediated settlement of the conflict within fifty (50) days of the receipt of the notice described in subparagraph a. above, the Parties in conflict may pursue any and all rights and remedies to which the Parties may be entitled with respect thereto.

ii. For a conflict solely between the City and SID, the conflict resolution provisions of the Interlocal Agreement shall apply.

d. Any of the time requirements set forth in this dispute resolution provision of the Agreement may be extended to a date certain by mutual agreement, in writing, of the primary conflicting Parties. To the extent such agreement to extend time would cause any jurisdictional time requirements to run with regard to a particular claim, the agreement to extend shall have the effect of extending any jurisdictional time requirements with regard to that claim.

6. Hold Harmless; Sovereign Immunity. To the extent permitted by law, each Party agrees to hold the others harmless from any and all claims, actions or suits which might arise out of its own neglect or default of the Agreement. The foregoing is not intended, and shall not be construed, as a waiver by any Party of the benefits of Section 768.28, Florida Statutes.

7. Force Majeure. No Party shall be liable or responsible to any other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to another Party hereunder), when and to the extent such failure or delay is caused by or results from the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, warlike operation, insurrection, rebellion, revolution, military or usurped power, sabotage or other civil unrest; (d) strikes, embargoes, blockades, labor stoppages, lockouts or slowdowns or other industrial disturbances or inability to obtain necessary materials or services (e) governmental delay regarding permits or approvals; (f) action by any governmental authority; (g) national or regional emergency; (h) shortage of adequate power or transportation facilities; or (j) other similar events beyond the reasonable control of the Party impacted by the Force Majeure

Event (the "Impacted Party") and provided further, however, that such performance shall be resumed and completed with due diligence and reasonable dispatch as soon as the contingency causing the delay or impossibility shall abate.

8. Notice. Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be in writing and shall be deemed given when (a) delivered personally to the intended Party, (b) sent by facsimile transmission (with electronic "answerback" confirmation of successful transmission) to that Party at the facsimile number for that Party set forth below, (c) sent by electronic mail submission with a written confirmation from the receiving Party confirming receipt of the electronic mail submission, (d) on the fifth (5th) Business Day after being mailed by certified mail (postage prepaid and return receipt requested) to that Party at the address for that Party set forth below, or (e) on the day delivered by Federal Express or any similar express delivery service for delivery to that Party at that address. All notices shall be addressed as follows:

If to Company: Florida Public Utilities Company  
1635 Meathe Drive  
West Palm Beach, Florida 33411  
Attention: Director, Natural Gas Operations  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to: Baker & Hostetler LLP  
200 S. Orange Avenue, Suite 2300  
Orlando, Florida 32801  
Attention: Jeffrey E. Decker  
Facsimile: (407) 841-0168  
Email: jdecker@bakerlaw.com

with a copy to: Chesapeake Utilities Corporation  
Office of the General Counsel  
500 Energy Lane, Suite 400  
Dover, DE 19901  
Attention: James F. Moriarty  
Facsimile: (302) 734-6750  
Email: jmoriarty@chpk.com

If to City: City of Westlake  
4001 Seminole Pratt Whitney Road  
Westlake, FL 33470  
Attention: Kenneth G. Cassel, City Manager  
Facsimile: (561) 790-5466  
Email: ken.cassel@inframark.com

with a copy to: City of Westlake  
4001 Seminole Pratt Whitney Road  
Westlake, FL 33470  
Attention: City Attorney  
Facsimile: (561) 790-5466  
Email: \_\_\_\_\_

For SID: Seminole Improvement District  
4001 Seminole Pratt Whitney Road  
Westlake, FL 33470  
Attention: Kenneth G. Cassel, District Manager  
Facsimile: (561) 790-5466  
Email: ken.cassel@inframark.com

with a copy to: Lewis, Longman, and Walker, P.A.  
360 S. Rosemary Avenue, Suite 1100  
West Palm Beach, FL 33401  
Attention: Robert Diffenderfer, District Attorney  
Facsimile: (561) 640-8202  
Email: rdiffenderfer@llw-law.com

Notices and communications delivered to persons designated to receive copies shall not be effective notice. Any Party may change its facsimile number or address for notices under this Agreement at any time by giving the other Parties at least ten (10) days' prior written notice of such change delivered in conformity with this Section 8.

9. Entire Agreement; Modification. This Agreement contains the entire agreement of the Parties and may not be changed except by written agreement duly executed by the Parties hereto. This Agreement supersedes any prior understandings or agreements between the Parties, and there are no representations, warranties, or oral agreements other than those expressly set forth herein.

10. Assignment and Subcontracting. No assignment, delegation, or transfer of this Agreement, or part hereof, shall be made, unless approved in writing by the Parties.

11. Jointly Drafted. The Parties agree that this Agreement is entered into knowingly and voluntarily. Having had the opportunity to obtain the advice of legal counsel to review, comment upon, and redraft this Agreement, the Parties agree that this Agreement shall be construed as if the Parties jointly prepared it so that any uncertainty or ambiguity shall not be interpreted against any one Party and in favor of any other.

12. Parties Acknowledgement; Parties Bound. The Parties acknowledge that they have read this Agreement, and that they understand the terms and conditions herein and that the terms have been fully and completely explained to the Parties prior to the execution thereof. Each Party acknowledges that each other Party has made no warranties, representations, covenants, or agreements, express or implied, except as expressly contained in this Agreement. Further, the Parties have caused this Agreement to be executed on their respective behalf by the authorized

officer whose signature appears below under their respective name, to be effective as of the date first written above. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors, and assigns.

13. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for such claim or lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS ANY OF THE PARTIES MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY ANOTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTIES IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

Prior to the filing of any litigation relating to this Agreement, the Parties will follow the dispute resolution provisions set forth in Section 4 hereof, with each Party to bear its own attorneys' fees and costs; however, each Party to the dispute shall pay equally its share of the mediator's fees and, if applicable, any pre-approved cost(s) incurred by the mediator.

The Parties further agree that entry into this Agreement constitutes irrevocable consent and agreement that the exclusive venue and jurisdiction for any such dispute (including any dispute that is based on only a tenuous nexus to this Agreement) shall lie solely in the state or county courts in and for Palm Beach County, Florida. The Parties expressly and irrevocably waive any and all right(s), to the removal of any such dispute to any federal court. Process in any action or proceeding referred to in this paragraph may be served on any Party anywhere in the world, such Party waives any argument that said Party is not subject to the jurisdiction of the state courts located in Palm Beach County, Florida and the laws of the State of Florida.

14. Attorneys' Fees; and Costs of Enforcement. Each Party shall at the conclusion of the resolution of any and all disputes arising from or based on this Agreement, pay all of its own costs and attorneys' fees incurred in the prosecution or defense of said dispute. Each Party shall pay its own costs and attorneys' fees without regard to which Party prevailed in the resolution of any dispute arising from or based on this provisions of this Agreement.

15. Cooperation; Supplementary Actions. All Parties agree to cooperate fully and to execute any supplementary documents, and to take any additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement, and which are not inconsistent with its terms.

16. Miscellaneous. Whenever the context shall so require, all words in this Agreement of one gender shall be deemed to include all other genders.

17. Public Records. SID and City are public entities. Each Party is responsible for complying with its public records requests and the public records laws in Chapter 119, Florida Statutes, including Section 119.0701.

18. Independent Contractor. SID, the Company, and City are independent contractors. Each of the Parties and its agents shall not act as officers, employees, or agents of the other Parties. None of the Parties shall have the right to bind any of the other Parties to any obligation not expressly undertaken by the other Parties.

19. Third Party Beneficiaries. The Parties acknowledge that there are no third party beneficiaries to this Agreement.

20. Compliance with Laws. The Parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing their duties, responsibilities, and obligations pursuant to this Agreement.

21. Interpretation. The headings are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter,” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

22. Representation of Authority. Each individual executing this Agreement on behalf of a Party hereto represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

23. Waiver. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

24. Time is of the Essence. Time shall be of the essence of this Agreement.

25. Severability. Whenever possible each provision and term of this Agreement will be interpreted in a manner to be effective and valid but if any provision or term of this Agreement is held to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement.

26. Counterparts. This Agreement may be executed in a number of identical counterparts and a facsimile or electronic/digital copy shall be treated as an original. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts

shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

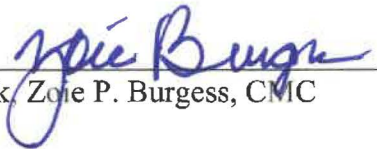
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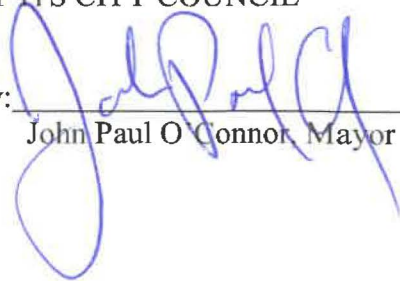


IN WITNESS WHEREOF, THE CITY OF WESTLAKE, THE SEMINOLE IMPROVEMENT DISTRICT, AND FLORIDA PUBLIC UTILITIES COMPANY HAVE EXECUTED OR HAVE CAUSED THIS TRI-PARTY GRANT AGREEMENT TO BE DULY EXECUTED.

ATTEST:

**CITY OF WESTLAKE, FLORIDA  
BY ITS CITY COUNCIL**

By:   
Clerk, Zoie P. Burgess, CMC

By:   
John Paul O'Connor, Mayor

Dated: July 5, 2022

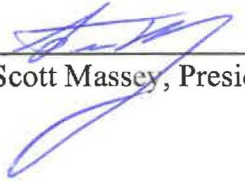
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By:   
City Attorney

ATTEST:


**SEMINOLE IMPROVEMENT DISTRICT**

By:   
*ASST* Secretary

By:   
Scott Massey, President

Dated: 6/6/2022, 2022

DISTRICT ATTORNEY  
Approved as to form and legal sufficiency

By:  Fox  
District Attorney, Robert P. Diffenderfer

**FLORIDA PUBLIC UTILITIES COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_