

**AN ORDINANCE ADOPTED BY THE TOWN OF
VIENNA APPROVING A NONEXCLUSIVE NATURAL GAS FRANCHISE
WITH WASHINGTON GAS LIGHT COMPANY**

WHEREAS, the Town, has the authority to grant franchises and other authorizations for the use and occupancy of the Public Rights-of-Way in accordance with §15.2-2100 *et. seq.* of the Code of Virginia; and,

WHEREAS, a descriptive notice of this ordinance proposing to make the grant of a natural gas franchise has been advertised in accordance with §15.2- 2101 of the Code of Virginia; and,

WHEREAS, the Town has received bids for this franchise through April 9, 2018 and has complied with the requirements of §15.2-2102 of the Code of Virginia, and

WHEREAS, WASHINGTON GAS LIGHT COMPANY has submitted a bid and desires to obtain a natural gas franchise to use and occupy the Public Rights-of-Way for the purpose of placing and maintaining a Natural Gas System in accordance with the proposed Franchise Agreement (Exhibit A) attached and incorporated by reference as if set forth fully herein; and

WHEREAS, Common Council believes that the award of such a franchise to WASHINGTON GAS LIGHT COMPANY is in the best interests of the Town of Vienna.

NOW THEREFORE BE IT ORDAINED, that the Town Council for the Town of Vienna, Virginia does hereby award a non-exclusive natural gas franchise to WASHINGTON GAS LIGHT COMPANY and hereby authorizes and directs the Town Manager and Town Attorney to review and execute the franchise agreement (Exhibit A) and take all actions necessary in furtherance of the granting of this franchise.

NOTICE OF INVITATION TO BID FOR FRANCHISE TO USE PUBLIC PROPERTY OF THE TOWN OF VIENNA, VIRGINIA FOR A NATURAL GAS FRANCHISE PURSUANT TO §15.2-2101 OF THE CODE OF VIRGINIA:

TAKE NOTICE that the Town of Vienna hereby invites bids for the franchise, privilege, lease or right to use the public streets, highways, parks, and other public places of the Town of Vienna, within the limits thereof as they now exist or may hereafter be extended by annexation or otherwise, and to erect, operate and maintain, and if not constructed for the purpose of placing and maintaining a Natural Gas System in accordance with the proposed Franchise Agreement, including the necessary underground pipes and appurtenances and under the public places of the Town of Vienna, Virginia for the purpose of placing and maintaining a Natural Gas System in accordance with the proposed Franchise Agreement and consistent with the substance of the specific terms and conditions of the Franchise Ordinance. A full copy of the text of the proposed Franchise Ordinance and Bid Documents are on file with the Town Clerk and available for public inspection during normal business hours of the Town of Vienna. Final Bids shall be submitted in writing to the Town Clerk at 127 Center Street, South, Vienna, Virginia 22180 on or before 10:00 a.m. on Monday, April 9, , 2018. The bids shall be opened by the presiding officer in public session of Council held in Council Chambers on Monday, April 9, 2018 on or after 8:00 p.m., and marked for identification by the Clerk of Council. The cost of this advertisement shall be reimbursed by the successful bidder as required by law. The Town of Vienna reserves the right to reject any and all bids in accordance with §15.2-2101(8) of the Code of Virginia.

NATURAL GAS FRANCHISE AGREEMENT

BETWEEN

THE TOWN OF VIENNA, VIRGINIA AND

WASHINGTON GAS LIGHT COMPANY

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made this _____ day of _____, 2018, between the Town of Vienna, Virginia a municipal corporation formed and operating under the laws of the Commonwealth of Virginia (hereinafter “Town” or “Franchising Authority” or “Grantor”) and Washington Gas Light Company, a Virginia corporation (Virginia SCC TD 00682765) whose principal office is located at 6801 Industrial Road, Springfield, VA 22151 (hereinafter “Washington Gas” or “Franchisee” or “Grantee” or “company”) for a twenty (20) year natural gas franchise commencing upon the effective date of this Agreement.

RECITALS

WHEREAS, Washington Gas is a Virginia and District of Columbia corporation, duly organized and existing under the laws of the Commonwealth of Virginia and the District of Columbia; and

WHEREAS, Washington Gas desires to construct, install, and maintain its natural gas service within the Town using the public rights of way, which are limited resources; and

WHEREAS, in accordance with the Code of Virginia, the Town has the authority to grant access to its public rights of way;

NOW therefore, in consideration of the recitals and mutual promises contained herein, the Town and Washington Gas agree as follows:

SECTION 1. Primary Object and Definitions

(a) The primary object of the granting of this franchise is to continue the existence and operation of a natural gas distribution system for the Town of Vienna, Virginia. The Grantee expressly agrees that no gas other than natural gas or a compatible substitute (such as, but not limited to, propane) shall be used at any time in its distribution system until the use of any such other gas is authorized by proper ordinance of the Common Council for the Town of Vienna, Virginia.

Permission to use other gas shall not be granted until the full particulars of the method of producing or acquiring such other gas have been submitted to the said Council, and until the said Council has inspected and approved such method of production or acquisition, equipment, specifications and method of operation.

(b) Whenever the word "Grantee" appears in this Agreement, it is intended to designate, and shall be held to mean WASHINGTON GAS LIGHT COMPANY, its successors and assigns.

Whenever the words "natural gas" appears in this Agreement, it is intended and shall be construed to mean natural gas or a compatible substitute. When the word "mains" appears in this Agreement, it is intended, and shall be construed to mean pipes, mains, conduits or other means used for the transmission and distribution of natural gas. Whenever the word "street" appears in this Agreement, it is intended, and shall be held to mean streets, alleys, avenues, or any other public way in the City of Vienna. Whenever the word "service" appears in this Agreement, it is intended and shall be held to have the meaning given said term in §§56-233 and 56-234 of the Virginia Code, or in any future amendment thereto.

SECTION II. Franchise Granted and Term Thereof

Subject to the provisions, conditions and restrictions set forth herein, the non-exclusive rights are hereby granted to Washington Gas to lay, construct, operate, extend, repair, replace, renew and maintain gas mains, gas pipes, and all necessary appurtenances and appendages thereto along, across, and under any streets in the Town of Vienna, and to use and occupy the said streets for the purpose of thereunder laying, constructing, extending, repairing, replacing, renewing, inspecting and maintaining the said gas mains and gas pipes and all necessary

appliances and appendages thereto for the transmission or distribution of gas for public consumption within and through the Town of Vienna, Virginia, such right to continue for twenty (20) years from the effective date of this Agreement. The “effective date” of this Agreement shall be construed as _____, 2018.

SECTION III. Right and Duties of Grantee in Opening Streets and Excavating Therein

- (a) The Grantee shall have the non-exclusive right for the purpose of laying, constructing and extending its mains, pipes, and all necessary appurtenances and appendages thereto for distributing its gas for public consumption, to open and excavate in the streets; and shall have, when necessary, the like right for the purpose of repairing, replacing, renewing, inspecting and maintaining its said mains, pipes and all necessary appurtenances and appendages thereto, subject to the terms and conditions herein specified, and those prescribed by the general ordinances of the said Town enacted as an exercise of the police power now in force or hereafter enacted.
- (b) Before the commencement of any major system expansion or replacement project within the Town that is outside the scope of the Company’s normal system expansion or replacement projects, the Company will provide the Town Manager with the plans and specifications of the proposed project, and will meet with the Town Manager to address any concerns relating to the proposed facilities.
- (c) In opening the surface of any street and in making any excavation therein for the purpose, the Grantee shall not unnecessarily obstruct or impede traffic upon the streets and shall avoid any interference with, or injury to the water pipes of the Town, or sewers, public or private, or other pipes, mains, conduits, tracks, lines or other fixtures of a public utility or public

service corporation. And if any injury be done by the Grantee to Town property, the Grantee shall make indemnity and satisfaction to the Town with the least possible delay.

(d) Whenever the Grantee shall, under the provisions of this franchise, break up or open any street, it shall act diligently in completing the necessary work and immediately thereafter replace the earth removed (the earth to be thoroughly tamped as the same is thrown into the trench or excavation), and shall replace the pavement and sidewalk and repair the same in such reasonable time and as the Town Manager shall require, and restore the same in all respects to as good, fine and workmanlike condition as the same was before being so broken up; and shall thereafter from time to time, as required by the Town Manager, readjust, fill and finish the same as long as, in the opinion of the said Town Manager, it may be necessary on account of settling of the earth or pavement caused by such opening; and all such work and all repairs which shall at any time become necessary to said pavements by reason of the laying, replacing or repairing of said mains and pipes shall be done by the Grantee at its own cost and expense.

(e) Except where the Grantee maintains facilities which are located on private property by right of recorded easements, the Grantee, when necessary and upon the request of the Town Manager, shall remove and relocate, at its own expense, any mains or services which shall endanger, impede or interfere with any municipal construction or construction of any municipally-owned development, equipment, facilities or utilities, provided the Town shall have made reasonable effort to avoid conflict with Grantee's facilities in designing such facilities.

(f) All construction, laying and installation authorized herein shall be done in accordance with applicable safety practices.

(g) The company shall at all times comply with then existing Federal, State and local laws and regulations in conducting its operations under this Franchise Agreement.

SECTION IV. Duty of Grantee to Furnish Adequate Gas Service at Reasonable Rates

The Grantee shall furnish to the Vienna public adequate gas service at reasonable and just rates, or such services as may be legally declared to be adequate, and at such rates as may be legally fixed and declared to be just by the duly constituted governmental authority having lawful jurisdiction thereof.

SECTION V. Principal Office of Grantee

The Grantee shall maintain an office in the Commonwealth of Virginia throughout the period hereof.

SECTION VI. Franchise Non-Exclusive

Nothing contained herein shall be construed as granting or attempting to grant the said Grantee the exclusive right to use any street of the Town of Vienna for its gas distribution system, or in any manner preventing the Town from engaging in said business, or in any manner preventing the Town from granting similar, equal, or greater privileges to any other person or corporation.

SECTION VII. General Ordinance of the Town

No provision of this Agreement shall be construed as in any way authorizing the violation or disregard by the Grantee of any general ordinance of the Town now in force or which may be hereafter enacted for the protection of the public in the use of the streets and highways of the Town, and the Town reserves the right to enact such rules, regulations and ordinances as may best serve or protect the safety, health, and general welfare of the public, and to require compliance therewith by the Grantee.

**SECTION VIII. Extension of Town Limits or Street System;
Subsequent Serviceable Units**

(a) If, during the life of this franchise, the corporate limits of the Town of Vienna shall be extended beyond the present line so as to include any of the works of the Grantee other than those within the present corporate limits, the provisions of this ordinance shall be and become, upon the extension of the Town limits, applicable to any and all works of the Grantee which may be located in any public streets within such extended limits of the Town; and the Grantee shall be deemed to be maintaining and operating such works under the terms and provisions of this ordinance.

(b) Where any gas facilities are laid anywhere in the Town limits as now or hereafter extended not in a public street and a street shall thereafter be opened or dedicated so as to include said main within the lines of such street, then as of the opening or dedication, the facilities shall be deemed to be operated and maintained under the terms of this franchise, provided however, that Grantee shall not be required to relocate its facilities without compensation of such facilities are located on private property by right of recorded easement.

SECTION IX. Grantee to Save Town Harmless; Liability Insurance

(a) The Grantee shall indemnify and save harmless the Town from any and all claims for damages that may be assessed against it by any person, firm, or corporation whatever, arising from the construction, operation or maintenance of the Grantee's works, or out of the exercise of any right, privilege or franchise granted herein, or the performance of any duty hereby imposed. In the event any action or other proceeding shall be brought against the Town of Vienna, in either dependently or jointly with said Grantee on account thereof, said Grantee, upon notice to it by the Town, shall defend the Town in any such action or other proceeding at the cost of said Grantee. In the event of final judgment being obtained against the Town, either independently or

jointly with said Grantees, the Grantee will pay said judgment with all interest and costs and will hold the Town harmless therefrom; but nothing herein contained shall be construed as recognizing on the part of the Town or the Grantee any claim or right of action growing out of this Agreement in favor of any third person.

(b) This franchise and grant of the rights and privileges herein confined shall be conditioned upon the Grantee obtaining and maintaining in effect throughout the term of this grant a policy of liability insurance, which names the Town of Vienna, Virginia, as an “additional insured”, with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) for all damages arising out of bodily injury, sickness or disease, including death at any time resulting therefrom sustained by one person in any one accident and subject to that limit for each person, a total limit of Five Million Dollars (\$5,000,000.00) for all damages arising out of bodily injury, sickness or disease, including death at any time resulting therefrom sustained by two or more persons in any one accident and limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of injury to or destruction of property in any one accident and subject to that limit per accident, an aggregate limit of not less than Two Million Dollars (\$2,000,000.00) for all damages arising out of injury to or destruction of property during the franchise period. The Grantee may have in such policy a deductible provision, not to exceed One Thousand Dollars (\$1,000.00) applicable in the instance of property damage coverage. This liability insurance is to cover not only the premises and operations of the Grantee, but also any liability as a result of products or completed operations. Satisfactory evidence of such policy being in full force and effect shall be filed with the Town Manager annually, or at any other time the Town Manager deems necessary.

The policy of liability insurance herein provided for must be carried by a company or companies licensed to do business under the Laws of the Commonwealth of Virginia.

SECTION X. Rates for Town and School Purposes

The Grantee shall supply gas to the Town of Vienna and to the School Board of the County of Fairfax for municipal and school uses within the Town limits at regular tariff rates.

SECTION XI. Expiration of Franchise and Rights of Town Thereon

At the expiration of this franchise twenty (20) years from effective date of this Agreement, the Town shall have the right to purchase and take over all of the physical facilities of the Grantee used or useful in the manufacture, production, transmission or distribution of gas within the Town of Vienna, together with all other properties and rights of the Grantee necessary to the full use and enjoyment thereof, but not any cash, accounts receivable, bonds, notes, stocks or other securities of the United States or any agency or instrumentality thereof, or of any state or political subdivision thereof, or of any other corporation, company or association owned or held by the Grantee, upon paying to the Grantee a sum equal to the higher of the then fair market value or book value thereof, but the Grantee shall not be entitled to any payment for the value of the franchise.

The provisions of this section shall not be construed as prohibiting the Town, upon the expiration of the period of this franchise, from condemning the properties of the Grantee, or any of them which it may then be authorized by law to condemn.

SECTION XII. Indemnity Bond

This franchise and its grant to rights and privileges is conditioned upon the Grantee filing with the Town Manager, a bond with corporate surety in the sum of Fifty Thousand Dollars (\$50,000.00) with condition that the said Grantee will maintain its works which are reasonably

necessary for the exercise of the rights and privileges granted by this Agreement in good order throughout the term of this grant, will hold the Town of Vienna harmless from all losses, expenses or damage in any amount to persons or property including municipal property by reason of the construction, maintenance and/or operation of its distribution system, and will comply in all respects with the terms, provisions and conditions of this franchise.

SECTION XIII. City Must Approve Assignment, lease, Sale or Transfer of Franchise Rights

Any assignment, lease, sale or transfer by the Grantee of its rights and privileges and duties under this franchise must be first approved in writing by the Town Manager, in accordance with such authority being contained in a resolution of the Common Council of the Town of Vienna.

SECTION XIV. Use of Odorant

It shall be a condition of the granting and of the continuing exercise of the privileges of this franchise throughout the term hereof that the Grantee shall provide, maintain, and use at all times an easily discernable odorant inter-mixed with the gas distributed by the Grantee for the purpose of detecting escaping, leaking or non-burning stream of such gas.

SECTION XV. Forfeiture

The rights and privileges herein set forth are granted and conferred upon the said Grantee upon the express condition and understanding, to be complied with the said Grantee, that it will render to the public within the Town of Vienna adequate gas service at reasonable rates as provided in Section IV hereof, that it will maintain its properties necessary for providing such service in good order throughout the term of this grant, and that the gas service supplied shall be of a quality standard to the industry. In the event of the Grantee's failure to render such gas service at reasonable rates, to maintain said properties in good working order, or to supply gas of

a quality standard to the industry, in the manner now or hereafter required by law and the terms of this franchise, then the Grantee shall forfeit the franchise hereby granted.

SECTION XVI. Deposit with Bid and Method of Acceptance by Grantee

Any person or corporation bidding for this franchise must deposit with the bid his or its certified check in the sum of Five Hundred Dollars (\$500.00), payable to the Treasurer of the Town of Vienna, Virginia. The check of the Grantee awarded this franchise shall be security to the City that if an ordinance substantially in the form of the foregoing ordinance is passed, granting to him or it the franchise rights and privileges hereinabove set forth, then such Grantee shall accept this franchise in the manner as is herein provided within thirty (30) days from the adoption of such ordinance granting this franchise to such Grantee. Upon failure of such Grantee so to accept this franchise, such Grantee shall forfeit to the Town the sum of Five Hundred Dollars (\$500.00) required to be deposited with the bid. The certified checks of all other bidders will be returned after the award of this franchise to the Grantee.

SECTION XVU Bid for Franchise

In addition to satisfying the foregoing terms, Washington Gas, Grantee, hereby bids the annual sum of Ninety-seven Thousand and Five Hundred Dollars (\$97,500.00), which will be increased by 1.5% annually, payable in quarterly installments for the right to use the Town street, alleys and other public ways.

This Agreement shall be and become effective on the effective date as defined herein and shall constitute a contract of franchise between the City and the Grantee when duly signed by all parties.

[SIGNATURES ON FOLLOWING PAGES]

On this _____ day of _____, 2018, the undersigned, Adrian P. Chapman, did attest that he is the President and Chief Operating Officer for Washington Gas Light Company and swear or affirm the following:

1. That he is the duly authorized representative of Washington Gas Light Company, Grantee, and is authorized to execute this Franchise Agreement to bind and by signing below does bind Washington Gas Light Company, Grantee, to the terms of this Franchise Agreement.
2. That by signing this document, he is submitting a bid for the renewal the existing Washington Gas Light franchise for the provision of natural gas utility services in the Town of Vienna, Virginia accordance with the terms described in this Franchise Agreement;
3. That upon approval of the franchise by the Town of Vienna, Virginia as evidenced by Ordinance of the Town Council for the Town of Vienna, Virginia, and execution of the Agreement by the Town Manager for the Town of Vienna, Virginia, Washington Gas Light does accept the Franchise and agree to fully abide by all terms described in the Franchise Agreement.

WASHINGTON GAS LIGHT COMPANY

President and Chief Operating Officer

ATTEST:

Secretary

COMMONWEALTH OF VIRGINIA TOWN
OF VIENNA

On this _____ day of _____, 2018, Adrian P. Chapman, whose identity was confirmed by valid photographic identification, did personally appear before me and affix his signature to this Franchise Agreement on behalf of Washington Gas Light Company.

On this ____ day of _____, 2018, the undersigned Laurie A. DiRocco, Mayor, did attest that she is the Mayor for the Town of Vienna and swear or affirm the following:

1. That she is the duly authorized representative of Town of Vienna, Virginia, and is authorized to execute this Franchise Agreement to bind and by signing below does bind the Town of Vienna, Virginia to terms of this Franchise Agreement;
2. That by signing this document she is accepting on behalf of the Town, the bid for the renewal the existing Washington Gas Light franchise for the provision of natural gas utility services in the Town of Vienna, Virginia in accordance with the terms described in this Franchise Agreement.
3. That upon approval of the Franchise by the Town of Vienna, Virginia as evidenced by Ordinance of the Town Council for the Town of Vienna, Virginia, and execution of the Agreement by the President and Chief Operating Officer of Washington Gas Light Company, the Town does offer the Franchise and agree to fully abide by all terms described in the Franchise Agreement.

TOWN OF VIENNA, VIRGINIA

By: _____
Laurie A. DiRocco, Mayor Date

ATTEST:

Town Clerk Date

APPROVED AS TO FORM:

Town Attorney Date

COMMONWEALTH OF VIRGINIA
TOWN OF VIENNA, VIRGINIA

On this ____ day of _____ 2018, _____, whose identity was confirmed by valid photographic identification, did personally appear before me and affix his/her signature to this Franchise Agreement.

SEAL

Notary Public
My Commission Expires: _____
Notary ID No.:

DRAFT

**ORDINANCE APPROVING A NONEXCLUSIVE NATURAL GAS FRANCHISE WITH
WASHINGTON GAS LIGHT COMPANY**

WHEREAS, the Town, has the authority to grant franchises and other authorizations for the use and occupancy of the Public Rights-of-Way in accordance with §15.2-2100 *et. seq.* of the Code of Virginia; and,

WHEREAS, a descriptive notice of this ordinance proposing to make the grant of a natural gas franchise has been advertised in accordance with §15.2- 2101 of the Code of Virginia; and,

WHEREAS, the Town shall and has received bids for this franchise through April 9, 2018, and has complied with the requirements of §15.2-2102 of the Code of Virginia

WHEREAS, WASHINGTON GAS LIGHT COMPANY has submitted a bid and desires to obtain a natural gas franchise to use and occupy the Public Rights-of-Way for the purpose of placing and maintaining a Natural Gas System in accordance with the proposed Franchise Agreement (Exhibit A) attached and incorporated by reference as if set forth fully herein; and

WHEREAS, Common Council believes that the award of such a franchise to WASHINGTON GAS LIGHT COMPANY is in the best interests of the Town of Vienna.

NOW THEREFORE BE IT ORDAINED, that the Town Council for the Town of Vienna, Virginia does hereby award a non-exclusive natural gas franchise to WASHINGTON GAS LIGHT COMPANY and hereby authorizes and directs the Town Manager and Town Attorney to review and execute the franchise agreement (Exhibit A) and take all actions necessary in furtherance of the granting of this franchise.

ACCEPTANCE OF FRANCHISE FOR NATURAL GAS SYSTEM

To: The Honorable Members of Common Council for the Town of Vienna

From: _____ WASHINGTON GAS LIGHT COMPANY _____

Date: _____

_____ WASHINGTON GAS LIGHT COMPANY respectfully accepts the franchise rights granted to it by action of the Town Council of the Town of Vienna, Virginia, on _____ (Ordinance No.: _____), and hereby posts a surety bond in the amount of \$_____ as security for proper performance of its franchise obligations.

WASHINGTON GAS LIGHT COMPANY

President and Chief Operating Officer

I hereby acknowledge on this ____ day of _____, 2018, the above Acceptance was delivered to me and I further acknowledge receipt of proof of surety as described above.

Clerk of Council
Town of Vienna, VA