

ORDINANCE 18-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLEAIR BEACH, FLORIDA, GRANTING TO THE CITY OF CLEARWATER, FLORIDA, A FRANCHISE FOR THE PURPOSE OF FURNISHING NATURAL GAS SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY OF BELLEAIR BEACH; PROVIDING FOR PURPOSE; PROVIDING FOR DEFINITIONS, PROVIDING FOR TERMS AND GRANT; PROVIDING FOR RATES; PROVIDING FOR EXTENSION OF SERVICE; PROVIDING FOR FORCE MAJEURE; PROVIDING FOR A NON-COMPETE; PROVIDING FOR TERMINATION; PROVIDING FOR FRANCHISE FEE; PROVIDING FOR FAVORED NATION PROVISION; PROVIDING FOR SERVICE STANDARDS; PROVIDING FOR COSTS, OWNERSHIP, REPAIR, RELOCATION; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR INSURANCE; PROVIDING FOR COMPLIANCE OF ORDINANCES; PROVIDING FOR AVAILABILITY OF RECORDS; PROVIDING FOR ASSIGNMENT OF GRANT; PROVIDING FOR CONFLICT; PROVIDING FOR ALTERNATIVE REMEDIES; PROVIDING FOR ACCEPTANCE; PROVIDING FOR RESOLUTION BY GRANTEE; PROVIDING FOR GOVERNING LAW; PROVIDING FOR NOTICES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in addition and supplemental to their other powers, CITY OF BELLEAIR BEACH and CITY OF CLEARWATER, pursuant to Chapter 163, Part I, Florida Statutes, as amended, commonly known as the “Florida Interlocal Cooperation Act of 1969”, are authorized and empowered to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of government organization that will best accord with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, it is in the best interests of the citizens of CITY OF BELLEAIR BEACH to be provided gas service whenever and wherever feasible; and,

WHEREAS, pursuant to Chapters 166 and 180, Florida Statutes, CITY OF CLEARWATER, d/b/a CLEARWATER GAS SYSTEM, has the power and the present capability to provide such gas services in CITY OF BELLEAIR BEACH; and

WHEREAS, CITY OF BELLEAIR BEACH and CITY OF CLEARWATER wish to set

forth the grants and conditions with respect to the provisions of such Gas Service to those areas within the corporate limits of CITY OF BELLEAIR BEACH and CITY OF BELLEAIR BEACH desires by virtue hereof to grant a Gas Franchise to the CITY OF CLEARWATER, a renewal of Ordinance 03-14.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLEAIR BEACH, FLORIDA:

SECTION 1. PURPOSE.

The parties acknowledge that CITY OF CLEARWATER has the legal authority pursuant to Florida Statutes to provide gas service and, further, that CITY OF BELLEAIR BEACH, upon appropriate exercise of its powers could also provide such service. CITY OF BELLEAIR BEACH and CITY OF CLEARWATER have determined it is in the best interests of both parties and their citizens for CITY OF CLEARWATER to provide gas service within the corporate limits of CITY OF BELLEAIR BEACH as defined herein.

SECTION 2. DEFINITIONS.

Whenever in this ordinance the words or phrases hereafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions, unless in the given instance, the context wherein they are used shall clearly import a different meaning:

- (a) Customer shall mean any person, firm, public or private corporation or governmental agency served by the Grantee within the corporate limits of CITY OF BELLEAIR BEACH.
- (b) Grantee or CITY OF CLEARWATER shall mean the City of City of Clearwater, a Florida municipal corporation, in its present incorporated form, or as may subsequently be reorganized, consolidated, or reincorporated.
- (c) Grantor or CITY OF BELLEAIR BEACH shall mean the CITY OF BELLEAIR BEACH, a Florida municipal corporation, in its present incorporated form, or as may subsequently be reorganized, consolidated, or reincorporated.
- (d) Gas or Natural Gas shall mean natural gas and/or manufactured gas and/or a mixture of gases which is 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") or any other fuel that is typically delivered by truck or stored in tanks; however, nothing herein shall be interpreted to prohibit CITY OF CLEARWATER from engaging in the sale of liquid petroleum (propane) gas.
- (e) Gross Revenue shall mean revenues received by CITY OF CLEARWATER from any Customer from the sale, transportation, distribution or delivery of Gas or Natural Gas.
- (f) Facilities or Equipment shall mean pipe, pipe line, tube, main, service, trap, vent,

vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas, located or to be located in, upon, along, across, or under the streets or within the public rights of way, or on Customer property up to the meter.

- (g) Franchise or Franchise Agreement shall mean this ordinance, as passed and adopted by CITY OF BELLEAIR BEACH and accepted or adopted by CITY OF CLEARWATER, as provided in Section 26 below.
- (h) Distribution System shall mean any and all transmission pipe lines, main pipe lines and customer pipe lines, together with all necessary and desirable appurtenances, that are situated within the corporate limits of CITY OF BELLEAIR BEACH and are reasonably necessary for the sale, transportation, distribution or delivery of Natural Gas for the public and private use of Customers.

SECTION 3. TERM; GRANT.

For a period of Fifteen (15) years from the date the Franchise granted herein becomes effective, CITY OF BELLEAIR BEACH, its successors and assigns, do hereby agree and give and grant to CITY OF CLEARWATER, its successors and assigns, a franchise, and any necessary right and authority to exercise the power to furnish gas and to construct, operate and maintain within the corporate limits of CITY OF BELLEAIR BEACH, in the rights-of-way, easements, streets, avenues, alleys, squares, bridges, viaducts, which are suitable and otherwise legally available for such use, and within publicly-owned lands, buildings and facilities as expressly requested by CITY OF BELLEAIR BEACH, (by way of example and not limitation, the CITY OF BELLEAIR BEACH city hall buildings) all facilities required by CITY OF CLEARWATER to supply Gas to CITY OF BELLEAIR BEACH, its inhabitants and the places of business located within CITY OF BELLEAIR BEACH corporate limits and other customers and areas now or hereafter supplied, or to be supplied, Gas by CITY OF CLEARWATER. The limitation as to public lands as described above is not intended to be a limitation as to rights-of-way or easements which are suitable and otherwise legally available for such use.

The parties may renew this Franchise for another fifteen (15) year term, by written notice to the other party at least one hundred-eighty (180) days and no more than three-hundred sixty-five (365) days prior to the termination of the term of this Franchise. If the parties renew this Franchise, the party receiving a request for renewal shall provide written notice of acceptance within ninety (90) days of receipt of the request. Failure to provide such notice shall constitute an approval of the request and this Franchise shall then expire at the end of this term. If the parties mutually agree to the further renewal of this Franchise, this Franchise shall continue for another fifteen (15) year term, otherwise this Agreement shall expire at the end of the initial term. Any rights granted hereunder are non-exclusive .

SECTION 4. RATES.

The rates, charges and fees to be charged by CITY OF CLEARWATER for Gas service within the corporate limits of CITY OF BELLEAIR BEACH during the term of this franchise

shall be as provided in CITY OF CLEARWATER's standard, system-wide rate schedule now or hereafter approved by City of Clearwater City Council, or as modified by the Clearwater City Manager, or other designated CITY OF CLEARWATER official, to the extent Clearwater City Manager, or other designated CITY OF CLEARWATER official, is expressly authorized to approve changes to such rates, charges, and fees, or such other agency of the State of Florida as may have proper jurisdiction over such rates and charges of CITY OF CLEARWATER under the general laws of the State of Florida, or CITY OF CLEARWATER's charter and ordinances. Such rate schedule shall be no greater than the rate schedule applied to rate payers within the corporate limits of CITY OF CLEARWATER and other customers in cities that have a franchise or agreement with CITY OF CLEARWATER for gas service.

SECTION 5. RESERVED.

SECTION 6. EXTENSION OF SERVICE.

In consideration of the rights granted under this franchise and the duration of this franchise, CITY OF CLEARWATER agrees that its facilities to be installed within the corporate limits of CITY OF BELLEAIR BEACH will be expanded to provide service to new customers on the terms and conditions hereinafter set forth. Gas service shall be extended to customers desiring said service based on a feasibility formula. Such formula shall be the formula currently in effect system-wide as then administered by CITY OF CLEARWATER and as applicable to the citizens of CITY OF CLEARWATER and other franchise areas.

SECTION 7. FORCE MAJEURE.

In the event by act of God, strike, riot, public enemy or other calamity, or restriction in the supply of Gas beyond the control of CITY OF CLEARWATER or its interstate supplier or by reason of regulation exerted by the Florida Public Service Commission or the Federal Energy Regulatory Commission or other regulatory body having jurisdiction in the premises, the supply of the Gas should be interrupted, CITY OF CLEARWATER shall, nevertheless, continue to supply the available Gas to such customers as it is possible, shall employ its full services to remedy such deficiency of Gas supply, and shall resume complete Gas service when that is possible.

SECTION 8. NON-COMPETE PROVISION.

As a further consideration of this franchise agreement and franchise granted hereunder, CITY OF BELLEAIR BEACH agrees not to engage in the business of distributing and selling Gas during the life of this franchise or any extension thereof in competition with CITY OF CLEARWATER, its successors and assigns, in the service territory within CITY OF BELLEAIR BEACH delineated by the Florida Public Service Commission as CITY OF CLEARWATER's service territory by PSC Order #00-0371-PAA-GU. CITY OF CLEARWATER's service territory is shown on Exhibit "A" incorporated herein. Pursuant to Sections 6 and 12 hereof, CITY OF CLEARWATER and CITY OF BELLEAIR BEACH have agreed to a certain extension of service policy. In the event CITY OF BELLEAIR BEACH desires to provide Gas

service where CITY OF CLEARWATER has notified CITY OF BELLEAIR BEACH in writing said areas do not qualify under the feasibility formula, CITY OF BELLEAIR BEACH may provide CITY OF CLEARWATER notice of its intent to provide such Gas service in said areas. CITY OF CLEARWATER shall have sixty (60) days after receipt of said notice to review its decision not to provide Gas service to said areas and to further meet with CITY OF BELLEAIR BEACH regarding said service. In the event CITY OF CLEARWATER has not delivered written notice to CITY OF BELLEAIR BEACH within this sixty (60) day period that CITY OF CLEARWATER shall provide Gas service to said areas, CITY OF BELLEAIR BEACH may provide Gas service in said defined areas thereafter.

SECTION 9. TERMINATION OF AGREEMENT.

Upon expiration of this agreement, CITY OF CLEARWATER shall have the right, privilege and option of removing all piping and equipment installed or maintained by CITY OF CLEARWATER in accordance with this Franchise. In the event of the removal of such equipment, CITY OF CLEARWATER shall repair all of CITY OF BELLEAIR BEACH and customers' property to the same condition as theretofore existed. CITY OF CLEARWATER shall also have the right to sell any or all of its piping and equipment to CITY OF BELLEAIR BEACH or a third party at the time of termination or subsequent thereto. In the event of acquisition by CITY OF BELLEAIR BEACH of such piping and equipment by purchase, condemnation, or otherwise, this franchise shall at once terminate; provided however, excepted from any right to acquire such piping and equipment are piping and equipment owned by CITY OF CLEARWATER and connected with its general system of distribution used for the purpose of serving other than customers located in CITY OF BELLEAIR BEACH municipal boundaries.

Further, violation by either Party of any of the covenants, terms, and conditions hereof, or default by either Party in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the non-defaulting party to declare a termination of this Franchise Agreement; provided, however, that before such action by the non-defaulting Party shall become operative and effective, the defaulting party shall have been served by the non-defaulting Party with a written notice setting forth all matters pertinent to such violation or default, and the defaulting Party shall have had a period of sixty (60) days after service of such notice or, in the event such cure reasonably requires a period of more than sixty (60) days, to present a plan, satisfactory to the non-defaulting Party, acting reasonably, to effect such cure; and provided further that any violation or default resulting from a strike, lockout, an act of God, or any other cause beyond the control of the defaulting Party shall not constitute grounds for termination.

SECTION 10. FRANCHISE FEE.

In consideration for the granting of this Franchise and the use of the rights-of-way, easements and other public places allowed hereunder, and effective the first day of the month after the effective date of this Franchise, CITY OF BELLEAIR BEACH shall be entitled to receive from CITY OF CLEARWATER a franchise fee which will equal six percent (6%) of the

gross receipts from the sale of Gas or Natural Gas within the corporate limits of CITY OF BELLEAIR BEACH for the term of this Franchise. Payment of the franchise fee by CITY OF CLEARWATER to CITY OF BELLEAIR BEACH shall be made for each Quarter, no later than the forty-fifth (45th) day after the end of each quarter. The franchise fee payment shall be deemed paid on time if postmarked within forty-five (45) days of the end of the preceding quarter.

Gross receipts, for purposes of computing such franchise fee, includes all revenues, less uncollectable accounts, received by CITY OF CLEARWATER, or any affiliated entity, from or in connection with the distribution of Gas in the CITY OF BELLEAIR BEACH and the transmission of Gas from and through the CITY OF BELLEAIR BEACH by parties other than CITY OF CLEARWATER pursuant to the terms of this Franchise; provided, however, gross receipts shall not include franchise fees, taxes, late payment charges, monies for Gas service or a component thereof paid by customers to a third party, unaffiliated with CITY OF CLEARWATER and where CITY OF CLEARWATER receives no payment from the third party or the customer.

SECTION 11. FAVORED NATIONS.

In the event CITY OF CLEARWATER shall hereafter accept a franchise from any other governmental entity with any provision more favorable to the governmental entity than contained in this franchise where all other conditions of the two franchises are substantially similar, then CITY OF CLEARWATER shall notify CITY OF BELLEAIR BEACH and CITY OF CLEARWATER shall be obligated upon written request of CITY OF BELLEAIR BEACH to agree to an amendment to this Ordinance to incorporate said provision. To the extent that any federal or state statute, rule, regulation, or any other law is enacted, adopted, repealed, amended, modified, changed or interpreted in any way during the term of this Agreement so as to enhance CITY OF BELLEAIR BEACH ability to regulate CITY OF CLEARWATER and the Distribution System, or allow CITY OF BELLEAIR BEACH to increase the franchise fee, CITY OF BELLEAIR BEACH and CITY OF CLEARWATER shall negotiate in good faith modifications to this franchise ordinance to reflect such enactment, adoption, repeal, amendment, modification, change or interpretation.

SECTION 12. SERVICE STANDARDS; EXTENSION POLICY.

Subject to the parameters of feasibility as set forth herein below, CITY OF CLEARWATER, its successors and assigns shall furnish twenty four (24) hours of continuous service each and every day to any customer within CITY OF BELLEAIR BEACH desiring the same and failure upon the part of CITY OF CLEARWATER to: furnish Gas as herein provided for any cause within the control of CITY OF CLEARWATER for a period of seventy-two (72)

hours or more; and/or other breach of term hereof, either not being corrected within thirty (30) days after written notice by CITY OF BELLEAIR BEACH thereof, may act as a forfeiture of this Franchise in the discretion of CITY OF BELLEAIR BEACH. CITY OF CLEARWATER shall have the opportunity to be heard by Belleair Beach City Council at a duly convened meeting of the Council prior to consideration of any such forfeiture.

As provided in Section 6 hereof, CITY OF CLEARWATER herein, its successors and assigns, shall not be required to lay facilities or equipment beyond such point as it determines to be economically unfeasible, and unless the revenue from such additional facilities or equipment shall warrant such installation on a basis of reasonable compensation or return on CITY OF CLEARWATER's investment. CITY OF CLEARWATER covenants and agrees that it will not arbitrarily or unreasonably refuse to make extensions when requested to do so by CITY OF BELLEAIR BEACH.

SECTION 13. COSTS; OWNERSHIP; REPAIRS; RELOCATION.

CITY OF CLEARWATER shall install the necessary facilities or equipment at its own cost and expense and same shall be and remain the property of CITY OF CLEARWATER; and CITY OF CLEARWATER's facilities or equipment and other physical properties used in connection with the furnishing of Natural Gas under this franchise shall be free from any ad valorem tax of CITY OF BELLEAIR BEACH as long as the same remains the property of CITY OF CLEARWATER, except as otherwise provided by applicable Florida Statute or applicable Court decision adopted after date of execution hereof. The mains shall be laid underground and CITY OF CLEARWATER shall re-pave or re-lay, as promptly as possible, all streets, lanes, alleys, sidewalks, squares, or public places dug or disturbed by it in the installation of said mains or for any other purpose attending such work, and it shall repair and restore such streets, lanes, alleys sidewalks and public places to their former and safe condition and with the same quality of material or its equivalent as was existing before said work commenced, unless there is a previously agreed upon repair schedule. CITY OF CLEARWATER shall be permitted to perform work on its facilities or extensions of facilities during all daylight hours and perform emergency work after such hours when necessary to restore service or for safety reasons. In all cases the repair work shall be made passable to traffic during conduct of such work as soon as physically possible. Prior to closing of a street in part or in whole, CITY OF CLEARWATER shall notify and consult with CITY OF BELLEAIR BEACH; provided, however in the case of an emergency, CITY OF CLEARWATER shall only be required to notify CITY OF BELLEAIR BEACH. Should CITY OF CLEARWATER neglect or refuse to restore or repair without delay after completion of installation and after ten (10) business days written notice, any streets, alleys, lanes, squares, sidewalks or public places which may have been excavated, dug or disturbed by it, its employees or agents, then CITY OF BELLEAIR BEACH shall have such repairs and restoration done and the expense incident thereto shall be paid by CITY OF CLEARWATER.

In accordance with this ordinance the CITY OF BELLEAIR BEACH shall have the right to control at all times distribution of any space in, over, across or under all streets, alleys, public grounds or other public places, occupied by public utility fixtures, and when, in the opinion of the City Council, the public interest so requires, to cause such fixtures to be relocated by CITY

OF CLEARWATER or its agent, without claim for reimbursement. Further, CITY OF BELLEAIR BEACH shall at all times have the power to pass all regulatory ordinances affecting utilities which, in the opinion of the City Council, are required in the interest of public health, safety, welfare or accommodation. Prior to requiring CITY OF CLEARWATER to relocate, CITY OF BELLEAIR BEACH shall give CITY OF CLEARWATER written notice of such requirement and the opportunity to be heard by Belleair Beach City Council as to the costs of such relocation to CITY OF CLEARWATER and possible alternative locations and routes, for CITY OF BELLEAIR BEACH improvements. Ultimately, the decision as to such need for relocation shall be CITY OF BELLEAIR BEACH. If CITY OF BELLEAIR BEACH shall require CITY OF CLEARWATER to adapt or conform any portion of its Distribution System or in any way to alter, relocate or change its property to enable any other person or third party to use said streets, alleys, public grounds or other public places of CITY OF BELLEAIR BEACH, CITY OF BELLEAIR BEACH shall require said person or third party desiring or occasioning such alteration, relocation or change to reimburse CITY OF CLEARWATER for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of CITY OF CLEARWATER's facilities. CITY OF CLEARWATER agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of CITY OF BELLEAIR BEACH unless it has received express permission from CITY OF BELLEAIR BEACH or its duly authorized representative.

Should it become necessary in the installation of gas lines or facilities to relocate water or sewer lines of CITY OF BELLEAIR BEACH now or hereafter installed, then such work shall be done at the expense of CITY OF CLEARWATER and not CITY OF BELLEAIR BEACH. It is understood that in all instances the facilities of CITY OF BELLEAIR BEACH shall have a reasonable right-of-way and preference over that of CITY OF CLEARWATER herein.

SECTION 14. INDEMNIFICATION.

To the extent permitted by law, the CITY OF CLEARWATER does hereby and shall at all times indemnify, defend and hold CITY OF BELLEAIR BEACH harmless from or on account of any claims, losses, injuries or damages, received or sustained by any person or persons caused by or arising out of CITY OF CLEARWATER's negligent operation of the Distribution System within CITY OF BELLEAIR BEACH during the term of this Franchise, or otherwise negligently caused by CITY OF CLEARWATER in connection with the operation of CITY OF CLEARWATER's Franchise pursuant to this Ordinance; or by or in consequence of any negligence, excluding the sole negligence of CITY OF BELLEAIR BEACH, in connection with the same; or by or on account of the use of any improper materials or by or on account of any negligent act or omission of CITY OF CLEARWATER, its agents, servants, or contractors. CITY OF CLEARWATER agrees to defend, indemnify and save harmless CITY OF BELLEAIR BEACH against liability arising from or based upon violation of any federal, state, county or municipal law, ordinance or regulation by CITY OF CLEARWATER, its agents, servants, employees, or contractors. This indemnification provision obligates CITY OF CLEARWATER to defend CITY OF BELLEAIR BEACH from any and all liability claims and all suits and actions that may be brought against CITY OF BELLEAIR BEACH resulting from

the sole negligence of CITY OF CLEARWATER, its agents, servants or contractors. CITY OF CLEARWATER may defend CITY OF BELLEAIR BEACH with CITY OF CLEARWATER's in-house staff counsel at trial and all appellate levels or CITY OF CLEARWATER may provide for CITY OF BELLEAIR BEACH defense with outside counsel by paying for all attorney's fees, costs and trial expenses. The decision to defend with in-house counsel or with outside counsel shall be within CITY OF CLEARWATER's sole discretion.

Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity from or limitation of liability to which CITY OF CLEARWATER or CITY OF BELLEAIR BEACH is entitled to pursuant to §768.28, Florida Statutes, as may be amended. Furthermore, this provision is not intended to nor shall be interpreted as limiting or in any way affecting any defense CITY OF CLEARWATER or CITY OF BELLEAIR BEACH may have under §768.28 and is not intended to and shall not be interpreted to alter the extent of CITY OF CLEARWATER's or CITY OF BELLEAIR BEACH waiver of sovereign immunity under §768.28. CITY OF CLEARWATER and CITY OF BELLEAIR BEACH shall be fully responsible for their own acts of negligence or their respective agent's acts of negligence when acting within the scope of their employment and agree to be liable for any damages resulting from said negligence. Nothing herein shall be construed as consent by either party to be sued by third parties in any manner arising out of this franchise. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement.

SECTION 15. INSURANCE.

CITY OF BELLEAIR BEACH shall be furnished proof of insurance coverage by CITY OF CLEARWATER to include no less than:

General Liability: \$200,000.00 per Person/\$300,000.00 per Occurrence self-insured retention with statutory limits per Section 768.28, Florida Statutes.

Excess Insurance: \$7,000,000.00 per Occurrence, \$14,000,000.00 Aggregate Excess Insurance with self-insurance retention of \$500,000.00.

Automobile Liability: \$200,000.00 per Person/\$300,000.00 per Occurrence self-insured retention with statutory limits per Section 768.28, Florida Statutes.

Excess Insurance: \$7,000,000.00 per Occurrence, \$14,000,000.00 Aggregate Excess Insurance with self-insured retention of \$500,000.00

Workers' Compensation and Employer's Liability: Statutory coverage as per the State of Florida per Occurrence with self-insured retention of \$600,000.00, as may be amended based on availability in the insurance marketplace. Excess Insurance applicable per Occurrence.

The insurance coverage required herein may be provided by CITY OF CLEARWATER by self-insurance, by self-funding, by purchase, or by any combination thereof at the sole option of CITY OF CLEARWATER. Insurance coverage and limits shall be evidenced by delivery to CITY OF BELLEAIR BEACH of letters of self-insurance or self-funding executed by CITY OF CLEARWATER's Risk Manager, or by certificates of insurance executed by either the agent for the insurers or the insurers or by copies of policy declaration pages. Such letters, certificates, and policy declaration pages shall list coverages (including the amount of insurance per claim and per occurrence, any gap in coverage, and the name of the excess insurer) and policy limits with expiration dates. Upon the specific written request of CITY OF BELLEAIR BEACH, a photocopy of each applicable insurance policy, including all endorsements, will be provided to CITY OF BELLEAIR BEACH.

SECTION 16. COMPLIANCE WITH ORDINANCES.

CITY OF CLEARWATER, its successors and assigns, shall at all times comply with all ordinances, rules and regulations enacted or passed by CITY OF BELLEAIR BEACH not in conflict with the terms of this Franchise and CITY OF CLEARWATER shall have the right to make, establish and maintain and enforce such reasonable regulations for the operation of its Distribution System as may be reasonably necessary and proper, not inconsistent with the terms of this Franchise and the ordinances of CITY OF BELLEAIR BEACH , and to protect itself from fraud or imposition and may, in its discretion, refuse to furnish Gas and to cut off the supply from any customer or customers who are in default in payment of any bill rendered for such service, as the law may allow.

SECTION 17. AVAILABILITY OF RECORDS; MAPS AND REPORTS.

As soon as practicable after the effective date of this Franchise, CITY OF CLEARWATER shall provide CITY OF BELLEAIR BEACH with a map showing all CITY OF CLEARWATER's Gas lines and facilities within CITY OF BELLEAIR BEACH. Upon CITY OF BELLEAIR BEACH request, CITY OF CLEARWATER shall provide an update of such map to reflect changes in City of Clearwater's Gas lines and facilities. Further, CITY OF CLEARWATER in accordance with applicable law, shall provide for review and inspection of such maps and also accounts and records of CITY OF CLEARWATER and/or all such information regarding CITY OF BELLEAIR BEACH that CITY OF BELLEAIR BEACH or its representatives may from time to time reasonably request or require. CITY OF CLEARWATER's financial records shall be kept and maintained in accordance with generally accepted accounting principles. All of these records shall, on written request of CITY OF BELLEAIR BEACH, be open for examination by CITY OF BELLEAIR BEACH and CITY OF BELLEAIR BEACH representatives during ordinary business hours, and such records shall be retained by CITY OF CLEARWATER for a period of three (3) years, or as otherwise required by law. Upon any map information of CITY OF CLEARWATER becoming available in electronic format, CITY OF CLEARWATER shall at CITY OF BELLEAIR BEACH request

make any map information available in that format.

SECTION 18. ASSIGNMENT OF GRANT.

This grant or Franchise, or any renewals thereof, shall not be leased, assigned, or otherwise alienated, except with the consent of the Belleair Beach City Council expressed by a Resolution, which consent shall not be unreasonably withheld, and evidence by a written assignment and consent to same. In consideration of consenting to such assignment the matters which may be considered by the City Council are the financial wherewithal and technical experience and capabilities of the proposed Assignee. Notwithstanding the foregoing, CITY OF CLEARWATER may, at its option alienate and transfer this Franchise in connection with its merger and consolidation with any other entity or pledge or mortgage such Franchise in connection with the physical property owned and used by CITY OF CLEARWATER in the operation of its Distribution System for the purpose of securing payment of monies borrowed by CITY OF CLEARWATER, provided that any successor-in-interest to the Distribution System agrees to be bound by the terms of the Franchise Agreement.

SECTION 19. CONFLICT; FILING.

Upon the effective date of this ordinance and acceptance by the CITY OF CLEARWATER, the franchise provided in CITY OF BELLEAIR BEACH Ordinance 03-14 shall be of no further force and effect. Upon full execution hereof, CITY OF CLEARWATER shall file with the Clerk a fully executed copy of this ordinance for recording in the public records in and for Pinellas County, Florida.

SECTION 20. ALTERNATIVE REMEDIES.

No provision of this ordinance or the Franchise granted hereunder shall be deemed to bar the right of either Party to seek or obtain judicial relief from a violation of any provision of this ordinance, the Franchise or any rule, regulation requirement or directive promulgated under the Franchise, whether administratively, judicially, or both. Neither the existence of other remedies identified in this ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover fines, penalties or monetary damages for such violation by means of specific performance, injunctive relief or mandate or any other administrative remedy or judicial remedy at law or in equity.

SECTION 21. ACCEPTANCE.

- (a) CITY OF CLEARWATER acknowledges that upon its acceptance of the Franchise it does so relying upon its own investigation and understanding of the power and authority of a municipality generally to enter into a separate Franchise Agreement, if necessary.
- (b) Each party acknowledges that it has not been induced to accept same by any promise, verbal or written, by or on behalf of the other party or by any third person regarding the Franchise not expressed herein. CITY OF CLEARWATER further pledges that no promise or inducement, oral or written, has been made to any city employee or

official regarding receipt of the Franchise.

- (c) Each party further acknowledges that it has carefully read the terms and conditions of this ordinance that also operates as a Franchise Agreement and accepts without reservation the obligations imposed by the terms and conditions herein.
- (d) CITY OF CLEARWATER shall provide timely written notice to CITY OF BELLEAIR BEACH for any waivers, exceptions, or declaratory rulings, filed with the FPSC or any other state or federal regulatory agency, directly affecting this ordinance.

SECTION 22. RESOLUTION BY GRANTEE.

The Franchise granted herein shall not become effective in whole or in part until the grantee shall, by Resolution duly passed and adopted by its Council, accept the Franchise, privileges and concession herein granted and in said resolution, agree to comply with the terms and conditions of the said franchise and said resolution to contain an agreement to comply with all reasonable ordinances passed by the City Council of the CITY OF BELLEAIR BEACH not in conflict with the terms of said Franchise, a certified copy thereof to be delivered to the City Clerk of the CITY of BELLEAIR BEACH. Upon the receipt of a certified copy of the resolution aforesaid, this ordinance and the franchise therein provided shall become effective for all purposes.

SECTION 23. GOVERNING LAW.

This Ordinance and the Franchise created hereunder shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 24. NOTICE.

Notice under this Agreement shall be in writing and sent by Registered or Certified Mail, Return Receipt Requested, or by courier, express or overnight delivery, and by confirmed e-mail.

The date such notice shall be deemed to have been given shall be the business day of receipt if received during business hours, the first business day after the business day of receipt if received after business hours on the preceding business day, the first business day after the date sent by courier, express or overnight (“next day delivery”) service, or the third business day after the date of the postmark on the envelope if mailed, whichever occurs first.

Notices to CITY OF CLEARWATER shall be sent to:

Chuck Warrington
Managing Director
Clearwater Gas System
P.O. Box 4748
Clearwater, Florida 33758

Attn: Mayor
City of Clearwater
112 S. Osceola Ave.
Clearwater, Florida 33756-5103

Notices to CITY OF BELLEAIR BEACH shall be sent to:

The Mayor and City Council
City of Belleair Beach, Florida
444 Causeway Boulevard
Belleair Beach, Florida 33755

Attn: City Manager and
City Attorney

Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in a manner described in this Section.

SECTION 25. SEVERABILITY.

It is declared to be the intent of the City Council of the City of Belleair Beach, Florida, that if any section, subsection, sentence, clause or provision of this ordinance is held invalid, or unconstitutional by any court of competent jurisdiction, the remainder of the ordinance shall be construed as not having contained said section, subsection, sentence, clause or provision and shall not be affected by such holding.

SECTION 26. EFFECTIVE DATE.

This Ordinance shall take effect upon adoption by the City Council and approval by the City Commission of the City of Clearwater while in a regular or special session.

The above and foregoing Ordinance was read by title only and passed by a majority vote upon its first reading at a Regular Meeting of the City Council of the City of Belleair Beach, Florida, held on the _____ day of _____, 2018.

Leslie Ford Notaro, Mayor

ATTEST:

Patricia A. Gentry, City Clerk

The above and foregoing Ordinance was read by title only and was passed by majority vote upon its second and final reading at the Regular Meeting of the City Council of the City of Belleair Beach, Florida, held on the _____ day of _____, 2018.

ATTEST:

Patricia A. Gentry, City Clerk

Leslie Ford Notaro, Mayor