

**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 - \_\_\_\_ 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



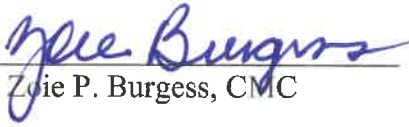
shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

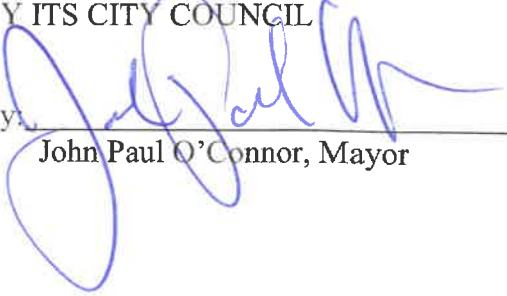
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IN WITNESS WHEREOF, THE CITY OF WESTLAKE, THE SEMINOLE IMPROVEMENT DISTRICT, AND FLORIDA PUBLIC UTILITIES COMPANY HAVE EXECUTED OR HAVE CAUSED THIS TRI-PARTY GRANT AGREEMENT TO BE DULY EXECUTED.

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

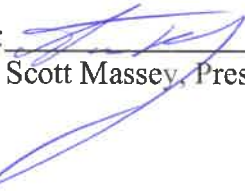
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By:   
City Attorney, \_\_\_\_\_

ATTEST:

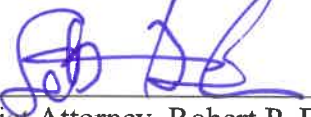
**SEMINOLE IMPROVEMENT DISTRICT**

By:   
*K.M.C.* Secretary \_\_\_\_\_

By:   
Scott Massey, President

Dated: 6/6/2022, 2022

DISTRICT ATTORNEY  
Approved as to form and legal sufficiency

By:  *P.D.*  
District Attorney, Robert P. Diffenderfer

**FLORIDA PUBLIC UTILITIES COMPANY**

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