

**RESOLUTION NO. 17-29**

A RESOLUTION OF THE CITY OF CLEARWATER,  
FLORIDA, ACCEPTING THE FRANCHISE, PRIVILEGE  
AND CONCESSION OF THE CITY OF BELLEAIR BLUFFS,  
FLORIDA, FOR THE PURPOSE OF FURNISHING GAS  
WITHIN THE CITY OF BELLEAIR BLUFFS AND TO ITS  
INHABITANTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, renewal of a gas system franchise has been approved by the adopting of Ordinance No. 2017-03 of the City of Belleair Bluffs, Florida on August 21, 2017, a copy of which is attached to this resolution and incorporated herein by reference; and

WHEREAS, the terms and conditions of the gas system franchise are acceptable; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF CLEARWATER, FLORIDA:

Section 1. The terms and conditions of the gas system franchise, privilege and concession granted by the City of Belleair Bluffs, Florida, by the adoption of Ordinance No. 2017-03 of the City of Belleair Bluffs, are hereby accepted, and the City Council of the City of Clearwater does hereby agree to comply with the terms and conditions of the franchise and with all reasonable ordinances adopted by the City Council of the City of Belleair Bluffs not inconsistent with the franchise.


Section 2. This resolution shall take effect immediately upon adoption. Upon adoption of this resolution, the City Clerk shall deliver a certified copy to the City Clerk of the City of Belleair Bluffs.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
George N. Cretelos  
Mayor

Approved as to form:

Attest:

  
\_\_\_\_\_  
Laura Mahony  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk

ORDINANCE 2017-03

AN ORDINANCE OF THE CITY OF BELLEAIR BLUFFS, FLORIDA, A FLORIDA MUNICIPAL CORPORATION (HEREINAFTER "BELLEAIR BLUFFS") GRANTING TO THE CITY OF CLEARWATER, FLORIDA, ITS LEGAL REPRESENTATIVES, SUCCESSOR AND ASSIGNS, (HEREINAFTER "CLEARWATER"), A GAS FRANCHISE AND IMPOSING CERTAIN CONDITIONS RELATING THERETO: PROVIDING FOR REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, in addition and supplemental to their other powers, BELLEAIR BLUFFS and 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 BELLEAIR BLUFFS to be provided gas service whenever and wherever feasible; and,

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

**WHEREAS**, BELLEAIR BLUFFS and 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 BELLEAIR BLUFFS and BELLEAIR BLUFFS desires by virtue hereof to grant a franchise to CLEARWATER.

**NOW, THEREFORE**, BE IT ORDAINED BY THE CITY COMMISSION OF BELLEAIR BLUFFS, FLORIDA:

## **SECTION 1. PURPOSE.**

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

## **SECTION 2. INTERPRETATION OF RECITALS.**

The recitals and findings contained above are hereby incorporated herein.

## **SECTION 3. 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 BELLEAIR BLUFFS.
- (b) GRANTEE or CLEARWATER shall mean the City of Clearwater, a Florida municipal corporation, in its present incorporated form, or as may subsequently be reorganized, consolidated, or reincorporated.
- (c) GRANTOR or BELLEAIR BLUFFS shall mean the City of BELLEAIR BLUFFS, 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 CLEARWATER from engaging in the sale of liquid petroleum (propane) gas.

- (e) GROSS REVENUES shall mean revenues received by CLEARWATER from any CUSTOMER from the sale, transportation, distribution or delivery of 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.
- (g) FRANCHISE or FRANCHISE AGREEMENT shall mean this agreement, as passed and adopted by BELLEAIR BLUFFS and accepted by 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 BELLEAIR BLUFFS 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, BELLEAIR BLUFFS, its successors and assigns, do hereby agree and give and grant to 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 BELLEAIR BLUFFS, in the rights-of-way or easements, which are suitable and otherwise legally available for such use, and within publicly-owned lands, buildings and

facilities as expressly requested by BELLEAIR BLUFFS, (by way of example and not limitation, the Belleair Bluffs fire station and city hall buildings) all facilities required by CLEARWATER to supply Gas to BELLEAIR BLUFFS, its inhabitants and the places of business located within BELLEAIR BLUFFS' corporate limits and other customers and areas now or hereafter supplied, or to be supplied, Gas by 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.

If CLEARWATER wishes to renew this Franchise for another fifteen (15) year term, it shall provide written notice to BELLEAIR BLUFFS 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 BELLEAIR BLUFFS agrees to CLEARWATER's notice to renew this Franchise, BELLEAIR BLUFFS shall provide written notice within ninety (90) days of receipt of CLEARWATER's notice. BELLEAIR BLUFF's failure to provide such notice shall constitute a denial of CLEARWATER's request and this Franchise shall then expire at the end of the initial term. If the parties mutually agree to the 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 CLEARWATER for Gas service within the corporate limits of BELLEAIR BLUFFS during the term of this franchise shall be as provided in CLEARWATER's standard, system-wide rate schedule now or hereafter approved by CLEARWATER's City Council, or as modified by the CLEARWATER Manager, or other designated CLEARWATER official, to the extent CLEARWATER Manager, or other designated 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 CLEARWATER under the general laws of the State of Florida, or

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 CLEARWATER and other customers in cities that have a franchise or agreement with CLEARWATER for gas service.

#### **SECTION 5. ANNEXATION.**

In the event of the annexation of any territory to the present corporate limits of BELLEAIR BLUFFS, such annexed territory and all portions of the Gas system of CLEARWATER located therein shall become subject to all of the terms and conditions of this franchise as of the time such annexation becomes effective. It shall be the responsibility of BELLEAIR BLUFFS to notify CLEARWATER in writing within thirty (30) days after the effective date of every such annexation by certified mail, return receipt requested, or electronic mail. CLEARWATER shall implement such annexation within thirty (30) days of the receipt of the notice from BELLEAIR BLUFFS.

#### **SECTION 6. EXTENSION OF SERVICE.**

In consideration of the rights granted under this FRANCHISE and the duration of this FRANCHISE, CLEARWATER agrees that its facilities to be installed within the corporate limits of BELLEAIR BLUFFS 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 CLEARWATER and as applicable to the citizens 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 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, 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. COMPETITION.**

As a further consideration of this interlocal agreement and FRANCHISE granted hereunder, BELLEAIR BLUFFS 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 CLEARWATER, its successors and assigns, in the service territory within BELLEAIR BLUFFS delineated by the Florida Public Service Commission as CLEARWATER's service territory by PSC Order #00-0371-PAA-GU. CLEARWATER's service territory is shown on Exhibit "A" attached hereto and incorporated herein. Pursuant to Sections 6 and 12 hereof, CLEARWATER and BELLEAIR BLUFFS have agreed to a certain extension of service policy. In the event BELLEAIR BLUFFS desires to provide Gas service where CLEARWATER has notified BELLEAIR BLUFFS in writing said areas do not qualify under the feasibility formula, BELLEAIR BLUFFS may provide CLEARWATER notice of its intent to provide such Gas service in said areas. 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 BELLEAIR BLUFFS regarding said service. In the event CLEARWATER has not delivered written notice to BELLEAIR BLUFFS within this sixty (60) day period that CLEARWATER shall provide Gas service to said areas, BELLEAIR BLUFFS may provide Gas service in said defined areas thereafter.

#### **SECTION 9. TERMINATION OF AGREEMENT.**

Upon expiration of this agreement, CLEARWATER shall have the right, privilege and option of removing all piping and equipment installed or maintained by CLEARWATER in accordance with this FRANCHISE. In the event of the removal of such equipment, CLEARWATER shall repair all of BELLEAIR BLUFFS' and customers' property to the same condition as theretofore existed. CLEARWATER shall also have the right to sell any or all of its piping and equipment to BELLEAIR BLUFFS or a third party at the time of termination or subsequent thereto. In the event of acquisition by BELLEAIR BLUFFS 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 CLEARWATER and connected with its general system of distribution used for the purpose of serving other than customers located in BELLEAIR BLUFFS' 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, BELLEAIR BLUFFS shall be entitled to receive from CLEARWATER a franchise fee which will equal six percent (6%) of the gross receipts from the sale of Gas within the corporate limits of BELLEAIR BLUFFS for the term of this FRANCHISE. Payment of the franchise fee by CLEARWATER to BELLEAIR BLUFFS shall



be made for each Quarter, no later than the forty-fifth (45<sup>th</sup>) 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 CLEARWATER, or any affiliated entity, from or in connection with the distribution of Gas in the City of BELLEAIR BLUFFS and the transmission of Gas from and through the City of BELLEAIR BLUFFS by parties other than 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 CLEARWATER and where CLEARWATER receives no payment from the third party or the customer; provided, further, gross receipts shall not include monies for Gas service to an industrial customer engaged in manufacturing or processing activities which create or change raw or unfinished materials into another form or product and who consumes the Gas in such activities, including but not limited to activities such as laundry and dry cleaning plants; cold storage plants; steam laundries; machine shops; rebuilders of airplanes and airplane engines; mines; fruit, meat and vegetable packing and pre-cooling plants; quarries; railroad shops; water and sewer treatment plants; sewer lift stations; agricultural pumps; or any company whose Standard Industrial Code (SIC) is classified within the range of 0100-3999, as published by the Occupational Safety and Health Administration (OSHA). "Transmission of Gas" as used in this Section shall mean the transmission of natural gas and/or commingled gas through lines operating at a pressure of one hundred (100) pounds per square inch or above.

#### **SECTION 11. FAVORED NATIONS.**

In the event 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 CLEARWATER shall notify BELLEAIR BLUFFS and CLEARWATER shall be obligated upon

written request of BELLEAIR BLUFFS 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 BELLEAIR BLUFFS' ability to regulate CLEARWATER and the DISTRIBUTION SYSTEM, or allow BELLEAIR BLUFFS to increase the franchise fee, BELLEAIR BLUFFS and CLEARWATER shall negotiate in good faith modifications to this franchise 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, CLEARWATER, its successors and assigns shall furnish twenty four (24) hours of continuous service each and every day to any customer within BELLEAIR BLUFFS desiring the same and failure upon the part of CLEARWATER to: furnish Gas as herein provided for any cause within the control 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 BELLEAIR BLUFFS thereof, may act as a forfeiture of this FRANCHISE in the discretion of BELLEAIR BLUFFS. CLEARWATER shall have the opportunity to be heard by BELLEAIR BLUFFS' Commission at a duly convened meeting of the Commission prior to consideration of any such forfeiture.

As provided in Section 6 hereof, 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 CLEARWATER's investment. CLEARWATER covenants and agrees that it will not arbitrarily or unreasonably refuse to make extensions when requested to do so by BELLEAIR BLUFFS.

#### **SECTION 13. COSTS; OWNERSHIP; REPAIRS; RELOCATION**

CLEARWATER shall install the necessary facilities or equipment at its own cost and



expense and same shall be and remain the property of CLEARWATER; and CLEARWATER's facilities or equipment and other physical properties used in connection with the furnishing of GAS under this franchise shall be free from any ad valorem tax of BELLEAIR BLUFFS as long as the same remains the property 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 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. 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, CLEARWATER shall notify and consult with BELLEAIR BLUFFS; provided, however in the case of an emergency, CLEARWATER shall only be required to notify BELLEAIR BLUFFS. Should 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 BELLEAIR BLUFFS shall have such repairs and restoration done and the expense incident thereto shall be paid by CLEARWATER.

In accordance with the ordinance of BELLEAIR BLUFFS, BELLEAIR BLUFFS 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 Commission, the public interest so requires, to cause such fixtures to be relocated by CLEARWATER or its agent, without claim for reimbursement. Further,



BELLEAIR BLUFFS shall at all times have the power to pass all regulatory ordinances affecting utilities which, in the opinion of the Commission, are required in the interest of public health, safety, welfare or accommodation. Prior to requiring CLEARWATER to relocate, BELLEAIR BLUFFS shall give CLEARWATER written notice of such requirement and the opportunity to be heard by BELLEAIR BLUFFS' Commission as to the costs of such relocation to CLEARWATER and possible alternative locations and routes, for BELLEAIR BLUFFS' improvements. Ultimately, the decision as to such need for relocation shall be BELLEAIR BLUFFS'. If BELLEAIR BLUFFS shall require 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 BELLEAIR BLUFFS, BELLEAIR BLUFFS shall require said person or third party desiring or occasioning such alteration, relocation or change to reimburse CLEARWATER for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of CLEARWATER'S facilities. CLEARWATER agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of BELLEAIR BLUFFS unless it has received express permission from BELLEAIR BLUFFS or its duly authorized representative.

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

#### **SECTION 14. INDEMNIFICATION**

CLEARWATER does hereby and shall at all times indemnify, defend and hold BELLEAIR BLUFFS 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 CLEARWATER'S negligent operation of the DISTRIBUTION SYSTEM within BELLEAIR BLUFFS during the

term of this FRANCHISE, or otherwise negligently caused by CLEARWATER in connection with the operation of CLEARWATER's FRANCHISE pursuant to this Ordinance; or by or in consequence of any negligence, excluding the sole negligence of BELLEAIR BLUFFS, 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 CLEARWATER, its agents, servants, or contractors. CLEARWATER agrees to defend, indemnify and save harmless BELLEAIR BLUFFS against liability arising from or based upon violation of any Federal, State, County or Municipal law, ordinance or regulation by CLEARWATER, its agents, servants, employees, or contractors. This indemnification provision obligates CLEARWATER to defend BELLEAIR BLUFFS from any and all liability claims and all suits and actions that may be brought against BELLEAIR BLUFFS resulting from the sole negligence of CLEARWATER, its agents, servants or contractors. CLEARWATER may defend BELLEAIR BLUFFS with CLEARWATER's in-house staff counsel at trial and all appellate levels or CLEARWATER may provide for BELLEAIR BLUFFS' 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 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 CLEARWATER or BELLEAIR BLUFFS 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 CLEARWATER or BELLEAIR BLUFFS may have under §768.28 and is not intended to and shall not be interpreted to alter the extent of CLEARWATER's or BELLEAIR BLUFFS' waiver of sovereign immunity under §768.28. CLEARWATER and BELLEAIR BLUFFS 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**

BELLEAIR BLUFFS shall be furnished proof of insurance coverage by CLEARWATER to include:

**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

**Worker's 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 CLEARWATER by self-insurance, by self-funding, by purchase, or by any combination thereof at the sole option of CLEARWATER. Insurance coverage and limits shall be evidenced by delivery to BELLEAIR BLUFFS of letters of self-insurance or self-funding executed by 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 BELLEAIR BLUFFS, a photocopy of each



applicable insurance policy, including all endorsements, will be provided to BELLEAIR BLUFFS.

#### **SECTION 16. COMPLIANCE WITH ORDINANCES.**

CLEARWATER, its successors and assigns, shall at all times comply with all ordinances, rules and regulations enacted or passed by BELLEAIR BLUFFS not in conflict with the terms of this FRANCHISE and 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 BELLEAIR BLUFFS , 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, CLEARWATER shall provide BELLEAIR BLUFFS with a map showing all CLEARWATER's Gas lines and facilities within BELLEAIR BLUFFS. Upon BELLEAIR BLUFFS' request, CLEARWATER shall provide an update of such map to reflect changes in Clearwater's Gas lines and facilities. Further, CLEARWATER in accordance with applicable law, shall provide for review and inspection of such maps and also accounts and records of CLEARWATER and/or all such information regarding BELLEAIR BLUFFS that BELLEAIR BLUFFS or its representatives may from time to time reasonably request or require. 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 BELLEAIR BLUFFS, be open for examination by BELLEAIR BLUFFS and BELLEAIR BLUFFS' representatives during ordinary business hours, and such records shall be retained by CLEARWATER for a period of three (3) years, or as otherwise required by law. Upon any map information of CLEARWATER becoming available in electronic format, CLEARWATER shall at BELLEAIR BLUFFS' 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 BLUFFS' City Commission expressed by ordinance, 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 Commission are the financial wherewithal and technical experience and capabilities of the proposed Assignee. Notwithstanding the foregoing, 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 CLEARWATER in the operation of its DISTRIBUTION SYSTEM for the purpose of securing payment of monies borrowed by 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 the FRANCHISE, the franchise provided in BELLEAIR BLUFFS' Ordinance 2002-02 shall be of no further force and effect. Upon full execution hereof, 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. ENTIRE AGREEMENT**

- (a) 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 FRANCHISE AGREEMENT.
- (b) Each party, by making this agreement, 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. 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 and the FRANCHISE AGREEMENT and accepts without reservation the obligations imposed by the terms and conditions herein and in the FRANCHISE AGREEMENT.
- (d) CLEARWATER shall provide timely written notice to BELLEAIR BLUFFS for any waivers, exceptions, or declaratory rulings, filed with the FPSC or any other state or federal regulatory agency, directly affecting the FRANCHISE AGREEMENT with BELLEAIR BLUFFS.

## **SECTION 22. CHANGES IN PROVISIONS HEREOF**

Changes in the terms and conditions hereof may be made by written agreement between BELLEAIR BLUFFS and CLEARWATER, executed by both parties.

## **SECTION 23. GOVERNING LAW**

This FRANCHISE 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 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 BELLEAIR BLUFFS shall be sent to:

City of Belleair Bluffs  
City Clerk  
2747 Sunset Blvd  
Belleair Bluffs, FL 33770

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**

If any section, part of section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof. If either party to this Franchise Agreement feels that elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to it, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

## **SECTION 26. EFFECTIVE DATE**

This FRANCHISE shall become effective upon the first day of the month after approval


by CLEARWATER by resolution, duly passed and adopted by its City Council, accepting the franchise granted herein.

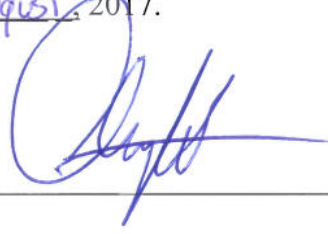
**SECTION 27.** This Ordinance shall take effect immediately upon passage and adoption.

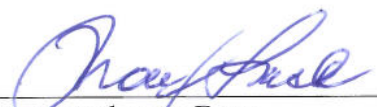
PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF BELLEAIR BLUFFS, FLORIDA, THIS 21<sup>st</sup> DAY OF August, 2017.

ATTEST:



  
City Clerk

  
Mayor

  
Approved as to Form

Thomas J. Trask, Attorney

Passed on First Reading	July 18, 2017	CA, JB, JN, TS, SS	AYE
Passed on Second Reading	August 21, 2017	CA, JB, JN, TS, SS	AYE

Countersigned:

CITY OF CLEARWATER, FLORIDA

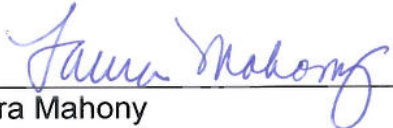
\_\_\_\_\_  
George N. Cretekos  
Mayor

By:

\_\_\_\_\_  
William B. Horne II  
City Manager

Approved as to form:

Attest:

  
\_\_\_\_\_  
Laura Mahony  
Assistant City Attorney

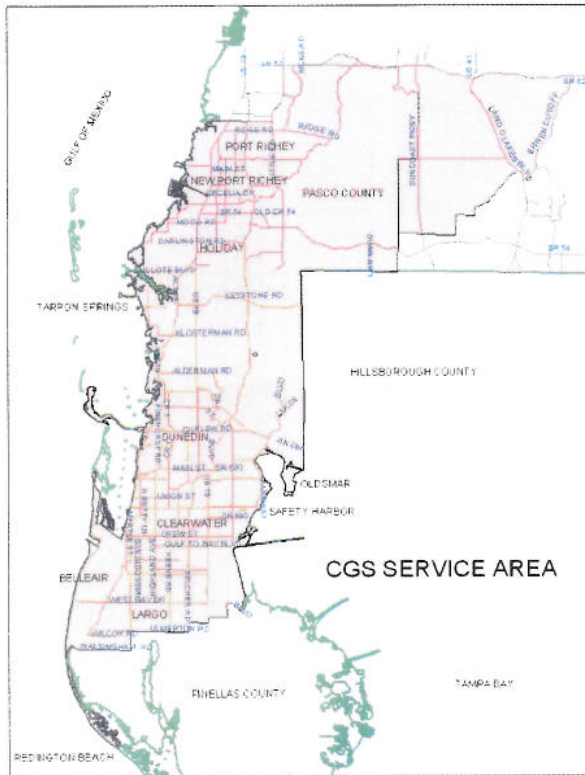
\_\_\_\_\_  
Rosemarie Call  
City Clerk



# CLEARWATER GAS SYSTEM - OVERVIEW

## (A DEPARTMENT OF THE CITY OF CLEARWATER)

### SERVING THE COMMUNITY ENERGY NEEDS FOR 90 YEARS (SINCE 1923)



#### KEY SERVICE CHARACTERISTICS & DATA

- NATURAL & PROPANE GAS SERVICE
- GAS APPLIANCE SALES & SERVICE
- INSTALLATION OF INSIDE CUSTOMER GAS PIPING
- DOMESTIC AND COMMERCIAL GAS APPLIANCE & EQUIPMENT SERVICE
- 330 SQUARE MILES OF SERVICE TERRITORY
- 850 MILES OF MAIN PIPELINE
- OPERATES CNG/NGV FUELING FACILITY

#### • SERVE 20 MUNICIPAL AREAS:

BELLEAIR	INDIAN ROCKS BEACH	PINELLAS PARK (LP)
BELLEAIR BEACH	INDIAN SHORES	PORT RICHEY
BELLEAIR BLUFFS	LARGO	REDINGTON BEACH
BELLEAIR SHORE	MADEIRA BEACH (LP)	REDINGTON SHORES
CLEARWATER	NEW PORT RICHEY	SAFETY HARBOR
DUNEDIN	NORTH REDINGTON BEACH	SEMINOLE (LP)
	OLDSMAR	TARPON SPRINGS

#### AND UNINCORPORATED NORTHERN PINELLAS & SOUTHWESTERN & CENTRAL PASCO COUNTIES:

##### PINELLAS COUNTY

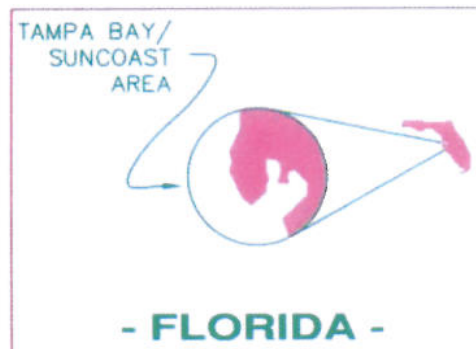
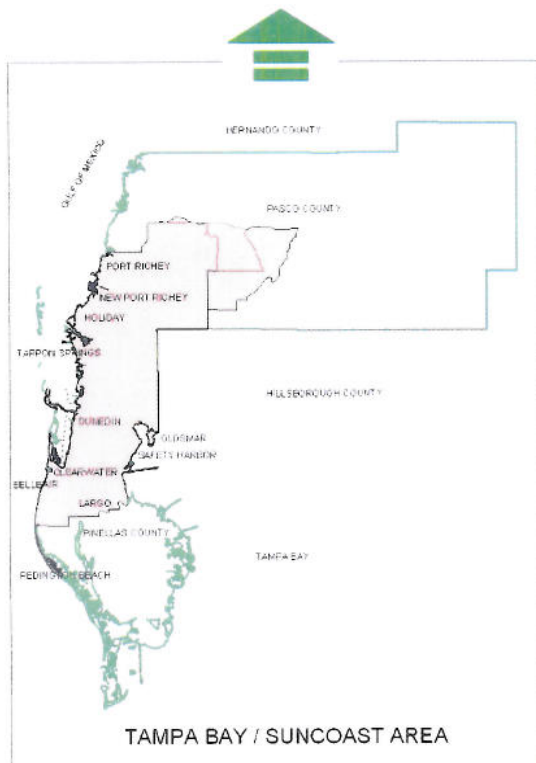
##### AREAS SERVED

CRYSTAL BEACH  
EAST LAKE  
FEATHER SOUND (LP)  
HARBOR BLUFFS  
HIGHPOINT  
OZONA  
PALM HARBOR

##### PASCO COUNTY

##### AREAS SERVED

ANCLOTE  
BEXLEY RANCH  
CONNERTON  
ELFERS  
HOLIDAY  
LAND O' LAKES  
MOON LAKE  
ODESSA  
SERENOVA  
TRINITY



- 20,313 CUSTOMERS (18,319 natural | 1,994 propane)
- 83 EMPLOYEES
- \$37.5 MILLION ANNUAL OPERATING REVENUES
- 12,455 MMBTU/DAY PEAK DEMAND (1/9/2010)
- 12,000 MMBTU/DAY PEAK CONTRACT DEMAND
- SUPPLIER: FLORIDA GAS TRANSMISSION (FGT)