

EXHIBIT A

**STATE OF NEW JERSEY
COUNTY OF WARREN
TOWN OF PHILLIPSBURG**

O: 2018- 02

**AN ORDINANCE OF THE TOWN OF PHILLIPSBURG GRANTING
MUNICIPAL CONSENT TO PIVOTAL UTILITY HOLDINGS, INC. d/b/a
ELIZABETHTOWN GAS TO CONSTRUCT, MAINTAIN AND OPERATE GAS
LINES FOR THE DISTRIBUTION OF NATURAL AND MIXED GAS.**

WHEREAS, Pivotal Utility Holdings, Inc. doing business as Elizabethtown Gas, a Corporation of the State of New Jersey and a public utility subject to the jurisdiction of the New Jersey Board of Public Utilities, on January 22, 2018, filed a Petition with the Clerk of Phillipsburg seeking renewal of the Municipal Consent to construct, operate and maintain natural and mixed gas distribution lines for public and private consumption throughout the Town of Phillipsburg (the "Town").

WHEREAS, City Gas Company of Phillipsburg, a predecessor of Elizabethtown Gas was granted Municipal Consent to serve residents within the municipality and to construct, maintain, and operate a gas line for the distribution of natural and mixed gas in the Town, pursuant to an Ordinance adopted on August 14, 1946, and that Municipal Consent expired in August, 1996.

WHEREAS, representatives of the Petitioner appeared before the Mayor and Council to present their request for renewal of the Consent Ordinance within the Town; and

WHEREAS, the Petitioner has provided public notice of such Petition through publication in the official newspaper of the Town, and notices of such Petition have been posted pursuant to Statute.

WHEREAS, the Town has determined that it is reasonable and necessary for Elizabethtown Gas, its successors and assigns, to continue to provide for construction, maintenance, and operation of a gas line for the distribution of natural and mixed gas in the entire Town.

WHEREAS, the Town desires to extend the municipal consent to Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas under the terms set forth in this Ordinance.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Phillipsburg:

Section I. Grant of Municipal Consent.

The Mayor and Council of the Town of Phillipsburg hereby grant to Pivotal Utility Holdings, Inc. doing business as Elizabethtown Gas, a Corporation of the State of New Jersey (hereinafter "Elizabethtown") with principal offices located at 520 Green Lane,

Union, New Jersey 07083, its successors and assigns, a nonexclusive consent, right and privilege for the use, without impairment of, or obstruction to the public use, of the public roads, streets, avenues, ways, and other public places of the Town to construct, lay, maintain, and operate for a period of fifty (50) years, the necessary mains, conductors, pipes and concomitant appurtenances for the purpose of furnishing, conveying, storing, supplying and distributing natural and mixed gas for heat, power, light and other purposes for public and private use and consumption, along, in, or under the following described service area: all the public roads, streets, avenues, highways, and public places within the Town as they now exist or may be hereinafter be laid out by the municipal authorities of the Town or dedicated to the Town.

Section II. Conditions on Grant of Municipal Consent.

The Municipal Consent granted herein is expressly conditioned upon the following:

- (a) the written acceptance of Elizabethtown of the terms and conditions of this municipal Consent Ordinance within thirty (30) days of its final adoption.
- (b) the New Jersey Board of Public Utilities (hereinafter "N.J.B.P.U.") approval of the Consent herein granted and the issuance of such other grants or approvals as determined by the N.J.B.P.U.
- (c) Elizabethtown shall satisfy all Statutory requirements regarding the proper organization and operation of a Public Utilities engaged in the distribution of natural and mixed gas, and shall remain subject to the jurisdiction of and comply with all Rules and Regulations of the United States Department of Transportation, Office of Pipeline Safety and the N.J.B.P.U. as well as the Ordinance of the Town.
- (d) Elizabethtown shall construct and continuously maintain and operate their distribution lines within the service area in a safe and efficient manner, and maintain such gas distribution lines in a state of good operation and repair and including all streets, roads, and public rights-of-way within the Town wherein its lines are located.
- (e) the construction, operation and maintenance of the gas distribution system within the rights-of-way of the Town shall in no way place any obligation, financial or otherwise, or any liability of any kind, upon the Town and no obligation is to attach for the construction, operation and maintenance of the said gas distribution system to the Town.

Section III. Construction; Installation; Restoration.

- A. Construction. In each and every case in which road openings or excavation of any nature are required or made for the purposes aforesaid, Elizabethtown shall restore, all such public and private lands or facilities to as good a condition as existed at the commencement of the said work or such better condition, at its sole cost and expense. All such openings and installation and

maintenance shall be undertaken in strict compliance with the standards imposed by the N.J.B.P.U., any other regulatory agency, and all applicable Municipal Ordinances, with such work to be done in a careful, prudent and workmanlike manner, and within such time limitations as shall be best for the proper safeguard of the public.

- B. Relocation. If at any time during the period of this Municipal consent, the Town finds it necessary to alter or change the grade of any street, road or other public right-of-way or area, Elizabethtown shall, upon reasonable notice by the Town, remove and relocate its distribution line and pipes at the expense of Elizabethtown.
- C. Restoration. In the event that Elizabethtown shall refuse or neglect, after ten (10) days notice in writing by the representative of the Town, to restore any disturbed area at its cost and expense, and in compliance with all applicable Municipal Ordinances in effect at the time, to its pre-existing or better condition, any street, road, pavement, driveway or other improvements after having made an opening or excavation, the necessary work to accomplish such restoration may be done by the Town, and thereafter, Elizabethtown shall be liable for the actual and necessary costs thereof, and shall immediately pay such costs to the Town upon receiving notice thereof.
- D. Preconditions to Undertaking Construction. Elizabethtown shall give to the Town, through its duly designated representative, written notice of its intention to open or excavate any street or other public place in accordance with the Town Ordinance regulating the excavation and opening of streets, roads and highways, with the exception that such notice requirement shall be waived in the event of an emergent circumstance such that such emergency will affect public health or safety. As soon as practically possible after the occurrence of such emergent circumstance, Elizabethtown shall give prompt written notice to the Town of any emergency opening or excavation that Elizabethtown shall undertake.

Section IV. Indemnification, Performance Bond, Liability.

- A. Indemnification. Elizabethtown, its successors and assigns, by the acceptance of the grants, rights and privileges conferred by this ordinance, shall at all times and does hereby and will indemnify and hold harmless, the Town and all of its subsidiary agencies, officials and employees for any and all claims of whatsoever kind or nature arising from or relating to the construction, installation, maintenance, laying, repairing, inspecting, or altering of mains conductors, pipes

and appurtenances thereto, and any other facilities, and including, but not by way of limitation, any damages, penalties, costs, attorney's fees and charges for personal injury, property damage or otherwise, based upon Elizabethtown's negligence or the negligence of its agents, servants, employees or independent contractors.

- B. Performance Bond. Prior to the commencement or any construction or installation under this Municipal Consent, Elizabethtown shall execute and deliver to the Clerk of the Town and subject to prior review and approval by the Town Attorney, a Bond in the amount of \$10,000.00 guaranteeing the faithful performance of all of its obligations and undertakings under this Ordinance, which Bond shall be enlarged or renewed from time to time as the Committee may require.

- C. Liability Insurance. Elizabethtown agrees to maintain and keep in full force and effect, at its sole expense, and at all times during the terms and duration of this Municipal Consent, sufficient liability insurance naming the Town as an additional insured party, and insuring and indemnifying the Town against any loss by any such claim, suit, judgment, execution or as follows:
 - (a) Elizabethtown shall carry Workman's Compensation Insurance with Statutory limits.
 - (b) Elizabethtown shall at all times, maintain a Comprehensive General Liability Insurance Policy with a single limit amount of \$1,000,000.00 covering liability for any death, personal injury, property damage or other liability arising out of its construction and operation of the gas distribution systems herein and in addition, an excess liability (or "umbrella") policy in the amount of \$5,000,000.00, said amount to be reviewed every five (5) years.
 - (c) Elizabethtown shall furnish to the Town a certified copy or Certificate of Insurance of each of the Policies as set forth herein.

Section V. Duration of Consent.

Term. The Municipal consent granted to Elizabethtown herein is for a period of fifty (50) years from the effective date of this Ordinance.

Section VI. Severability.

If the provision of any article, section, subsection, paragraph, subdivision or clause of this Ordinance shall be judged invalid by any Court or Competent jurisdiction, such Order or Judgment shall not effect or invalidate this remainder of any such article,

section, subsection, paragraph or clause, and, to this end, the provisions of this Ordinance are hereby declared to be severable.

Section VII. Effective Date.

This Municipal Consent Ordinance shall become effective upon adoption and publication according to law, and only upon written acceptance of this Municipal Consent by Elizabethtown, which written consent shall be filed with the Clerk of the Municipality within thirty (30) days of the date after which Elizabethtown receives notice of the passage of this Ordinance.

, Mayor

ATTEST:

, Clerk