

Attachment 1
 FCG Request for Confidential Classification August 14, 2017
 Line-by-Line Justification
 Docket No. 160175

REDACTED

DOCUMENT	PAGE NO(S).	COLUMNS	LINE NO(S).	STATUTORY JUSTIFICATION
Joint Petition Exhibit A, Amended and Restated GTA	7	N/A	40	This is selected pages from the Amended and Restated Natural Gas Transportation service agreement between FCG and Florida Crystals. By agreement of the parties, only price and customer sensitive information is to be treated as confidential. This document reflects trade secrets of FCG, including customer specific rates, gas volumes to be transported, rate adjustment terms, and related commercially sensitive conditions of service being made available to Florida Crystals that are not available to any other customer. Such customer-specific information is not released to the public and if disclosed, would harm FCG and Florida Crystals. If the rates and other terms were made public, such disclosure would harm FCG's competitive interests by impairing the ability to negotiate future special contracts with other customers.
	8	N/A	10	
	9	N/A	19 and 20, 22-25, 27, 33, 35-39	
	10	N/A	1 and 2, 4, 5-10	
	15	N/A	4 and 5	

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 COMMISSION
 CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition for Review and) Docket No.: 20160175-GU
Determination on the Project Construction)
and Gas Transportation Agreement By and) Filed: August 14, 2017
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)
_____)

**FLORIDA CITY GAS
REQUEST FOR CONFIDENTIAL CLASSIFICATION FOR THE
EXECUTED AMENDED AND RESTATED GTA**

Florida City Gas (“FCG” or “Company”), by and through its undersigned counsel, and pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(4), Florida Administrative Code, hereby files this Request for Confidential Classification (“Request”) for the confidential portions of the execution copy of the Amended and Restated Gas Transportation Agreement (“Amended and Restated GTA”) signed by the authorized representatives of FCG and Florida Crystals Corporation on August 8, 2017. In support of this Request, FCG states as follows:

1. By operation of Order No. PSC-2017-0296-FOF-GU, issued on August 2, 2017, the Amended and Restated GTA became effective July 13, 2017, and the parties were required to execute and file the signed document within 10 days of the issuance of Order No. PSC-2017-0296-FOF-GU. The parties did timely execute the document and it is now being timely filed.¹

2. In Order No. PSC-2017-0272-CFO-GU, the Florida Public Service Commission (“PSC” or “Commission”) granted confidential classification to the confidential information contained in the unsigned version of the Amended and Restated GTA, which is identified in the PSC’s records as Document No. 04699-17, of which there are only five pages containing confidential information. Since the execution copy of the Amended and Restated GTA is the

¹ Since the tenth day fell on a Saturday, today is the next business day appropriate for filing.

exact same document as Document No. 04699-17 *but for* the signatures on the last page, pursuant to Order No. PSC-2017-0272-CFO-GU the PSC has already determined that the confidential information in the execution copy is entitled to confidential protection. Accordingly, FCG is requesting that this execution copy be granted the same confidential protection for the same period of time set forth in Order No. PSC-2017-0272-CFO-GU.

3. Attached to this Request is an envelope marked "CONFIDENTIAL" containing a complete copy of the signed original Amended and Restated GTA, which includes the five pages containing confidential information which were granted confidential classification in Order No. PSC-2017-0272-CFO-GU. Each of the five pages containing confidential information has the applicable confidential information highlighted. Two public, redacted versions of the execution copy of the Amended and Restated GTA are also provided with this Request.

4. Pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006(9), Florida Administrative Code, FCG requests that the information described above as proprietary confidential business information be protected from disclosure for a period of 18 months corresponding to the terms of Order No. PSC-2017-0272-CFO-GU.

WHEREFORE, Florida City Gas requests that confidential classification be granted to the confidential information in the execution copy of the Amended and Restated GTA.

Respectfully submitted,

Floyd R. Self, B.C.S.
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Counsel for Florida City Gas

CERTIFICATE OF SERVICE

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

Mail on this 14th day of August, 2017, to the following:

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Floyd R. Self



REDACTED VERSION

**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 July 13, 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 July 13, 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

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

27
28 **9. RATES AND CHARGES FOR SERVICE, CUSTOMER'S RIGHTS AND**
29 **OBLIGATIONS**
30

31 **A. Rates During the Primary Term and Make-Up Period**
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33 The Parties agree that that their respective prior rights and obligations under this
34 Agreement for the Company to provide Service and for the Customer to pay for Service during
35 the Primary Term and the Make-Up Period, including Customer's having made all required
36 payments pursuant to the Take-or-Pay Obligation previously applicable during the Primary Term
37 and the Make-Up Period, have either been satisfied or are no longer applicable.
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39

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

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

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

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

16

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

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19 (1) During the Extended Term, [REDACTED]
20 [REDACTED] Company will provide Service to Customer at the rates per term
21 set forth in this Section 9.D.(1). Subject to the limitations of Section 9.D.(2) of this
22 Agreement, this rate will be adjusted [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] delivered during each Contract Year of the Extended Term,
26 regardless whether such terms are delivered on a Firm Service basis or an
27 Interruptible Service basis, shall be billed at a rate of [REDACTED] (as
28 adjusted in accordance with the previous sentence), exclusive of applicable taxes
29 and other adjustments, fuel and transportation shrinkage, as such may be
30 applicable to Service provided on the Project. All subsequent terms delivered
31 during each Contract Year of the Extended Term, again regardless whether such
32 terms are delivered on a Firm Service basis or an Interruptible Service basis,
33 shall be billed at a rate of [REDACTED] (as adjusted in accordance with the
34 first sentence of this Section 9.D.(1)) up to a total maximum Contract Year
35 quantity of [REDACTED]
36 [REDACTED]
37 [REDACTED]
38 [REDACTED]
39 [REDACTED]

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[REDACTED]

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

1 third-party contracts shall not affect Customer's obligations to Company under this
2 Agreement.

3
4 C. The provisions of this Article 18 shall not apply in the event that Customer [REDACTED]
5 [REDACTED]
6
7

8 **19. FORCE MAJEURE**
9

10 A. If either Party hereto is rendered unable, wholly or in part, by an event of Force Majeure,
11 as defined below in Section 19.B. of this Agreement, to carry out its obligations pursuant
12 to the terms of this Agreement, then upon such Party's giving written notice (including
13 full particulars) as soon as reasonably possible, but no later than seventy-two (72) hours
14 after the occurrence of the cause relied on, the obligations of the Party giving such notice,
15 so far as they are affected by such Force Majeure event, shall be suspended during the
16 continuance of any inability so caused but for no longer period, and such cause shall as
17 far as possible be remedied with all reasonable dispatch, provided however, that such
18 event of Force Majeure will not relieve a Party from its obligation to make payments for
19 obligations accruing prior to the Force Majeure.
20

21 B. The term "Force Majeure" as used herein means events or causes not reasonably within
22 the control of the Party claiming Force Majeure, including but not limited to, acts of God,
23 strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars,
24 blockades, insurrections, riots, epidemics, landslides, lightning, storms, hurricanes, fires,
25 earthquakes, floods, arrests and restraints of governments and people, civil disturbances,
26 explosion, breakage or accidents to machinery, equipment or lines of pipe, delays in
27 obtaining (after the exercise of reasonable diligence, which includes, but is not limited to,
28 operating and maintaining all of Company's facilities and equipment in accordance with
29 good utility practice) necessary materials, equipment, easements, franchises, permits,
30 governmental or regulatory approvals, orders, acts, or requirements of courts or
31 governmental agencies, and any other cause beyond the reasonable control of the Party
32 affected, and which by the exercise of due diligence such Party is unable to prevent or
33 overcome, which renders that Party unable to carry out its obligations pursuant to the
34 terms of this Agreement. The settlement of strikes or lockouts shall be entirely within the
35 discretion of the Party having the difficulty, and the above requirement that any Force
36 Majeure be remedied with all reasonable dispatch shall not require the settlement of
37 strikes or lockouts by acceding to the demands of an opposing Party when such course is
38 inadvisable in the discretion of the Party having the difficulty. Force Majeure shall not
39 include economic hardship, loss of Customer's market, any reduction in operations at the
40 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
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With copies to General Counsel at:	Southern Company Gas General Counsel Ten Peachtree Place, NE Atlanta, GA 30312
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Gas Control Notices: Florida City Gas
Gas Control
Telephone: (404) 584-4400
Email: gascont@southernco.com

With copy to: Attn: Forrest Smalley
Senior Account Executive
Telephone: (772) 224-3920
Email: 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.

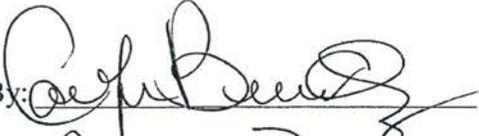
- C. The headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- D. The Recitals (i.e., the “WHEREAS” clauses) set forth at the beginning of this Agreement are true and correct and are hereby incorporated into this Agreement.
- E. 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.

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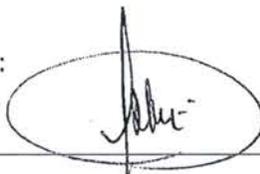
IN WITNESS WHEREOF, duly authorized representatives of the Parties have executed this Agreement as of the date first stated above.

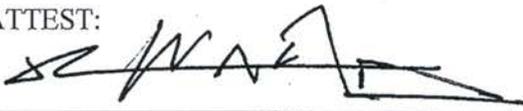
PIVOTAL UTILITY HOLDINGS, INC.
(f/k/a NUI UTILITIES, INC.)
d/b/a FLORIDA CITY GAS (f/d/b/a
CITY GAS COMPANY OF FLORIDA)

FLORIDA CRYSTALS CORPORATION

By: 
Name: Carolyn Bermudez
Title: VP of Operations

By: 
Name: GUSTAVO R. CEPERO
Title: VP

ATTEST:  U. BOSTES

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)