

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Review and	)	
Determination on the Project Construction	)	
and Gas Transportation Agreement By and	)	Docket No.: 160175-GU
Between NUI Utilities, Inc. d/b/a City Gas	)	
Company of Florida and Florida Crystals	)	Filed: May 4, 2017
Corporation dated April 24, 2001 and	)	
Approval of an Interim Service Arrangement	)	
_____	)	

**JOINT PETITION OF  
FLORIDA CITY GAS AND FLORIDA CRYSTALS CORPORATION  
TO APPROVE THE AMENDED AND RESTATED  
GAS TRANSPORTATION AGREEMENT**

1. Florida City Gas (“FCG” or “Company”) and Florida Crystals Corporation (“Florida Crystals”) (collectively, FCG and Florida Crystals shall be referred to as the “Parties”), pursuant to Sections 120.569, 120.57, 366.04, and 366.06, Florida Statutes,<sup>1</sup> and Rules 25-9.034 and 28-106.201, Florida Administrative Code (“F.A.C.”), hereby file with the Florida Public Service Commission (“PSC” or “Commission”) this Joint Petition to Approve the *Amended and Restated Project Construction and Gas Transportation Agreement By and Between Pivotal Utility Holdings, Inc. (f/k/a NUI Utilities, Inc.) d/b/a Florida City Gas (f/d/b/a City Gas Company of Florida) and Florida Crystals Corporation dated as of April 24, 2001, As Amended \_\_\_\_\_, 2017*<sup>2</sup> (“Joint Petition”) in order to establish going forward rates, terms, and conditions between the Parties for natural gas transportation services provided by FCG to Florida Crystals and to resolve, settle, and conclude all of the issues in this docket in a manner that is consistent with the Commission’s rules and regulations and the public interest. In support of this Joint Petition, the

<sup>1</sup> All references herein to the Florida Statutes are to the 2016 edition.  
<sup>2</sup> The date field for the Amended and Restated GTA is blank since the Parties will not be executing it until after the PSC approves it.

Parties state as follows:

## I. INTRODUCTION AND SUMMARY

2. This docket was initiated on July 22, 2016, by FCG's Petition for Review and Determination on the *Project Construction and Gas Transportation Agreement By and Between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation dated April 24, 2001* and Approval of an Interim Service Arrangement (the "Petition"). The *Project Construction and Gas Transportation Agreement By and Between NUI Utilities, Inc. d/b/a City Gas Company of Florida and Florida Crystals Corporation dated April 24, 2001* has been referred to in these proceedings as the "GTA." Florida Crystals was designated a party in this docket by Order No. PSC-16-0581-PCO-GU, issued December 27, 2016 ("Order"). The Parties have filed various pleadings in this matter which were identified and addressed by the Order and the PSC's subsequent Order Granting Florida Crystals Corporation's Motion for Clarification, PSC Order No. PSC-17-0062-FOF-GU, issued February 27, 2017.

3. In summary, while the Parties have vigorously advocated for their respective positions before the Commission, the Parties have also realized the importance of a business solution that would permit FCG to continue to provide natural gas transportation service to Florida Crystals under mutually agreeable terms. In this spirit, both prior to and subsequent to the Commission's December 6, 2016, Agenda Conference, the Parties have met in good faith to seek a business solution that meets their individual business needs and that would be consistent with the PSC's requirements and the public interest. The Commission has also recognized the importance of a business solution to this unique situation, and the Commissioners during the December 6, 2016, Agenda Conference and the February 7, 2017, Agenda Conference encouraged the Parties to work together for a negotiated mutual business solution. The

Commission Staff has also facilitated the negotiation process through the initial issues identification meeting and agreed upon deferrals of subsequent issues identification meetings.

4. The Parties have now reached a negotiated settlement that, with the Commission's approval, will resolve all issues in this docket including a going-forward service arrangement that complies with applicable regulatory requirements. Accordingly, the Parties have prepared and agreed to the attached and unsigned *Amended and Restated Project Construction and Gas Transportation Agreement By and Between Pivotal Utility Holdings, Inc. (f/k/a NUI Utilities, Inc.) d/b/a Florida City Gas (f/d/b/a City Gas Company of Florida) and Florida Crystals Corporation dated as of April 24, 2001, As Amended \_\_\_\_\_, 2017* ("Amended and Restated GTA" attached hereto as Exhibit A) that is hereby being submitted to the PSC for approval pursuant to Rule 25-9.034, F.A.C. Also attached are supporting exhibits, including the Settlement Agreement of the Parties (Exhibit B) and certain cost analyses (Exhibit C). The Parties note that the Settlement Agreement is not being submitted to the PSC for approval but rather is being provided for informational purposes so the Commission can understand the full scope of the Parties' agreement. To the extent the Commission requires additional information and supporting documentation, the Parties will respond to such requests as quickly as reasonably practicable.

5. The rates, terms, and conditions of the Amended and Restated GTA are fair, just, and reasonable and mutually beneficial to FCG, FCG's other customers, and Florida Crystals. Moreover, the Amended and Restated GTA fully complies with the standards set forth in the Commission's statutes and rules as well as FCG's Commission-approved Tariff. Accordingly, the Amended and Restated GTA is in the public interest. Based upon the attached Exhibits and the information provided in this Joint Petition, the Parties hereby respectfully request PSC approval of the Amended and Restated GTA.

## II. PROCEDURAL BACKGROUND

6. Florida City Gas is a public utility as defined in Section 366.02(1), Florida Statutes, that provides natural gas sales service and natural gas transportation service in its service area, which extends from Miami-Dade County north to Palm Beach, Indian River, and Brevard Counties, and west to Glades, Charlotte, Hendry, and Lee Counties. FCG's name and address are as follows:

Florida City Gas  
4045 NW 97<sup>th</sup> Street  
Doral, FL 33178.

7. All notices, orders, or documents regarding this Petition should be directed to the following person on behalf of FCG:

Floyd R. Self, B.C.S. ([fself@bergersingerman.com](mailto:fself@bergersingerman.com))  
Berger Singerman LLP  
313 North Monroe Street, Suite 301  
Tallahassee, FL 32301  
Telephone (850) 521-6727  
Facsimile (850) 561-3013

with a courtesy copy to:

Blake O'Farrow ([bofarrow@southernco.com](mailto:bofarrow@southernco.com))  
Director of Regulatory and Legislative Affairs  
Southern Company Gas  
Ten Peachtree Place NE  
Atlanta, GA 30309  
Telephone (404) 584-3694

8. Florida Crystals Corporation is a Delaware corporation registered with the Florida Department of State and duly authorized to do business in Florida. Florida Crystals, through wholly-owned subsidiaries, owns and operates sugar growing, processing, and refining facilities in Florida, including the Okeelanta sugar mill and an associated cogeneration power plant (collectively, the "Okeelanta Plant"), located near South Bay, in western Palm Beach County,

that provides electricity and thermal energy to its mill and refinery. Florida Crystals' name, address, and telephone number are as follows:

Florida Crystals Corporation  
One North Clematis Street  
Suite 200  
West Palm Beach, FL 33401  
Telephone: (561) 366-5100.

9. All pleadings, orders, and correspondence should be directed to Florida Crystals' representatives as follows:

Robert Scheffel Wright ([schef@gbwlegal.com](mailto:schef@gbwlegal.com))  
John T. LaVia, III ([jlavia@gbwlegal.com](mailto:jlavia@gbwlegal.com))  
Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, FL 32308  
Telephone: (850) 385-0070  
Facsimile: (850) 385-5416

with a courtesy copy to:

Steven M. Pincus ([Steven.Pincus@floridacrystals.com](mailto:Steven.Pincus@floridacrystals.com))  
Florida Crystals Corporation  
One North Clematis Street  
Suite 200  
West Palm Beach, FL 33401  
Telephone: (561) 366-5199  
Facsimile: (561) 838-9303.

10. The agency affected by this Joint Petition is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850.

11. Because this Joint Petition is initiating proceedings on the Amended and Restated GTA for which the Parties seek the Commission's approval, this case does not involve reversal or modification of an agency decision or an agency's proposed action. Therefore, subparagraph (c) and portions of subparagraphs (e), (f) and (g) of Rule 28-106.201(2), F.A.C. are not

applicable to this Joint Petition.

12. The Parties' Substantial Interests. Through their Joint Petition, FCG and Florida Crystals seek the Commission's formal approval of the rates, terms, and conditions under which the Parties have agreed, subject to Commission approval, to continue their business relationship that began in 2001. The Amended and Restated GTA, for which the Parties seek the Commission's approval, provides for higher rates to be paid to FCG for the next 15 years than are required under the original GTA, and the new higher rates fully recover FCG's cost to serve and likewise fully satisfy all applicable requirements of FCG's Tariff and the Commission's statutes and rules. The Amended and Restated GTA also provides additional service and capacity opportunities for Florida Crystals. FCG has a substantial interest in retaining Florida Crystals' business on the terms and conditions set forth in the Amended and Restated GTA, and Florida Crystals has a substantial interest in continuing to obtain gas transportation service at reasonable rates, with the expanded interruptible service opportunities provided in the Amended and Restated GTA. Both Parties also have substantial interests in obtaining the Commission's approval in order to resolve their disputes and provide a clear, formally approved contractual framework for their business relationship going forward. Accordingly, the Parties' substantial interests – in providing and receiving gas transportation service at fair, just, and reasonable rates, through a Commission-approved long-term contract that provides certainty to both Parties – are immediate and squarely within the scope of the Commission's jurisdiction.

### **III. FACTUAL BACKGROUND: THE AMENDED AND RESTATED GTA**

13. The circumstances and issues raised in this docket are unique. Florida Crystals is a very large consumer of natural gas, and thus of natural gas transportation service. Historically, however, Florida Crystals operated the Okeelanta Plant with a combination of sugar cane

bagasse, other biomass fuels, and fuel oil. The possibility of providing gas transportation service to a customer like Florida Crystals with substantial energy requirements significantly contributed to the Company's business decision in the late 1990s to construct a new natural gas pipeline west from Palm Beach to Clewiston, which has been referred to as the Clewiston Pipeline Extension Project (the "Clewiston Project"). While the Clewiston Project initially did not directly serve the Florida Crystals Okeelanta Plant, the Parties successfully negotiated a natural gas transportation agreement, the GTA, that would permit such service. In the GTA, the Company agreed to construct a lateral pipeline (the "Okeelanta Lateral") from the Clewiston Project to serve the Okeelanta Plant. The GTA was signed by the Parties on April 24, 2001. The Okeelanta Lateral was timely constructed, and FCG began providing natural gas transportation service to the Okeelanta Plant pursuant to the terms of the GTA in November 2001. Among other provisions, the April 24, 2001 GTA required Florida Crystals to make substantial payments for service on a take-or-pay basis, which Florida Crystals duly made over the first fifteen years of the GTA's term, and which supported FCG's ability to expand new natural gas service into what is now the western part of its service area.

14. While the Company did not submit the GTA to the PSC for approval prior to the commencement of this docket, the Parties have in good faith fully performed their various duties and responsibilities under the GTA for over 15 years and the GTA has been cost effective for the Parties and FCG's other customers. During the early years of the GTA the volume of gas transported varied based upon the availability and cost of Florida Crystals' alternative biomass fuel. Over the last several years, Florida Crystals has generally transported gas in quantities much closer to the maximum volumes permitted by the GTA. FCG's transportation service volume to Florida Crystals is substantially greater than the service volume provided to FCG's

next largest, and only other special contract customer. Even at contract rates below those in FCG's otherwise applicable large volume service tariffs but above FCG's incremental cost, the revenues associated with FCG's service to Florida Crystals have provided significant economic benefits to FCG and its general body of ratepayers. The rates paid by Florida Crystals during the Primary Term and the Make-Up Period significantly exceeded FCG's costs and were fair, just, and reasonable. Even in years when Florida Crystals used no natural gas, Florida Crystals made substantial payments to FCG pursuant to the GTA. The total revenues collected to date significantly exceed the cost of the Okeelanta Lateral and FCG's incremental costs of serving the Okeelanta Plant. In addition, the total revenues have contributed to the recovery of the cost of the Clewiston Project pipeline while also providing a contribution to common overhead costs, including common capital costs, return on investment, and O&M costs. The Company's updated and revised cost analysis, including sensitivity cases, is presented in Exhibit C.<sup>3</sup>

15. Going forward, Florida Crystals would like to have available additional, new gas transportation capacity to meet potential future needs of the Plant. Natural gas provides a clean, efficient, and cost effective fuel for the Okeelanta Plant. The opportunity for Florida Crystals to continue to receive natural gas transportation service from FCG under the Amended and

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<sup>3</sup> The cost study analysis provided in Exhibit C is different from that previously provided to the Commission. Since the December 6, 2016 Commission Agenda Conference, FCG has revisited its entire analysis and determined that there were some mathematical errors and incorrect assumptions in the previously submitted documentation, which are further explained in the Exhibit. FCG believes that the analysis provided in support of this Joint Petition is the correct methodology with the correct numbers. (As previously explained in its pleadings, Florida Crystals does not agree that the Company's methodology presented in the Exhibit is the methodology contemplated by FCG's Tariff, but this difference of opinion does not detract in any way from Florida Crystals' support for the Joint Petition and the Amended & Restated GTA. In brief, Florida Crystals believes that the correct methodology would show that service to Florida Crystals pursuant to the Amended & Restated GTA is even more cost-effective than indicated by the Company's Exhibit.)

Restated GTA combined with the ability to receive additional gas transportation services on an interruptible basis reinforces the historic benefits of Florida Crystals as an FCG customer and provides new benefits for both FCG and Florida Crystals through the expanded service while keeping a very large customer on FCG's system, which is of great benefit to FCG's general body of ratepayers.

16. The original GTA was entered into pursuant to the terms of the Company's then-effective Contract Transportation Service rate schedule ("KTS Tariff"). The Amended and Restated GTA remains grounded on FCG's Tariff, including specifically the Contract Demand Service Rate Schedule ("KDS Tariff"), which is the successor to the Company's KTS Tariff. The KDS Tariff provides clear and specific tariff authority for special service contracts and rates of exactly the type provided for in the Amended and Restated GTA. The rates, terms, and conditions pursuant to which FCG will provide service to Florida Crystals under the Amended and Restated GTA fully complies with the KDS Tariff for the following reasons:

- Florida Crystals is a large commercial customer.
- The volume of gas to be transported qualifies for the GS-1250k rate schedule (which is FCG's largest volume tariff classification).
- Florida Crystals has alternative fuel sources, including sugar cane bagasse, other biomass fuels, and fuel oil, which it has utilized and is prepared to utilize in the absence of the approval of the Amended and Restated GTA.
- The Amended and Restated GTA provides for additional incremental gas to be transported over the volumes set forth in the original GTA.

- The rates in the Amended and Restated GTA recover FCG’s incremental costs of providing the service, including a reasonable return on FCG’s investment.
- The rates in the GTA and the Amended and Restated GTA have already recovered the capital costs of the Okeelanta Lateral.
- Service to Florida Crystals was a critical factor in FCG’s original decision to construct the Clewiston Project pipeline, thereby facilitating the expansion of natural gas service into new, previously unserved areas, and retaining Florida Crystals as a customer will commit a significant volume of gas for the pipeline that will continue to enable the recovery of costs associated with the Clewiston Project while also providing contributions to FCG’s common overhead and return, to the benefit of FCG and all of FCG’s customers.
- Providing service to Florida Crystals will not adversely impact FCG’s other customers and will in fact benefit customers since the net revenue above incremental cost will contribute to FCG’s common costs; FCG will also not seek recovery through the Competitive Rate Adjustment (“CRA”) mechanism from its ratepayers.
- FCG has evaluated the competitive conditions and the other terms of FCG’s Tariff regarding interruption and curtailment, which are consistent with FCG's service terms.

17. The critical issue in this docket is whether the rates under the Extended Term of the GTA recover FCG’s costs as is required by FCG’s Tariff. Without conceding their respective positions regarding the precise cost standard required by the KDS Tariff, the Parties agree that the Amended and Restated GTA provides for rates, terms, and conditions for natural gas transportation service to Florida Crystals that are fair, just, and reasonable and in the public

interest because Florida Crystals will continue to be a very large natural gas transportation customer of FCG with the ability to increase the volume of gas transported by FCG. Since the rates for the Extended Term under the Amended and Restated GTA exceed FCG's costs to provide the service, these new rates will continue the economic benefits provided in the past to FCG and its ratepayers.

18. To be consistent with the original intent of the Parties as expressed in the GTA, the Parties' performance under the GTA since 2001, the benefits provided by that performance, and the continuing desire of the Parties as is reflected in the Amended and Restated GTA, the Parties further agree that it is appropriate to continue service pursuant to the Company's KDS Tariff as the successor to the KTS Tariff. While the KDS Tariff requires that the contract rate apply to the new incremental capacity, as an amended and restated contract being submitted to the PSC for the first time for its approval, the Parties believe it is appropriate to treat the Amended and Restated GTA as an original special contract for approval purposes, and that such approval will result in fair, just, and reasonable treatment for FCG, FCG's general body of customers, and Florida Crystals. In addition to according respect to the original purpose of the Company's KTS Tariff and the Parties' intent in successfully promoting the expansion of natural gas service to new areas that were not served before the construction of the Clewiston Project, absent approval of the Amended and Restated GTA, the loss of Florida Crystals as a customer by FCG could have very significant, adverse consequences for FCG and its general body of ratepayers.

19. The original GTA included a tiered rate structure that has been slightly modified in the Amended and Restated GTA to provide for cost-based rates applicable for all volumes of transportation service in the Extended Term that recover the Company's incremental costs of

service with respect to each tier. This rate structure affords Florida Crystals the opportunity to increase the volume of FCG's transportation services and receive a lower rate based upon the total volume delivered and the incremental cost applicable to Florida Crystals. The specific analysis and support for these rates, and for the Commission's approval of the rates and the Amended and Restated GTA, is included in Exhibit C to this Petition.<sup>4</sup>

20. With very high volume customers like Florida Crystals, given the declines in the cost to serve at higher transportation volumes, a rate structure that includes tiered rates reflects the economics of serving the customer while encouraging the customer to stay on the system and potentially increase throughput. This is a win-win for all of FCG's customers because the cost of facilities and common O&M costs are ultimately recovered over a larger volume of gas transported. FCG utilized a similar tiered rate approach with the transportation agreement for another large service customer, Miami-Dade County, which the PSC approved in Docket Nos. 090539-GU and 130089-GU.

21. The information presented in Exhibit C shows that, if Florida Crystals uses the maximum volume of firm transportation service allowed under the Amended and Restated GTA, the revenues will provide significant benefits to FCG and FCG's general body of customers. This is true because those revenues will more than cover the allocated costs of providing the service, including a full return on FCG's investment and will also recover substantial amounts of

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<sup>4</sup> While the Parties have vigorously disputed the exact cost standard to be applied to service under the GTA, the Commission will readily see, in reviewing the confidential information supporting this Joint Petition, that the revenues to be provided by Florida Crystals pursuant to the Amended & Restated GTA will satisfy either Party's proposed cost standard, and that the revenues will also satisfy the standard discussed by the Commission in the Miami-Dade case. In re: Joint Petition for Approval of Natural Gas Transportation Service Agreement Between Florida City Gas and Miami-Dade County, FPSC Docket No. 130089-GU, Order No. PSC-13-0402-PAA-GU (Fla. Pub. Serv. Comm'n, August 30, 2013).

FCG's common overhead costs that would otherwise be borne by other customers. The Exhibit further shows that if Florida Crystals were to increase throughput by utilizing the interruptible service<sup>5</sup> provided for in the Amended and Restated GTA, the benefits to FCG and its other customers would be even greater. Further, even if Florida Crystals were to use annual volumes closer to its recent and current usage levels, it would still cover all allocated costs and provide a substantial return on investment.<sup>6</sup>

22. With respect to the temporary rates established in the Order for transportation service provided during the pendency of this docket through the final order in this matter, FCG is prepared to implement the true-up required by the Order. Attached hereto as Exhibit D is FCG's calculation of the true-up for the period November 16, 2016 through March 31, 2017. That actual true-up and refund will be calculated and paid employing the methodology utilized in Exhibit D but for the complete applicable period as required by the Order.

23. Under Rider "C" to the Company's Tariff, the Competitive Rate Adjustment ("CRA") Rider, and the Commission's decision in Order No. PSC-04-0128-PAA-GU, at page 59 (issued February 9, 2004), FCG may "recover from its customers any revenue shortfall or credit any revenue surplus it incurs by offering a discount to large volume customers that have alternate

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<sup>5</sup> The Commission will note that all interruptible service can be interrupted or curtailed at the sole option of the Company, such that Florida Crystals' use of interruptible transportation service can never adversely affect other customers. The Commission will also note that the rates paid for such interruptible service are, in fact, the same exact rates as for firm service, signifying additional benefits to FCG and its other customers.

<sup>6</sup> As noted above, Florida Crystals does not agree that the allocation methodology reflected in Exhibit C is what is required by the plain language of FCG's Tariff, nor by the Commission's longstanding policies addressing load retention and load enhancement rates. In thus advising the Commission on this issue, Florida Crystals further states that its position on the appropriate cost methodology does not detract in any way from Florida Crystals' full support for the Parties' request that the Commission approve the Amended and Restated GTA.

fuel capabilities.” Thus, FCG may seek CRA recovery for the difference between the Amended and Restated GTA rates and the otherwise applicable tariff rate, in this case the GS-1,250k Rate Schedule. However, in view of the overall special circumstances of this case, FCG commits to the Commission that it will not seek any CRA recovery associated with the Amended and Restated GTA for the duration of the special contract.

24. The Parties request that the Commission approve the Amended and Restated GTA as a special contract pursuant to Rule 25-9.034(1), F.A.C. Consistent with that Rule, the Amended and Restated GTA provides that it shall be approved by the PSC before it is signed by the parties.

#### **IV. SETTLEMENT REQUIREMENTS**

25. By its nature, a negotiated settlement recognizes that the respective Parties have made various compromises in order to remove the uncertainty of litigation results. In view of the extensive litigation that has occurred in this docket, the Parties believe that the rates, terms, and conditions of the Amended and Restated GTA represent a reasonable resolution of this matter, that the Amended and Restated GTA is in the best interests of each Party, and that it should be approved in the public interest.

26. The settlement and resolution of all of the issues between the Parties depends upon the PSC’s approval of the Amended and Restated GTA and this Joint Petition as they have been submitted in order for the issues and disputes between the Parties to be fully and completely resolved, settled, and concluded. If the Commission does not grant the relief requested in the Joint Petition and does not approve the Amended and Restated GTA as presented, then this docket shall not be settled and FCG and Florida Crystals fully reserve each and all of their respective rights, positions, and arguments. If this Joint Petition and the Amended GTA are not

accepted in their entirety, the Parties and Commission Staff will need to meet to immediately develop a new procedural schedule so this matter can be heard as soon as possible.

27. If this Joint Petition is accepted by the Commission in its entirety as proposed, including approval of the Amended and Restated GTA, then FCG and Florida Crystals shall not request reconsideration of or appeal the orders of the Commission approving this Joint Petition in accordance with its terms.

28. When the order granting the relief requested in the Joint Petition and approving the Amended and Restated GTA becomes final agency action as would be reflected through the issuance of a consummating order, the Amended and Restated GTA shall be valid and binding upon FCG and Florida Crystals. The Parties will thereafter execute the Amended and Restated GTA, and FCG shall timely file it with the PSC.

29. Upon the issuance of the consummating order approving this Joint Petition and the Amended and Restated GTA, this docket should be closed by the Commission without any further action on any matter within or related to the scope of the docket.

#### **V. DISPUTED ISSUES OF MATERIAL FACT**

30. In compliance with Rule 28-106.201(2)(d), F.A.C., the Joint Petitioners state that they do not dispute any of the material facts set forth herein, and that they are not aware of any issues of material fact that may be disputed by others who may plan to participate in the proceedings to approve the Amended and Restated GTA.

#### **VI. ULTIMATE FACTS ALLEGED**

31. In determining whether to grant the Joint Petition and approve the Amended and Restated GTA, the Commission will ultimately have to decide whether approval is consistent with FCG's Tariff and the Commission's underlying statutory requirements that the rates, terms,

and conditions for service be fair, just, and reasonable. If approval is consistent with FCG's Tariff and the statutory requirements, then the Commission should grant the Joint Petition and approve the Amended and Restated GTA. In support of their request for the Commission's approval, the Parties aver that the following ultimate facts are true and that they thus support the Commission's approval as requested herein.

- A. Florida Crystals is eligible for service pursuant to FCG's Rate Schedule KDS.
- B. Florida Crystals has alternative fuel sources, including sugar cane bagasse, other biomass fuels, and fuel oil, that it has historically used and is capable of using in the future to meet its energy requirements.
- C. FCG's service to Florida Crystals was a critical factor in FCG's original decision to construct the Clewiston Project pipeline, which facilitated and supported FCG's extension of natural gas service into what is now the western part of its service area, an area in which natural gas service was not available before Florida Crystals committed to take substantial volumes of natural gas transportation service from FCG.
- D. The Amended and Restated GTA provides for the continuation of the Parties' business arrangement that facilitated and supported FCG's extension of natural gas service into what is now the western part of its service area.
- E. The rates paid by Florida Crystals since 2001 have been fair, just, and reasonable, and the revenues paid to FCG by Florida Crystals at those rates have recovered FCG's costs of service, including a reasonable return, have provided significant contributions to covering FCG's common capital and O&M costs, and have more than recovered the cost of the Okeelanta Lateral pipeline that serves Florida

Crystals' Okeelanta Plant.

- F. The rates to be paid by and the revenues to be collected from Florida Crystals will recover FCG's costs of providing service to Florida Crystals and will provide a reasonable return on FCG's investment.
- G. The rates to be paid by Florida Crystals, and the terms and conditions under which FCG will provide natural gas transportation service to Florida Crystals, are fair, just, and reasonable, and not unduly discriminatory as to FCG, FCG's general body of customers, and Florida Crystals.
- H. FCG's continued provision of service to Florida Crystals pursuant to the rates, terms, and conditions set forth in the Amended and Restated GTA satisfies all applicable requirements of, and is wholly consistent with, FCG's Rate Schedule KDS and other relevant provisions of FCG's Tariff.
- I. FCG's continued provision of service to Florida Crystals pursuant to the rates, terms, and conditions set forth in the Amended and Restated GTA will not adversely affect FCG or FCG's general body of ratepayers, and will in fact benefit all customers because the net revenue above FCG's incremental costs will contribute to FCG's common costs, including common capital, return, and O&M costs.
- J. FCG's continued provision of service to Florida Crystals pursuant to the rates, terms, and conditions set forth in the Amended and Restated GTA is in the public interest and the best interests of all of FCG's customers.
- K. FCG has evaluated the competitive conditions and the other terms of its Tariff regarding interruption and curtailment, and FCG has concluded that the service to

be provided is consistent with FCG's service terms, conditions, and other requirements of FCG's Tariff.

- L. FCG will not seek recovery of any hypothetical revenue shortfall associated with the Amended and Restated GTA through the Competitive Rate Adjustment mechanism for the duration of the Amended and Restated GTA.

## **VII. CONCLUSION AND RELIEF REQUESTED**

32. The Parties appreciate the Commission's encouragement and support to find a business resolution of this matter. As explained above, the Parties' settlement embodied in the Amended and Restated GTA provides for service at rates, terms, and conditions that are fair, just, and reasonable as to FCG, FCG's other present and future customers, and Florida Crystals. Additionally, service pursuant to the Amended and Restated GTA will be beneficial to FCG and its general body of customers.

33. Statement of Statutes and Rules That Entitle the Parties to Relief. The Parties are entitled to the relief requested because the Commission's applicable statutes, including Sections 366.04 and 366.06, Florida Statutes, authorize the Commission to approve rates, terms, and conditions for natural gas transportation service that are fair, just, reasonable, and not unduly discriminatory. Consistent with Commission Rule 25-9.034, F.A.C., this Joint Petition and its supporting exhibits provides a full explanation and justification for the differences between the rates provided in the Amended and Restated GTA from those in the Company's standard rate schedules. The Amended and Restated GTA fully satisfies the applicable statutory and rule requirements, and the Commission should accordingly approve the Joint Petition and the Amended and Restated GTA as requested by FCG and Florida Crystals herein.

**WHEREFORE**, the Parties respectfully request that the Commission:

- A. Process this Joint Petition as expeditiously as practicable using the Commission's Proposed Agency Action ("PAA") process.
- B. Issue its Order GRANTING this Joint Petition and APPROVING the Amended and Restated GTA in its entirety, without any changes, modifications, or conditions.
- C. Include in its Order provisions that authorize Company to make a refund to Customer equal to the difference between the temporary rates approved pursuant to FPSC Order No. PSC-16-0581-PCO-GU (which are the Make-Up Period Rates under the Agreement as it exists before the effectiveness of the Amended and Restated GTA) and the final rates for the Extended Term that the Parties have agreed to in the Amended and Restated GTA, as applied and calculated with respect to Customer's usage of gas transportation service from November 16, 2016 through and including the date on which the Commission's order approving the Amended and Restated GTA becomes final by operation of law (i.e., the time for filing a notice of appeal has expired or any appeals have been decided); and further authorizing Company to make such refund either by a direct payment to Customer or by crediting the full amount of the refund, with interest as provided for in the aforementioned Order No. PSC-16-0581-PCO-GU, to Customer's bills for Service beginning on the FPSC Final Approval Order Effective Date and continuing until the full refund amount has been credited to Customer's bills.

Respectfully submitted this 4<sup>th</sup> day of May, 2017,

/s/ Floyd R. Self

Floyd R. Self, B.C.S.  
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313 North Monroe Street, Suite 301  
Tallahassee, Florida 32301  
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*Counsel for Florida Crystals Corporation*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been furnished by E-

Mail on this 4<sup>th</sup> day of May, 2017, to the following:

Robert Scheffel Wright, Esq.  
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**AMENDED AND RESTATED  
PROJECT CONSTRUCTION AND GAS TRANSPORTATION AGREEMENT**

**BY AND BETWEEN**

**PIVOTAL UTILITY HOLDINGS, INC. (f/k/a NUI UTILITIES, INC.)  
d/b/a FLORIDA CITY GAS (f/d/b/a CITY GAS COMPANY OF FLORIDA)**

**AND**

**FLORIDA CRYSTALS CORPORATION**

**DATED AS OF**

**APRIL 24, 2001,**

**AS AMENDED \_\_\_\_\_, 2017**

**AMENDED AND RESTATED**  
**PROJECT CONSTRUCTION AND GAS TRANSPORTATION AGREEMENT**

THIS AMENDED AND RESTATED PROJECT CONSTRUCTION AND GAS TRANSPORTATION AGREEMENT DATED AS OF APRIL 24, 2001, AS AMENDED \_\_\_\_\_, 2017 (“Agreement”) is made and effective as of April 24, 2001 by Pivotal Utility Holdings, Inc. (f/k/a NUI Utilities, Inc.), d/b/a Florida City Gas, f/d/b/a City Gas Company of Florida, a New Jersey corporation with offices at 4045 NW 97th Ave, Doral, Florida 33178 (“Company”) and Florida Crystals Corporation, a Delaware corporation, with offices at 1 North Clematis Street, #200, West Palm Beach, Florida 33401 (“Customer”), collectively the “Parties” or individually a “Party.”

**BACKGROUND**

WHEREAS, Company and Customer are parties to that certain Project Construction and Gas Transportation Agreement, dated April 24, 2001, pursuant to which Company has provided natural gas transportation service to Customer’s Okeelanta Facility (as defined below); and

WHEREAS, Company and Customer have performed their respective duties and obligations under this Agreement since its execution on April 24, 2001; and

WHEREAS, pursuant to this Agreement, Company has constructed facilities and continues to use such facilities to provide natural gas transportation service to Customer and Customer has received and paid for, and Customer is willing to continue to receive and pay for such service in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Parties are currently disputing various issues associated with the Agreement and future service thereunder in Florida Public Service Commission (“FPSC”) Docket No. 160175-GU; and

WHEREAS, the Parties mutually wish to amend and restate the Agreement as set forth herein to provide for certain additional gas transportation service options, to delete certain obsolete provisions, and to modify certain provisions so as to mutually resolve certain issues that have arisen between them, including those issues that are in dispute in the aforementioned FPSC Docket No. 160175-GU; and

WHEREAS, the Parties agree and acknowledge that the availability and provision of Service (as defined herein) to Customer pursuant to Company's Rate Schedule KDS (Contract Demand Service) is a material inducement to Customer to enter into and perform this Agreement, and that Customer would not enter into this Agreement without the provisions hereof making Service available to Customer pursuant to the aforementioned Rate Schedule KDS; and

WHEREAS, the Parties expressly intend that, excepting those provisions that are expressly modified, all other provisions of this Agreement as executed on April 24, 2001 shall remain in full force and effect; and

NOW, THEREFORE, in consideration of the premises set forth above and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties agree as follows:

## **1. DEFINITIONS**

**"Business Day"** shall mean any day on which Federal reserve member banks in New York City are open for business, and shall begin at 8:00 a.m. and close at 5:00 p.m. Eastern Time.

**"Confidential Information"** shall have the meaning ascribed to it in Article 17 of this Agreement.

**"Contract Year"** shall mean a period of 365 consecutive days, or 366 consecutive days for any year that contains the date of February 29, beginning on the day of the month that the Extended Term begins.

**"CPI"** shall mean the Consumer Price Index, which shall be, for purposes of this Agreement, the CPI-U for All Items for the Miami-Ft. Lauderdale Standard Metropolitan Statistical Area, Series ID: CUURA320SAO, as published by the Bureau of Labor Statistics as reported in January of each year for the prior twelve (12) calendar months (i.e., January 1 to December 31).

**"Deficiency Quantity"** shall have the meaning ascribed to it in Section 15.B. of this Agreement.

**"Effective Date"** shall mean April 24, 2001.

**"Extended Term"** shall have the meaning ascribed to it in Article 3 of this Agreement.

**"FERC"** shall mean the Federal Energy Regulatory Commission.

**“Firm Service”** shall mean natural gas transportation service that is provided by Company to Customer with the same degree of reliability as it provides to all other retail customers of the Company in accordance with Company’s Tariff and the rules and regulations for service contained therein, but “Firm Service” does not include “Interruptible Service” as defined hereinbelow.

**“FGT”** shall mean Florida Gas Transmission Company.

**“Force Majeure”** shall have the meaning ascribed to it in Section 19.B. of this Agreement.

**“FPSC”** shall mean the Florida Public Service Commission.

**“Gas Day”** shall mean the twenty-four hour period beginning at 10:00 a.m. Eastern Time and ending at 9:59:59 a.m. Eastern Time on the following calendar day, provided that the Parties agree that this definition shall be revised to be consistent with any revision made by FGT to its definition of Gas Day, approved by FERC, and made effective in FGT’s gas tariff on file with FERC.

**“Interruptible Service”** means natural gas transportation service provided by Company to Customer that can be limited or interrupted, either automatically or manually, solely at the option of the Company, when necessary to maintain firm service to other customers of the Company, or to maintain the reliability and integrity of Company’s system.

**“Main Line”** shall have the meaning ascribed to it in Article 2 of this Agreement.

**“Make-Up Period”** shall have the meaning ascribed to it in Article 3 of this Agreement.

**“Maximum Daily Contract Quantity”** or **“MDCQ”** shall have the meaning ascribed to it in Article 8 of this Agreement.

**“Okeelanta Facility”** shall mean, collectively, the Okeelanta sugar processing and distribution industrial facilities, the Okeelanta power plant, and ancillary facilities, which are located west of U.S. 27 and within one-half mile of the access road that is located between U.S. 27 and the Okeelanta Facility, all of which is located near South Bay, Florida.

**“Okeelanta Line”** shall have the meaning ascribed to it in Article 2 of this Agreement.

**“Per Therm O & M Expenses of Company”** shall be equal to (i) the pro-forma adjusted operations and maintenance expenses, exclusive of the expenses for natural gas, as reported in Company’s annual earnings surveillance report to the FPSC for any given reporting year, divided by (ii) the total therms delivered by Company for such reporting year.

**“Point of Delivery”** shall mean the interconnection between the outlet of Company’s meter and Customer’s piping at the Okeelanta Facility.

**“Point of Receipt”** shall mean the interconnection between the FGT facilities and the Project, located in Palm Beach County, Florida.

**“Primary Term”** shall have the meaning ascribed to it in Article 3 of this Agreement.

**“Project”** shall have the meaning ascribed to it in Article 2 of this Agreement.

**“Related Parties”** means with respect to each Party, such Party’s past and present affiliates and such Party’s and its past and present affiliates’ members, managers, officers, directors, stockholders, partners, agents, employees, accountants, attorneys, representatives, personal representatives, estates, administrators, heirs, executors, trustees, predecessors, successors and assigns.

**“Scheduled”** shall mean the act of Customer, or its agent, FGT, and Company notifying, requesting, and confirming to each other the quantity of gas to be delivered in accordance with this Agreement on any Gas Day.

**“Service”** shall mean the natural gas transportation service, including both Firm Service and Interruptible Service, provided by Company to Customer pursuant to this Agreement.

**“Take-Or-Pay Obligation”** shall mean a minimum volume of gas to be transported by Company that the Customer must pay for whether the gas is transported or not by Company.

**“Tariff”** shall mean the Company’s effective Tariff as filed with, and approved by, the FPSC.

**“Term”** shall have the meaning ascribed to it in Article 3 of this Agreement.

**“Third Party Supplier”** shall mean any broker, marketer, or other third party supplier, including, if applicable, Customer acting as its own gas supplier, within the meaning of such term as defined in Company’s Tariff applicable to THIRD PARTY SUPPLIER (TPS).

**2. DESCRIPTION OF THE SERVICE, THE PROJECT, AND THE OKEELANTA FACILITY**

Company has constructed the project, consisting of a natural gas distribution system and any ancillary facilities, as described below (“Project”). Under this Agreement, Company shall have no obligation to provide Customer, and Customer waives any right under this Agreement to obtain from Company, natural gas sales service, other than balancing services that are mandatory under provisions that are generally applicable to a transportation customer of Company and as set forth in Company’s Tariff.

The Project consists of:

- (a) a twelve inch (12”) natural gas transmission line running from the Point of Receipt at Pioneer Gate Station located at the SE corner of Pioneer Road and the Florida Turnpike to the intersection of State Road 80 and U.S. Highway 27 in South Bay, Florida (“Main Line”), including all necessary appurtenances attached to and supporting the Main Line; and
- (b) a six inch (6”) natural gas transmission line running from the end of the Main Line to the Point of Delivery at the Okeelanta Facility (“Okeelanta Line”), including all necessary appurtenances attached to and supporting the Okeelanta Line.

The Project has been constructed at the expense of Company and is and will continue to be owned and operated by and is and will remain the property of Company.

**3. TERM**

This Agreement shall be effective as of April 24, 2001, which is the Effective Date. The term of this Agreement (“Term”) has consisted and will consist of: (a) the “Primary Term,” which was a period of eight (8) Contract Years, which commenced on November 15, 2001, such date being the date upon which Company was prepared to provide and Customer was prepared to receive Service, and which terminated on November 15, 2009; (b) the “Make-Up Period,” which commenced on November 16, 2009 and which terminated on November 15, 2016; and (c) the “Extended Term,” which shall have an effective date of November 16, 2016, and which, unless extended as provided in the remainder of this Article 3, shall terminate as of 11:59:59 P.M. on November 15, 2031. The Extended Term shall automatically be extended by an additional five

(5) years unless either Party sends written notice to the other Party no later than October 31, 2030, and such notice states that the notice-giving Party declines to agree to the additional five (5) years being added to the Extended Term. Except as may be specifically provided otherwise in this Agreement, if such notice is given by either Party, the Agreement shall terminate at 11:59:59 P.M. on November 15, 2031; if such notice is not given, the Agreement shall terminate at 11:59:59 P.M. on November 15, 2036.

#### **4. CONDITIONS PRECEDENT**

The Parties agree that all Conditions Precedent for the Parties' performance under this Agreement have either been fulfilled or waived, and that their respective prior obligations under Article 4 of this Agreement have either been satisfied or are no longer applicable.

#### **5. TARGET COMPLETION DATE**

The Parties agree that that their respective prior obligations under Article 5 of this Agreement have either been satisfied or are no longer applicable.

#### **6. GRANT OF EASEMENTS AND PROPERTY RIGHTS**

The Parties agree that that their respective prior obligations under Article 6 of this Agreement have either been satisfied or are no longer applicable.

#### **7. APPLICABILITY OF TARIFF**

The Service provided by Company to Customer hereunder is expressly subject to and governed by the terms and conditions of the Company's Tariff, and specifically the Rules and Regulations and the Contract Demand Service (KDS) Rate Schedule contained therein, as any or all may be modified and made effective from time-to-time. The Parties expressly agree and acknowledge that the availability and provision of Service to Customer pursuant to Company's Rate Schedule KDS is a material inducement to Customer to enter into and perform this Agreement, and that Customer would not enter into this Agreement without the provisions hereof making Service available to Customer pursuant to the aforementioned Rate Schedule KDS. Specifically, but not by way of limitation, the Service shall be provided subject to Section 12 – "Transportation - Special Conditions" of the Rules and Regulations of Company's Tariff, as the same may be modified or superseded. In the event of a conflict among or between the terms of

this Agreement and the terms of either the Tariff or the KDS rate schedule, the order of priority shall be as follows: (1) the terms of this Agreement, (2) the terms of the KDS rate schedule, and (3) the other terms of the Tariff. The KDS rate schedule, like its predecessor Rate Schedule KTS, provides for a negotiated rate structure and the Parties have agreed to establish the negotiated rates set forth in this Agreement.

## **8. QUANTITY**

The Maximum Daily Contract Quantity of gas that Customer shall be entitled to receive and that Company shall be obligated to deliver to Customer, on a Firm Service basis, on any Gas Day during the Extended Term of this Agreement shall be [REDACTED]. Notwithstanding the foregoing, Customer acknowledges and recognizes that the quantity and pressure of gas that Company shall actually be obligated to accept at the Point of Receipt and able to deliver to the Point of Delivery may be limited or restricted by the failure of FGT to deliver gas to the Point of Receipt at a sufficient delivery pressure and/or the quantity of gas that Customer or Customer's agent has Scheduled for delivery at the Point of Receipt. Company shall have no liability to Customer for its failure or refusal to accept gas for or on behalf of Customer at the Point of Receipt or to deliver gas to Customer at the Point of Delivery if such failure or refusal is a direct result of the events described in this Article 8 or in Article 19 of this Agreement. Commencing at the beginning of the Extended Term, Customer will have the right to schedule and receive an additional [REDACTED] of gas transportation service above the Maximum Daily Contract Quantity on an Interruptible Service basis; provided, that Customer shall give Company appropriate notice (of volumes and other information reasonably requested by Company) by electronic mail or facsimile transmission to the Company's Gas Control personnel identified in Section 21 of this Agreement no later than 12:00 P.M. on the day preceding the day on which Customer desires to schedule and receive any Interruptible Service volumes. Such notification from Customer shall be in addition to, and not in lieu of, all nomination notices and procedures applicable to Customer's Third Party Supplier, including, without limitation, those set forth in Section 12 – "Transportation - Special Conditions" of the Rules and Regulations of the Tariff and the Third Party Supplier Rate Schedule in the Tariff. Company will notify Customer (or its Third Party Supplier) by 8 a.m. of the Gas Day on which delivery is requested if Company is unable to deliver all or a portion of the requested Interruptible Service volumes. Other provisions of Company's Tariff may also apply to the transportation of firm or interruptible gas by Customer or its suppliers, including but not limited to Section 12, Transportation – Special Conditions, and the Third Party Supplier ("TPS") rate schedule. The rates applicable to all volumes delivered during the Extended Term, including both Firm Service volumes and Interruptible Service volumes, are those set forth in Paragraph 9.D.1 of this Agreement.

**9. RATES AND CHARGES FOR SERVICE, CUSTOMER'S RIGHTS AND OBLIGATIONS**

**A. Rates During the Primary Term and Make-Up Period**

The Parties agree that that their respective prior rights and obligations under this Agreement for the Company to provide Service and for the Customer to pay for Service during the Primary Term and the Make-Up Period, including Customer's having made all required payments pursuant to the Take-or-Pay Obligation previously applicable during the Primary Term and the Make-Up Period, have either been satisfied or are no longer applicable.

**B. Customer's Obligations During the Primary Term**

The Parties agree that that their respective prior rights and obligations under this Agreement for the Company to provide Service and for the Customer to pay for Service during the Primary Term and the Make-Up Period, including Customer's having made all required payments pursuant to the Take-or-Pay Obligation previously applicable during the Primary Term and the Make-Up Period, have either been satisfied or are no longer applicable.

**C. Customer's Obligations During the Make-Up Period**

The Parties agree that that their respective prior rights and obligations under this Agreement for the Company to provide Service and for the Customer to pay for Service during the Primary Term and the Make-Up Period, including Customer's having made all required payments pursuant to the Take-or-Pay Obligation previously applicable during the Primary Term and the Make-Up Period, have either been satisfied or are no longer applicable.

**D. Customer's Rights and Rates During the Extended Term**

- (1) During the Extended Term, [REDACTED] Company will provide Service to Customer at the rates per therm set forth in this Section 9.D.(1). Subject to the limitations of Section 9.D.(2) of this Agreement, this rate will be adjusted [REDACTED] delivered during each Contract Year of the Extended Term, regardless whether such therms are delivered on a Firm Service basis or an

Interruptible Service basis, shall be billed at a rate of [REDACTED] (as adjusted in accordance with the previous sentence), exclusive of applicable taxes and other adjustments, fuel and transportation shrinkage, as such may be applicable to Service provided on the Project. All subsequent therms delivered during each Contract Year of the Extended Term, again regardless whether such therms are delivered on a Firm Service basis or an Interruptible Service basis, shall be billed at a rate of [REDACTED] (as adjusted in accordance with the first sentence of this Section 9.D.(1)) up to a total maximum Contract Year quantity of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

- (2) Commencing with the [REDACTED] Contract Year of the Extended Term, the annual increase, if any, in the rate per therm [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**E. Call Rights**

The Parties agree that that their respective prior rights and obligations under the Call Rights provisions of Section 9.E.(1) of this Agreement have either been satisfied or are no longer applicable.

**10. CONVERSION COSTS**

The Parties agree that that their respective prior rights and obligations under Article 10 of this Agreement have either been satisfied or are no longer applicable.

**11. PAYMENT TERMS**

Invoicing, payment terms, late payment interest, and resolution of billing errors will be as set forth in the Tariff and the applicable rules and regulations of the FPSC, as amended from time to time.

## **12. POINTS OF RECEIPT AND DELIVERY**

Customer shall arrange for the delivery of all gas to be transported by Company hereunder to take place at the Point of Receipt. Company shall redeliver the gas to Customer at the Point of Delivery.

## **13. QUALITY, MEASUREMENT AND PRESSURE**

Customer warrants that all gas delivered to Company for transportation hereunder shall be of merchantable quality and shall conform to the quality requirements set forth in FGT's gas tariff on file at FERC and the Company's Tariff, as applicable, including but not limited to Section 12, Transportation – Special Conditions, and the Third Party Supplier ("TPS") rate schedule. Company shall, in accordance with the terms of this Agreement and Company's Tariff, maintain facilities to measure the gas at the Point of Delivery. All charges billed to Customer hereunder shall be based on the measurement made at the Point of Delivery in accordance with the terms of Company's Tariff. Subject to the terms of this Agreement, the gas delivered by Company to the Point of Delivery shall be delivered at Company's available line pressure, provided however, that a nominal delivery pressure of 325 psig shall be maintained at the outlet flange of the Company meter located at a mutually agreeable location at the Okeelanta Facility.

## **14. INDEMNIFICATION**

- A. Company shall indemnify and hold harmless Customer (including Customer's officers, directors, employees, agents, successors and assigns) from all loss, damage, cost, expense, fines or penalties (including, without limitation, attorneys' fees and costs of defense) arising out of any claim of any kind (whether for personal injury, property damage, environmental damage or other claims) from any third party arising out of or related to the performance or breach of this Agreement by Company, or the construction, operation or maintenance of the Project or arising from any damage to the Okeelanta Facility by Company, or any related act or omission, irrespective of negligence, fault or strict liability of Company, its contractors or agents, provided however, that Company's obligations under this Article 14.A. shall not apply to the extent and in the proportion that

any such claims are due to the negligence or willful misconduct of Customer, its agents, contractors, or employees. Company shall procure and maintain in effect throughout the Term, in form and substance reasonably satisfactory to Customer, insurance policies with respect to any portion of the Project or other assets owned by Company, or any actions of the Company or its employees with respect to such portion of the Project or such other assets, to the extent such portion of the Project or such other assets is located on property owned by Customer. Company shall make Customer an “additional insured” under any such insurance policies. Company shall maintain in effect throughout the Extended Term of this Agreement general liability insurance coverage in an amount not less than ten million dollars (\$10,000,000.00), issued by an insurance carrier rated not less than “A” by Standard & Poor’s Insurer Solvency Review or Best’s Key Rating Guide.

- B. Customer shall indemnify and hold harmless Company (including Company’s officers, directors, employees, agents, successors and assigns) from all loss, damage, cost, expense, fines or penalties (including, without limitation, attorneys’ fees and costs of defense) arising out of any claim of any kind (whether for personal injury, property damage, environmental damage or other claims) from any third party arising out of or related to Customer’s performance or breach of this Agreement, or arising from any damage caused to the Project by Customer, and any related act or omission hereunder, irrespective of negligence, fault or strict liability of Customer, its contractors or agents, provided however, that Customer’s obligations under this Article 14.B. shall not apply to the extent and in the proportion that any such claims are due to the negligence or willful misconduct of Company, its agents, contractors, or employees. Customer shall maintain throughout the Extended Term of this Agreement general liability insurance coverage in an amount of not less than ten million dollars (\$10,000,000.00), issued by an insurance carrier rated not less than “A” by Standard & Poor’s Insurer Solvency Review or Best’s Key Rating Guide.
- C. The indemnified Party shall promptly notify the indemnifying Party of any claim by any third party coming to its attention which may result in liability hereunder. The indemnifying Party shall be entitled at its own expense to conduct the defense of any such third party claim with counsel of its choosing, but acceptable to the indemnified Party. If the indemnified Party so chooses, it shall be entitled to participate in or monitor such defense with counsel of its own choosing and at its own expense provided that control of the defense will remain with the counsel for the indemnifying Party. The indemnified Party agrees to cooperate with the indemnifying Party to the extent necessary to mount a proper defense, provided that any expenses of said cooperation shall be paid by the indemnifying Party. Failure to give notice as provided herein shall not relieve the

indemnifying Party of its obligations hereunder, except to the extent that the defense of any claim is materially prejudiced by such failure to give notice. The indemnifying Party shall have the right to compromise or settle for money damages only any claim giving rise to an obligation for indemnification hereunder; any claim compromised or settled by the indemnified Party without the written consent of the indemnifying Party shall not be subject to indemnification hereunder. The indemnity shall not apply to any liability determined by a Court of competent jurisdiction to be based upon the sole negligence of the indemnified Party.

- D. The terms of this Article 14 shall survive termination of this Agreement.

**15. DAMAGES IN THE EVENT OF DEFAULT**

**A. RESERVED**

- B. In the event Company fails to provide Service to Customer in accordance with this Agreement, which results in a failure by Company to deliver all or a portion of the MDCQ to Customer in accordance with Article 8 and other provisions of this Agreement (“Deficiency Quantity”), Company shall pay Customer an amount equal to (i) the total amount that Customer paid for alternative fuel or delivered gas supplies to the Okeelanta Facility due to the existence of a Deficiency Quantity, less (ii) the total amount Customer would have paid for a delivered gas supply to the Okeelanta Facility in the event there had been no Deficiency Quantity.

- C. THE PARTIES DO HEREBY CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, THE RESPECTIVE PARTY’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE RESPECTIVE PARTY’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY; SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL

BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, IN TORT, CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURES OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**16. RESERVED**

**17. CONFIDENTIALITY**

Company and Customer agree that, subject to the terms of this Article 17, they will maintain certain commercially sensitive, trade secret terms and conditions of this Agreement as confidential and proprietary business information (hereinafter, "Confidential Information"), and that they will not cause or permit the disclosure of such Confidential Information to any third party without the express written consent of the other Party. The Confidential Information generally consists of the rates, volumes of natural gas to be transported, and certain specific terms involving rates, natural gas volumes, or operational matters that are identified by the Parties in this document by yellow highlighting and which have been redacted from any public versions of this document. The Parties agree that the disclosure of Confidential Information without the prior consent of the non-disclosing Party shall be permitted to the extent that: (1) such information is already or becomes public through no act or omission of the disclosing Party; or (2) a Party is required to disclose such information by a court, agency, or other governmental body having, or purporting to have jurisdiction over the Party (provided however, such Party shall use reasonable efforts to resist such disclosure and/or seek appropriate protection from further disclosure). Customer recognizes that a breach of this Article 17 may cause Company to suffer damages and/or irreparable harm and may interfere with Company's relationships with other customers or prospective customers. Notwithstanding the foregoing, the Parties acknowledge and agree that Company shall file this Agreement with the FPSC pursuant to the FPSC's rules applicable to the protection of confidential information. The Parties further agree,

acknowledge, and reaffirm that the original GTA between the Parties shall remain confidential in its entirety until such time as the Parties may agree to a redacted version of the original GTA or the complete declassification of the original GTA. The terms of this Article 17 shall survive termination of this Agreement.

## **18. EXCLUSIVITY**

- A. Subject to the provisions of Sections 18.B. and 18.C. below, during the Extended Term of this Agreement, Customer agrees that it will not receive or permit the receipt of any natural gas deliveries to the Okeelanta Facility, other than through facilities owned and operated by Company, regardless of any other natural gas pipelines or distribution systems that may be built in the area, provided that Customer's and Company's obligations under this Article 18 shall be limited to the maximum capacity available on the Project, as determined by Company at the time that Customer seeks to obtain additional service. Upon written request from Customer, Company shall provide in writing to Customer, within thirty (30) days of Customer's written request, the capacity available on the Project for commitment by Company to Customer.
- B. In the event that at any time during the Extended Term of this Agreement, Customer seeks to increase its transportation capacity entitlement at the Okeelanta Facility above the MDCQ set forth in Article 8, Customer agrees (a) that it shall enter good faith negotiations with Company for Company to provide such additional capacity to Customer, either from capacity then available or capacity to be added by Company, and (b) if such negotiations are unsuccessful within ninety (90) days after initiation of such negotiations, Customer may contract for service with third parties, provided that any such third-party contracts shall not affect Customer's obligations to Company under this Agreement.
- C. The provisions of this Article 18 shall not apply in the event that Customer [REDACTED].

## **19. FORCE MAJEURE**

- A. If either Party hereto is rendered unable, wholly or in part, by an event of Force Majeure, as defined below in Section 19.B. of this Agreement, to carry out its obligations pursuant to the terms of this Agreement, then upon such Party's giving written notice (including full particulars) as soon as reasonably possible, but no later than seventy-two (72) hours

after the occurrence of the cause relied on, the obligations of the Party giving such notice, so far as they are affected by such Force Majeure event, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch, provided however, that such event of Force Majeure will not relieve a Party from its obligation to make payments for obligations accruing prior to the Force Majeure.

- B. The term “Force Majeure” as used herein means events or causes not reasonably within the control of the Party claiming Force Majeure, including but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, storms, hurricanes, fires, earthquakes, floods, arrests and restraints of governments and people, civil disturbances, explosion, breakage or accidents to machinery, equipment or lines of pipe, delays in obtaining (after the exercise of reasonable diligence, which includes, but is not limited to, operating and maintaining all of Company’s facilities and equipment in accordance with good utility practice) necessary materials, equipment, easements, franchises, permits, governmental or regulatory approvals, orders, acts, or requirements of courts or governmental agencies, and any other cause beyond the reasonable control of the Party affected, and which by the exercise of due diligence such Party is unable to prevent or overcome, which renders that Party unable to carry out its obligations pursuant to the terms of this Agreement. The settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any Force Majeure be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of an opposing Party when such course is inadvisable in the discretion of the Party having the difficulty. Force Majeure shall not include economic hardship, loss of Customer’s market, any reduction in operations at the Okeelanta Facility or any closure of the Okeelanta Facility or any inability of Customer to deliver gas or to have gas delivered on its behalf to Company at the Point of Receipt, unless such inability to deliver gas is due to an event of Force Majeure upstream of the Point of Receipt by FGT or by Customer’s gas supplier.

## 20. ASSIGNMENT

Neither Party shall assign this Agreement or its rights and obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, and any assignment absent such consent is void; provided however, either Party may, without the consent of, but with written notice to, the other Party (and without relieving itself from liability hereunder): (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts,

revenues or proceeds hereof in connection with any financing or financial arrangements; (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is, in the sole opinion of the non-assigning Party, comparable to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided however, that in each such case, any such assignee shall agree to be bound by the terms hereof.

## **21. NOTICES AND PAYMENTS**

All notices, payments, statements and communications made pursuant to this Agreement shall be made as follows:

Notices to Company should be made as directed below or as otherwise indicated by written notice provided under the terms and conditions as outlined in this Agreement:

General Notices: Vice-President, Operations  
Florida City Gas  
4045 NW 97th Ave  
Doral, FL 33178  
Telephone: (305) 835-3606  
Fax: (305) 468-9569

With copies to General Counsel at: Southern Company Gas  
General Counsel  
Ten Peachtree Place, NE  
Atlanta, GA 30312

Gas Control Notices: Florida City Gas  
Gas Control  
Telephone: (404) 584-4400  
Email: [gascont@southernco.com](mailto:gascont@southernco.com)

With copy to: Attn: Forrest Smalley  
Senior Account Executive  
Telephone: (772) 224-3920  
Email: [fsmalley@southernco.com](mailto:fsmalley@southernco.com)

Notices to Customer should be made as directed below or otherwise indicated by written notice provided under the terms and conditions outlined in this Agreement.

General Notices: Florida Crystals Corporation  
ATTENTION: General Counsel  
1 North Clematis Street, #200  
West Palm Beach, FL 33401  
Telephone: (561) 655-6303  
Fax: (561) 659-3206

Invoices: Accounting Manager  
New Hope Power  
Okeelanta Cogeneration Facility  
P.O. Box 9  
South Bay, FL 33493

Either Party may modify any information specified above by written notice to the other Party.

Unless otherwise provided in this Agreement all notices, invoices, payments, and nominations provided for hereunder may be sent by fax or generally accepted electronic means, by nationally recognized overnight courier service, first class mail or hand delivery and shall be considered effective upon receipt. A notice sent by facsimile transmission shall be deemed received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission, if the day on which such facsimile is received is not a Business Day or is after 5 p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next Business Day and notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior verbal communication in which case any such notice shall be deemed received on the day sent.

## **22. DISPUTE RESOLUTION**

Any dispute between the Parties with respect to any matter arising under this Agreement which cannot be resolved within ten (10) days after being raised by either Party shall be referred to senior officials of the Parties with authority to settle the dispute on an informal basis. The senior officials shall have ten (10) days to resolve the dispute or such longer time as they may

mutually agree. Prior to the conclusion of such informal attempts to resolve the dispute, neither Party shall initiate any formal attempts to resolve the dispute, action in court or other forum having jurisdiction over the matter (unless necessary to prevent the expiration of any applicable statute of limitation). Each Party reserves to itself all rights and defenses to which it is or may be entitled under this Agreement or under law or equity.

### **23. SECURITY**

The Parties agree that, in consideration of Customer's satisfactory performance of its payment obligations pursuant to the Agreement through the Primary Term and the Make-Up Period, any future security required by Company shall be in accordance with the Company's Tariff provisions applicable to customer deposits, provided further, that Company acknowledges and agrees that, given Customer's satisfactory payment history, Company will not require a deposit from Customer until and unless Customer fails to make payments satisfactorily pursuant to its payment obligations under this Agreement and under Company's Tariff, and provided further that Customer may satisfy any future deposit obligation by posting an irrevocable standby letter of credit, a performance bond, or a guarantee by a creditworthy entity in lieu of a cash deposit.

### **24. MISCELLANEOUS**

- A. This Agreement is subject to all present and future laws, regulations, and lawful orders of regulatory bodies or other duly constituted governmental authority having jurisdiction over the Parties or the subject matter of this Agreement. Both Parties agree that the transactions agreed to herein shall be in compliance with all such laws, orders, rules, and regulations.
- B. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties hereto with respect to gas transportation service to the Okeelanta Facility. This Agreement supersedes and replaces any and all prior or contemporaneous agreements or representations affecting the same subject matter. Any amendment, change, modification, or other alteration of this Agreement shall be ineffective unless in writing and executed by duly authorized representatives of the Parties.
- C. The headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

- D. The Recitals (i.e., the “WHEREAS” clauses) set forth at the beginning of this Agreement are true and correct and are hereby incorporated into this Agreement.
- E. No waiver by either Party hereto of any one or more defaults by the other in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provision of this Agreement or to require performance by the other Party of any of the provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of either Party thereafter to enforce each and every provision hereof.
- F. Neither Party shall be liable to the other for any incidental, indirect, special, consequential, or punitive damages.
- G. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT RECOURSE TO THE LAW GOVERNING CONFLICT OF LAWS.
- H. If any term or provision of this Agreement or the application thereof to any Party or circumstance is held to be illegal, invalid or unenforceable under any present or future law or by any governmental agency, (a) such term or provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) the Parties shall negotiate in good faith to agree upon legal, valid and enforceable substitute provisions to carry out the purposes and intent of the illegal, invalid or unenforceable terms and provisions.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.**

IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this Agreement as of the date first stated above.

PIVOTAL UTILITY HOLDINGS, INC.  
(f/k/a NUI UTILITIES, INC.)  
d/b/a FLORIDA CITY GAS (f/d/b/a  
CITY GAS COMPANY OF FLORIDA)

FLORIDA CRYSTALS CORPORATION

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

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

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

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

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

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

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Signature page of Amended and Restated Project Construction and Gas Transportation Agreement By and Between Pivotal Utility Holdings, Inc. (f/k/a NUI Utilities, Inc.), d/b/a Florida City Gas (f/d/b/a City Gas Company of Florida) and Florida Crystals Corporation Dated As Of April 24, 2001, As Amended \_\_\_\_\_, 2017)

**SETTLEMENT AGREEMENT**

**BY AND BETWEEN**

**PIVOTAL UTILITY HOLDINGS, INC. (f/k/a NUI UTILITIES, INC.)  
d/b/a FLORIDA CITY GAS (f/d/b/a CITY GAS COMPANY OF FLORIDA)**

**AND**

**FLORIDA CRYSTALS CORPORATION**

**DATED AS OF**

**APRIL 19, 2017**

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is made and effective as of April \_\_, 2017 (the "Effective Date"), by Pivotal Utility Holdings, Inc. (f/k/a NUI Utilities, Inc.), d/b/a Florida City Gas, f/d/b/a City Gas Company of Florida, a New Jersey corporation with offices at 4045 NW 97th Ave, Doral, Florida 33178 ("Company") and Florida Crystals Corporation, a Delaware corporation, with offices at 1 North Clematis Street, #200, West Palm Beach, Florida 33401 ("Customer"), collectively the "Parties" or individually a "Party."

### BACKGROUND

WHEREAS, Company and Customer are parties to that certain PROJECT CONSTRUCTION AND GAS TRANSPORTATION AGREEMENT BY AND BETWEEN NUI UTILITIES, INC. d/b/a CITY GAS COMPANY OF FLORIDA AND FLORIDA CRYSTALS CORPORATION DATED AS OF APRIL 24, 2001 (the "Agreement" or "GTA") pursuant to which Company has provided natural gas transportation service to Customer's Okeelanta Facility; and

WHEREAS, Company and Customer have performed their respective duties and obligations under the Agreement since its execution on April 24, 2001; and

WHEREAS, the Parties are currently disputing various issues associated with the GTA and future service thereunder in Florida Public Service Commission ("FPSC") Docket No. 160175-GU; and

WHEREAS, the Parties mutually wish to amend and restate the Agreement to provide for certain additional gas transportation service options, to delete certain obsolete provisions, and to modify certain provisions so as to mutually resolve certain issues that have arisen between them, including those issues that are in dispute in the aforementioned FPSC Docket No. 160175-GU; and

WHEREAS, the Parties have accordingly agreed to enter into that certain AMENDED AND RESTATED PROJECT CONSTRUCTION AND GAS TRANSPORTATION AGREEMENT BY AND BETWEEN PIVOTAL UTILITY HOLDINGS, INC. (f/k/a NUI UTILITIES, INC.) d/b/a FLORIDA CITY GAS (f/d/b/a CITY GAS COMPANY OF FLORIDA) AND FLORIDA CRYSTALS CORPORATION DATED AS OF APRIL 24, 2001, AS AMENDED \_\_\_\_\_, 2017 (the "Amended & Restated GTA") upon receiving the approval of the Amended & Restated GTA by the FPSC; and

WHEREAS, the effective date of the Parties' agreed-upon amendments in the Amended & Restated GTA is intentionally left blank because that date depends upon and is to be determined by subsequent action of the FPSC, notwithstanding which fact the Parties agree that this Settlement Agreement shall be effective and binding as of the date first above written; and

WHEREAS, the Parties have agreed to file a joint petition for approval of the Amended & Restated GTA for approval by the FPSC, and to support and defend such joint petition in all proceedings before the FPSC; and

WHEREAS, this Settlement Agreement is not subject to the approval of the FPSC, but the Parties wish to fully inform the FPSC of their agreements and covenants and have therefore agreed to submit this Settlement Agreement as an exhibit to the joint petition for approval of the Amended & Restated GTA; and

WHEREAS, the Parties have also mutually agreed to take certain actions in the event that the PSC does not approve the Amended & Restated GTA as requested in the joint petition for approval thereof; and

WHEREAS, the Parties have also mutually agreed to other covenants that are outside the jurisdiction of the FPSC, including, by way of example, mutual releases from liability for previous acts or omissions as between them;

NOW, THEREFORE, in consideration of the premises set forth above and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties agree as follows:

## 1. DEFINITIONS

Capitalized terms shall have the meanings given for such terms herein, and if no definition is given herein, then capitalized terms shall have the meanings specified in the Amended & Restated GTA. In addition to those terms defined in the Amended & Restated GTA, the following terms shall have the meanings stated below.

**“FPSC Final Approval Order”** shall mean the final order of the FPSC approving the Amended & Restated GTA in its entirety and granting the FPSC Petition in its entirety, including the specific requests for relief set forth in Article 5 of this Settlement Agreement.

**“FPSC Final Approval Order Effective Date”** shall mean the date that is one day after the date upon which the FPSC Final Approval Order has become final by operation of law, meaning that either (a) no appeal was filed with respect to the FPSC Final Approval Order and the time for filing appeals has expired as provided by law, or (b) any appeals of the FPSC Final Approval Order have been decided by the Florida Supreme Court (or other court of competent jurisdiction) and all opportunities for seeking rehearing, reconsideration, or further appellate review have expired and are barred by operation of law.

**“FPSC Petition”** shall mean the petition to the FPSC to be filed jointly by the Parties as described more fully in Articles 4 and 5 of this Settlement Agreement.

## 2. TERM

This Settlement Agreement shall be effective as of the date first written above and shall remain in effect until the termination of the Amended & Restated GTA.

## 3. REPRESENTATIONS AND WARRANTIES

Each Party hereby represents and warrants to the other Party that it has actual authority to enter into this Settlement Agreement as authorized by its governing board or officers, as applicable; that it has not committed any act or failed to take any action, or allowed or caused any of its respective officers, employees, attorneys, and other persons authorized to act on the Party’s behalf (collectively, a Party’s “Agents”) to intentionally or knowingly mislead the FPSC, or to withhold material information from the FPSC or in any way misrepresent material information to the FPSC in connection with obtaining the FPSC Final Approval Order; that it has not taken any act to adversely affect the Parties’ covenants to jointly seek, and that it will proceed in good faith and use commercially reasonable efforts to obtain, the FPSC Final Approval Order; that it has had (or will have) a full and adequate opportunity to assess the Settlement Agreement and the Amended & Restated GTA, as it is to be filed with the FPSC; and that there has been no mistake involved in each such Party’s understanding of the Settlement Agreement and the Amended & Restated GTA.

#### 4. COVENANTS AND OBLIGATIONS OF THE PARTIES

The Parties mutually covenant and agree that, beginning on the Effective Date of this Settlement Agreement, they will, individually, collectively, and cooperatively, do the following:

- A. From the date hereof until the FPSC Final Approval Order Effective Date, each Party shall, and shall cause its respective officers, employees, attorneys, and other persons authorized to act on the Party's behalf (collectively, a Party's "Agents") to, proceed diligently and in good faith and use all commercially reasonable efforts to obtain, as promptly as practicable, the FPSC Final Approval Order.
- B. As soon as practicable, the Parties shall jointly file the FPSC Petition seeking approval of the Amended & Restated GTA in its entirety, and seeking the inclusion of the specific ordering statements set forth in this Settlement Agreement. Each Party individually, and the Parties collectively, shall thereafter use commercially reasonable efforts to comply with the requirements of, and reasonable requests made by, the FPSC in order to obtain, as quickly and expeditiously as practicable, the FPSC Final Approval Order, including by promptly complying with any relevant request for additional information received by either Party from the FPSC with respect to the FPSC Petition, which may include providing information that may be confidential. Any confidential information requested by the FPSC shall be provided pursuant to the FPSC's Rule 25-22.006, F.A.C., which governs the handling and protection of confidential information while in the FPSC's possession; further, neither Party shall be required to provide to the other Party confidential, proprietary business information except as provided by that certain Protective Agreement entered into by Company and the attorneys for Customer, or another similar agreement entered into by the Parties.
- C. The Parties shall cooperate in good faith with each other and with the FPSC, including the Staff of the FPSC, in all commercially reasonable ways to provide promptly such information and communications to the FPSC as the FPSC may reasonably request in connection with its analysis, evaluation, and consideration of the FPSC Petition and the Amended & Restated GTA.
- D. The Parties shall, without qualification or limitation, support and defend the FPSC Petition and the Amended & Restated GTA, including the rates for Service provided for therein. The Parties shall defend against all actions and proceedings challenging or opposing: (1) the FPSC Petition; or (2) the Amended & Restated GTA; or (3) the FPSC's

- approval of the Amended & Restated GTA; or (4) the rates for Service provided for in the Amended & Restated GTA.
- E. Without qualification or limitation, neither Party will take any action or fail to take any action, or cause or allow its Agents to take any action or to fail to take any action, the consequence of which would be to impair or delay the issuance of the FPSC Final Approval Order or to result in the modification of any material term of the Amended & Restated GTA, including, without limitation, the rates for Service provided for in the Amended & Restated GTA.
- F. Each Party shall promptly notify the other Party in writing of, and contemporaneously shall provide the other Party with true and complete copies of, any and all information or documents in the Party's possession (to the extent permitted to do so under applicable law and contracts, and without prejudicing attorney-client or similar privileges) relating to any event, transaction or circumstance, as soon as practicable after it becomes known to the Party giving such notice, occurring on or after the date of this Settlement Agreement that renders, or shall render, untrue in any material respect or causes, or shall cause, the breach of any representation, warranty, covenant or agreement of either Party under this Settlement Agreement as if the same were made on or as of the date of such event, transaction or circumstance.
- G. This Settlement Agreement shall not be construed to require either Party to, or to cause its Agents to, provide any such information where the provision of access or furnishing of such information would violate any law or other contractual obligation of such Party, result in the waiver of any material attorney-client, work product, or similar privilege, or disclose any confidential information concerning the activities of the Party that is unrelated to the Amended & Restated GTA.
- H. In the event the FPSC does not approve the Amended & Restated GTA as submitted, and does not issue the FPSC Final Approval Order as requested in the FPSC Petition, then the Parties shall work in good faith for a period not to exceed thirty (30) days, unless such period is extended by mutual agreement of the Parties, to attempt to resolve such matters while preserving the fundamental economic bargain reflected in the Amended & Restated GTA, and shall thereafter seek FPSC approval of such revised terms. In the event that either (1) the Parties are unable to agree on such resolution or on revisions to the Amended & Restated GTA that are necessary to address the FPSC's grounds for declining to approve the Amended & Restated GTA; or (2) the FPSC ultimately does not

approve the Amended & Restated GTA; or (3) the FPSC does not issue the FPSC Final Approval Order as requested in the FPSC Petition, and the Parties are ultimately unable to obtain a mutually acceptable FPSC Final Approval Order for such revised Amended & Restated GTA, then the legal status (i.e., the validity or invalidity, or the enforceability or non-enforceability) of the Agreement are unchanged and unaffected by the FPSC's declining to issue a mutually acceptable FPSC Final Approval Order, and the Parties are free to advocate for their respective positions before the FPSC in Docket No. 160175-GU or in any other venue. Further, this Settlement Agreement, the FPSC Petition and supporting documentation, the Amended & Restated GTA, and the negotiation and agreement underlying those documents, are inadmissible in any proceeding and shall not be used in any way by one Party against the other.

## 5. CONTENTS OF FPSC PETITION

The Parties agree that the FPSC Petition shall, in addition to all appropriate background and other required information, include the following provisions:

- A. All necessary allegations to support the FPSC's determinations: (1) that the Amended & Restated GTA is appropriate; (2) that the Amended & Restated GTA satisfies all applicable requirements of, and is consistent with, Company's Rate Schedule KDS and other relevant provisions of Company's Tariff; (3) that the Amended & Restated GTA provides for rates to be paid by Customer that are fair, just, and reasonable for the Service to be provided pursuant to the Amended & Restated GTA; (4) that the rates paid by Customer for Service during the Primary Term and the Make-Up Period of the Amended & Restated GTA were and are fair, just, and reasonable; (5) that the Amended & Restated GTA is in the public interest; (6) that the Amended & Restated GTA should be approved; and (7) any other relevant determinations by the FPSC that the Parties deem necessary to support the FPSC's issuance of the FPSC Final Approval Order.
- B. The express request that the FPSC grant the FPSC Petition and all specific ordering requests made therein, and likewise that the FPSC approve the Amended & Restated GTA in its entirety, without any modification thereto or conditions to the effectiveness of the Amended & Restated GTA other than the conditions specified in the FPSC Petition or in the Amended & Restated GTA.

- C. An express request for expedited approval of the Amended & Restated GTA using the Commission's Proposed Agency Action process and procedures.
- D. Ordering language authorizing Company to make a refund to Customer equal to the difference between the temporary rates approved pursuant to FPSC Order No. PSC-16-0581-PCO-GU (which are the Make-Up Period Rates under the Agreement as it exists before the effectiveness of the Amended & Restated GTA) and the final rates for the Extended Term that the Parties have agreed to in the Amended & Restated GTA, as applied and calculated with respect to Customer's usage of gas transportation service from November 16, 2016 through and including the FPSC Final Approval Order Effective Date; and further authorizing Company to make such refund either by a direct payment to Customer or by crediting the full amount of the refund, with interest as provided for in the aforementioned Order No. PSC-16-0581-PCO-GU, to Customer's bills for Service beginning on the FPSC Final Approval Order Effective Date and continuing until the full refund amount has been credited to Customer's bills.
- E. This Settlement Agreement shall be filed as an exhibit to the FPSC Petition in order to ensure that the FPSC is fully informed regarding the Parties' negotiated resolution of their disputes and their agreements relating to the Amended & Restated GTA.

## 6. DISPUTE RESOLUTION

Any dispute between the Parties with respect to any matter arising under this Settlement Agreement that cannot be resolved within ten (10) days after being raised by either Party shall be referred to senior officials of the Parties with authority to settle the dispute on an informal basis. The senior officials shall have ten (10) days to resolve the dispute or such longer time as they may mutually agree. Prior to the conclusion of such informal attempts to resolve the dispute, neither Party shall initiate any formal legal action (unless necessary to prevent the expiration of any applicable statute of limitation). Each Party reserves to itself all rights, claims, causes of action, and defenses to which it is or may be entitled under this Settlement Agreement or otherwise under law or equity.

The Parties agree that this Settlement Agreement is subject to the jurisdiction of the courts of the State of Florida, and that venue for any action brought under this Settlement

Agreement shall be brought in the Circuit Court of the State of Florida in and for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

## 7. RELEASES

Within five (5) Business Days following the FPSC Final Approval Order Effective Date, each Party shall execute a mutual release in the form attached as Exhibit A to this Settlement Agreement, by which each Party will voluntarily and unconditionally release and forever discharge the other Party and each of its Related Parties (together, the “Released Parties”) from any and all claims, demands, rights, actions, causes of action, damages, obligations, liabilities, or injuries of any kind or nature, whether arising under law or equity, whether known or unknown, whether asserted or unasserted, whether fixed or contingent, that any of the Releasing Parties has or may have, now or in the future, that arise out of, relate to, or result from the Released Parties’ acts or omissions occurring from the beginning of time to and including the FPSC Final Approval Order Effective Date, including, without limitation, any of the Released Parties’ performance or failure to perform its or their obligations during the Primary Term or the Make-Up Period of the Agreement. Notwithstanding the foregoing, the “Released Claims” shall not include any claims for payment of any amounts due and owing for gas transportation service, or any claims for refunds of amounts paid by Customer for gas transportation service that Company provided pursuant to the “temporary rates” provisions set forth at pages 10-12 of FPSC Order No. PSC-16-0581-PCO-GU issued in FPSC Docket No. 160175-GU on December 27, 2016. Any payments for service due from Customer as of the FPSC Final Approval Order Effective Date shall be billed and paid pursuant to the terms of the Agreement. Any refunds shall be promptly paid by Company to Customer or credited to Customer’s bills for gas transportation service rendered on and after the FPSC Final Approval Order Effective Date.

## 8. MISCELLANEOUS

- A. This Settlement Agreement is subject to all present and future statutory and civil laws, regulations, and lawful orders of the courts of the State of Florida, of regulatory bodies, and of any other duly constituted governmental authority having jurisdiction over the Parties or the subject matter of this Settlement Agreement. Each Party agrees that the transactions agreed to herein shall be in compliance with all such laws, orders, rules, and regulations.

- B. This Settlement Agreement constitutes the entire agreement between the Parties hereto with respect to the matters and provisions hereof; provided, however, that the Amended & Restated GTA, and not this Settlement Agreement, shall, upon its effectiveness, govern the provision of gas transportation service to the Okeelanta Facility. This Settlement Agreement supersedes and replaces any and all prior or contemporaneous agreements or representations affecting the same subject matter, i.e., specifically limited to the subject matter and specific provisions of this Settlement Agreement. Any amendment, change, modification, or other alteration of this Settlement Agreement shall be ineffective unless in writing and executed by duly authorized representatives of the Parties.
- C. The headings appearing in this Settlement Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- D. The Recitals (i.e., the “WHEREAS” clauses) set forth at the beginning of this Settlement Agreement are true and correct and are hereby incorporated into this Settlement Agreement.
- E. No waiver by either Party hereto of any one or more defaults by the other in the performance of any of the provisions of this Settlement Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay less than any applicable statutory period of limitations in asserting or enforcing any rights under this Settlement Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provision of this Settlement Agreement or to require performance by the other Party of any of the provisions hereof shall not be construed to waive such provision, or to affect the validity of this Settlement Agreement or any part thereof, or the right of either Party thereafter to enforce each and every provision hereof.
- F. Neither Party shall be liable to the other for any incidental, indirect, special, consequential, or punitive damages.
- G. THIS SETTLEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT RECOURSE TO THE LAW GOVERNING CONFLICT OF LAWS.

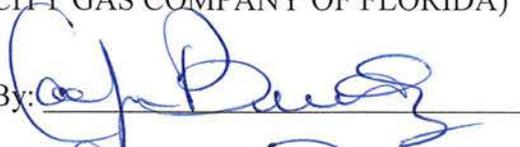
- H. If any term or provision of this Settlement Agreement or the application thereof to any Party or circumstance is held to be illegal, invalid or unenforceable under any present or future law or by any governmental agency, (a) such term or provision shall be fully severable, (b) this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Settlement Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) the Parties shall negotiate in good faith to agree upon legal, valid and enforceable substitute provisions to restore and maintain the fundamental bargain of this Settlement Agreement and to enable the Parties to carry out the purposes and intent of the terms and provisions that were determined to be illegal, invalid or unenforceable.
- I. The Parties agree that they and their respective attorneys have jointly drafted this Settlement Agreement, and each Party expressly waives any claim that the Settlement Agreement should be construed against the other Party based on any assertion or claim that any disputed provision of this Settlement Agreement was drafted by the other Party.
- J. This Settlement Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.
- K. Time is of the essence in the performance and satisfaction of each and every obligation and condition of this Settlement Agreement.
- L. Each Party shall bear its own attorneys' fees and costs associated with FPSC Docket No. 160175-GU and the resolution of the issues addressed in this Settlement Agreement.

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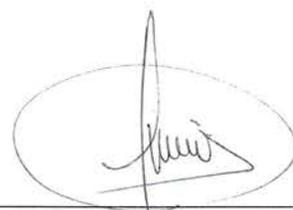
IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this Agreement as of the date first stated above.

PIVOTAL UTILITY HOLDINGS, INC.  
(f/k/a NUI UTILITIES, INC.)  
d/b/a FLORIDA CITY GAS (f/d/b/a  
CITY GAS COMPANY OF FLORIDA)

FLORIDA CRYSTALS CORPORATION

By:   
Name: Carolyn Bermudez  
Title: VP of Operations

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

ATTEST:   
\_\_\_\_\_  
  
\_\_\_\_\_

ATTEST:  
\_\_\_\_\_  
\_\_\_\_\_

(Signature page of Settlement Agreement Between Pivotal Utility Holdings, Inc.,  
(f/k/a NUI Utilities, Inc.) d/b/a Florida City Gas (f/d/b/a City Gas Company of Florida) and  
Florida Crystals Corporation Dated As Of April 19, 2017)

IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this Agreement as of the date first stated above.

PIVOTAL UTILITY HOLDINGS, INC.  
(f/k/a NUI UTILITIES, INC.)  
d/b/a FLORIDA CITY GAS (f/d/b/a  
CITY GAS COMPANY OF FLORIDA)

FLORIDA CRYSTALS CORPORATION

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

By: *Gustavo R. Cepero*

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

Name: GUSTAVO R. CEPERO

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

Title: Vice PRESIDENT



ATTEST:

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

*Sarahleen Yerkes*  
\_\_\_\_\_

(Signature page of Settlement Agreement Between Pivotal Utility Holdings, Inc.,  
(f/k/a NUI Utilities, Inc.) d/b/a Florida City Gas (f/d/b/a City Gas Company of Florida) and  
Florida Crystals Corporation Dated As Of April 19, 2017)

Docket No. 160175-GU  
Joint Petition Exhibit C  
May 4, 2017  
Confidential Cost Study Support  
Documentation

Redacted Version:  
Redacted in its Entirety

Confidential Study includes printed  
spreadsheets and CD-ROM with  
additional workpapers

Docket No. 160175-GU  
Joint Petition Exhibit D  
May 4, 2017  
Confidential True-Up Documentation

Redacted Version:  
Redacted in its Entirety  
11 Pages

Confidential True-Up includes Florida  
Crystals customer bills and calculation of  
rates from the Temporary Rates to the  
Proposed Amended and Restated GTA  
Extended Term Rates