

NATURAL GAS  
FRANCHISE AGREEMENT  
ORDINANCE NO. 137

AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE TOWN OF ALFORD, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE.

WHEREAS, Peoples Gas System and the Town of Alford desire to enter into a franchise agreement for an initial period of ten (10) years commencing from the date provided herein and containing automatic renewal provisions for successive ten (10) year terms (up to a maximum of two (2) such ten (10) year renewals);, and

WHEREAS, the Town Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

NOW THEREFORE, BE IT ENACTED BY THE TOWN COMMISSION OF THE TOWN OF ALFORD, FLORIDA, THAT:

SECTION 1:            DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the Town.
- B. "Town" shall mean the Town of Alford, Jackson County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric

Company, a Florida corporation, its successors and assigns.

- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, installed by Company and as are exclusively used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the Town.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the Town and accepted by the Company, as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" or "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the Town.

SECTION 2:            GRANT

The Town hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the Town, or in such territory as may be hereafter added or annexed to, or consolidated with, the Town, a Distribution System subject to the terms and conditions herein contained.

SECTION 3:            TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of ten (10) years from the effective date of this ordinance; provided, however, that the Franchise will automatically renew for successive ten (10) year terms (up to a maximum of two (2) such ten (10) year renewals), unless one of the parties notifies the other, with no less than one hundred and eighty (180) days' written notice, prior to the expiration of the then-current term, that it does not want the Franchise to automatically renew. If either party elects not to renew the Franchise, then the Franchise shall expire upon the conclusion of the then-current term.

SECTION 4:            ASSIGNMENT

A.     The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the Town, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the Town .

B. Notwithstanding the foregoing, the Company may, without the consent of the Town, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5:            TOWN COVENANT

As a further consideration for this Franchise Agreement, the Town covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the Town, as modified, during the term of this Franchise Agreement.

SECTION 6:            USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate Town authority. The Town shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this agreement, the Town shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such

excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the Town, to restore such Rights-of-way, then the Town may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the Town has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the Town or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the Town shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

SECTION 7:            MAINTENANCE

All such components of the Distribution System of the Company located within the Town shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 8:            LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in Town permits.

SECTION 9:            CONSTRUCTION WORK

The Town reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be

deemed necessary or proper by the Town in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the Town to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the Town without claim for reimbursement. If the Town shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the Town, as part of its permitting or approval process, the Town shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said Town unless it has received specific permission from the Town or its duly authorized representative.

SECTION 10:            FRANCHISE FEE

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the Town, or its successors, a sum of money equal to six percent (6%) of the Company's Gross

Revenue, less any adjustments for uncollectable accounts, from the sale of Natural Gas to Customers within the corporate limits of the Town. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

SECTION 11:            IDENTIFICATION OF TOWN RESIDENTS

No less than thirty (30) days prior to the Effective Date, the Town shall deliver to the Company a GIS map of the limits of the Town, including street names and an overlay of the most recent parcel identification information as provided by the Jackson County Property Appraiser, as is needed by the Company to determine which of its customer are located within the Town limits. The Town shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's request. Until such time as the Town provides the information required pursuant to this Section 11, the Company shall be relieved of its obligation to pay franchise fees for those customers whose property has not been included in the most recent GIS map of the limits of the Town and provided in accordance with this Section 11.

SECTION 12:            ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the Town are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the Town, or its designated representative, and execution of a confidentiality agreement as may be allowed under Florida law and reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the Town for

the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

SECTION 13:            INSURANCE

During the term of this Franchise, the Company shall file with the Town Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the Town, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the Town, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14:            INDEMNIFICATION



In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the Town, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the Town during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the Town in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however**, that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the Town, its officers, agents, or employees. Nothing in this Franchise Agreement shall be construed to affect in any way the Town's rights, privileges and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

SECTION 15:            TERMINATION BY TOWN

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the Town to declare a termination this Franchise Agreement; provided, however, that before such action by the Town shall become operative and effective, the Company shall have been served by the Town with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Town with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the Town, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16: CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the Town and the Company.

SECTION 17: SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a

party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the Town or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or Town may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 18:            GOVERNING LAW AND VENUE

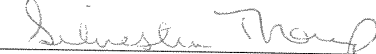
This Franchise shall be governed by the laws of the State of Florida and applicable federal law. Jackson County, Florida shall be the venue for any litigation concerning the interpretation or performance of this franchise.

SECTION 19:            EFFECTIVE DATE

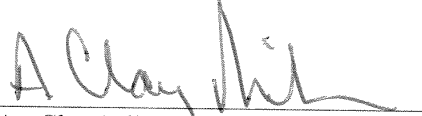
This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the Town's passage and adoption hereof.

PASSED AND CERTIFIED AS TO PASSAGE this 10th day of July, A.D.2012.

  
George Gay, MAYOR

ATTEST:   
Silvestra Tharp, TOWN CLERK

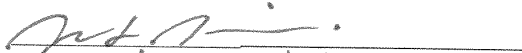
APPROVED AS TO FORM AND CORRECTNESS:



A. Clay Milton, Esq.  
Attorney for the Town

Accepted this 12 day of October, A.D. 2012

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

  
By: Gordon L. Gillette  
Title: President

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial agreement in Orange County by Peoples Gas System and The Lake Apopka Natural Gas District.

DOCKET NO. 130166-GU  
ORDER NO. PSC-13-0345-PAA-GU  
ISSUED: July 31, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

BACKGROUND

On June 17, 2013, Peoples Gas System (Peoples) and the Lake Apopka Natural Gas District (Lake Apopka) filed a joint petition for approval of a territorial agreement in Orange County. Peoples is a public utility regulated by this Commission pursuant to Chapter 366, Florida Statutes (F.S.). It provides natural gas to approximately 345,000 customers throughout the State of Florida, including customers in Orange County. Lake Apopka is an independent special district of the State of Florida created by the Legislature in 1959. It was created for the purpose of constructing and operating one or more natural gas transmission and distribution systems for its member municipalities of Apopka, Winter Garden, and Clermont, and also for the benefit of nearby municipalities and unincorporated areas and the public within the statutory area of service of the district. Lake Apopka is not a public utility as defined by Section 366.02(1), F.S., but it is a natural gas utility subject to our jurisdiction under Section 366.04(3), F.S., for the purpose of resolving territorial disputes and approving territorial agreements. We do not have jurisdiction over Lake Apopka's rates and charges. Lake Apopka provides natural gas service to approximately 15,000 customers in Orange and Lake Counties.

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In the 1990s, Peoples and Lake Apopka entered into transfer agreements which specified that Peoples would provide natural gas service to certain customers in Orange County, and that Lake Apopka would have an option to purchase the facilities when it was ready to provide such service. Upon Lake Apopka's purchase of the facilities, at their depreciated book value, the customers served by those facilities would be transferred to Lake Apopka. In July 2012, Peoples was notified that Lake Apopka wanted to acquire all the facilities installed by Peoples pursuant to the transfer agreements.

In order to complete the purchase and sale of the facilities, Peoples and Lake Apopka have entered into an Asset Purchase and Sale Agreement which provides for the transfer of the facilities as well as approximately 144 accounts that may receive natural gas service through those facilities from Peoples to Lake Apopka. Peoples and Lake Apopka seek our approval of the Territorial Agreement (Attachment A), which will become effective only upon the closing of the purchase and sale as outlined in the Asset Purchase and Sale Agreement. The map attached to the Agreement and Attachment B show the area in which the facilities to be transferred are located. We have jurisdiction over this matter pursuant to Section 366.04, F.S.

#### DECISION

Pursuant to Section 366.04(3)(a), F.S., we have jurisdiction to approve territorial agreements between and among natural gas utilities. Rule 25-7.0471(2), F.A.C., states that in approving territorial agreements, we may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of gas service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless we determine that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

As stated above, based upon transfer agreements executed in the 1990s, the petitioners agreed that Peoples would provide natural gas service to certain customers in Orange County, and that Lake Apopka would have an option to purchase, at depreciated book value, the facilities installed to serve such customers when it was ready to provide such service. In July 2012, Lake Apopka notified Peoples that it was ready to purchase the facilities. The companies have now entered into an Asset Purchase and Sale Agreement which provides for the transfer from Peoples to Lake Apopka of the facilities as well as the approximately 144 accounts that receive natural gas service through those facilities.<sup>1</sup> If approved, the territorial agreement would become effective upon the closing of the purchase and sale called for by the Asset Purchase and Sale Agreement.

The approximately 144 accounts that would be transferred from Peoples to Lake Apopka have been provided notice of the possible transfer. The notice informed customers that Lake Apopka will apply the same rates as charged by Peoples through September 30, 2014. The

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<sup>1</sup>Of the 144 total accounts, 67 are residential and 77 are commercial. Not all of the 144 accounts are currently "active."

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notice also provided a telephone number for customers to call for additional information. Prior to the notices being sent and Lake Apopka agreeing to charge the same rates as Peoples, a handful of customers had expressed opposition to being transferred based on the difference in rates between the two utilities. Our staff also spoke to one customer who expressed concern regarding the rate difference between the companies. However, since the notices have been sent, Lake Apopka and our staff have not received any calls or inquiries from customers. One residential customer contacted Peoples opposing the transfer.

Peoples and Lake Apopka represent that approval and implementation of the territorial agreement will not cause a decrease in the availability or reliability of natural gas service from either company, or to the existing or future ratepayers. In addition, they assert that approval of the territorial agreement by the Commission will assist in avoiding future uneconomic duplication of facilities by the parties, and will expedite the handling of applications for service by future potential natural gas customers. For these reasons they assert that the agreement is in the public interest.

It appears that the proposed agreement eliminates the potential uneconomic duplication of facilities and will not cause a decrease in the reliability of gas service. In addition, the purchase price of the facilities (at their depreciated book value) appears reasonable. Therefore, based on the above, we find that the proposed territorial agreement will not cause a detriment to the public interest and we approve it.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Joint petition for approval of territorial agreement in Orange County by Peoples Gas System and The Lake Apopka Natural Gas District is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 31st day of July, 2013.



ANN COLE  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 21, 2013.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.



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Attachment A

**EXHIBIT 1**

**TERRITORIAL AGREEMENT**

THIS TERRITORIAL AGREEMENT (this "Agreement") is made and entered into this 17th day of June, 2013, by and between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("Peoples"), and The Lake Apopka Natural Gas District, a public body corporate and Independent Special District of the State of Florida ("LANGD"). Peoples and LANGD are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

**WITNESSETH:**

WHEREAS, Peoples is a natural gas public utility subject to the regulatory jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, *Florida Statutes*; and

WHEREAS, LANGD is a natural gas utility subject to the Commission's jurisdiction to resolve territorial disputes and approve territorial agreements pursuant to Section 366.04(3), *Florida Statutes*; and

WHEREAS, as pertinent to this Agreement, both LANGD and Peoples are presently providing natural gas ("gas") service to customers in portions of Orange County, Florida; and

WHEREAS, the parties entered into agreements during the 1990s pursuant to which Peoples constructed gas distribution facilities (the "Transfer Facilities") in portions of Orange County to provide gas service to customers through such facilities, and LANGD was granted the option to purchase, at their depreciated book value, such Transfer Facilities when LANGD advised Peoples that LANGD was ready to provide such service itself; and

WHEREAS, LANGD exercised its option to purchase in October 2012, and the parties have entered into an Asset Purchase and Sale Agreement dated as of May 20, 2013 (the "PSA"), which provides for, upon the closing of the transaction, the transfer from Peoples to LANGD of the Transfer Facilities as well as the customers that receive gas service through the Transfer Facilities; and

WHEREAS, the parties desire to avoid future unnecessary and uneconomic duplication of gas distribution facilities in the locations where the Transfer Facilities are installed, which would be contrary to Commission policies and detrimental to the interests of their customers and the general public, and to expedite the handling of applications for service by future potential gas customers near such locations; and

WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities.

NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties, subject to and upon the terms and conditions herein set forth, agree as follows:

**Section 1.**

(a) Upon the consummation of the purchase and sale of the Transfer Facilities, and the transfer of customers then served through such facilities from Peoples to LANGD, as contemplated by the PSA, the locations occupied by the Transfer Facilities and any extensions thereof shall, as between the parties, be deemed to be a service area of LANGD. Such locations are generally depicted on the map attached hereto and made a part hereof as Exhibit A, and the nature and location of such facilities are described in the narrative attached hereto and made a part hereof as Exhibit B.

(b) Except as specifically otherwise provided herein, Peoples agrees that it will not provide or offer to provide natural gas service to existing or potential customers within the service area herein reserved to LANGD.

(c) Except as specifically otherwise provided herein, nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are now or which may in the future be located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the general office level of the parties. No such facilities shall be used by Peoples to provide natural gas service to customers located in the service area reserved hereunder to LANGD.

(d) This Agreement shall have no effect on the boundaries of the respective service areas of the parties hereto as the same may now or hereafter exist except as specifically provided herein.

**Section 2.** Notwithstanding the provisions of Section 1, LANGD may request that Peoples provide natural gas service to potential customers within the service area reserved hereunder to LANGD. In the event of any such request, Peoples may elect to provide service to such potential customers in its sole discretion subject to the approval of the Commission.

**Section 3.** If LANGD determines, in a specific instance, that good engineering practices or economic constraints indicate that a small service area and/or future natural gas customer within LANGD's service area under Section 1 hereof should not be served by LANGD, LANGD shall notify Peoples and request that Peoples serve such small service area and/or potential customer. If the parties reach agreement thereon, the parties shall jointly and expeditiously seek approval of the Commission for modification of this Agreement in order to permit Peoples to provide such service to such small service area and/or future natural gas customer.

**Section 4.** This Agreement, after execution by the parties, shall be submitted jointly by the parties to the Commission for approval. It shall become effective on the date that a Commission order approving it becomes final and effective (the "Effective Date"), and continue in effect until termination or modification shall be mutually agreed upon by the parties and approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction. In the event that the Commission declines to approve this Agreement, the same shall be of no force or effect, and neither party shall have any claim against the other arising out of this Agreement.

**Section 5.** As soon as practicable after the later to occur of the Effective Date and the date on which the purchase and sale contemplated by the PSA is consummated, Peoples agrees to file any revisions to its tariff on file with the Commission which may be required as a

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Attachment A

result of the Commission's approval of this Agreement, and shall provide a copy of any such tariff revisions to LANGD upon their filing with the Commission.

**Section 6.** The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

**Section 7.** This Agreement shall become void and unenforceable if the Commission's jurisdiction with respect to approval and supervision of territorial agreements between natural gas utilities is terminated by statute or ruled invalid by a court of final appellate jurisdiction.

**Section 8.** This Agreement shall be governed by the laws of the State of Florida.

**Section 9.** All notices under this Agreement shall be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand delivery, to the parties at the addresses and facsimile numbers set forth below:

**To Peoples:**

President  
Peoples Gas System  
702 N. Franklin Street  
Tampa, Florida 33602  
Phone: (813) 228-4111  
Facsimile: (813) 228-4811

**To LANGD:**

General Manager and CEO  
The Lake Apopka Natural Gas District  
1320 Winter Garden-Vineland Road  
Winter Garden, Florida 34787, Florida 33402  
Phone: (407) 656-2734  
Facsimile: (407) 656-9731

Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Notices sent by facsimile shall be deemed to have been 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, the receipt is after 5:00 p.m. on a business day, then such facsimile shall be deemed to have been received on the next succeeding business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving party. Notice by first class mail shall be deemed to have been received on the third business day following deposit in the mail. A party may from time to time change the address to which notice hereunder is to be sent by providing notice to the other party pursuant to this section.

**Section 10.** This Agreement, on and after the Effective Date, shall be binding in accordance with its terms upon the parties hereto and their respective successors and assigns with regard to the retail distribution of natural gas. This Agreement shall not affect or bind affiliates of Peoples.

**Section 11.** This Agreement may be executed in one or more counterparts and by original and/or facsimile signatures, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

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Attachment A

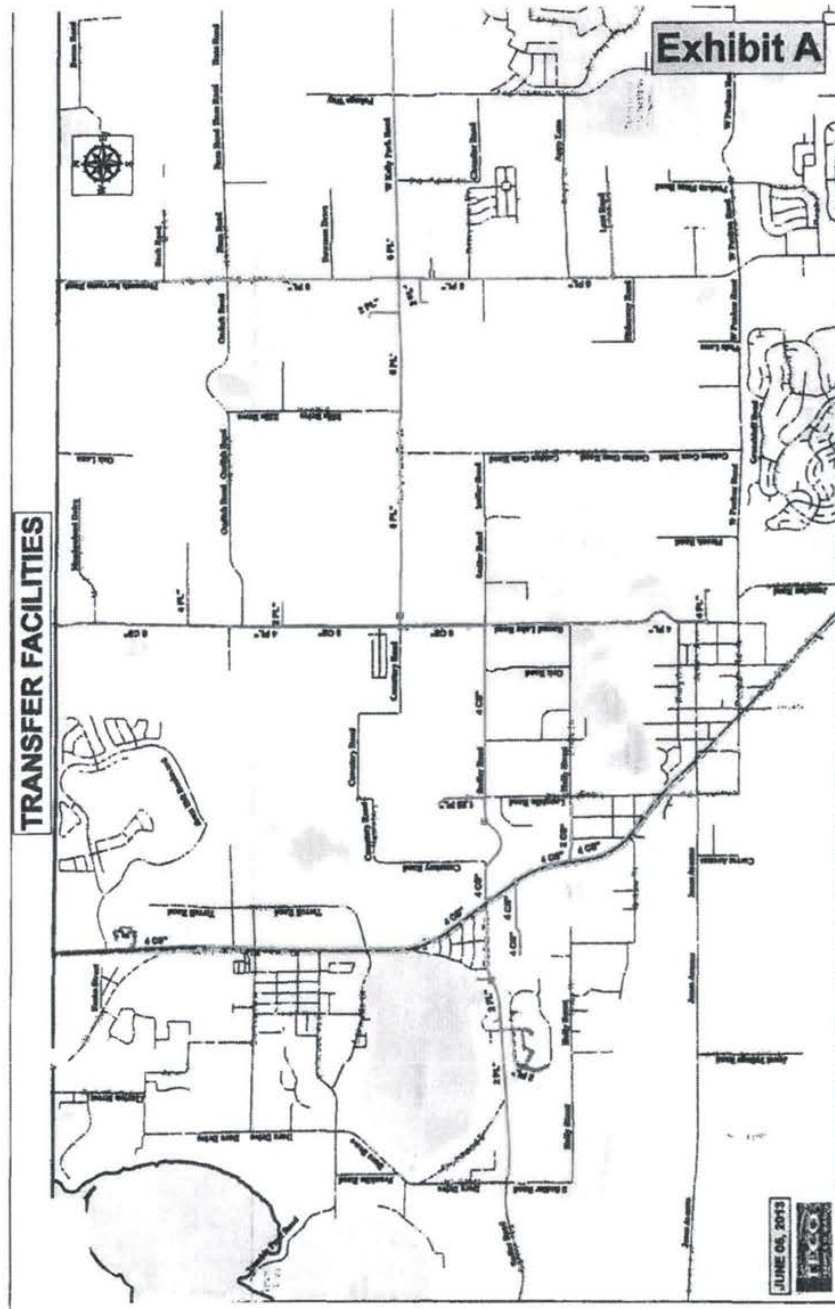
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

PEOPLES GAS SYSTEM, a division of  
Tampa Electric Company

By:   
Bruce Narzissenfeld  
Vice President - Fuels

THE LAKE APOPKA NATURAL GAS DISTRICT

By:   
Ann Dupee  
President



**EXHIBIT B**

**Narrative Describing Transfer Facilities**

- 1) Initial installation completed June 11, 1990 under AFE: 010579003301
  - 23,390 feet 4" steel
  - 2800 feet of 2" steel
  - 7500 feet of 2" plastic

This included installing 4" steel beginning at SR 44 heading south along US Hwy 441 stopping just south of Sadler Rd. The 4" steel was also installed east along Sadler stopping at what is now called Monterey Mushrooms. 2" steel was installed off of the 4" steel going west on Sadler road to a new regulator station (01-05-790-060-01) installed on Sadler just west of Bigler Lane. 2" plastic was installed west of the station to serve what was then called Lake Ola Estates.

- 2) The next installation was completed November 29, 1990
  - 2392 feet of 4" steel
  - 600 feet of 2" plastic

This included attaching to the original 4" steel on US Hwy 441 just south of Sadler road. It was extended south to just south of Berg Dr. It was also installed west on Berg Dr to serve what was then called Hickerson Glowlers (now Plowboys Inc.)

- 3) The next installation was completed July 15, 1992
  - 532 feet of 1.25" plastic

This was installed off of the regulator station installed on Sadler Road to Bigler Rd North of Sadler running to 5 residential customers.

- 4) The next installation was on Lake Ashley Dr. completed on Nov. 22, 1993
  - 914 feet of 2" plastic

- 5) The next installation was completed June 23, 1994.
  - 4623 feet 4" steel
  - 7529 feet of 4" plastic
  - Regulator station installed on Sadler road just west of Round Lake Rd

This included extending the 4" steel on Sadler road where it previously ended in front of Monterey Mushroom east to new regulator station just west of Round Lake Rd. 4" plastic was then installed north on round Lake Rd to serve Pecketts Nursery and south on Round Lake Rd to serve Agri Starts Nursery.

- 6) The next installation was completed September 20, 1994
  - 6516 feet of 4" plastic

This installation was installed on the north side of Kelly Park Rd. east from Round Lake Rd to serve crematorium

- 7) The next installation was completed December 4, 1996
  - 8000 feet of 4" steel

This installation tied the new 4" steel to the previously installed gas main on the east side of US Hwy 441. It was continued southward on US Hwy 441 to Laughlin Rd and then west of Jones Ave. to serve Drum Services.

- 8) The next installation was completed on December 6, 1996
- 10900 feet of 6" plastic

This installation tied new 4" plastic that was completed under #5 above. 6" plastic was installed east along W. Kelly Park Rd to serve Robinson Nursery located at 2136 W. Kelly Park Rd.

- 9) The next installation was also completed on December 6 1996
- 4500 feet of 4" plastic

This installation tied onto the 4" plastic on Round Lake Rd ran to Picketts Nursery in #4 above. It ran north along Round Lake Rd. and then east of Oak Hill St to serve Milestone Nursery.

- 10) The next installation was completed on October 6, 1997
- 10550 feet 6" plastic

This installation initiated on Hwy 46 in Orange County and was installed south on Plymouth Sorrento Rd tying into the 6" plastic that was installed on Kelly Park Rd installed under #7 above. It was installed to get numerous services on Plymouth Sorrento as well as enhance the existing system to meet the near & future demands in the area.

- 11) The next installation was completed on April 27, 1998
- 6144 feet 4" plastic.

This installation tied onto the existing 4" plastic installed under #4 above that had stopped at Agri Starts nursery. It was installed south along Round Lake Rd to serve three nurseries.

- 12) The next installation was completed on February 7, 2000.
- 13260 feet of 6" steel starting at the Orange County South

This installation was a 6" steel gas main began on SR 46 in Orange County south along Round Lake Rd tying into the existing 4" steel installed on Sadler Rd just west of the regulator station referred to in #4 above. This installation was needed to meet the demand of the new Egg Crate Plant that was being built on Jones Ave. where our existing 4" steel was installed referred to in #6 above. The system we had would not accommodate the proposed load of the Egg Crate necessitating the 6" steel installation.

- 13) The next installation was completed on July 31, 2000
- 366 feet of 2" steel

This installation was installed along Holly St. east from the 4" steel on US Hwy 441 referenced above in #6 above. This served the Anthony House.

- 14) The next installation was completed on September 18, 2001
- 480 feet of 6" plastic

This installation was installed extending the 6" plastic on Kelly Park Rd east tying into the main installed referenced on #7 above.

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Attachment A

- 15) The next installation was completed on February 15, 2002
- 685 feet of 6" plastic
  - 970 feet of 2" plastic

This 6" plastic was installed south ward on Plymouth Sorrento to serve 4720 Plymouth Sorrento Rd tying onto the 6" plastic on Kelly Park Rd referred in #7 above.

- 16) The next installation was completed March 4, 2005
- 299 feet of 2" plastic

Installed to pet crematorium on Effie Rd Tying onto 4" plastic referred to #5 above.

- 17) The next installation was completed on November 7, 2007.
- 4616 feet of 2" plastic

This installation tied onto the 2" plastic installed on Sadler Rd referred to above in #1. It served a new nursery at 8258 Sadler Rd.

- 18) The next installation was completed June 9, 2009
- 1412 feet of 2" plastic and 493 feet of 1.25" plastic

This installation tied onto the 4" steel referred to in #1 above. It included a regulator station installed and the plastic ran into a new Publix Plaza on US Hwy 441.

- 19) The next installation was completed November 16, 2011
- 1043 feet of 2" plastic

This was tied into the existing 6" plastic installed under #7 above. It tied into the 6" on Kelly Park rd to serve new services at 3119 W. Kelly Park Rd.

- 20) The next installation was completed on August 18, 2011
- 1441 feet of 2" steel

This was 2" steel tying into the existing 2" steel on Holly St referred to in #12 above to serve new service at 6029 Holly St.

- 21) Installed gas main south on Plymouth Sorrento south from Kelly Park Rd. and east on Lent Rd. Completed and made active 11-2-2012
- Installed 7100 feet of 6" plastic and 2000 feet of 4" plastic D0021216

This included four services that have been installed and activated:

- 1) 4309 Plymouth Sorrento Rd
- 2) 3746 Plymouth Sorrento Rd
- 3) 4322 Plymouth Sorrento Rd
- 4) 2490 Lent Rd.

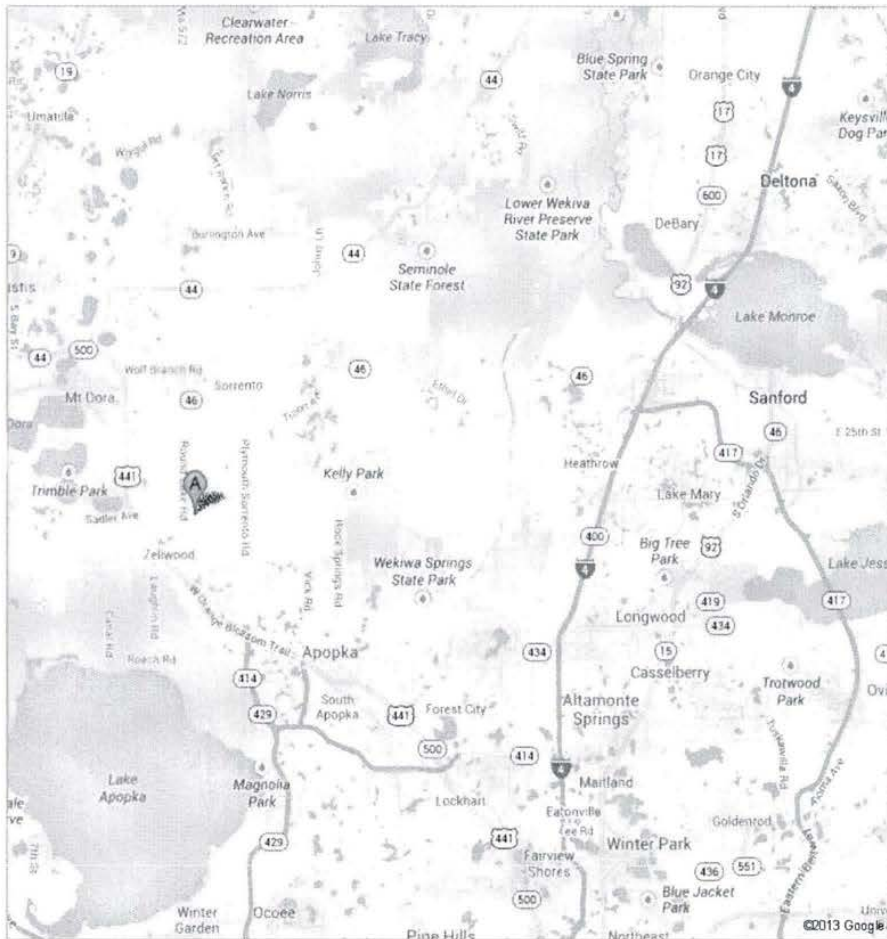
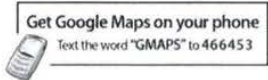


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Attachment B

Google

Address Sadler Rd  
Apopka, FL 32712



**CITY OF BRADENTON BEACH  
ORDINANCE NO. 08-410**

**AN ORDINANCE OF THE CITY OF BRADENTON BEACH, FLORIDA GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, AND , ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF BRADENTON BEACH; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRADENTON BEACH, FLORIDA, as follows:**

**WHEREAS**, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

**WHEREAS**, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and

**WHEREAS**, the City Commission of the City of Bradenton Beach, Florida recognizes that the City of Bradenton Beach and its citizens and businesses need and desire the benefits of natural gas service; and

**WHEREAS**, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the City of Bradenton Beach does not desire to undertake to provide such services; and

**WHEREAS**, Peoples Gas System, a division of Tampa Electric Company (the "Company") is a public utility, which has the demonstrated ability to supply such services to the City of Bradenton Beach and its citizens, residents and businesses; and

**WHEREAS**, Peoples Gas System is a division of Tampa Electric Company, a Florida corporation, operating under the fictitious name Peoples Gas System, registered and owned by Tampa Electric Company in the State of Florida; and

**WHEREAS**, the Company and the City of Bradenton Beach desire to enter into a franchise agreement (hereinafter referred to as "Franchise Agreement") providing for the payment of fees to the City of Bradenton Beach in exchange for the non-exclusive right and privilege to use the public rights-of-way within the City of Bradenton Beach to provide natural gas service free of competition from the City of Bradenton Beach, pursuant to certain terms and conditions, and

**WHEREAS**, the City Commission of the City of Bradenton Beach has determined that the enactment of this Ordinance authorizing the execution of a Franchise Agreement by and between the City of Bradenton Beach and the Company is for a proper municipal purpose and protects the public health, safety and welfare of its citizens and residents.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY COMMISSION, AS FOLLOWS:**

SECTION 1:            DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Bradenton Beach, Manatee County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, its successors and assigns.
- D. "Distribution System" shall mean any and all distribution pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 21 below.

- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City Commission and accepted by the Company, as provided in Section 21 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale, distribution or transportation of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" of "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, or other right-of-way that is owned by the City or to which the City has been given rights (but not to the extent Company's use or use by a similar gas utility are prohibited by the terms of the conveyance through which the City obtained such rights).

SECTION 2:            GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 3:            TERM.

Except as provided in Section 15, the Franchise hereby granted shall be for a period of fifteen (15) years from the effective date of this ordinance.

SECTION 4:            ASSIGNMENT.

A.     The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City.

B.     Notwithstanding the foregoing, the Company may, upon written notice but without the consent of the City, assign or otherwise alienate and transfer this Franchise in connection with the sale of substantially all of the Company's natural gas division assets or upon its merger or consolidation with, or transfer to, a corporation engaged in a similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5:            CITY COVENANT.

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement. Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions for purposes of adopting or complying with government environmental or alternative energy initiatives which enable or require Grantor to generate electrical energy for consumption at facilities owned or operated by Grantor or its governmental affiliates.

SECTION 6:            USE OF STREETS.

The Distribution System shall be installed, erected, placed, laid, or relocated in such

manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily or unreasonably obstructed. Before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall expressly notify the City Clerk and make application for a permit to the appropriate City authority. The City will use its best efforts to issue, or if applicable deny, permits within a reasonable timeframe no more than 15 business days from the date of a completed application by the Company. When any portion of a right-of-way is excavated by the Company in the location or relocation of any of portion of its Distribution System, the portion of the public right-of-way so excavated shall within a reasonable time be restored by the Company at its sole expense and in as good condition as it was at the time of such excavation.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under this Franchise Agreement. Notwithstanding the foregoing, nothing in this Franchise Agreement shall affect a duly authorized exercise of eminent domain or the City's emergency police powers as set forth in Ordinance 07-399 and Chapter 252, Florida Statutes.

SECTION 7:            MAINTENANCE.

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission, Florida Statutes, the Florida Administrative Code and any applicable local ordinance or resolution not in conflict therewith.

SECTION 8:            LAYING OF PIPE.

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes,

rules, regulations and laws, specifications contained in City permits.

SECTION 9: CONSTRUCTION WORK.

The City reserves the right to permit electric conduits, water and gas pipes and lines, cables, sewers, including any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as requested in writing by the City without claim for reimbursement from the City. If the City shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said City unless it has received specific and express permission from the City or its duly authorized representative.

SECTION 10: FRANCHISE FEE.

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the City and actually paid by

Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectible amounts, from the sale, distribution or transportation of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

If during the term of this Franchise the Company enters into a franchise agreement with Manatee or Sarasota Counties, or with any other municipality located therein, the terms of which provide for the payment of franchise fees by the Company at a rate greater than 6 percent of the Company's gross revenues from the sale of natural gas to customers in such municipality or county, the Company upon written request of the City, shall negotiate and enter into an amendment to this Franchise Agreement so that the percentage to be used in calculating monthly payments under Section 10 hereof shall be no greater than that percentage which the Company has agreed to use as a basis for the calculation of payments to the other municipality or county.

If during the term of this Franchise the City enters into a franchise agreement with another natural gas service provider in exchange for franchise fees (including, if applicable, any in-kind contributions) less than 6 percent of such other natural gas service provider's gross revenues from the sale of natural gas to customers in the City, then the City upon written request of the Company, shall negotiate and enter into an amendment to this Franchise Agreement so that the percentage to be used in calculating monthly payments under Section 10 hereof shall be no greater than that percentage (including, if applicable, any in-kind contributions) which the City has agreed to use as a basis for the calculation of payments to the City from the other natural gas service provider.

SECTION 11: IDENTIFICATION OF CITY RESIDENTS.

The City shall use its best efforts to deliver within thirty (30) days following the Effective Date of this Franchise Agreement to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the City limits. The City shall also use its best efforts to provide such information within thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's request. In the event the City fails to



provide such information within the time frames specified in this Section, or the information supplied by the City is incomplete or erroneous, the Company shall not be obligated to pay those fees (if any) that were not collected as a result of such failure, incompleteness or error, and the City shall return to the Company those fees (if any) that would not have been collected from a customer, but for such failure, incompleteness or error.

SECTION 12: ACCOUNTS AND RECORDS.

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, or its designated representative, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. Notwithstanding the foregoing, no information specific to an individual customer (including the fact that such specific individual is a natural gas customer or that gas is consumed at a specific address) shall be made available to the City unless the City can satisfy the Company that such information is necessary for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. To the extent permitted by law, the City and its agents shall use their best efforts to protect the confidential nature of all information received pursuant to this Section. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

SECTION 13: INSURANCE.

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy

shall be in the minimum sum of \$2,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$2,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective. The Company shall require any contractor or subcontractor who performs work on the Distribution System to carry insurance comparable in coverage and type to that described in this Section 13.

SECTION 14:            INDEMNIFICATION.

The acceptance of this Ordinance, including the consideration of the permissions granted to the Company by the Franchise Agreement, shall be deemed an agreement on the part of the Company to indemnify and hold the City, its officers, agents and employees harmless against any and all claims, suits, actions, causes of action, liability, loss, cost, damage or expense (including, but not limited to, reasonable attorney's fees and costs incurred by the City in connection with the investigation and defense of any action or proceeding brought in connection therewith) which may accrue to the Company by reason of and to the extent of the negligence, strict liability, intentional torts, willful misconduct or criminal acts of the Grantee in the construction, operation, relocation, or maintenance of its Distribution System; **provided, however,** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, to the extent arising out of the negligence, strict liability, intentional torts, willful misconduct or criminal acts of the City, its officers, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement.

SECTION 15:            TERMINATION BY CITY.

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been provided by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the City, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall be deemed excused and shall not constitute grounds for termination. If a violation or default is not excused and is not remedied by the Company within the time period described above, then the City may terminate this Franchise Agreement by delivering written notice to the Company and termination shall be effective on the date of delivery of such notice.

SECTION 16:            CHANGES IN PROVISIONS HEREOF.

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 17:            SEVERABILITY; CHANGE IN LAW.

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a

party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 18: SOLICITATION.

Except as expressly provided in this Ordinance, nothing herein shall be deemed to limit the City of Bradenton Beach's rights to solicit additional applications or award or renew additional franchises in the future.

SECTION 19: GOVERNING LAW.

This Franchise shall be governed by the laws of the State of Florida and applicable federal law. Venue for any and all actions between the parties arising out of this Agreement shall be in Manatee County, Florida.

SECTION 20: ATTORNEYS' FEES.

In any litigation, including breach, enforcement or interpretation, arising out of this Agreement, the prevailing party in such litigation including any appeals, shall be entitled to recover from the non prevailing party reasonable attorneys' fees, costs and expenses.

SECTION 21: DISPUTE RESOLUTION.

Should any dispute arise concerning this Franchise Agreement, the parties agree to submit to the following dispute resolution process:

- (a) The parties agree to pursue good faith communication and cooperation to resolve any dispute between them.

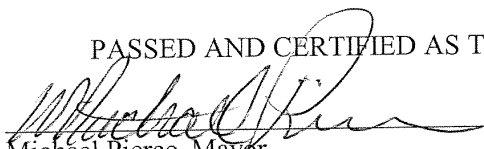
(b) If the parties cannot reach an agreement, the parties agree to identify a mediator to resolve the dispute. The mediator will be selected within thirty days of written notification by either party requesting mediation. Cost for the mediator will be shared by the parties. Mediation is non-binding.

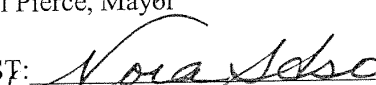
If the parties cannot timely agree to a mediator or an agreement is not reached through non-binding mediation and an impasse is declared then the Dispute Resolution process will proceed to litigation.

SECTION 21:            EFFECTIVE DATE.

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

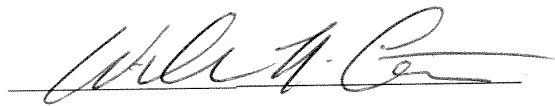
PASSED AND CERTIFIED AS TO PASSAGE this 22 day of January, 2009.

  
Michael Pierce, Mayor

ATTEST:   
Nora Idso, City Clerk

APPROVED AS TO FORM AND CORRECTNESS: \_\_\_\_\_

Accepted this 22<sup>nd</sup> day of January, A.D. 2009.

  
By: William N. Cantrell  
Title: President TECO Peoples Gas

**COPY**

## RESOLUTION 2009-08

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF BUNNELL, FLORIDA APPROVING A NON EXCLUSIVE FRANCHISE AGREEMENT BETWEEN PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY (TECO) AND THE CITY OF BUNNELL; PROVIDING AUTHORIZATION TO EXECUTE THE AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Peoples Gas System and the City of Bunnell, Florida (City) desire to enter into a franchise agreement for a period of twenty (20) years commencing from the date provided herein; and

**WHEREAS**, the City Commission finds that it is in the public interest of its citizens to enter into an initial franchise agreement with Peoples Gas System.

**NOW, THEREFORE**, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BUNNELL, FLORIDA AS FOLLOWS:

**SECTION 1. APPROVAL OF AGREEMENT.** The City Commission of the City of Bunnell hereby approves the terms and conditions of the non-exclusive franchise agreement with Peoples Gas System, a division of TECO as attached hereto and incorporated herein as Exhibit "A".

**SECTION 2. AUTHORIZATION TO EXECUTE.** The Mayor or Vice Mayor is hereby authorized to execute the necessary documents.

**SECTION 3. SEVERABILITY.** If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

**SECTION 4. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 5. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption by the City Commission.

**DULY ADOPTED** by the City Commission of the City of Bunnell, Florida, on this 17<sup>th</sup> day of March 2009.

**CITY COMMISSION, City of Bunnell, Florida.**

By: Jenny Crain Brady Date 3/17/09  
Jenny Crain-Brady, Vice Mayor

Approved for form and content by:

[Signature] Date 03/17/09  
Sidney M. Nowell, Esq., City Attorney or  
Justin T. Peterson, Assistant City Attorney

Attest:

Ronya D. Johnson Date 03/17/09  
Ronya D. Johnson, City Clerk

**Seal:**

**Exhibit "A"**

**BUNNELL  
NATURAL GAS FRANCHISE**

**THIS AGREEMENT** is made this 17<sup>th</sup> day of March 2009, by and between the **CITY OF BUNNELL**, a Florida municipal corporation, (hereinafter referred to as the ("City")), whose address is 200 South Church Street, Bunnell, FL 32110, and **PEOPLES GAS SYSTEM**, a division of Tampa Electric Company, a Florida corporation, (hereinafter referred to as the "Company"), whose address is 702 North Franklin Street, Tampa, FL 33602.

***WITNESSETH:***

**WHEREAS**, Peoples Gas System (Company) and the City of Bunnell, Florida (City) desire to enter into a franchise agreement for a period of twenty (20) years commencing from the date provided herein; and

**WHEREAS**, the City Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System; and

**WHEREAS**, the City is authorized to grant one or more non-exclusive franchises to construct, reconstruct, operate, and maintain a natural gas system within the City; and

**WHEREAS**, the City finds it in the public interest to make available within its corporate limits high-quality and reliable natural gas service; and

**WHEREAS**, the City finds it in the public interest to retain control over the use of public rights-of-way by providers of natural gas to prohibit interference with the public convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right-of-way space, and to protect the public investment in right-of-way property; and

**WHEREAS**, the City Commission of the City of Bunnell finds that the granting of a non-exclusive natural gas franchise is the best means of assuring that the above-described interests of the City are promoted and maintained; and

**WHEREAS**, the City, after due evaluations, has determined that it is in the best interests of the public health, safety and welfare of the City and its residents to approve this Gas Franchise Agreement with the Peoples Gas System.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration each to the other provided the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**SECTION 1: RECITALS**

Each and all of the foregoing recitals are hereby incorporated herein and acknowledged to be true and correct. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Franchise Agreement.



**SECTION 2: SHORT TITLE**

This Agreement shall be known and may be cited as "Bunnell Natural Gas Franchise."

**SECTION 3: PURPOSE**

The City finds that the development of a natural gas distribution system has the potential of having great benefit and impact upon the people of the City. The City further finds that the public convenience, safety and general welfare can best be served by exercising regulatory powers which are vested in the City or such persons as the City shall designate.

**SECTION 4: DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any person, firm, public or private corporation, or governmental agency served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Bunnell, Flagler County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service pipe lines, together with all necessary and desirable appurtenances, including all traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and facilities, that are situated within the corporate limits of the City and are used or useful in the sale, distribution or transportation of Natural Gas for the public and private use of Customers.
- E. "Gas" or "Natural Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas") or any other fuel that is typically delivered by truck and stored in tanks.
- F. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale, distribution or transportation of Gas.
- G. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 23 below.
- H. "FPSC" shall mean the Florida Public Service Commission or any successor agency.

**SECTION 5: GRANT**

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all of the public streets, alleys, highways, waterways, bridges, easements and other public places of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, to the extent of the City's ownership, a Distribution System subject to the terms and conditions herein contained. All rights granted for the construction, reconstruction, maintenance, and operation of the Natural Gas Distribution System shall be subject to the rights and obligations

contained in this Franchise, including, but not limited to, Sections 9(C) and 12.

**SECTION 6: TERM**

Except as provided in Section 18, the Franchise hereby granted shall be for a period of twenty (20) years from the effective date of this Agreement.

**SECTION 7: ASSIGNMENT**

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City Commission of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City.

B. Notwithstanding the foregoing, the Company may lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger and consolidation with, or transfer to any other corporation engaged in similar business (including any affiliate or subsidiary of the Company), or pledge or mortgage such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company without the express consent of the City Commission of the City. The Company shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Company.

**SECTION 8: CITY COVENANT**

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

**SECTION 9: USE OF PUBLIC RIGHTS-OF-WAY**

A. The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of said streets, alleys, avenues, easements, and public rights of way, and said streets shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the streets, alleys, or other public rights of way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. The Company shall, with due diligence and dispatch, place such streets, easements or public rights of way in as good condition and repair as before such excavation or disturbance was made, and in default thereof the City may make such repairs and charge the reasonable cost thereof to the Company and collect the same from it.

B. To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish; provided, however, the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

C. **City's Right to Perform Public Works.** Nothing in this Agreement shall be in hindrance to the right of the City or any governmental authority to perform or carry on, directly or indirectly, any public works or public improvements of any description. Should the Natural Gas Distribution System in any way interfere with the construction, maintenance or repair of such public works or public improvements, the Company shall, at its' own cost and expense, protect or relocate its

Natural Gas Distribution System, or part thereof, as reasonably directed by the City officials or any governmental authority.

**SECTION 10: MAINTENANCE**

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission or other regulatory body having jurisdiction over the Company.

**SECTION 11: LAYING OF PIPE**

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations, laws, and specifications contained in City permits.

**SECTION 12: CONSTRUCTION WORK**

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any street, alley, public way, easement, place, or other public rights of way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, or other public rights of way, or in the location or manner of construction of any water pipes, electric conduits, sewers, cables or other underground structure, it shall be deemed necessary by the City to alter, change, adapt or conform any portion of the Distribution System of the Company hereto, such alterations, or changes, shall be made by the Company as ordered in writing by the City, without claim for reimbursement. If the City shall require the Company to adapt or conform any portion of its Distribution System or in any way to alter, relocate or change its property to enable any other person or entity other than the City to use said street, alley, easement, highway or public rights-of-way of the City, as part of its permitting or approval process, the City shall require the person or entity desiring or occasioning such alteration, relocation or change to reimburse the Company for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of the Company's facilities. The Company further agrees that it will not intentionally interfere with, change, or take any action that might impact any water pipes, drains, sewers or cables of said City unless it has received specific permission from the City or its duly authorized representative.

**SECTION 13: FRANCHISE FEE**

A. Within thirty (30) days after the close of the first full billing month following the effective date (as defined in Section 23) of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the City and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectible accounts, from the sale, distribution or transportation of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

B. Franchise Fees in Addition to Other Taxes or Payments. Payment of the Franchise Fee made by the Company to the City shall not be considered in the nature of a tax, but shall be in addition to any and all taxes of general applicability which are now or may be required hereafter to be paid by any Federal, State, or local law.

C. Acceptance by the City. Subject to applicable law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim that the City may have for further or additional sums payable as a Franchise Fee under this Agreement or for the performance of any other obligation of the Company.

D. Failure to Make Required Payment. In the event that any Franchise Fee or recomputed amount is not made on or before the dates specified herein, the Company shall pay as additional compensation an interest charge, computed from such due date, at an annualized rate equal to the commercial prime interest rate of the City's primary depository bank during the period that such unpaid amount is owed.

#### **SECTION 14: FRANCHISE PARITY**

A. If, during the term of this Franchise Agreement, the City, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters ("Alternate Gas Providers") the right, privilege or franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public rights of way of the City, for the purpose of supplying or delivering Natural Gas to customers located within the corporate limits of the City or receiving such gas from a person other than the Company within such corporate limits, and imposes a franchise compensation obligation or an equivalent on such Alternate Gas Provider for any customer or class of customers that is less than that imposed with respect to the same Customer or class of Customers under this Franchise Agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of customers shall be reduced under this Franchise Agreement so that the franchise compensation paid hereunder for such Customer class is no greater than the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance applicable to it, when compared on a dollars-per-term basis. In the event that the City determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Company's obligation to pay a franchise fee under this Franchise Agreement with respect to revenues derived from the provision of service by the Company to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

B. In the event the Company enters into a franchise or other agreement with Flagler County or any other city within Flagler County which provides to the County or any other city more favorable franchise fees than provided to the City under this Franchise, the City and the Company mutually agree to renegotiate the Franchise Fee of this Franchise. This Franchise shall remain in full force and effect until any negotiated amendments have been duly approved by both the City and the Company, however, if the Company fails to negotiate said amendments in good faith and in a timely manner, the City shall have the right to terminate this Franchise pursuant to Section 18 herein.

#### **SECTION 15: ACCOUNTS AND RECORDS**

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida, and be open at all reasonable times for inspection by the duly authorized representatives of the City. Upon request by the City, or its designated representative, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based; provided, however, that no audit of the Company's records relating to Gross Revenues shall take place later than thirty-six (36) months following the close of each of the Company's fiscal years. Access to the aforementioned records shall not be denied by the Company on the basis that said records contain "proprietary" information, unless Company takes appropriate steps to ensure applicable law exempts said records. Notwithstanding the foregoing, no information specific to an individual customer shall be

made available to the City unless the City can satisfy the Company that such information is necessary for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. Audits that uncover a discrepancy in Franchise Fees during one year of \$5000 or more shall be at the expense of the Company. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) Days of notice by the City, unless the Company disputes the results of the audit. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

No less than thirty (30) days prior to the effective date of a change in the City limits, whether by addition, annexation, or consolidation, the City shall deliver to the Company written notice of such occurrence, and include in such notice a description of the affected territory.

#### **SECTION 16: INSURANCE**

A. During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies covering Company's activities within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$2,000,000.00 for injury or death to anyone person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in anyone accident, and in the minimum sum of \$2,000,000.00 for damage to property resulting from anyone accident, and include coverage for comprehensive, premises operations, explosion and collapse hazard, underground hazard, products completed operations hazard, contractual insurance, broad form property damage, and personal injury. The Company shall produce insurance certificates evidencing automobile liability coverage for owned, non-owned or rented vehicles, in the minimum sum of \$2,000,000 single limit liability for bodily injury or death, and \$2,000,000 for property damage; and evidencing worker's compensation in the minimum amount required by Florida statute. Company shall obtain a waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by the policies described above. The minimum sums for all of the above coverages shall remain in full force and shall be undiminished during the Term of this Franchise. The City shall be named as an additional insured on the foregoing policies (except for worker's compensation) for liability arising out of this Franchise. To offset the effects of inflation, the City may, at the five year anniversary of the Effective Date, request in writing that the Company adjust the coverage limitations contained in this Section 16 to reflect amounts typically provided in franchises by similarly situated natural gas utilities, but not to exceed the percentage increase in the Consumer Price Index over the same period.

B. The Company may meet the policy requirements of this Section 16, in whole or in part, with self-insurance.

C. Every such insurance policy shall contain a provision whereby every insurer shall obligate itself to notify the City Clerk, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

#### **SECTION 17: INDEMNIFICATION**

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, caused by or arising out of and to the extent of the Company's negligent operation of the Distribution System or intentional acts within the City or failure to comply with any applicable federal, state or local law during the term of this franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's

fees, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof, except that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, suits, actions, damages, expenditures, including attorney's fees, or causes of action arising out of injury, loss of life or damage to persons or property caused by or arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

**SECTION 18: TERMINATION BY CITY**

A material breach by the Company of any of the covenants, terms, and conditions hereof (including a failure to provide insurance in accordance with Section 16), or a material violation of any orders or rulings of the FPSC relative to this Franchise, or the insolvency or bankruptcy of the Company, shall authorize and empower the City to declare a termination of this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the FPSC with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice or, in the event such cure reasonably requires a period of more than sixty (60) days, to present a plan, satisfactory to the City, acting reasonably, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the reasonable control of the Company shall not constitute grounds for termination. If by the end of the cure period the Company does not remedy the violation or convince the City Manager there is no violation, the City Manager shall schedule a public meeting of the City Commission for purposes of addressing the alleged violation. The Commission meeting shall be held within thirty (30) days from the expiration of the cure period. The City Manager shall promptly provide the Company written notice of the Commission meeting. During the Commission meeting, the City Manager, Company, and all interested parties shall have the right to be heard in person and through counsel, present evidence, and cross examine adverse witnesses. At the conclusion of the Commission meeting, the Commission may suspend or revoke the Franchise, if it determines that there are sufficient grounds which warrant such action; otherwise, the Franchise remains in full force and effect. The foregoing process shall not restrict the Company from pursuing its available remedies.

**SECTION 19: CHANGES IN PROVISIONS HEREOF**

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

**SECTION 20: MISCELLANEOUS PROVISIONS**

A. No Joint Venture. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner, which would indicate any such relationship with the other.

B. Notices. All notices from the Company to the City pursuant to this Agreement shall be sent to: City Manager, City of Bunnell, PO Box 756, 200 South Church Street, Bunnell, Florida,

FILED: 08/17/2020

32110. All notices to the Company shall be sent to: Peoples Gas System, Vice-President of Operations, 702 N. Franklin St., Tampa, Florida 33602; with a copy to TECO Energy, Inc., General Counsel, 702 N. Franklin St., Tampa, Florida 33602. The names and addresses in this section may be unilaterally amended by either party at anytime by giving written notice to the other party.

C. Attorney's Fees. In the event of any ligation or arbitration arising out of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and court costs incurred in such action.

**SECTION 21: SEVERABILITY; CHANGE IN LAW**

A. If any section, part of a section, paragraph, sentence, or clause of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

B. Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

**SECTION 22: GOVERNING LAW**

This franchise shall be governed by the laws of the State of Florida and applicable federal law.

**SECTION 23: EFFECTIVE DATE**

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

**IN WITNESS WHEREOF**, the parties have executed this agreement on the date indicated by or below their signature.

**CITY COMMISSION, City of Bunnell, Florida.**

By: Jenny Crain Brady Date 03/17/09  
Jenny Crain Brady, Vice Mayor

Approved as to form and content by:

[Signature] Date 03/17/09  
Sidney M. Nowell, Esq., City Attorney or  
Justin T. Peterson, Assistant City Attorney

Attest:

Ronya D. Johnson Date 03/17/09  
Ronya D. Johnson, City Clerk

**Seal:**

*Resolution 2009-08-Exhibit "A"*  
*City of Bunnell, FL*



**PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY.**

  
\_\_\_\_\_  
Signature

*William H. Cantrell*  
\_\_\_\_\_  
Name

*President*  
\_\_\_\_\_  
Title

*4/9/09*  
\_\_\_\_\_  
Date

ORDINANCE NO. 2016-04

AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF COLEMAN, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE.

WHEREAS, Peoples Gas System and the City of Coleman desire to enter into a franchise agreement for a period of thirty (30) years commencing from the date provided herein; and

WHEREAS, the City Council finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF COLEMAN, FLORIDA, THAT:

SECTION 1:                    DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Coleman, Sumter County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main

pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.

- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale or transportation of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" of "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the City.

SECTION 2:            GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 3:            TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of thirty (30) years from the effective date of this ordinance.

SECTION 4:            ASSIGNMENT

A.     The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City .

B.     Notwithstanding the foregoing, the Company may, without the consent of the City, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used

by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5:            CITY COVENANT

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

SECTION 6:            USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this agreement, the City shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

SECTION 7:            MAINTENANCE

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 8:            LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits.

SECTION 9:            CONSTRUCTION WORK

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other

underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the City without claim for reimbursement. If the City shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said City unless it has received specific permission from the City or its duly authorized representative.

SECTION 10:            FRANCHISE FEE

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale or transportation of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

SECTION 11: IDENTIFICATION OF CITY RESIDENTS

No less than thirty (30) days prior to the Effective Date, the City shall deliver to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the City limits. The City shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's request. The Company shall be relieved of any obligation to pay franchise fees to the extent the City has failed to provide information in accordance with this Section 11.

SECTION 12: ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.



SECTION 13:            INSURANCE

During the term of this Franchise, the Company shall file with the City and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Company shall notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14:            INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the City during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses

and liabilities incurred by the City in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however,** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

SECTION 15:            TERMINATION BY CITY

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the City, to effect such cure; and provided

further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16: CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 17: SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 18:            GOVERNING LAW


This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 19:            EFFECTIVE DATE

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

PASSED AND CERTIFIED AS TO PASSAGE this   8   day of   August  ,  
2016.

  
Milton Hill, MAYOR


ATTEST:   
Ruth Busby, Public Service Director

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Brenda H. Smith, City Attorney

Accepted this 18<sup>th</sup> day of August, 2016

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

By:   
Title: President

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|  |  |
|--|--|
| In re: Joint petition for approval of amendment to territorial agreement in Pasco County, by Peoples Gas System and the City of Clearwater, d/b/a Clearwater Gas System. | DOCKET NO. 160050-GU<br>ORDER NO. PSC-16-0201-PAA-GU<br>ISSUED: May 19, 2016 |
|--|--|

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
RONALD A. BRISÉ  
JIMMY PATRONIS

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TERRITORIAL AGREEMENT AMENDMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

**Background**

On March 4, 2016, Peoples Gas System (Peoples) and the City of Clearwater, d/b/a Clearwater Gas System (Clearwater) filed a joint petition for approval of a third amendment to their territorial agreement in Pasco County. The territorial agreement was originally approved in 1995.<sup>1</sup> The first amendment, approved in 2005, allowed Clearwater to provide natural gas service to proposed developments adjacent to its territory in Pasco County.<sup>2</sup> The second amendment, approved in 2006, permitted Clearwater to provide service to a new development (Lakeshore Ranch and surrounding areas).<sup>3</sup> The proposed third amendment would permit Clearwater to provide service to Asturia, a new mixed use development in Pasco County.

<sup>1</sup> Order No. PSC-95-0620-AS-GU, issued May 22, 1995, in Docket No. 940660-GU, In re: Petition to resolve territorial dispute with Clearwater Gas System, a Division of the City of Clearwater, by Peoples Gas System, Inc.

<sup>2</sup> Order No. PSC-05-0163-PAA-GU, issued February 10, 2005, in Docket No. 041385-GU, In re: Joint petition for approval of amendment to territorial agreement in Pasco County, by Peoples Gas System and Clearwater Gas System, a department of the City of Clearwater.

<sup>3</sup> Order No. PSC-06-0052-PAA-GU, issued January 20, 2006, in Docket No. 050877-GU, In re: Joint petition for approval of amendment to territorial agreement in Pasco County by Peoples Gas System and Clearwater Gas System, a department of the City of Clearwater.

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The third amendment is contained in Attachment 1. We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

### **Decision**

Pursuant to Section 366.04(3)(a), F.S., this Commission has the jurisdiction to approve territorial agreements between and among natural gas utilities. Rule 25-7.0471(2), F.A.C., states that in approving territorial agreements, this Commission shall consider:

- (a) The reasonableness of the purchase price of any facilities being transferred;
- (b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of natural gas service to the existing or future ratepayers of any utility party to the agreement; and
- (c) The reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.
- (d) Other relevant factors that may arise from the circumstances of a particular case.

Unless this Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.<sup>4</sup>

In September 2014, Clearwater entered into an agreement with a developer, pursuant to which Clearwater agreed to install natural gas distribution facilities to provide natural gas service to Asturia. A portion of the Asturia development lies within an area reserved to Peoples under the original 1995 agreement, thus, according to the petitioners, creating a potential territorial dispute. The third amendment would permit Clearwater to provide service to Asturia and resolve the potential territorial dispute. There are no customers or facilities to be transferred as a result of the third amendment, as the Asturia subdivision is still under development.

The petitioners represent that approval and implementation of the third amendment will not cause a decrease in the availability or reliability of natural gas service to existing or future ratepayers of Peoples or Clearwater. According to the petitioners, approval of the third amendment will permit Peoples and Clearwater to continue to avoid future uneconomic duplication of facilities, will permit the party best suited to provide service to Asturia, and, thus is in the public interest.

After review of the petition, we find that the third amendment will enable Peoples and Clearwater to better serve their current and future customers. It appears that the third amendment will serve to eliminate any potential uneconomic duplication of facilities and will not cause a decrease in reliability of gas service. As such, we find that the third amendment between Peoples and Clearwater will not cause a detriment to the public interest and therefore approve it.

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<sup>4</sup> Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the third amendment to the territorial agreement between Peoples Gas System and the City of Clearwater, d/b/a/ Clearwater Gas System. shall be approved.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 19th day of May, 2016.



HONG WANG  
Chief Deputy Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

JEV

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.



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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 9, 2016.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**THIRD AMENDMENT TO AGREEMENT**

This Third Amendment to Agreement (this "Third Amendment") is made and entered into as of this 18th day of February, 2016, by and between the City of Clearwater, a Florida municipality, d/b/a **Clearwater Gas System** ("Clearwater"), and **Peoples Gas System**, a division of Tampa Electric Company (successor by merger to Peoples Gas System, Inc.), a Florida corporation ("PGS"), to amend certain provisions of the Agreement dated March 17, 1995 between Clearwater and PGS (as heretofore amended, the "Agreement"). Clearwater and PGS are sometimes referred to singularly as "Party" and collectively referred to as "Parties."

**W I T N E S S E T H:**

WHEREAS, Clearwater and PGS have heretofore entered into the Agreement, a copy of which is attached hereto, for the purpose of avoiding uneconomic duplication of facilities used to provide natural gas service to the public within Pasco County, Florida;

WHEREAS, the Agreement was initially approved by Order No. PSC-95-0620-AS-GU (Docket No. 940660-GU), issued by the Florida Public Service Commission (the "PSC") on May 22, 1995;

WHEREAS, the PSC approved the First Amendment to Agreement dated December 2, 2004, by its Order No. PSC-05-0163-PAA-GU, issued February 10, 2005, and the Second Amendment to Agreement dated November 4, 2005, by its Order No. PSC-06-0052-PAA-GU, issued January 20, 2006; and

WHEREAS, the Parties have determined it is desirable that Clearwater provide Natural Gas service to additional areas lying within a new subdivision to be known as Asturia heretofore designated in the Agreement as PGS Territorial Area.

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NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties, subject to and upon the conditions herein set forth, hereby agree as follows:

1. Section 1.2 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.2 Clearwater Territorial Area As used herein, the term "Clearwater Territorial Area" shall mean the areas labeled Clearwater Gas System Pasco County Service Area on Third Revised Exhibit "A" to this Agreement, which areas are more particularly described as follows:

The Original 1995 Clearwater Territory: Asturia Subdivision:

(a) Beginning at the Gulf of Mexico at the northwest corner of Section 30, Township 25 South, Range 16 East (POB) and then running easterly along the section lines approximately 0.5 mile north of Ridge Road to the westernmost property line of the frontage property along the western side of Little Road and then generally northerly along the westernmost property lines of the frontage properties along the western side of Little Road to the centerline of SR 52 and then generally easterly along the centerline of SR 52 to the easternmost boundary of the Serenova Development, intersecting at the centerline of SR 52. Then following the eastern and southern boundary lines of the Serenova Development (the legal description of such Development being attached hereto and made a part hereof as Exhibit "B") and then westerly along the southern boundary of the Serenova Development to the northeast corner of Section 2, Township 26 South, Range 17 East and then southerly along the east line of Section 2, 11, 14 and 23 of Township 26 South, Range 17 East to the northwest corner of Section 25, Township 26 South, Range 17 East; then easterly along the north line of said section for 1975.70 feet, thence South 00°23'37" West, for 2,656.48 feet; thence South 00°16'14" West, for 2,735.58 feet, then along the arc of a convex curve having a radius of 243.81 feet, a central angle of 61°41'15", an arc length of 262.50 feet and a chord bearing North 78°37'57" West, for 250.00 feet, then to a concave curve having a radius of 172.47 feet, a central angle of 77°43'55", an arc length of 233.99 feet and a chord bearing North 83°49'08" West, for 216.46 feet, then to a convex curve having a radius of 437.98 feet, a

central angle of 24°36'27", an arc length of 188.11 feet and a chord bearing South 83°44'27" West, for 186.66 feet; thence North 00°21'12" East, for 83.25 feet; thence North 89°02'24" West, for 256.03 feet to a point of intersection with the Northerly right of way line of State Road 54 as described in Official Records Book 4926, page 1228 of the public records of Pasco County Florida; thence North 48°21'18" West, for 261.60 feet; then North 41°38'42" East, for 314.09 feet to a concave curve having a radius of 375.00 feet, a central angle of 64°33'58", an arc length of 422.58 feet and a chord bearing North 09°21'43" East, for 400.57 feet; then North 22°55'16" West, for 335.02 feet to a concave curve having a radius of 670.00 feet, a central angle of 31°08'15", an arc length of 364.11 feet and a chord bearing North 38°29'24" West, for 359.65 feet; then North 54°03'32" West, for 716.06 feet; then South 32°12'18" West, for 800.51 feet to a concave curve having a radius of 2634.51 feet, a central angle of 02°32'31", an arc length of 116.89 feet and a chord bearing South 49°37'34" East, for 116.87 feet; thence South 48°21'18" East, for 185.29 feet to the intersection of the east line of Section 26, Township 26 South, Range 17 East; and then southerly along the east line of Section 26 and 35 of Township 26 South, Range 17 East to the Hillsborough/Pasco County line, then westerly along the Hillsborough/Pasco County line to the Gulf of Mexico (POE) (See Third Revised Exhibit A).

(b) All parcels of property adjacent to the western right of way of Little Road within the area described in paragraph (a) above.

The Added 2004 and 2005 Clearwater Territory:

(c) Beginning at the easternmost boundary of the Original 1995 Clearwater Territory described in paragraph (a) above at the centerline of SR 52 near Hayes Road, then easterly along the centerline of SR 52 to the centerline of Ehren Cutoff Road (CR 583); then southerly along the centerline of Ehren Cutoff Road (CR 583) to the centerline of Land O' Lakes Boulevard (US 41); then northerly along the centerline of Land O' Lakes Boulevard (US 41) to the centerline of Little Lake Thomas Road; then southwesterly along the centerline of Little Lake Thomas Road to the centerline of Tower Road; then southwesterly along the centerline of Tower Road to the east section line of Section 16, Township 26 South, Range 18 East; then south to the southeast corner of Section 16, Township 26 South, Range 18 East; then west to the northeast corner of Section 20, Township 26 South, Range 18 East; then south to the southeast corner of Section 20, Township 26 South, Range 18 East; then west to the northwest corner of Section 30, Township 26 South, Range 18 East; then continuing west to the easternmost boundary of the Original 1995 Clearwater Territory

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described in paragraph (a) above at or near the northwest corner of Section 25, Township 26 South, Range 17 East; then north along the west section lines of Sections 24, 13, 12 and 1, Township 26 South, Range 17 East to the northwest corner of Section 1, Township 26 South, Range 17 East; then east along the southern boundary line of the Serenova Development (Exhibit "B"); then continuing north along the eastern boundary of the Serenova Development until intersecting the centerline of SR 52.

(d) A corridor in Section 30, Township 26 South, Range 18 East from the intersection of the centerline of SR 54 and the centerline of the future entrance road to the Bexley Ranch property, northerly along the centerline of the future entrance road to the Bexley Ranch property to the northern boundary of Section 30, Township 26 South, Range 18 East. Said corridor shall include all parcels on the easterly side of the future entrance road to the Bexley Ranch property and all parcels on the westerly side of said entrance road, but excluding all parcels adjacent to SR 54.

(e) When reference is made in paragraphs (a) and (c) above to the centerline" of a boundary line road between the Clearwater and PGS Territorial Areas, it is intended that adjacent parcels on both sides of that road be included within the Clearwater Territorial Area provided that Clearwater has extended its main along the subject boundary line road; however, (i) if Clearwater has not extended main along a boundary line road and (ii) service is requested by a potential customer lying on the PGS side of a road serving as such a boundary line, and (iii) PGS's facilities for the provision of such service are more proximate to such customer than are those of Clearwater, then PGS shall have the right to serve such customer.

If there is a conflict between the boundaries of the Clearwater Territorial Area set forth in this Section 1.2 and the boundaries of the Clearwater Territorial Area as depicted on Third Revised Exhibit "A" to this Agreement, the boundaries set forth in this Section 1.2 shall govern.

2. Section 1.3 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.3 PGS Territorial Area As used herein, the term "PGS Territorial Area" shall mean the areas labeled Peoples Gas System Pasco County Service Area on Third Revised Exhibit "A" to this Agreement, such areas consisting of all areas within Pasco County which are not located within the Clearwater Territorial Area described in Section 1.2 of this Agreement. If there is a conflict between the boundaries of the PGS Territorial Area set forth in this Section 1.3 and the boundaries of the PGS Territorial Area as depicted on Third Revised Exhibit "A" to this Agreement, the boundaries set forth in this Section 1.3 shall govern.

3. Section 1.8 of the Agreement is hereby amended to read in its entirety as follows:

Section 1.8 Territorial Boundary Line As used herein, the term "Territorial Boundary Line" shall mean each of the boundary lines so labeled, designating the dividing line between the areas shown on Third Revised Exhibit "A" to this Agreement, which boundary lines are more particularly described in Section 1.2 of this Agreement.

4. Second Revised Exhibit "A" to the Agreement is hereby deleted, and Third Revised Exhibit "A" attached hereto is hereby substituted therefor.

5. Except as modified by this Third Amendment, the Agreement shall continue in full force and effect.

6. The provisions and the Parties' performance of the Agreement, as hereby amended, are subject to the regulatory authority of the PSC, whose approval of the

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Agreement, as hereby amended, shall be an absolute condition precedent to the validity, enforceability and applicability of this Third Amendment and of the Agreement as hereby amended. This Third Amendment shall have no force or effect whatsoever until such approval has been obtained, and the Parties hereby agree to jointly petition the PSC for such approval. This Third Amendment shall become effective on the date of expiration of the appeal period following the issuance by the PSC of an order approving this Third Amendment and the Agreement as hereby amended. In the event the PSC declines to approve this Third Amendment, the same shall be of no force or effect, and neither Party shall have any claim against the other arising out of this Third Amendment.

*[signature page follows]*

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IN WITNESS WHEREOF, the Parties have caused this Third Amendment to be executed by their respective duly authorized officers as of the date first written above.

**PEOPLES GAS SYSTEM, a division  
of Tampa Electric Company**

By:   
Gordon L. Gillette  
President

Countersigned:

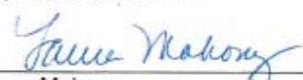
  
Charles S. Warrington, Jr.  
Managing Director  
Clearwater Gas System

**CITY OF CLEARWATER, FLORIDA**

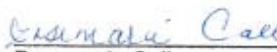
  
George N. Cretekos  
Mayor

By:   
William B. Horne II  
City Manager

Approved as to form:

  
Laura Mahony  
Assistant City Attorney

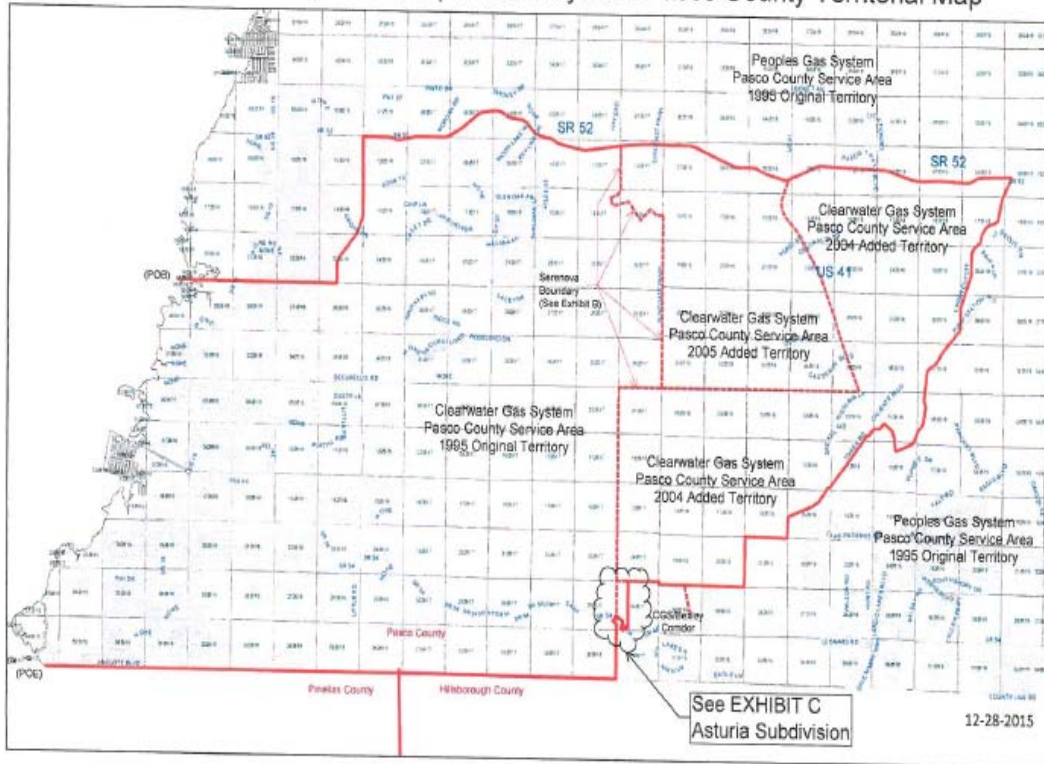
Attest:

  
Rosemarie Call  
City Clerk





**THIRD REVISED EXHIBIT A**  
**Clearwater Gas System/Peoples Gas System Pasco County Territorial Map**





RESOLUTION 2012-54

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, APPROVING A RIGHT-OF-WAY USE AGREEMENT WITH PEOPLES GAS AND PENINSULA PIPELINE FOR INSTALLING AND MAINTAINING A NATURAL GAS PIPELINE; ACCEPTING A ONE-TIME PAYMENT OF \$200,000 IN EXCHANGE FOR THE USE OF CITY RIGHT-OF-WAY TO INSTALL AND MAINTAIN THE NATURAL GAS PIPELINE; AUTHORIZING EXECUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission approved Ordinance 2011-26 granting a natural gas franchise to Florida Public Utilities; and

WHEREAS, Peninsula Pipeline Company (PPC), an affiliate of Florida Public Utilities, and Peoples Gas System (PGS), a division of Tampa Electric Company, jointly own and wish to install a natural gas pipeline in the rights-of-way of the City; and

WHEREAS, the City Commission desires to allow PPC and PGS to install and maintain a natural gas pipeline within the City rights-of-way in exchange for a one-time payment to the City of Two Hundred Thousand Dollars (\$200,000) by June 1, 2012.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, THAT:

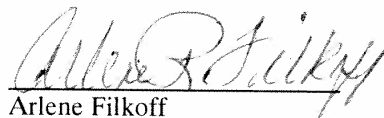
SECTION 1. The City Commission hereby approves the Right-of-Way Use Agreement for the installation and maintenance of a natural gas pipeline attached hereto as Exhibit "A".

SECTION 2. The City Manager and City Clerk are hereby authorized to execute the Right-of-Way Use Agreement, upon review and approval by the City Attorney.

SECTION 3. This resolution shall become effective immediately upon passage.

ADOPTED this 3<sup>rd</sup> day of April, 2012.

CITY OF FERNANDINA BEACH



Arlene Filkoff  
Commissioner – Mayor

ATTEST:

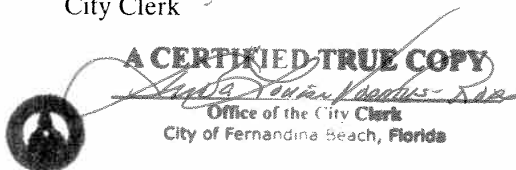


Mary L. Mercer  
City Clerk

APPROVED AS TO FORM



Tammi E. Bach  
City Attorney



**RIGHT-OF-WAY USE AGREEMENT**

This Right-of-Way Use Agreement (the "Agreement") is made and entered into as of this <sup>3<sup>rd</sup></sup> day of April, 2012, by and between **Peoples Gas System, a division of Tampa Electric Company**, a Florida corporation ("PGS"), and **Peninsula Pipeline Company, Inc., a Delaware corporation** ("PPC"), and the **City of Fernandina Beach, Florida**, a municipality organized and existing under the laws of the State of Florida (the "City").

**WITNESSETH:**

WHEREAS, the City has, by Ordinance No. 2011-26, granted to Florida Public Utilities Company ("FPUC") a franchise for the purpose of FPUC's delivering natural gas ("gas") to residential, commercial and industrial customers within the corporate limits of the City;

WHEREAS, the gas to be delivered by FPUC to its customers within the City will be transported through a new supply pipeline constructed jointly, and owned in common, by PGS and PPC (the "Fernandina Beach Line"); and

WHEREAS, PGS and PPC, pursuant to the City's Code of Ordinances, will be applying for permits to install the Fernandina Beach Line in the City's Right-of-Way, and are agreeable to the imposition by City of certain terms and conditions with respect to their occupation and use of the City's Right-of-Way for the installation of the Fernandina Beach Line.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

**SECTION 1. DEFINITIONS.**

For purposes of this Agreement, the following terms shall have the meanings given in this Section 1:

- A. "City" means the City of Fernandina Beach, Florida, its successors and assigns.
- B. "Fernandina Beach Line" means any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the transportation or delivery of gas and as are situated within the corporate limits of the City.
- C. "FPSC" means the Florida Public Service Commission or any successor agency.
- D. "gas" means natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter upon delivery. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- E. "Person" means any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- F. "PGS" means Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.

- G. "PPC" means Peninsula Pipeline Company, Inc., a Delaware corporation, its successors and assigns.
- H. "Right-of-Way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the City.

**SECTION 2. TERM.**

This Agreement shall become effective and binding on the parties hereto as provided in Section 13 hereof, and shall remain in effect for so long as PGS and PPC possess any City permit issued in connection with the construction, operation or maintenance of the Fernandina Beach Line.

**SECTION 3. USE OF RIGHTS-OF-WAY.**

The Fernandina Beach Line shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-Way, and said Rights-of-Way shall not be unnecessarily obstructed, and before, except in an emergency situation, either of PGS or PPC makes any excavation or disturbs the surface of any of the Rights-of-Way, PGS and PPC shall make joint application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by PGS and PPC. PGS and/or PPC shall, with due diligence and dispatch, place such Rights-of-Way in as good a condition as before such excavation or disturbance was made; provided, however, that should PGS or PPC fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-Way, then the City may undertake such restoration (other than any restoration work on the Fernandina Beach Line) and charge the reasonable cost thereof to PGS and/or PPC.

To the extent consistent with Florida law, PGS and PPC hereby agree to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the exercise of its police power, and further agree to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of PGS or PPC under this Agreement.

**SECTION 4. MAINTENANCE.**

All components of the Fernandina Beach Line located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

**SECTION 5. LAYING OF PIPE.**

All components of the Fernandina Beach Line shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations laws, or specifications contained in City permits; provided, however, that in the event of any inconsistency between the requirements of any codes, rules, regulations, laws, or specifications contained in any City permit and the requirements of the FPSC or the provisions of Parts 191 and 192, Title 49, Code of Federal Regulations, the requirements of the FPSC or of Parts 191 and 192, Title 49, Code of Federal Regulations, as applicable, shall govern.

**SECTION 6. CONSTRUCTION WORK.**

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-Way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-Way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-Way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-Way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Fernandina Beach Line for such public purpose, such removal, relocation or disconnection shall be made by PGS or PPC as ordered in writing by the City without claim for reimbursement. If the City shall require PGS and PPC to remove, relocate or disconnect any portion of the Fernandina Beach Line or in any way to alter the placement or location of the Fernandina Beach Line, to enable any other Person to use said Rights-of-Way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse PGS and/or PPC for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Fernandina Beach Line. PGS and PPC further agree that they will not intentionally interfere with, change, or injure any water pipes, drains or sewers of the City unless they have received specific permission from the City or its duly authorized representative. Notwithstanding anything to the contrary set forth herein, the City shall bear the cost of relocating any portion of the Fernandina Beach Line that already has been relocated by PGS or PPC at the request of City during the immediately preceding twelve (12) month period.

**SECTION 7. INSURANCE.**

During the term of this Agreement, PGS and PPC shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Agreement. The coverage requirements set forth in this Section 7 may be satisfied, in whole or in part, with self-insurance. Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the City Clerk, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

**SECTION 8. INDEMNIFICATION.**

In consideration of the permits to be issued jointly to PGS and PPC by the City, each of PGS and PPC hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by its respective negligent operation of the Fernandina Beach Line within the City during the term of this Agreement and resulting in personal injury, loss of life or damage to property sustained by any Person, through or as a result of the doing of any work authorized herein or by and City permit or the failure to do work required herein or by any City permit, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; provided, however, that neither the

Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this Section 8 for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, *Florida Statutes*. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement.

**SECTION 9. CHANGES IN PROVISIONS HEREOF.**

Changes in the terms and conditions of this Agreement may be made by written agreement between the City and both of PGS and PPC.

**SECTION 10 SEVERABILITY; CHANGE IN LAW.**

If any section, part of a section, paragraph, sentence, or clause of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of this Agreement adjudged to be invalid results in significant adverse consequences to a party hereto, then that party may terminate this Agreement by providing thirty (30) days written notice to the other party(ies).

**SECTION 11. GOVERNING LAW.**

This Agreement shall be governed by the laws of the State of Florida and applicable federal law.

**SECTION 12. RELATIONSHIP BETWEEN PGS AND PPC.**

Notwithstanding the obligations undertaken by each of PGS and PPC pursuant to this Agreement, as between PGS and PPC, nothing in this Agreement shall alter the contractual relationships between PGS and PPC existing as of the effective date of this Agreement.


**SECTION 13. EFFECTIVE DATE; PAYMENT BY PGS AND PPC.**

This Agreement shall become effective upon its execution by or on behalf of all of the parties hereto, and shall remain in effect as provided in Section 2 provided that PGS and PPC, collectively, pay to the City on or before June 1, 2012, the sum of \$200,000.00. Except as otherwise provided in this Agreement, no other payment to the City shall be required of PGS or PPC during the term of this Agreement.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers or other representatives.

*[signature page follows]*

**PEOPLES GAS SYSTEM, a division  
of Tampa Electric Company**


By:   
\_\_\_\_\_  
Bruce Narzissenfeld  
Vice President


**PENINSULA PIPELINE COMPANY, INC.**

By:   
\_\_\_\_\_  
Jeffrey Sylvester  
Vice President


ATTEST:

**CITY OF FERNANDINA BEACH, FLORIDA**

  
\_\_\_\_\_  
Mary L. Mercer  
City Clerk

  
\_\_\_\_\_  
~~Commissioner - Mayor~~  
Interim City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Tammi E. Bach  
City Attorney





## City of Fernandina Beach

Office of the City Clerk

April 5, 2012

Mr. Sergio Abreu Jr.  
TECO Energy  
Director, Local Govt. Comm.  
5101 NW 21<sup>st</sup> Avenue, Suite 460  
Ft. Lauderdale, FL 33309-2731

Re: Right-of-Way Use Agreement

Dear Mr. Abreu:

The City Commission of the City of Fernandina Beach approved Resolution 2012-54 at their regular meeting held April 3, 2012. Enclosed please find three (3) fully executed copies of the Use Agreement between the City of Fernandina Beach, Tampa Electric Company, Peoples Gas System, and Peninsula Pipeline Company for your records and distribution.

If you need further information or have any questions, please do not hesitate to contact me.

Sincerely,

CITY OF FERNANDINA BEACH

A handwritten signature in cursive script that reads "Mary L. Mercer".

Mary L. Mercer, CMC  
City Clerk

Enc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial agreement in Hardee County, by Peoples Gas System and Sebring Gas System, Inc.

DOCKET NO. 150093-GU  
ORDER NO. PSC-15-0279-PAA-GU  
ISSUED: July 7, 2015

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
JULIE I. BROWN  
JIMMY PATRONIS

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C).

Background

On March 23, 2015, Peoples Gas System (PGS) and Sebring Gas System, Inc. (Sebring) filed a joint petition requesting this Commission's approval of a territorial Agreement for a portion of Hardee County located within and adjacent to the City of Wauchula, Florida. PGS provides natural gas sales and transportation service to customers in Hardee County, Florida. In addition, PGS provides gas transportation service to the gas marketer supplying natural gas to customers that are served by Sebring. PGS plans to continue expanding its distribution system in Hardee County and the surrounding area as provided in the extension of facilities policy contained in its tariff on file with this Commission.<sup>1</sup>

Sebring provides natural gas transportation service to customers within and adjacent to the City of Sebring in Highlands County, immediately east of Hardee County. On May 12, 2014, the City of Wauchula Commission adopted Ordinance 2014-10 awarding a franchise to Sebring to provide natural gas service to residents of the city.

<sup>1</sup> Peoples Gas System Tariff, Original Volume No. 3, Fourth Revised Sheet No 5.601, effective March 13, 2012; Second Revised Sheet No. 5.601-1, effective January 6, 2004; and Second Revised Sheet No. 5.601-2, effective January 29, 2008.

ORDER NO. PSC-15-0279-PAA-GU  
DOCKET NO. 150093-GU  
PAGE 2

During its evaluation of the petition, Commission staff issued one data request to PGS and Sebring. The questions posed by Commission staff were intended to clarify background information about natural gas service to the City of Wauchula, some provisions of the Agreement, and its impact on ratepayers of both companies. We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

#### Decision

Pursuant to Section 366.04(3)(a), F.S., we have the jurisdiction to approve territorial agreements between and among natural gas utilities. Rule 25-7.0471, F.A.C., provides that in approving territorial agreements, this Commission shall consider:

- (a) The reasonableness of the purchase price of any facilities being transferred;
- (b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of natural gas service to the existing or future ratepayers of any utility party to the agreement, and
- (c) The reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.
- (d) Other relevant factors that may arise from the circumstances of a particular case.

Unless this Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.<sup>2</sup>

The territorial Agreement establishes the area Sebring will serve within the corporate limits of the City of Wauchula and certain adjoining areas as depicted on the map included as Attachment A to this order. The Agreement specifically excludes the Hardee County Fleet Maintenance facility occupying approximately one block in the southern portion of the city, which will be served by PGS. The term of the Agreement is until termination or modification is mutually agreed to by the parties or as mandated by an entity or court of appropriate jurisdiction.

In response to Commission staff's data request, the companies stated that natural gas service was not previously available to the City of Wauchula. As a result, there are no customers or facilities to be transferred between PGS and Sebring. Reliability of service will increase from no service to full access to natural gas service for residents of Wauchula. Furthermore, there will be no uneconomic duplication of facilities within the area to be served by Sebring, because Sebring's installation of its distribution system will be the only natural gas pipelines in the area, with the exception of the one excluded facility.

The PGS and Sebring response to Commission staff's data request further explained that the excluded facility belongs to Hardee County. Prior to the negotiation of the PGS-Sebring territorial agreement, PGS and Hardee County had committed to the construction of a Compressed Natural Gas (CNG) station to service Hardee County vehicles. PGS will provide gas service to the station. The carve out of this customer from the Agreement is necessary to keep the agreements made between PGS and the customer (Hardee County) intact since

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<sup>2</sup> Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

ORDER NO. PSC-15-0279-PAA-GU  
DOCKET NO. 150093-GU  
PAGE 3

construction of the CNG station has been completed. Sebring currently has no facilities near the CNG station. If necessary for Sebring to serve customers in this area, and to avoid duplication of service facilities, PGS and Sebring may establish a second interconnect on the PGS main line in this area. From that interconnect, Sebring could proceed to design and build-out their distribution facilities.

After review of the petition, the Agreement, and the parties' response to the data request, we find that the Agreement is in the public interest and will enable PGS and Sebring to better serve their current and future customers. We find that the Agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of natural gas service. As such, we find that the Agreement between PGS and Sebring will not cause a detriment to the public interest and hereby approve it.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition for approval of a territorial agreement in Hardee County by Peoples Gas System and Sebring Gas System, Inc. is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket shall be closed upon the issuance of a consummating order. It is further

ORDERED that Attachment A, attached to this Order, is incorporated herein by reference. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

ORDER NO. PSC-15-0279-PAA-GU  
DOCKET NO. 150093-GU  
PAGE 4

By ORDER of the Florida Public Service Commission this 7th day of July, 2015.

*Carlotta S. Stauffer*

CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

JEV

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

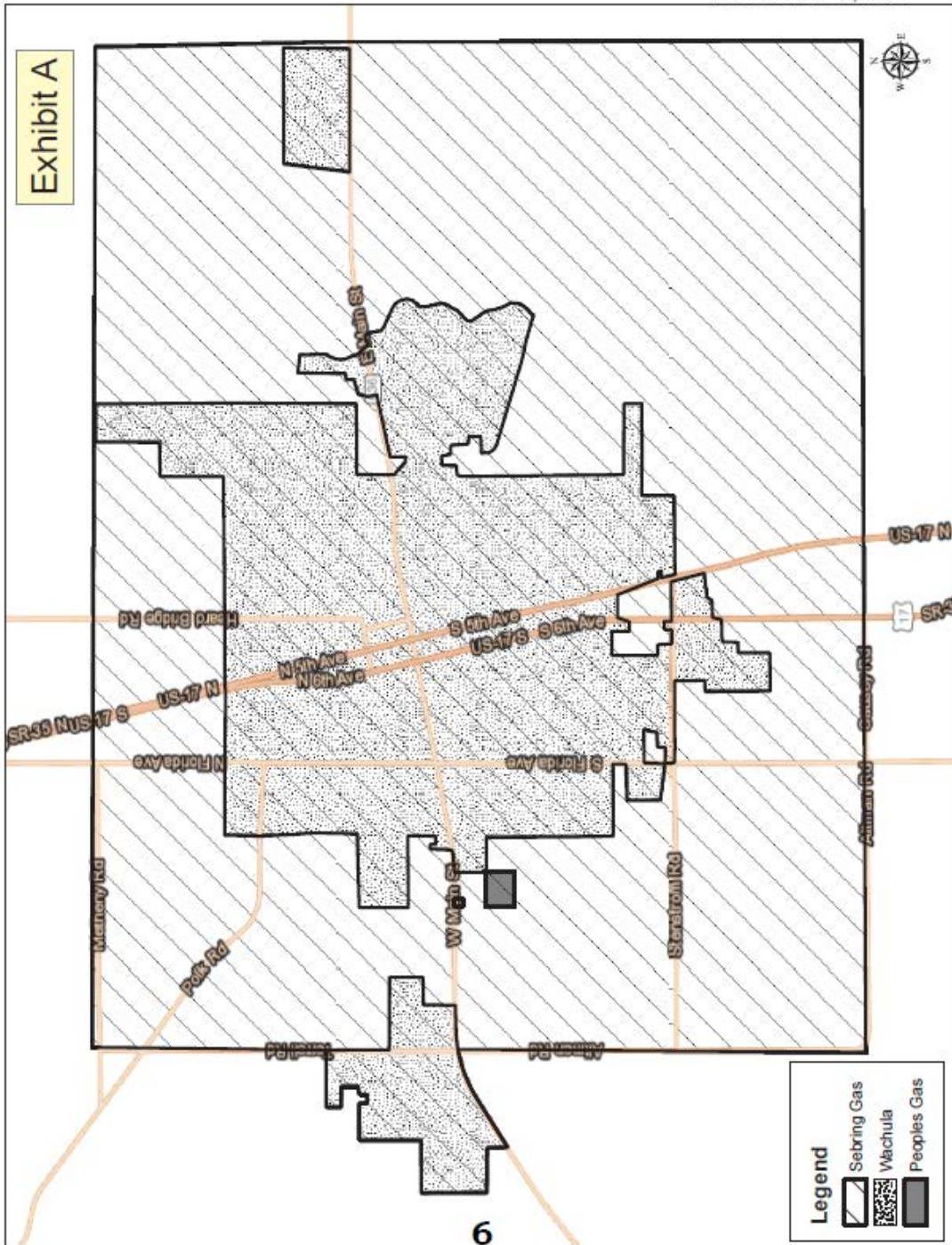
The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 28, 2015.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.



**EXHIBIT A**

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FRANCHISE AGREEMENT  
BETWEEN CITY OF HOLMES BEACH  
AND PEOPLES GAS SYSTEM

THIS FRANCHISE AGREEMENT, made and entered into as of this \_\_\_ day of September, 2008, by and between THE CITY OF HOLMES BEACH, FLORIDA, a municipal corporation, organized and existing under the laws of Florida (hereinafter called "City") with the address of 5801 Marina Drive, Holmes Beach, Florida 34217; and PEOPLES GAS SYSTEM, a division of TAMPA ELECTRIC COMPANY, a Florida corporation (hereinafter the "Company"), with the address of 702 N. Franklin St., Tampa, Florida 33602.

WHEREAS, the City is duly authorized to grant franchises for the construction of pipelines within its public rights-of-way and for distribution of natural gas within its corporate boundary; and

WHEREAS, Peoples Gas System is a division of Tampa Electric Company, a Florida corporation, operating under the fictitious name of Peoples Gas System, registered and owned by Tampa Electric Company in the State of Florida; and

WHEREAS, the Company and the City desire hereby to enter into a franchise agreement for a period of fifteen (15) years commencing from the date provided herein; and

WHEREAS, the City finds that it is in the public interest of its citizens to enter into a Franchise Agreement with Peoples Gas System.

NOW THEREFORE, in consideration of the premises and the mutual undertakings hereinafter stated, the parties hereto agree as follows:

**EXHIBIT A**

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SECTION 1: RECITALS AND DEFINITIONS

The recitals contained above are true and correct and are hereby incorporated by reference. For the purposes of this Agreement, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Holmes Beach, Manatee County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 25 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 25 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale, distribution or transportation of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation,



**EXHIBIT A**

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company or other entity, including, but not limited to, any government entity.

- J. "Natural Gas" or "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premises. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the City.

SECTION 2:            GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained. Prior to the expansion of the Distribution System into a new service area of the City, the Company shall apply for approval from the Public Works Department in accordance with the terms of this Franchise Agreement and any City ordinances that are lawfully in place and applied to all utilities.

SECTION 3:            TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of fifteen (15) years from the Effective Date of this Agreement.

**EXHIBIT A**

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SECTION 4:            ASSIGNMENT

A.     The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City.

B.     Notwithstanding the foregoing, the Company may, without the consent of the City, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5:            CITY COVENANT

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement. The foregoing covenant shall not be deemed to prohibit the City from receiving payment of franchise fees from any other Person(s) to whom the City might grant a franchise for the distribution or selling of Natural Gas within the corporate limits of the City.

**EXHIBIT A**

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SECTION 6:            USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for approval to the appropriate City authority. The City shall review the application within fifteen (15) days and shall approve it, provided it complies with the ordinance and the terms of the Franchise Agreement. The City may condition its approval in such ways as may be appropriate to minimize disruption to the City and its residents and visitors, including but not limited to, requiring delay of construction based on seasonal residency, tourism, and traffic considerations, limiting the extent of construction at the same time, or other relevant factors. The City shall approve, or if applicable deny, the application within fifteen (15) business days of application by the Company. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company, which amounts the Company will pay to the City within thirty (30) days of receipt of the billing of such charges, after which such amounts will bear interest at the rate of twelve percent (12%) per annum until paid

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the

**EXHIBIT A**

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exercise of its police power, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

SECTION 7:            MAINTENANCE

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 8:            LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City approvals.

SECTION 9:            CONSTRUCTION WORK

The City reserves the right to authorize to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and authorize to be done any underground work that may be deemed necessary or proper by the City or Manatee County as it relates to City or County facilities in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the City or Manatee

**EXHIBIT A**

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County, as applicable, to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the City or Manatee County, as applicable, without claim for reimbursement. If the City shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any Person other than the City or Manatee County to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or take any actions that pose a risk of damage to any water pipes, drains, or sewers of the City or Manatee County unless it has received specific permission from the City or Manatee County, as applicable, or its duly authorized representative.

SECTION 10:            FRANCHISE FEE

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the Effective Date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money which is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale, distribution or transportation of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of

**EXHIBIT A**

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the preceding billing month. Any amounts not paid (as determined by post mark) within forty five (45) days after the close of the preceding billing month shall bear interest from such date at the rate of twelve (12%) percent per annum until paid.

**SECTION 11: IDENTIFICATION OF CITY RESIDENTS**

Within thirty (30) days after the Effective Date, the City shall deliver to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customers are located within the City limits. The City shall also provide such information no later than thirty (30) days after the effective date of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's request. In any event, the Company shall not be obligated to pay a franchise fee on any Gross Revenues derived from any customer until the City has provided to the Company the information, thirty (30) days in advance, that would allow the Company to identify the customer as a resident of the City.

**SECTION 12: ACCOUNTS AND RECORDS**

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall

**EXHIBIT A**

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maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

In the event an audit reveals an over or underpayment of franchise fees, then payment or refund of the discrepancy shall be made within thirty (30) days of notice and support thereof. Amounts not in dispute and not paid by such date shall bear interest thereafter at twelve percent (12%) per annum. Amounts in dispute shall bear interest at such rate from such date if and when determined or agreed to have been due.

The Company shall provide annually a certification from its internal auditor certifying the accuracy of the Gross Revenues calculation and the franchise fees paid. The City may dispute such audit by notice to the Company given within thirty (30) days after the City receives the audit, supporting materials and the certification by the Company's internal auditor.

SECTION 13:        INSURANCE

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$2,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$2,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. Such insurance policy or policies

**EXHIBIT A**

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may contain deductibles or a self-insured retention that is commercially reasonable and consistent with prudent utility risk management practices.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14:            INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the City during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however**, that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. The Company shall annually provide the City with a copy of TECO



**EXHIBIT A**

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Energy, Inc.'s annual report to other information which lists the assets and business of Peoples Gas System.

SECTION 15:            TERMINATION BY CITY

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination of this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, to effect a cure, or, in the event such cure reasonably requires a period of more than sixty (60) days, the Company shall have sixty (60) days to present a plan, reasonably satisfactory to the City, to effect such cure; and then implement such plan and pursue it to completion with reasonable diligence; provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16:            CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 17:            RESOLUTION OF COMPLAINTS

The Company will address and respond to all customer complaints in accordance with FPSC rules and processes.

**EXHIBIT A**

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SECTION 18:            SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 19:            GOVERNING LAW

This Franchise shall be governed by the laws of the State of Florida.

SECTION 20:            APPROVALS, PERMITS AND LICENSES.

The Company shall obtain at its expense all approvals, permits and licenses required by law or ordinance and maintain same in full force and effect.

**EXHIBIT A**

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SECTION 21:        EMERGENCY RESPONSE.

In the event of an emergency, natural disaster or casualty, the Company shall act in accordance with its emergency response plan, on file with the FPSC. As soon as practicable after such emergency, the Company shall advise the City Public Works Manager of any failures in the Distribution System and provide the estimated time required for repair.

SECTION 22:        NOTICES.

All notices hereunder shall be in writing and either delivered or sent by United States Mail, postage prepaid, certified with return receipt requested, or delivered by nationally recognized overnight courier, to City and Company at the address previously set forth in this Agreement. Notices shall be effective on the earlier of five (5) business days after deposit in the United States Mail or actual receipt.

SECTION 23:        ENFORCEMENT

In the event either party resorts to litigation to enforce or construe the terms of this Agreement, then the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

SECTION 24:        INTEGRATION AND INTERPRETATION

Except as otherwise provided in this Agreement, this instrument embodies the whole agreement of the parties. There are no provisions, terms, conditions or obligations other than those contained herein, and this Agreement shall supercede all previous communications, representations or agreements, either verbal or written, between the parties hereto.

**EXHIBIT A**

SECTION 25:            EFFECTIVE DATE

This Franchise Agreement shall become effective upon its execution by both parties and upon the adoption of Ordinance 08- 07.

SECTION 26:            REPRESENTATION.

The Company is a division of Tampa Electric Company, a Florida corporation, ("TEC"), and is registered pursuant to Section 859.06, Florida Statutes, as a fictitious name under which TEC operates. Execution of this Agreement in the name of the Company has been duly authorized by TEC in accordance with its articles and bylaws as the agreement of TEC.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their officers thereunto duly authorized as of this \_\_\_\_ day of September, 2008.

THE CITY OF HOLMES BEACH

By: *Rich Boland*  
[print name], MAYOR

ATTEST: *Brenda A. Bennett*  
CITY CLERK

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

*William N. Campbell*  
By: *William N. Campbell*  
Title: *President*

NATURAL GAS  
FRANCHISE AGREEMENT  
RESOLUTION NO. 2013-08

AN RESOLUTION GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF LABELLE, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE

WHEREAS, Peoples Gas System and the City of LaBelle desire to enter into a franchise agreement for a period of thirty (30) years commencing from the date provided herein; and

WHEREAS, the City Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF LABELLE, FLORIDA, THAT:

SECTION 1:            DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of LaBelle, Hendry County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.

- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" or "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the City.

SECTION 2: GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 3: TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of thirty (30) years from the effective date of this ordinance.

SECTION 4: ASSIGNMENT

The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City .

SECTION 5: CITY COVENANT

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

SECTION 6: USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this agreement, the City shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.



SECTION 7: MAINTENANCE

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 8: LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits.

SECTION 9: CONSTRUCTION WORK

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the City without claim for reimbursement. If the City shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other

Person to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said City unless it has received specific permission from the City or its duly authorized representative.

SECTION 10: FRANCHISE FEE

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

SECTION 11: IDENTIFICATION OF CITY RESIDENTS

No less than thirty (30) days prior to the Effective Date, the City shall deliver to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the City limits. The City shall also provide such information no less than thirty (30) days prior to the effectiveness of any

change in said limits, whether by addition, annexation or consolidation, or upon the Company's request.

SECTION 12: ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

SECTION 13: INSURANCE

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and

in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$5,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14: INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the City during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a

result thereof; **provided, however,** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, or criminal acts of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement.

SECTION 15: TERMINATION BY CITY

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the City, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16: CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 17: SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

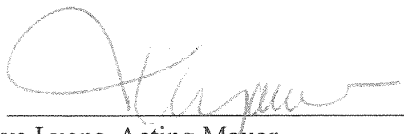
SECTION 18: GOVERNING LAW

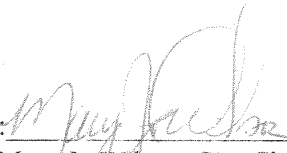
This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 19: EFFECTIVE DATE

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

PASSED AND CERTIFIED AS TO PASSAGE this 14<sup>th</sup> day of March, A.D. 2013.

By:   
Dave Lyons, Acting Mayor

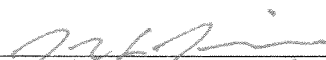
ATTEST:   
Mary Jo Wilson, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By:   
James O. Luckey, City Attorney

Accepted this \_\_\_\_\_ day of March, A.D. 2013

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

  
By: Gordon L. Gillette  
Title: President

PEOPLES GAS SYSTEM  
Franchise Fee Agreement Checklist

New \_\_\_\_\_ Renewal  X

Name of Municipality: Town of Lady Lake 15180 County: Lake County  
Effective Date: March 3, 2017 Term: 10 yrs.  
Contractual Rate: 6% Parity Clause: no  
Billing Rate: 6.415% Purchase Clause: no  
Ad Valorem Tax Deductible: no Permits/Licenses Deductible: no

Rate Base: sale or transport of gas  
Exemptions: none  
Payments Due: 30th of each month, postmark date

Notify:

Pam Bayvat, Manager, Customer Accounting

To set up tax district in CIS - **RENEWAL**  
Name of City Town of Lady Lake  
County, Sales Tax Information \_\_\_\_\_  
Effective billing cycle \_\_\_\_\_  
Billing Rate \_\_\_\_\_  
Rate Base \_\_\_\_\_  
Exemptions \_\_\_\_\_  
Any Utility Tax? yes

Rosemary Barbour, Director, Accounting

To set up new G/L number - **RENEWAL**  
Name of City \_\_\_\_\_  
Which Division will be servicing customers? (Determines acct.# design)  
Type of Tax - Franchise/Utility or both \_\_\_\_\_

Maria Huth, A/P Coordinator

To set up vendor in Walker System **RENEWAL** *\*This address is to be used per franchise agreement.*  
Name of City \_\_\_\_\_  
Correct Address (verified by City) \_\_\_\_\_  
Attention to, if any \_\_\_\_\_

Kim Tollefson, Utility Accounting Specialist

Also verify if Utility Tax is applicable. **Utility Tax: yes**

To set up payments -

- NA E-mail Pam, Rosemary, and Maria Huth with information listed above
- NA Update Master Franchise Fee Schedule on Shared Drive
- NA Update Compliance Calendar
- NA Update Payment Schedule in Excel



**ORDINANCE NO. 2017-04**

**NATURAL GAS  
FRANCHISE AGREEMENT**

**AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF TOWN OF LADY LAKE, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE.**

WHEREAS, Peoples Gas System and Town of Lady Lake desire to enter into a franchise agreement for a period of ten (10) years commencing from the date provided and subject to the renewal provisions set forth herein; and

WHEREAS, the Town Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

**NOW THEREFORE, BE IT ENACTED BY THE TOWN COMMISSION OF TOWN OF LADY LAKE, FLORIDA, THAT:**

**Section 1:                      Definitions**

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the Town.
- B. "Town" shall mean the Town of Lady Lake, Lake County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the Town.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed

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and adopted by the Town and accepted by the Company, as provided in Section 19 below.

- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale or transportation of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" or "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the Town.

**Section 2:**            **Grant**

The Town hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the Town, or in such territory as may be hereafter added or annexed to, or consolidated with, the Town, a Distribution System subject to the terms and conditions herein contained.

**Section 3:**            **Term**

Except as provided in Section 15, the Franchise hereby granted shall be for a period of ten (10) years from the effective date of this ordinance; provided, however, that the Franchise will automatically renew for up to two (2) successive ten (10) year terms until such time as one of the parties notifies the other, with no less than one hundred and eighty (180) days' written notice, prior to the expiration of the then-current term, that it does not want the Franchise to automatically renew. If either party elects not to renew the Franchise, then the Franchise shall expire upon the conclusion of the then-current term.

**Section 4:**            **Assignment**

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the Town, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the Town.

B. Notwithstanding the foregoing, the Company may, without the consent of the Town, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged

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in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

**Section 5:**                    **Town Covenant**

As a further consideration for this Franchise Agreement, the Town covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the Town, as modified, during the term of this Franchise Agreement.

**Section 6:**                    **Use of Streets**

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate Town authority. The Town shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this agreement, the Town shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the Town, to restore such Rights-of-way, then the Town may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the Town has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the Town or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the Town shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

**Section 7:**                    **Maintenance**

All such components of the Distribution System of the Company located within the Town shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

**Section 8:**                    **Laying of Pipe**

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in Town permits.

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**Section 9:**                    **Construction Work**

The Town reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the Town in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the Town to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the Town without claim for reimbursement. If the Town shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the Town, as part of its permitting or approval process, the Town shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said Town unless it has received specific permission from the Town or its duly authorized representative.

**Section 10:**                    **Franchise Fee**

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the Town, or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale or transportation of Natural Gas to Customers within the corporate limits of the Town. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month. Any monthly payment or any portion thereof received more than twenty (20) days after the due date shall be subject to interest at the rate of 10% per annum until all payments are paid in full.

**Section 11:**                    **Identification of Town Residents**

No less than thirty (30) days prior to the Effective Date, the Town shall deliver to the Company such information (including Town limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the Town limits. The Town shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's request. The Company shall be relieved of any obligation to pay franchise fees to the extent the Town has failed to provide information in accordance with this Section 11.

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**Section 12: Accounts and Records**

Upon request by the Town, or its designated representative, the Company shall make available said records within thirty (30) days to the Town for determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available. The following records and reports shall be filed with or available to the Town, subject to the above terms:

- (A) Company Rules and Regulations. Copies or rules, regulations, terms and conditions adopted by the Company concerning the Town of Lady Lake shall be available to the Town upon request.
- (B) Accounting. The Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or as mutually agreed to by the Town and the Company. Should the Florida Public Service Commission cease to exist, the Town retains the right to require the Company to maintain a system of accounts and forms of books and accounts and memoranda prescribed by the Federal Energy Regulatory Commission or any other applicable agency.
- (C) Reports. The Company will attach to each payment a statement of its Gross Revenues for the period on which such payment is based, signed by an authorized representative of the Company, in such reasonable form and detail as the Town may from time to time prescribe, sufficient to show the source and method of computation of Gross Revenues. The acceptance of any statement or payment shall not estop the Town from asserting that the amount paid is not the amount due or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 10.
- (D) Availability of Records and Reports. The Company shall supply all accounts and records of the Company and/or all such information that the Town or its representatives may from time to time reasonably request or require relative to the calculation of the franchise fees. Such financial records shall be kept and maintained in accordance with generally accepted accounting principles. All of these records shall, on written request of the Town, be open for examination and audit by the Town and the Town's representatives during ordinary business hours, and such records shall be retained by the Company for a period of three (3) years from the completion and acceptance of the City's audit.
- (E) Audit. The Town may require an audit of the Company at a minimum of once every two years. The Company will reimburse the Town's audit costs if the audit identified errors in the Company's franchise Gross Revenue that are equal to or greater than the lesser of \$1,000 or five percent (5%) across an annual period audited. Unless otherwise demonstrated, errors identified during the audit process shall be projected for any

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additional time periods not covered during the audit if there is a reasonable probability these errors occurred during the unaudited period, but not for more than five (5) years. If an underpayment of franchise fee has occurred, interest will be computed at a rate of ten percent (10%) per annum. The underpayment plus interest, shall be paid within thirty (30) days after receipt of demand therefor. If an audit or other review reveals an overpayment, the Town shall refund such amount back to the Company within thirty (30) days, but, absent an error on the part of the Town, shall not be obligated to pay the Company any interest.

**Section 13:**            **Insurance**

During the term of this Franchise, the Company shall file with the Town Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the Town, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Company shall notify the clerk of the Town, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

**Section 14:**            **Indemnification**

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the Town, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the Town during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the Town in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however,** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the Town, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and

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business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

**Section 15:**                    **Termination by Town**

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the Town to declare a termination this Franchise Agreement; provided, however, that before such action by the Town shall become operative and effective, the Company shall have been served by the Town with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Town with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the Town, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

**Section 16:**                    **Changes in Provisions Hereof**

Changes in the terms and conditions hereof may be made by written agreement between the Town and the Company.

**Section 17:**                    **Severability; Change in Law**

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the Town or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or Town may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

**Section 18:**                    **Governing Law**

This Franchise shall be governed by the laws of the State of Florida and applicable federal law. Venue for all actions shall be in Lake County, Florida.

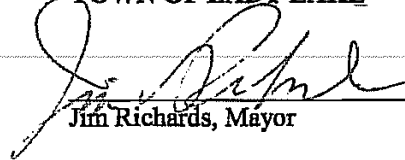
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**Section 19:            Effective Date**

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the Town's passage and adoption hereof.

**PASSED AND CERTIFIED AS TO PASSAGE** this 6<sup>th</sup> day of February, A.D. 2017.


**TOWN OF LADY LAKE**

  
\_\_\_\_\_  
Jim Richards, Mayor

ATTEST:

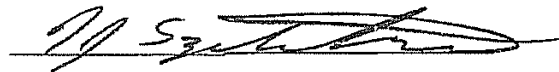
  
\_\_\_\_\_  
Kristen Kollgaard, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

  
\_\_\_\_\_  
Derek Schroth, Town Attorney

Accepted this 3 day of March, A.D. 2017

**PEOPLES GAS SYSTEM, A DIVISION  
OF TAMPA ELECTRIC COMPANY**

  
By: TJ Szelistowski  
Title: President



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for approval of territorial agreement in Sumter County by Peoples Gas System, The City of Leesburg and South Sumter Gas Company.

DOCKET NO. 20200085-GU  
ORDER NO. PSC-2020-0221-PAA-GU  
ISSUED: June 29, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman  
ART GRAHAM  
JULIE I. BROWN  
DONALD J. POLMANN  
ANDREW GILES FAY

PROPOSED AGENCY ACTION  
ORDER APPROVING JOINT TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

**Background**

On March 11, 2020, Peoples Gas System (Peoples) and the City of Leesburg (Leesburg), collectively the joint petitioners, filed a petition seeking our approval of a Territorial Agreement delineating their respective service boundaries in Sumter County, Florida. We note that South Sumter Gas Company, LLC, although listed in the title of the petition, is not a party to the proposed Territorial Agreement. The proposed Territorial Agreement and a map depicting the current service territories and proposed changes, and boundary areas to be served by Peoples and Leesburg are provided in Attachment A to this Order.

On February 23, 2018, Peoples filed a petition in Docket No. 20180055-GU,<sup>1</sup> requesting that we resolve a territorial dispute between Peoples and Leesburg and/or South Sumter Gas Company, LLC. The Petition alleged that Peoples and Leesburg and/or South Sumter Gas Company, LLC were in a dispute as to the rights of each to provide natural gas services to the customers in Sumter County, including The Villages. The area in dispute is characterized by

<sup>1</sup> *In re: Petition to resolve territorial dispute in Sumter County and/or Lake County with City of Leesburg and/or South Sumter Gas Company, LLC, by Peoples Gas System.*

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residential areas of varying density, interspersed with commercial support areas, and is referred to as Bigham North, Bigham West, Bigham East (Bigham developments).

On August 21, 2018, we referred the dispute to the Division of Administrative Hearings (DOAH). DOAH assigned an Administrative Law Judge (ALJ) for the purpose of conducting an administrative hearing and issuing a Recommended Order<sup>2</sup> on the territorial dispute. The administrative hearing was held from June 24 to 27, 2019, and a Recommended Order was issued on September 30, 2019.<sup>3</sup> In that Order, the ALJ awarded Peoples the disputed territory encompassing the Bigham North, Bigham East, and Bigham West developments in the Villages in Sumter County. The ALJ's Order did not award any other territory to any of the parties. At the January 14, 2020 Commission Conference, we adopted the ALJ's Recommended Order without modification by final Order No. PSC-2020-0052-FOF-GU.<sup>4</sup>

The proposed Territorial Agreement in the instant docket incorporates our decision in Order No. PSC-2020-0052-FOF-GU, a separate Settlement Agreement between the parties addressing the transfer of infrastructure from Leesburg to Peoples, and establishes new service boundary lines between the joint petitioners for the remaining portions of the county. The referenced Settlement Agreement is not subject to our approval, and hence was provided for informational purposes only. The joint petitioners believe the Territorial Agreement will avoid future litigation and territorial disputes in Sumter County and enhance natural gas service for customers.

We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

### **Decision**

Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, F.A.C., we have jurisdiction over territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless we determine that the agreement will cause a detriment to the public interest, the agreement should be approved.<sup>5</sup>

#### **Peoples and Leesburg Territorial Agreement**

The proposed Territorial Agreement between Peoples and Leesburg was executed on March 9, 2020, and would continue to be in effect until modification by mutual agreement by the parties and approved by us or until termination or modification mandated by court order, as stated in Section 1.1 of the territorial agreement.

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<sup>2</sup> "Recommended Order" is defined in Section 120.52(15), F.S., as the official recommendation of the ALJ assigned by DOAH or of any other duly authorized presiding officer, other than the agency head or member thereof.

<sup>3</sup> *Peoples Gas System vs. South Sumter Gas Company, LLC, and City of Leesburg*, DOAH Case No. 18-4422, Recommended Order issued on September 30, 2019.

<sup>4</sup> Order No. PSC-2020-0052-FOF-GU, issued February 11, 2020, in Docket No. 20180055-GU, *In re: Petition to resolve territorial dispute in Sumter County and/or Lake County with City of Leesburg and/or South Sumter Gas Company, LLC, by Peoples Gas System*.

<sup>5</sup> *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

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As a result of Order No. PSC-2020-0052-FOF-GU, 3,625 (includes 3,615 residential and 10 commercial customers) Leesburg service customers in Bigham North, Bigham West, and Bigham East were transferred to Peoples, effective June 1, 2020. Pursuant to the proposed Territorial Agreement in the instant docket, the joint petitioners will also transfer three additional customers (fire station, a district building, and The Villages Grown—a hydroponic and aeroponic farm) located adjacent to Bailey West Development to Peoples. Section 2.1 of the proposed Territorial Agreement also includes additional areas in Sumter County to be served by Peoples in the future. The joint petitioners stated that any new customers taking service within the areas contained in Article II – Boundary Provisions of the proposed Territorial Agreement will be served by either Peoples or Leesburg according to the future service areas identified in the map in Attachment A.

During the pendency of Docket No. 20180055-GU, Leesburg filed a territorial dispute petition in Docket No. 20180185-GU against Peoples regarding its natural gas service to Suwannee American Cement Company, LLC in Sumter County. This petition was still pending before us; however, pursuant to Section 2.1 of the proposed Territorial Agreement and pursuant to the Settlement Agreement, the Suwannee American Cement Company, LLC, will continue to be served by Peoples. The joint petitioners stated that the unresolved issues in Docket No. 20180185-GU will be resolved by our action to approve the proposed Territorial Agreement and Leesburg's petition in Docket No. 20180185-GU will be voluntarily dismissed.

#### **Transfer of Assets**

The joint petitioners, in paragraph 10 of the petition and in paragraph 9 of the Territorial Agreement, stated their intention to provide an orderly transfer of assets in the Bigham developments without the need for further litigation. Rule 25-7.0471(2)(a), F.A.C., requires us to consider the reasonableness of the purchase price of any facilities being transferred.

In accordance with the Territorial Agreement, the joint petitioners stated that Peoples will be paying for the infrastructure for the approximately 3,625 Bigham development customers transferred to Peoples. South Sumter Gas Company, LLC was retained by Leesburg to serve as the construction company for the infrastructure necessary to serve the Bigham developments. Peoples will pay \$5,000,000 to South Sumter Gas Company, LLC, with \$500,000 to be retained by Peoples to pay for warranty claims. The balance will be paid to South Sumter Gas Company, LLC, in one year less claims for warranty issues related to the infrastructure being transferred. This payment amount results in a per customer amount ranging between \$1,241 to \$1,379 depending on the reduction for warranty expenses. Through our adoption of the ALJ's Recommended Order, we concluded in Order No. PSC-2020-0052-FOF-GU that "the cost-per-home for Leesburg and SSGC to provide service in Bigham is \$1,800. In addition, Leesburg will be installing automated meters at a cost of \$72.80 per home. The preponderance of evidence indicates that PGS cost-per-home is \$1,579."<sup>6</sup>

The per customer purchase price stated above is less than the cost determined by Order No. PSC-2020-0052-FOF-GU. The joint petitioners also stated that no purchase price has been

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<sup>6</sup> Order No. PSC-2020-0052-FOF-GU at p. 92 (Conclusion of Law 160).

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affixed to Leesburg's transfer of its Bigham development infrastructure, as Leesburg did not incur significant costs in installing infrastructure in the Bigham developments. We find the negotiated infrastructure transfer cost is reasonable and approximates the cost established in Order No. PSC-2020-0052-FOF-GU.

#### **Customer Deposits and Notification**

Leesburg notified its affected natural gas customers via a letter dated April 1, 2020, which stated that their customer deposit will be applied towards the final bill or outstanding balance, and any remaining deposit amount will be directly refunded to the customer by check within 30 to 45 days of the date of transfer (June 1, 2020). Of the 3,625 Leesburg customers to be transferred to Peoples, per Order PSC-2020-0052-FOF-GU, 1,909 customers have a deposit on file with Leesburg. Leesburg's customer deposit is \$50.

Peoples proposed a \$50 deposit for Leesburg customers transferred to Peoples. After 12 months of service, Peoples will reassess the deposit amount in accordance with 366.05(1), F.S. According to Peoples' proposed customer notification, it will collect the deposit in its first bill in July 2020 and return the deposit with interest after 23 months of continuous service and no more than one late payment. Peoples' tariff allows transferred customers to request a credit check to evaluate if the customer would qualify to have the deposit waived. Peoples included information in its proposed customer notification on how customers can request the credit check to determine if the deposit can be waived.

Pursuant to the proposed Territorial Agreement, three additional commercial customers will be transferred to Peoples. These three customers currently are being served by Leesburg and are located outside of the area ordered to be transferred to Peoples in Order No. PSC-2020-0052-FOF-GU. The parties have agreed to transfer these customers to Peoples in the proposed Territorial Agreement. Peoples stated that it will contact the three additional customers individually to discuss the transfer and applicable billing rates.

#### **Conclusion**

Through the proposed Territorial Agreement, the joint petitioners will be able to serve customers within clearly defined service areas, comport with the requirements of Order No. PSC-2020-0052-FOF-GU, resolve the dispute in Docket No. 20180185-GU, avoid future litigation, eliminate any potential uneconomic duplication of facilities, and serve current and future customers without service disruption.

After review of the joint petition and the petitioners' joint responses to Commission staff's data requests, we find that the proposed Territorial Agreement is in the public interest and will enable Peoples and Leesburg to serve their current and future customers efficiently. It appears that the proposed Territorial Agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in reliability of natural gas service. Pursuant to the joint petition, approval of this Territorial Agreement will establish definitive service boundaries and avoid future litigation. Additionally, Leesburg will withdraw its counter-petition in Docket No. 20180185-GU to resolve the territorial dispute related to the Suwannee American Cement, following our approval of this Territorial Agreement. Therefore, we find that the proposed

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Territorial Agreement between Peoples and Leesburg will not cause a detriment to the public interest and hereby approve the Territorial Agreement.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission the proposed Territorial Agreement between Peoples Gas Company and the City of Leesburg in Sumter County (Attachment A hereto) is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 29th day of June, 2020.



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ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

WLT

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 20, 2020.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

#### TERRITORIAL AGREEMENT

This Territorial Agreement (the "Agreement") is made and entered into this 9<sup>th</sup> day of March, 2020, by and between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("Peoples") and the City of Leesburg, a municipal corporation organized and existing under the laws of the State of Florida ("Leesburg").

#### RECITALS

1. Leesburg and South Sumter Gas Company, a Florida corporation ("SSGC" or The Villages") have entered into an agreement for Leesburg to provide natural gas service to certain properties of The Villages community located in in Sumter County, Florida.
2. Peoples was serving The Villages Development known as Fenney when the agreement between Leesburg and SSGC was entered into. Peoples has existing infrastructure in Sumter County, Florida.
3. Peoples filed a territorial dispute with the Florida Public Service Commission ("Commission") on February 23, 2018 titled *Petition to resolve territorial dispute in Sumter County and/or Lake County with the City of Leesburg and/or South Sumter Gas Company*, Docket No. 20180055-GU. The case was referred to an administrative law judge and a final hearing was held from June 24, 2019 – June 27, 2019.
4. The administrative law judge issued a Recommended Order on September 30, 2019.
5. On January 14, 2020, the Commission adopted the Recommended Order as its Final Order (PSC-2020-0052-FOF-GU). That Order awarded Peoples the territory

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Attachment A

encompassing three (3) Villages Developments known as Bigham North, Bigham East and Bigham West. Those developments were being served by Leesburg pursuant to its agreement with SSGC. The Order did not award any other territory to any of the parties.

6. During the pendency of Peoples' territorial dispute petition against Leesburg and SSGC, Leesburg filed a territorial dispute petition with the Commission against Peoples regarding service to Suwannee American Cement. That petition, Docket No. 20180185-GU, is still pending and has not been resolved.

7. The Villages and Leesburg desire to have Leesburg provide natural gas service in future Villages developments in Sumter County, Florida. Peoples does not object to Leesburg providing natural gas service to certain Villages developments as depicted on the attached map.

8. Peoples intends to file additional territorial disputes regarding Leesburg serving future developments in Sumter County, Florida, if this Agreement is not executed and approved by the Commission.

9. The parties wish to provide an orderly transfer of infrastructure in the Bigham developments without the need for further litigation.

10. The parties wish to avoid and eliminate future territorial disputes in Sumter County arising out of Leesburg's providing natural gas service to the Villages Developments. The parties agree that this Agreement will resolve the ongoing issues among the parties in the subject area, Sumter County, Florida, and enhance the ability of customers to receive natural gas service.

**NOW THEREFORE**, in fulfillment of the purposes and desires described above,



and in consideration of the mutual covenants and agreements herein contained and referenced by attachment, the parties, subject to and upon the terms and conditions set forth hereby agree as follows:

**ARTICLE I**

**TERM OF AGREEMENT**

**Section 1.1**

After this Agreement becomes effective, pursuant to Section 2.1 hereof, it shall continue in effect until modification by mutual agreement by the parties and approval by the Commission or until termination or modification mandated by a court with appropriate jurisdiction.

**ARTICLE II**

**BOUNDARY PROVISIONS**

**Section 2.1**

The map attached hereto and labeled Exhibit A depicts boundary lines in Sumter County, Florida delineating the natural gas service area reserved to Peoples and the natural gas service area reserved to Leesburg with respect to service to natural gas customers. The boundary areas to be served by the respective parties are described as follows:

**City of Leesburg**

Leesburg will be the natural gas provider in the areas shown on the map in green which include:

- (a) Any area within the Leesburg city limits.

(b) Carter 5b1-4, 5c, and 5c1-4, and all commercial and recreational centers located therein.

(c) The Coleman Prison.

(d) All portions of future developments in areas shown in green on Exhibit B.

**Peoples Gas System**

Peoples shall serve all areas shaded in blue, including but not limited to the following Villages Developments:

(a) The Rick Scott Industrial Park and areas adjacent thereto.

(b) The developments known as Pinkstaff 10A and all areas west of Pinkstaff.

(c) Hickman 3D1 thru 3D3.

(d) Meggison 4A1 thru 4C2, including the four recreation centers and commercial development at State Road 44 and the north side of County Road 468.

(e) Bailey West, including the Villages Grown, the Fire Station, office complex and all commercial development along State Road 44 and County Road 468.

(f) Bailey East, including the recreation center and all commercial development along State Road 44.

(g) Portions of Carter at 5A1, 5D1, 5D2-3, including three recreation centers and commercial development along State Road 468.

(h) Suwanee American Cement Company, LLC

**Section 2.2**

Each of the parties agrees that it will not, except as provided under separate written agreement, provide or offer to provide natural gas service to customers within the territory herein reserved to the other party.

**Section 2.3**

Leesburg is currently providing natural gas service to customers located in Bigham North, Bigham East, Bigham West, and in portions of Bailey West and the fire station adjacent to Bailey West (the "Existing Customers"), which is situated within territory reserved under this Territorial Petition Peoples. Those approximately 3,625 existing customers shall be transferred to Peoples.

**ARTICLE III**

**MISCELLANEOUS PROVISIONS**

**Section 3.1**

The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

**Section 3.2**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**Section 3.3**

This Agreement shall be governed by the laws of the State of Florida.

**Section 3.4**

The parties hereto recognize and agree that each of them is subject to the jurisdiction of the Commission with regard to the subject of their respective territories as set forth in this Agreement and further agree that this Agreement shall have no force or effect unless and until it is approved by the Commission in accordance with applicable procedures. The parties further agree that this Agreement, if and when approved by the Commission, shall be subject to the continuing jurisdiction of the Commission and may be terminated or modified only mutual agreement of the parties and by order of the Commission. No modification or termination of this Agreement by the parties hereto shall be effective unless and until approved by the Commission (or any successor agency with power to consider approval or modification hereof). Each party agrees to promptly notify the other in writing of any petition, application or request for modification of this Agreement made to the Commission and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

**Section 3.5**

This Agreement shall be effective on the date it is approved by the Commission in accordance with Section 3.4 hereof.

**Section 3.6**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.


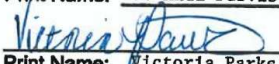
PEOPLES GAS SYSTEM, a  
division of Tampa Electric  
Company


By:   
Print name: Richard F. Wall  
Its: President

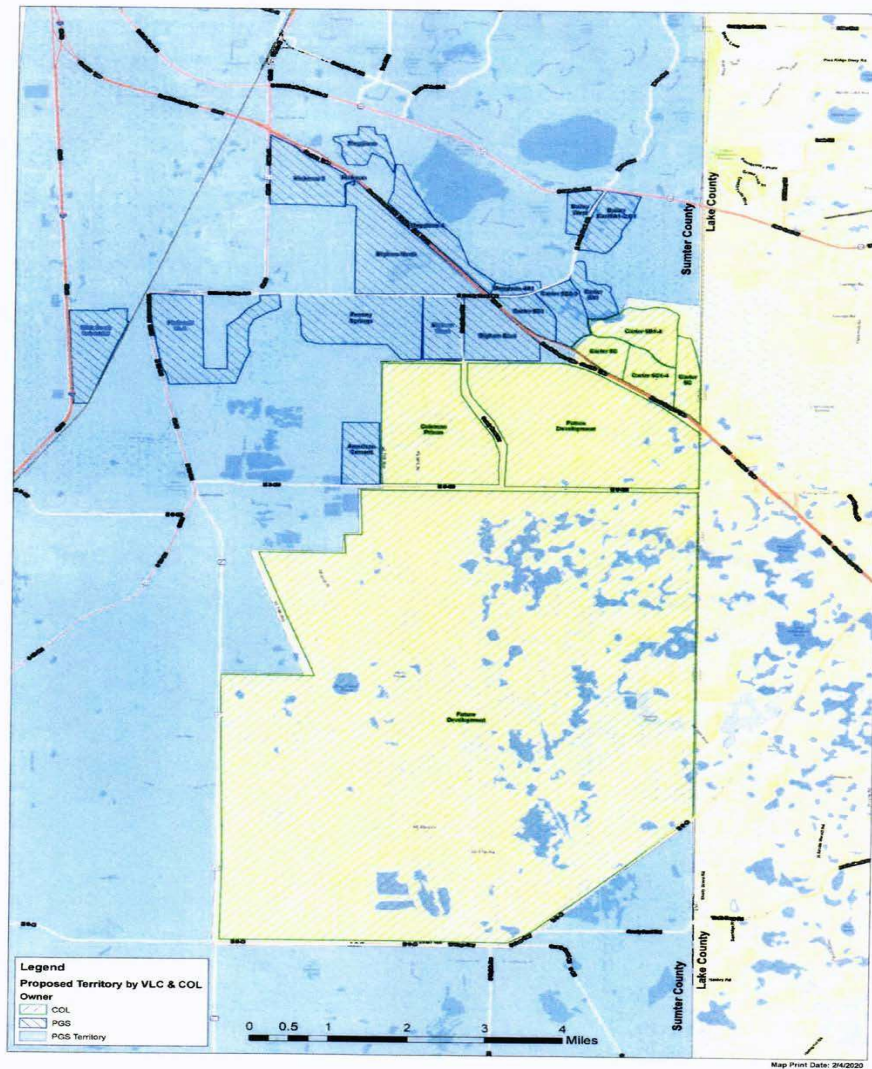
  
Print Name: Kandi M. Boyd  
  
Print Name: Richard F. Wall

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Attachment A

  
Print Name: J. Andi Purvis  
  
Print Name: Victoria Parks

**CITY OF LEESBURG**  
By:   
Print name: Elise A. Dennison  
Its: Mayor



**ORDINANCE NO. 2016-14**

**AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS-OF-WAY OF THE TOWN OF LONGBOAT KEY, FLORIDA; AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCE 85-17; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Peoples Gas System, a division of Tampa Electric Company, and the Town of Longboat Key desire to enter into a franchise agreement for a period of thirty (30) years commencing from the date provided herein; and

**WHEREAS**, the Town Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:**

**SECTION 1. DEFINITIONS**

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the Town.
- B. "Town" shall mean the Town of Longboat Key, located in Manatee and Sarasota counties, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the Town.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the Town and accepted by the Company, as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.



- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity or municipally-owned utility.
- J. "Natural Gas" or "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the Town.

#### SECTION 2. GRANT

The Town hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate, and maintain in, on, or under any and all rights-of-way, as they now exist or may be hereafter constructed, opened, laid out, or extended within the present incorporated limits of the Town, or in such territory as may be hereafter added or annexed to, or consolidated with, the Town, a Distribution System subject to the terms and conditions herein contained.

#### SECTION 3. TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of thirty (30) years from the effective date of this ordinance.

#### SECTION 4. ASSIGNMENT

- A. The Franchise hereby granted shall not be leased, assigned, or otherwise alienated or disposed of except with the prior express written consent of the Town, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the Town.
- B. Notwithstanding the foregoing, the Company may, without the consent of the Town, lease, assign, or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

#### SECTION 5. TOWN COVENANT

As a further consideration for this Franchise Agreement, the Town covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the Town, as modified, during the term of this Franchise Agreement.

**SECTION 6. USE OF STREETS**

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the rights-of-way, and said rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the rights-of-way, it shall make application for a permit to the appropriate Town authority. The Town shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. The Company shall, with due diligence and dispatch, place such rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the Town, to restore such rights-of-way, then the Town may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the Town has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the Town or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the Town shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

**SECTION 7. MAINTENANCE**

All such components of the Distribution System of the Company located within the Town shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

**SECTION 8. LAYING OF PIPE**

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent applicable, consistent with all applicable codes, rules, regulations and laws, specifications contained in Town permits.

**SECTION 9. CONSTRUCTION WORK**

The Town reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the Town in, across, along, or under any right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the rights-of-way, it shall be deemed necessary by the Town to remove, relocate, or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation, or disconnection shall be made by the Company as ordered in writing by the Town without claim for reimbursement. If the Town shall require the Company to remove, relocate, or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said rights-of-way of the Town, as part of its permitting or approval process, the Town shall require the Person desiring or occasioning such removal, relocation,

disconnection, or alteration to reimburse the Company for any loss, cost, or expense caused by or arising out of such removal, relocation, disconnection, or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally change or injure any of the Town's infrastructure, including, but not limited to, the Town's potable water, reclaimed water, or sanitary sewer distribution systems, stormwater management system, signage, landscaping, sidewalk, and roadways, unless the Company has received specific prior permission in writing from the Town or its duly authorized representative. In the event that any of the Town's infrastructure is changed or injured by the Company or a sub-contractor of the Company without authorization to do so from the Town, the Company shall, with due diligence and dispatch, place such infrastructure in as good a condition as before such change or injury was made. Should the Company fail to restore or repair any such infrastructure within ten (10) days for its receipt of written notice from the Town to do so, then the Town may undertake such repairs and the Company shall reimburse the Town for any loss, cost, or expense caused by or arising out of such repairs or restoration to the Town's infrastructure.

#### SECTION 10. FRANCHISE FEE

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the Town, or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale of Natural Gas to Customers within the corporate limits of the Town. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month. Any franchise fees which remain unpaid after the dates specified above shall be delinquent and shall thereafter accrue interest at an annual percentage rate of twelve percent (12%) until paid.

#### SECTION 11. IDENTIFICATION OF TOWN RESIDENTS

No less than thirty (30) days prior to the Effective Date, the Town shall deliver to the Company such information (including Town limit streets and block numbers) as is needed by the Company to determine which of its customers are located within the Town limits. The Town shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation, or consolidation, or upon the Company's request. The Company shall be relieved of any obligation to pay franchise fees to the extent the Town has failed to provide information in accordance with this Section.

#### SECTION 12. ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the Town are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the Town, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the Town for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for

the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

### SECTION 13. INSURANCE

- A. During the term of this Franchise, the Company shall file with the Town and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies covering Company's activities within the corporate limits of the Town, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$2,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$2,000,000.00 for damage to property resulting from any one accident, and include coverage for comprehensive, premises operations, explosion and collapse hazard, underground hazard, products completed operations hazard, contractual insurance, broad form property damage, and personal injury. The Company shall produce insurance certificates evidencing automobile liability coverage for owned, non-owned or rented vehicles, in the minimum sum of \$2,000,000 single limit liability for bodily injury or death, and \$2,000,000 for property damage; and evidencing worker's compensation in the minimum amount required by Florida statute. Company shall obtain a waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by the policies described above. The minimum sums for all of the above coverages shall remain in full force and shall be undiminished during the Term of this Franchise. The Town shall be named as an additional insured on the foregoing policies (except for worker's compensation) for liability arising out of this Franchise. To offset the effects of inflation, the Town may, at the five year anniversary of the Effective Date, request in writing that the Company adjust the coverage limitations contained in this Section 13 to reflect amounts typically provided in franchises by similarly situated natural gas utilities, but not to exceed the percentage increase in the Consumer Price Index over the same period.
- B. The Company may meet the policy requirements of this Section 13, in whole or in part, with self-insurance.
- C. Company shall notify the Town, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

### SECTION 14. INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the Town, its officers, agents, and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the Town during the term of this Franchise and resulting in personal injury, loss of life, or damage to property sustained by any person or entity, through or as a result

of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the Town in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; provided, however, that neither the Company nor any of its employees, agents, contractor, licensees, or sub-lessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the Town, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

#### SECTION 15. TERMINATION BY TOWN

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms, and conditions, shall authorize and empower the Town to declare a termination this Franchise Agreement; provided, however, that before such action by the Town shall become operative and effective, the Company shall have been served by the Town with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Town with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the Town, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

#### SECTION 16. CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the Town and the Company.

#### SECTION 17. SEVERABILITY; CHANGE IN LAW

- A. If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.
- B. Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the Town or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise

fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or Town may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

**SECTION 18. GOVERNING LAW**

This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

**SECTION 19. EFFECTIVE DATE**

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the Town's passage and adoption hereof.

Passed on the first reading the 4<sup>th</sup> day of April 2016.

Adopted on the second reading and public hearing the 2<sup>nd</sup> day of May, 2016.

  
\_\_\_\_\_  
Jack G. Duncah, Mayor

ATTEST:

  
\_\_\_\_\_  
Trish Granger, Town Clerk


APPROVED AS TO FORM AND CORRECTNESS:

  
\_\_\_\_\_  
Maggie Mooney-Portale, Town Attorney



Accepted this 13 day of May, 2016

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

  
\_\_\_\_\_  
By: Geraldine Gilllette  
Title: President

NATURAL GAS  
FRANCHISE AGREEMENT  
ORDINANCE NO. 99-05

AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC PLACES OF THE CITY OF MACCLENNY, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF MACCLENNY, FLORIDA, THAT:

SECTION 1:            DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any person, firm, public or private corporation, or governmental agency served by the Company.
- B. "City" shall mean the City of Macclenny, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Gas" or "Natural Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas") or any other fuel that is typically delivered by truck and stored in tanks.
- E. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.
- F. "Facilities or equipment" shall mean pipe, pipe line, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit,

appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas, located or to be located in, upon, along, across, or under the streets.

- G. "Franchise Agreement" shall mean the document executed by the City and Company giving the Company the authority to operate the franchise within the City, under the terms of this ordinance, and containing such other terms as are necessary to place the franchise into effect.
- H. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- I. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and Customer pipe lines, together with all necessary and desirable appurtenances as may be reasonably necessary for the sale and distribution of Natural Gas for the public and private use of Customers within the corporate limits of the City.

SECTION 2:            GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all of the public streets, alleys, highways, waterways, bridges, easements and other public places of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, any all such transmission line pipes, main line pipes and Customer service line pipes, together with all necessary and desirable appurtenances as may be reasonably necessary for the sale and distribution of Natural Gas for the public and private use of Customers within the corporate limits of the City, subject to the terms and conditions herein contained.

SECTION 3:            TERM



FILED: 08/17/2020  
10/1/20

The Franchise hereby granted shall be for a period of thirty (30) years from the effective date of this ordinance, provided that at the end of said thirty (30) year period this agreement shall be automatically renewed for successive six (6) month periods until such time as the City has granted a new franchise to the Company.

SECTION 4: ASSIGNMENT

The Company, upon notice to the City, shall have the right and authority to assign all rights conferred upon it by this Franchise Agreement to any entity. The assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this franchise. Notwithstanding the foregoing, the Company may, at its option, lease, assign or otherwise alienate and transfer this Franchise Agreement in connection with the lease or sale of the Natural Gas Distribution System or upon the Company's merger and consolidation with any other entity or pledge or mortgage such Franchise in connection with the physical property owned and used by the Company in the operation of the Natural Gas Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5: CITY COVENANT

As a further consideration of this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas in competition with the Company, its successors or assigns.

SECTION 6: USE OF STREETS

The said Natural Gas Distribution System facilities shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of said streets, alleys, avenues, easements, and public grounds, and said streets shall not be unnecessarily

obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the streets, alleys, or other public places, it shall make application for a permit to the appropriate City authority and shall, with due diligence and dispatch, place such streets or public places in as good condition and repair as before such excavation or disturbance was made, and in default thereof the City may make such repairs and charge the reasonable cost thereof to the Company and collect the same from it.

To the extent consistent with Florida Law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish; provided, however, it is not intended hereby that the City shall have the right of breaching the terms of this franchise other than as herein provided.

SECTION 7: MAINTENANCE

All such components of the Natural Gas Distribution System of the Company that are located within the city limits of Macclenny shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission or other regulatory body having jurisdiction over the Company.

SECTION 8: LAYING OF PIPE

All components of the Natural Gas Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits.

SECTION 9: CONSTRUCTION WORK

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City or other governmental body having jurisdiction in, across, along, or under any street, alley, public way, easement, place, or other public ground. Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, or other public ways and places, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure, it shall be deemed necessary by the City or other governmental body to alter, change, adapt, or conform any portion of the Natural Gas Distribution System of the Company hereto, such alterations, or changes, shall be made by the Company as ordered in writing by the City or other governing body, without claim for reimbursement. If the City shall require the Company to adapt or conform any portion of its Natural Gas Distribution System or in any way to alter, relocate or change its property to enable any other Person or corporation to use said street, alley, easement, highway or public place of the City, as part of its permitting or approval process, shall require the Person desiring or occasioning such alteration, relocation or change to reimburse the Company for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of the Company's facilities. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said City unless it has received specific permission from the City or its duly authorized representative.

SECTION 10: FRANCHISE FEE

Within thirty (30) days after the close of each month following the effective date of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its

successors, a sum of money which, when added to the amount of all ad valorem and other taxes, and all permit fees, levied or assessed by or on behalf of the City upon the Company, its properties, or its operations within the corporate limits of the City, is equal to five percent (5 %) of the Company's gross revenue, less any adjustments for uncollectable accounts, from the sale of natural gas to customers within the corporate limits of the City (excluding (a) the City and each agency, board, commission or department thereof, and (b) those Customers for whom the City has waived, in whole or in part, the obligation to pay a franchise fee and said waiver will be passed on to the Customer's bill.) The franchise fee payment shall be deemed paid ontime if post-marked within thirty (30) days of the close of the preceding month.

SECTION 11: FRANCHISE PARITY

If, during the term of this Franchise Agreement, the City, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters ("Alternate Gas Providers") the right, privilege or franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public places of the City, for the purpose of supplying or delivering Natural Gas to Customers located within the corporate limits of the City or receiving such gas from a person other than the Company within such corporate limits, and imposes a franchise compensation obligation or an equivalent on such Alternate Gas Provider for any Customer or class of Customers that is less than that imposed with respect to the same Customer or class of Customers under this franchise agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of Customers shall be reduced under this agreement so that the franchise compensation paid hereunder for such customer class is no greater than the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance

applicable to it, when compared on a dollars-per-therm basis. In the event that the City determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Company's obligation to pay a franchise fee under this agreement with respect to revenues derived from the provision of service by the Company to the comparable class of Customers served by such Alternate Gas Provider thereafter shall be extinguished.

SECTION 12: ACCOUNTS AND RECORDS

The company shall maintain accounting, maintenance, and construction records as prescribed by the Florida Public Service Commission. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida, and be open at all reasonable times for inspection by the duly authorized representatives of the City pursuant to an appropriate confidentiality agreement. Upon request by the City, or its designated representative, the Company shall provide a copy of said records within thirty (30) days to the City for the determination of the accuracy of the gross revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

SECTION 13: INSURANCE

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance, the terms and conditions whereof shall provide that the City is an additional insured as to the Company's

construction or operation of a Natural Gas Distribution System within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14: INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, arising from the Company's operations within the City pursuant to this Franchise Agreement during the term of this franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof, **except** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, suits, actions, damages, expenditures,

including attorney's fees, or causes of action arising out of injury, loss of life or damage to persons or property caused by or resulting from the negligence, gross negligence, willful misconduct, act, omission, or error of the City, its officers, agents, or employees. Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes. The provisions of this section shall survive this agreement.

SECTION 15: FORFEITURE OR REVOCATION OF GRANT

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a forfeiture of and to revoke and cancel all rights granted hereunder, provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Council with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice within which to cure such violation or within which to present a plan, satisfactory to the City, acting reasonably, to affect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for revoking and canceling any rights hereunder. In the event of forfeiture, the Company shall have the right to assign, sell or transfer, to any entity of its choice, the rights conferred by this Franchise Agreement subject to the terms in Section 4.

SECTION 16: CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 17: SEVERABILITY

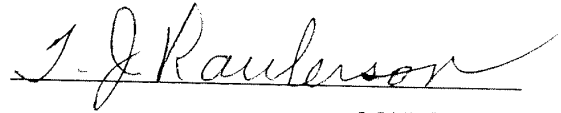
If any section, part of section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered. If either party to this Franchise Agreement feels that elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to itself, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

SECTION 18: EFFECTIVE DATE


This Ordinance shall become effective immediately upon its passage and adoption, provided the Company shall have signified its acceptance of the franchise hereby granted, in writing, within thirty (30) days from the date this Ordinance is duly adopted, the Company's acceptance of said franchise being a condition precedent to the effectiveness of the provisions of this Ordinance.



PASSED AND ADOPTED this 14th day of September, A.D. 1999.

  
\_\_\_\_\_  
, MAYOR

ATTEST:

  
\_\_\_\_\_  
City Clerk

Accepted this 14<sup>th</sup> day of October, A.D. 1999

PEOPLE GAS SYSTEM, A DIVISION OF  
~~TAMPA ELECTRIC COMPANY~~

BY: 

Francis J. Sivard

Vice President, Accounting

NATURAL GAS  
FRANCHISE AGREEMENT  
ORDINANCE NO. 12-04

AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF MARCO ISLAND, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE.

WHEREAS, Peoples Gas System and the City of Marco Island desire to enter into a franchise agreement for a period of thirty (30) years commencing from the date provided herein; and

WHEREAS, the City Council finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, THAT:

SECTION 1:            DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Marco Island, Collier County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric

Company, a Florida corporation, its successors and assigns.

- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale or transportation of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" of "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the City.

SECTION 2:            GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 3:            TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of thirty (30) years from the effective date of this ordinance.

SECTION 4:            ASSIGNMENT

A.     The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City .

B.     Notwithstanding the foregoing, the Company may, without the consent of the City, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used

by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5:            CITY COVENANT

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

SECTION 6:            USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this agreement, the City shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

SECTION 7:            MAINTENANCE

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 8:            LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits.

SECTION 9:            CONSTRUCTION WORK

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other

underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the City without claim for reimbursement. If the City shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said City unless it has received specific permission from the City or its duly authorized representative.

SECTION 10:        FRANCHISE FEE

A.        Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale or transportation of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

B. In the event the Company enters into a franchise agreement with another Florida municipality or government entity located in Collier or Lee County that contains substantially similar terms and conditions as this Franchise and that provides for a franchise fee calculation that would result in a franchise fee being paid to such municipality or government entity that is higher (as a percentage of Gross Revenues) than that promised hereunder, then the City may, at its option, demand that the franchise fee payable hereunder be adjusted so as to be consistent with the franchise fee calculation extended to such Florida municipality or government entity.

SECTION 11: IDENTIFICATION OF CITY RESIDENTS

In the event that the City annexes areas into the City, the City shall notify Company of the areas that are annexed into the City within thirty (30) days from the date said annexation shall become effective. The Company and the City shall work cooperatively to identify any of Company's customers within those areas so that the appropriate franchise fees can be determined and paid to the City pursuant to this Franchise Agreement.

SECTION 12: ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall



maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

SECTION 13:            INSURANCE

During the term of this Franchise, the Company shall file with the City Clerk annually and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$2,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$2,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14:            INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by

the Company's operation of the Distribution System within the City during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however**, that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

SECTION 15:           TERMINATION BY CITY

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all

matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the City, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16: CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 17: SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does

away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 18:            GOVERNING LAW

This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 19:            EFFECTIVE DATE

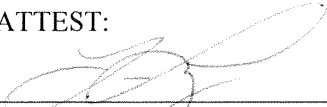
This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

PASSED AND CERTIFIED AS TO PASSAGE this 16th day of April, 2012.

CITY OF MARCO ISLAND, FLORIDA

BY:   
\_\_\_\_\_  
Larry Magel, Chairman

ATTEST:

  
\_\_\_\_\_  
Laura Litzan, City Clerk


APPROVED AS TO LEGAL FORM AND CORRECTNESS:

  
\_\_\_\_\_  
Burt L. Saunders, City Attorney

PEOPLES GAS SYSTEM  
DOCKET NO. 20200051-GU  
DOCKET NO. 20200166-GU  
STAFF'S SECOND REQUEST FOR  
PRODUCTION OF DOCUMENTS  
REQUEST NO. 4  
FILED: 08/17/2020

Accepted this 30 day of APRIL, A.D. 2012

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

  
By: William J. Whaley  
Title: VICE PRESIDENT

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of transportation service agreement with Florida Public Utilities Company, by Peninsula Pipeline Company, Inc.

DOCKET NO. 110271-GU

In re: Joint petition for approval of territorial agreement in Nassau and Duval Counties by Peoples Gas System and Florida Public Utilities Company; gas transportation agreement by Peoples Gas System and Peninsula Pipeline Company, Inc.; and application for approval of tariff revisions to reflect service in Nassau and Okeechobee Counties, by Florida Public Utilities Company

DOCKET NO. 110277-GU  
ORDER NO. PSC-12-0230-PAA-GU  
ISSUED: May 9, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TRANSPORTATION AND TERRITORIAL AGREEMENTS AND  
ORDER APPROVING TARIFF MODIFICATIONS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein, except for approving tariff modifications, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

Pursuant to Section 366.04(3)(a), Florida Statutes (F.S.), and Rule 25-7.0471, F.A.C., Florida Public Utilities Company (FPUC) and Peoples Gas System (Peoples) filed a January 26, 2012 joint petition in Docket No. 110277-GU for approval of a territorial agreement between the Petitioners related to the provision of natural gas service in Nassau and Duval Counties. Each Petitioner owns and operates natural gas distribution facilities in various portions of Florida.

DOCUMENT NUMBER DATE

02969 MAY-9 2012

FPSC-COMMISSION CLERK

ORDER NO. PSC-12-0230-PAA-GU  
DOCKET NOS. 110271-GU, 110277-GU  
PAGE 2

FPUC currently has no active customers in Nassau or Duval County. Peoples currently has one customer in Nassau County and 20,080 customers in Duval County. FPUC and Peoples are seeking our approval of a territorial agreement that would determine the areas of Nassau and Duval Counties within which each utility would be authorized to provide natural gas service. Further, FPUC is seeking approval of tariff modifications reflecting its intent to provide natural gas service in Nassau and Okeechobee Counties. FPUC currently has no customers in Okeechobee County.

Pursuant to Rule 25-9.034, F.A.C., both FPUC and Peoples have also each filed for our approval of separate gas transportation agreements with Peninsula Pipeline Company, Inc. (PPC). The transportation agreements are required to move gas from People's interconnections with the interstate pipeline system of Florida Gas Transmission Company (FGT), through the Peoples distribution system, and into a new pipeline (the Fernandina Beach Line) to be owned in common by PPC and Peoples.

Docket No. 110271-GU was opened in mid-September 2011 by PPC's filing of a petition for approval of a Firm Transportation Service Agreement between PPC and FPUC. However, on February 8, 2012, a petition for approval of an amended and revised transportation service agreement between PPC and FPUC was filed as a result of negotiations that arose between Peoples and FPUC in relation to Docket No. 110277-GU.

Docket No. 110277-GU was also opened in September 2011 by FPUC's filing of a petition for approval of tariff modifications to reflect FPUC's intent to extend gas service into unserved areas in Nassau and Okeechobee Counties. Subsequently, FPUC and Peoples recognized that a territorial dispute was imminent as a result of their planned expansions of gas service to portions of Nassau County. Peoples had entered into a transportation agreement with RockTenn CP (RockTenn), the owner and operator of a large paper mill on the northern tip of Amelia Island in Nassau County in October 2011. FPUC had obtained commitments from over 200 potential commercial customers to take gas service from the proposed FPUC distribution system expansions in Nassau County. FPUC and Peoples entered into negotiations in late 2011 in an effort to avoid delayed implementation of the expansion plans of both FPUC and Peoples. A January 26, 2012 petition was filed requesting approval of a territorial agreement between Peoples and FPUC. Accompanying the petition was an associated gas transportation agreement between Peoples and PPC.

Attachment A to this Order includes the Nassau-Duval County Territorial Agreement, as well as an associated map depicting the service territories of Peoples and FPUC. Attachment B to this Order is a map depicting the various pipeline construction segments discussed herein.

The parties requested that we consolidate our decisions in Docket Nos. 110271-GU and Docket No. 110277-GU. We find that such administrative consolidation will permit a more complete understanding of the jointly developed plan for the provision of natural gas service to residents of Nassau County. This Order addresses the territorial agreement, the tariff modification, and the two transportation service agreements. We have jurisdiction over these matters pursuant to Section 366.03, 366.04, 366.05, and 366.06, and 368.105, F.S.

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### Territorial Agreement

As disclosed in the joint petition, both FPUC and Peoples have been independently pursuing plans to extend their respective distribution systems to provide service to customers in Nassau County. Peoples provides natural gas service to approximately 20,000 customers in Duval County and one customer in Nassau County. Peoples had recently entered into a transportation agreement with RockTenn, the owner of a large paper mill on the northern tip of Amelia Island in Nassau County and FPUC had obtained commitments from over 200 potential customers to take gas service from the proposed FPUC distribution system expansions in Nassau County. When Peoples and FPUC became aware that a territorial dispute was imminent, they entered into negotiations to address the provision of service in Nassau and Duval Counties. As a result of those negotiations, Peoples and FPUC seek our approval of the January 24, 2012 Nassau-Duval County Territorial Agreement (the Nassau-Duval Agreement) that specifically defines their respective territorial service areas in both Nassau and Duval Counties, pursuant to Section 366.04(3)(a), F.S. This was considered necessary because of Peoples' existing presence in Duval County, the close proximity of Duval County to Nassau County, and the fact that both Peoples and FPUC would be serving customers in Nassau County.

The Nassau-Duval Agreement provides that Peoples' service area shall be (i) the RockTenn Facility (and any expansions thereof), (ii) Peoples' existing customer identified in the agreement, and (iii) all of Duval County; FPUC's service area shall be all of Nassau County except those areas of the county reserved to Peoples by the agreement. Neither party currently has any customers in the service area reserved by the other party by the agreement and the agreement provides for no transfers of customers or facilities between the parties. Further, the agreement provides that it would enable as many persons and businesses in Nassau County as possible to receive economical and reliable natural gas service, avoid any territorial dispute between Peoples and FPUC which would inevitably delay the provision of natural gas service by either of the parties, and enable the parties to avoid any unnecessary duplication of facilities.

The Nassau-Duval Agreement will become effective on the date that our order approving it becomes final and effective, and will continue in effect until termination or modification is mutually agreed upon by the parties and approved by us, or until termination or modification is mandated by a governmental entity or court with appropriate jurisdiction. Also, prior to the second anniversary of its effective date, and no more than every fifth anniversary thereafter, the Nassau-Duval Agreement requires the parties to meet and review the status of the agreement and submit a joint status report.

### FPUC Tariff Modifications

In its petition, FPUC indicated that it had received sufficient interest from potential natural gas customers in both Nassau and Okeechobee Counties to provide economic justification for extending service into those areas. FPUC indicated that for Nassau County it has received executed agreements from over 200 commercial customers. Also, a market study indicated that within the next three years, FPUC believes that over 1,500 new housing starts will



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occur and new commercial building is expected to double from current construction levels. FPUC projects that approximately 400 residential customers and 240 commercial and industrial customers will be served by the end of year five. Over the initial twenty year horizon, FPUC expects to serve a minimum of 2,500 residential customers and 450 commercial and industrial customers in Nassau County. FPUC indicated that the economic viability of providing service into unserved areas is further enhanced with the proposed transportation service agreement with PPC, as discussed herein, and expects to start providing natural gas service to customers in Nassau County by mid November 2012.

For Okeechobee County, FPUC noted in its petition that no other distribution company serves the area. Based on customer growth forecasts, FPUC projects that approximately 50 residential customers and 100 commercial customers will be served by the end of year five. Over a twenty year horizon, FPUC expects to serve a minimum of 750 residential customers and 150 commercial and industrial customers. In order to provide service to Okeechobee County, FPUC plans to interconnect with the Florida Gas Transmission interstate pipeline system which runs about three miles north of the City of Okeechobee. FPUC will construct a city gate station at the interconnection point and construct a 6-inch distribution main south into the City of Okeechobee. FPUC has identified the location of approximately 90 commercial customers located in or near the city limits and has designed distribution facilities capable of providing service to each of these customers. FPUC currently has no firm contracts for service in the area.

Pursuant to Section 366.04(3)(a), F.S., we have jurisdiction to approve territorial agreements between and among natural gas utilities. Pursuant to Rule 25-7.0471(2), F.A.C., in approving territorial agreements, we may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of natural gas service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless we determine that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

It appears that the Nassau-Duval County Territorial Agreement proposed by Peoples and FPUC eliminates existing or potential uneconomic duplication of facilities, and does not cause a decrease in the reliability of natural gas service to existing or future ratepayers. Therefore, we find that the Joint Petition for the Territorial Agreement in Nassau and Duval Counties between Peoples and FPUC is in the public interest and shall be approved, pursuant to Section 366.04(3)(a), F.S.

FPUC's tariff modifications reflecting its extension of service into unserved areas in Nassau and Okeechobee Counties are appropriate and shall be approved. We find that the addition of Okeechobee County to the proposed tariff's description of the territory served only represents a notice from FPUC that it intends to provide service in that area. Our approval of the proposed tariff does not convey any exclusive territorial rights to FPUC for that county, nor does it preclude another utility from challenging FPUC's right to serve Okeechobee County under Section 366.04(3), F.S. and Rule 25-6.0441, F.A.C., when service is requested in the future.

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Revised Transportation Service Agreement between FPUC and PPC

On September 19, 2011, PPC filed a petition for approval of a transportation service agreement with FPUC to enable FPUC to serve Nassau County. As noted previously, subsequent to the original filing, concern about a potential territorial dispute in Nassau County led to additional negotiations among Peoples, FPUC and PPC. The original agreement was therefore modified reflecting the negotiations that included Peoples. On February 8, 2012, PPC filed a petition for approval of an amended and revised transportation service agreement with FPUC to be effective February 1, 2012. Under the revised agreement, FPUC will pay PPC for the transportation of gas from the FGT/Peoples interconnection through Peoples' system and PPC's portion of the Fernandina Beach Line to points of delivery to FPUC in Nassau County. FPUC's payments to PPC are proposed for recovery through the Purchased Gas Adjustment (PGA).

To establish context, we first review PPC's regulatory framework. PPC is an intrastate natural gas transmission company subject to our jurisdiction under Chapter 368.101, F.S. PPC is a subsidiary of Chesapeake Utilities Corporation (Chesapeake). In Order No. PSC-07-1012-TRF-GP,<sup>1</sup> PPC received approval of an intrastate gas pipeline tariff that allows PPC to construct and operate intrastate pipeline facilities and to actively pursue transportation agreements with gas customers. PPC provides transportation service only, and does not engage in the sale of natural gas. The tariff includes the general terms, conditions, and rules under which PPC can operate.

Pursuant to Order No. PSC-07-1012-TRF-GP and PPC's approved tariff, PPC is allowed to enter into certain pipeline projects without our approval, pursuant to negotiated contracts. PPC's tariff does not include rates and charges, as those would be negotiated individually based on market conditions and the specific needs of each customer pursuant to Section 368.105(3), F.S. Contracts between affiliated companies, however, must be specifically approved by us prior to implementation.

FPUC's discussions with potential intrastate pipeline providers, including PPC, began in 2008. Following the merger between Chesapeake and FPUC in October 2009, both PPC and FPUC are now subsidiaries of Chesapeake. PPC therefore is required to seek our approval of the revised agreement with FPUC, consistent with PPC's tariff Sheet 12, Section 4(d).

FPUC considered several options to serve new load in Nassau County. Historically, interstate pipelines such as FGT have made investments in physical extensions of transmission laterals to a local distribution company's growth areas. FPUC stated that it had discussions with FGT and Southern Natural Gas Company, LLC (SONAT). Both FGT and SONAT operate interstate transmission facilities close to Nassau County. However, FPUC stated that SONAT was not interested in the project and the FGT cost estimate was not a viable economic option.

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<sup>1</sup> Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, Docket No. 070570-GP, In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.

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FPUC also reviewed its existing tariff provisions for funding expansion. The primary mechanism is the Maximum Allowable Construction Cost (MACC). The formula under this tariff provision showed that it was cost effective for FPUC to extend its facilities, based on the expected load and associated revenues. However, FPUC determined that PPC's proposal was the best overall option. In addition, the PPC option allows for FPUC to grow into pipeline capacity over time, keeping initial rates lower than they would otherwise be if FPUC had to contract for a greater amount of capacity now, or run the risk of such capacity not being available for growth later. Connection to Peoples through PPC would also allow multiple interstate pipeline connections for FPUC to provide greater reliability and flexibility.

PPC states in the amended petition that the revised agreement was developed through an "arm's length" transaction. FPUC issued a request for proposal (RFP) to all potential entities that could provide a valid proposal for the Nassau County project. FPUC states that it evaluated the terms and pricing under each proposal received, and PPC was awarded the original contract over other competitive bidders. Subsequently, further negotiations took place which included Peoples as well as PPC, resulting in the revised agreement filed on February 8, 2012. FPUC provided an evaluation of the bid responses, which indicates the PPC was ranked No. 1.<sup>2</sup> FPUC evaluated the proposals based on several criteria such as cost, route, in-service date, and capacity. PPC also provided information in response to our data request showing that the revised agreement results in lower overall costs to FPUC when compared to the original agreement filed in September 2011.<sup>3</sup>

The charges to FPUC under the revised agreement includes costs associated with: (1) the transportation charges PPC will pay to Peoples for Peoples' new investments discussed herein; (2) PPC's 46.46 percent pro-rata share of the new Fernandina Beach Line; and (3) PPC's cost to construct two wholly-owned laterals connected to the Fernandina Beach Line to serve FPUC in Nassau County. The Fernandina Beach Line is the orange line shown on the map in Attachment B.

FPUC is proposing to recover the payments to PPC under the revised agreement through its PGA mechanism consistent with other gas transmission pipeline costs incurred by FPUC. We note that in the annual PGA docket we do not set an actual factor, but a PGA cap. FPUC provided information showing that the impact of the revised agreement on the PGA cap will be minor (increase of less than 3 cents on the 2013 cap), and in future years the cap is projected to decrease as a result of the revised agreement, as a result of new customers in Nassau County.

FPUC conducted a detailed market study of the Nassau County area which shows significant potential for natural gas usage, and it already has signed commitments from over 200 commercial customers in Nassau County to convert to natural gas service. Many of these customers are currently served by propane and switching to natural gas would result in a significant cost savings. FPUC explained that it will recover its construction costs of the Nassau County distribution system through revenues generated by its tariff rates charges to the

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<sup>2</sup> The response is in Confidential Document No. 01463-12.

<sup>3</sup> The response is in Confidential Document No. 01466-12.

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customers. We reviewed the cost estimates contained in the confidential documents and find the revised agreement between FPUC and PPC is prudent and shall be approved.

Gas Transportation Agreement between Peoples and PPC

To support the transportation agreement between FPUC and PPC discussed herein, PPC entered into an agreement with Peoples which allows for the transportation of gas by PPC across Peoples' system. The agreement requires that Peoples install the gas distribution facilities and equipment required to provide the transportation service. Because Peoples' existing wholesale sales tariff would not allow adequate recovery of the investment necessary to support Peoples' transportation of gas for PPC, Peoples and PPC entered into this agreement. The agreement allows for a fixed monthly charge for service similar to the capacity reservation charge paid to a Federal Energy Regulatory Commission (FERC) regulated interstate pipeline for transportation service. The charge is designed to recover Peoples' cost of the investment. We approved a similar arrangement between Peoples and the Florida Division of Chesapeake Utilities.<sup>4</sup> The agreement was entered into on January 24, 2012 and has a 15-year initial term. Peoples will begin to recover its investment for the extension of facilities upon the in-service date of the facilities.

The agreement provides for the receipt of gas by Peoples from FPUC at Peoples' interconnection(s) with FGT (receipt points), and the transport of that gas by PPC over Peoples' system to the interconnect with the Fernandina Beach Line at the Nassau/Duval county line (delivery point). At that point, the gas would be transported by PPC through the Fernandina Beach Line which is jointly owned by Peoples and PPC. PPC would then construct laterals off the Fernandina Beach Line to interconnect with FPUC's distribution system.

Peoples currently has four interconnections with FGT and two with Southern Natural Gas (SNG) west of Jacksonville. Thus, under the joint petition, no new interconnections with interstate pipelines will be required in order to bring natural gas service to Nassau County. Peoples and FPUC signed a capacity release agreement which allows Peoples to make a temporary release of its interstate pipeline transportation capacity on FGT to FPUC. This release allows FPUC to transport gas on the interstate pipeline for delivery to Peoples' interconnect point(s). The capacity release agreement itself does not require our approval, and may result in savings to Peoples' customers, because any reduction in capacity costs will flow through the PGA to Peoples' customers. The amount of the savings will depend on the quantity of capacity released to FPUC.

The agreement provides for Peoples' recovery of the following costs, including a return: (1) Peoples' replacement of 2.25 miles of Peoples' existing 12-inch pipeline with 2.25 miles of 20-inch pipeline (white line on the map in Attachment B); and (2) Peoples' incremental construction costs to build a 16.2 mile 12-inch line instead of an 8-inch line from northern Duval county to the Nassau/Duval County line (yellow line).

<sup>4</sup> Order No. PSC-07-0944-PAA-GU, issued in Docket No. 070399-GU, In re: Joint Petition for approval of territorial agreement in Pasco County, master territorial agreement, and gas transportation agreement, by Peoples Gas System and Florida Division of Chesapeake Utilities Corporation.

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Based on a contractual arrangement with RockTenn, Peoples had originally planned to construct an 8-inch line originating at its existing 12-inch line in the North Jacksonville area and terminating at the RockTenn facility. Under the revised agreement, the original 33.1 mile extension will be divided into two segments. Instead of the originally planned 8-inch line from North Jacksonville to RockTenn, Peoples will construct a 16.2 mile 12-inch line from North Jacksonville to the Nassau/Duval county line. Peoples and PPC will then jointly construct and own the 16.9 mile segment from the county line to connect with Peoples facilities serving RockTenn (Fernandina Beach Line). PPC will then construct laterals to serve FPUC off this Fernandina Line extension.

RockTenn is responsible for the construction costs associated with the originally planned 33.1 mile 8-inch pipeline extension from Peoples' existing facilities in North Jacksonville to the RockTenn facility. PPC will be responsible for the incremental cost for enlarging the 16.2 mile extension from North Jacksonville to the county line from an 8-inch line to a 12-inch line.<sup>5</sup> The cost of the Fernandina Line extension will be shared by PPC (46.46 percent) and Peoples (54.54 percent). PPC will recover from FPUC, under the revised transportation service agreement discussed above, the 2.25 mile upgrade (white line), the incremental sizing of the 16.2 mile line extension (yellow line), and PPC's share of the Fernandina Beach Line (orange line). The total cost for the projects was provided under confidentiality orders. Based on responses to the information provided in the discovery, the proposed reservation charge contained in the PPC agreement is designed to recover the cost to Peoples for the additional facilities necessary for PPC to provide service to FPUC over a 15 year period.<sup>6</sup>

Peoples states in the joint petition that Peoples is capable of providing service to PPC under the agreement without adversely impacting existing Peoples' customers or affecting Peoples' ability to serve additional customers on its distribution system. We believe that between rate cases the agreement will have no impact on Peoples' base rates, and in a rate case such investment is typically treated as a direct assignment facility and removed from the cost of service study.

We have reviewed the agreement and the information provided by Peoples and PPC, and find that the agreement is reasonable and cost based, and shall therefore be approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the territorial agreement between Florida Public Utilities Company and Peoples Gas System is hereby approved. It is further

ORDERED that Florida Public Utilities Company's tariff modifications are hereby approved. It is further

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<sup>5</sup> The total costs were provided under Confidential Document No. 01546-12, p5.

<sup>6</sup> Ibid., pp. 11-22

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ORDERED that the tariff modifications become effective on April 10, 2012. It is further

ORDERED that the revised agreement between Florida Public Utilities Company and Peninsula Pipeline Company is hereby approved. It is further

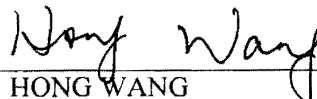
ORDERED that the gas transportation agreement between Peoples Gas System and Peninsula Pipeline Company is hereby approved. It is further

ORDERED that the agreements approved herein are to become effective on the date this Order becomes final and effective. It is further

ORDERED that the provisions of this Order issued as proposed agency action shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 9th day of May, 2012.



HONG WANG  
Chief Deputy Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

As identified in the body of this order, our action, except for approving tariff modifications, is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 30, 2012. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 30, 2012. In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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NASSAU-DUVAL COUNTY TERRITORIAL AGREEMENT

THIS NASSAU-DUVAL COUNTY TERRITORIAL AGREEMENT (this "Agreement") is made and entered into this 24<sup>th</sup> day of January, 2012, by and between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("PGS"), and Florida Public Utilities Company, a Florida corporation ("FPUC"). PGS and FPUC are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

**WITNESSETH:**

WHEREAS, FPUC and PGS are natural gas utilities subject to the regulatory jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, *Florida Statutes*; and

WHEREAS, PGS has for many years provided natural gas service to approximately 20,000 customers in Duval County, Florida, and currently has facilities for the provision of such service to one customer in Nassau County, Florida;

WHEREAS, as pertinent to this Agreement, both FPUC and PGS have been independently pursuing their intentions to extend their respective distribution systems to provide service to customers in Nassau County;

WHEREAS, PGS became aware of FPUC's intentions through FPUC's filings with the Commission of a petition and testimony in Docket No. 11003-GU for approval of recovery of the costs of a new contract with Peninsula Pipeline Company, Inc., an affiliate of FPUC ("PPC"), of a petition in Docket No. 110271-GU for approval of a PPC-FPUC transportation service agreement, and of a petition in Docket No. 110277-GU for approval of new tariff sheets reflecting the holding out of natural gas service by FPUC in Nassau County; and

WHEREAS, PGS has entered into agreements for the temporary release of interstate pipeline capacity and gas transportation with RockTenn CP, LLC, the owner and operator of a paper products mill at the north end of Amelia Island in Fernandina Beach, Nassau County (the "RockTenn Facility"); and

WHEREAS, independent pursuit by each of the parties of their respective Nassau County expansion plans would have inevitably led to a territorial dispute between the parties; and

WHEREAS PGS and FPUC have entered into agreements which will facilitate the provision of natural gas service to customers in Nassau County; and

WHEREAS, in order to enable as many persons and businesses as possible within Duval and Nassau Counties to receive economical and reliable natural gas service, PGS and FPUC have entered into this Agreement to avoid any unnecessary or uneconomic duplication of natural gas facilities which would be contrary to Commission policies and detrimental to the interests of their respective customers and the general public, and to more rapidly expand the availability of natural gas service



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to potential customers in Nassau County by avoiding a lengthy and expensive territorial dispute, and

WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities

NOW, THEREFORE, in fulfillment of the purposes aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties, subject to and upon the terms and conditions herein set forth, agree as follows:

**Section 1.**

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below:

"FPUC Service Area" means all of Nassau County except those areas thereof included in the PGS Service Area.

"PGS Service Area" means (i) Duval County, (ii) the RockTenn Facility and any expansion thereof by RockTenn CP, L.L.C., its successors or assigns, and (iii) the premises located at 9559 Ford Road, Bryceville, Nassau County, Florida 32009.

"RockTenn Facility" means the paper products mill at the north end of Amelia Island in Fernandina Beach, Nassau County, owned and operated by RockTenn CP, L.L.C.

**Section 2.**

(a) The service area reserved hereunder for PGS shall consist of the PGS Service Area. As between the parties, PGS shall have the authority to serve all customers within said area.

(b) The service area reserved hereunder for FPUC shall consist of the FPUC Service Area. As between the parties, FPUC shall have the authority to serve all customers within said area.

(c) Except as specifically otherwise provided herein, each party agrees that it will not provide or offer to provide natural gas service to existing or potential customers within the service area herein reserved to the other party.

(d) Except as specifically otherwise provided herein, nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are now or which may in the future be located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the general office level of the parties. No such facilities shall be used by one party to provide natural gas service to customers located in the service area reserved hereunder to the other party.

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(c) This Agreement shall have no effect on the boundaries of the respective service areas of the parties hereto as the same may now or hereafter exist except as specifically provided herein.

**Section 3.** Notwithstanding the provisions of Section 2, either party may request that the other party provide natural gas service to potential customers within the service area reserved hereunder to the requesting party. The party receiving the request may elect to provide service to such potential customers in its sole discretion subject to the approval of the Commission.

**Section 4.** If a party determines, in a specific instance, that good engineering practices or economic constraints on that party indicate that any small service area and/or future natural gas customer within that party's service area under Section 2 hereof should not be served by that party, such party shall notify the other party and request the other party to serve such small service area and/or potential customer. If the parties reach agreement thereon, the parties shall jointly and expeditiously seek approval of the Commission for modification of this Agreement in order to permit the appropriate party to provide such service to such small service area and/or future natural gas customer.

**Section 5.** This Agreement, after execution by the parties, shall be submitted jointly by the parties to the Commission for approval. It shall become effective on the date that a Commission order approving it becomes final and effective (the "Effective Date"), and continue in effect until termination or modification shall be mutually agreed upon by the parties and approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction. In the event that the Commission declines to approve this Agreement, the same shall be of no force or effect, and neither party shall have any claim against the other arising out of this Agreement.

**Section 6.** Prior to the second anniversary of the Effective Date and no more than every fifth anniversary thereafter, the Parties shall meet to review the status of this Agreement and shall submit a joint status report to the Commission (or any successor agency with power to consider approval or modification hereof).

**Section 7.** As soon as practicable after the Effective Date, each party agrees to file any revisions to its tariffs on file with the Commission which may be required as a result of the Commission's approval of this Agreement, and shall provide a copy of any such tariff revisions to the other party upon their filing with the Commission.

**Section 8.** The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

**Section 9.** This Agreement shall become void and unenforceable if the Commission's jurisdiction with respect to approval and supervision of territorial agreements between natural gas utilities is terminated by statute or ruled invalid by a court of final appellate jurisdiction.

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Section 10. This Agreement shall be governed by the laws of the State of Florida.

Section 11. This Agreement does not provide for the transfer of any existing customers or facilities.

Section 12. All notices under this Agreement shall be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand delivery, to the parties at the addresses and facsimile numbers set forth below:

To PGS:

President  
Peoples Gas System  
702 N. Franklin Street  
Tampa, Florida 33602  
Phone: (813) 228-4111  
facsimile: (813) 228-4643

To FPUC:

Vice President-Business Development and Gas  
Operations  
Florida Public Utilities Company  
1015 6<sup>th</sup> Street, N.W.  
Winter Haven, Florida 33881  
Phone: (863) 293-2125

with a copy to:

Peoples Gas System  
Attention: General Counsel  
702 N. Franklin Street  
Tampa, Florida 33602  
Phone: (813) 228-4111  
Facsimile: (813) 228-1328

Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply: Notices sent by facsimile shall be deemed to have been 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, the receipt is after 5:00 p.m. on a business day, then such facsimile shall be deemed to have been received on the next succeeding business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving party. Notice by first class mail shall be deemed to have been received on the third business day following deposit in the mail. A party may from time to time change the address to which notice hereunder is to be sent by providing notice to the other party pursuant to this section.

Section 13. This Agreement, on and after the Effective Date, shall be binding in accordance with its terms upon the parties hereto and their respective successors and assigns with regard to the retail distribution of natural gas. This Agreement shall not affect or bind affiliates or subsidiaries of PGS and FPUC.


ORDER NO. PSC-12-0230-PAA-GU  
DOCKET NOS. 110271-GU, 110277-GU  
PAGE 15

Attachment A  
Page 5 of 6


DOCKET NO. 110277-GU  
EXHIBIT NO. 2  
FILED: JANUARY 26, 2012  
PAGE 6 OF 5

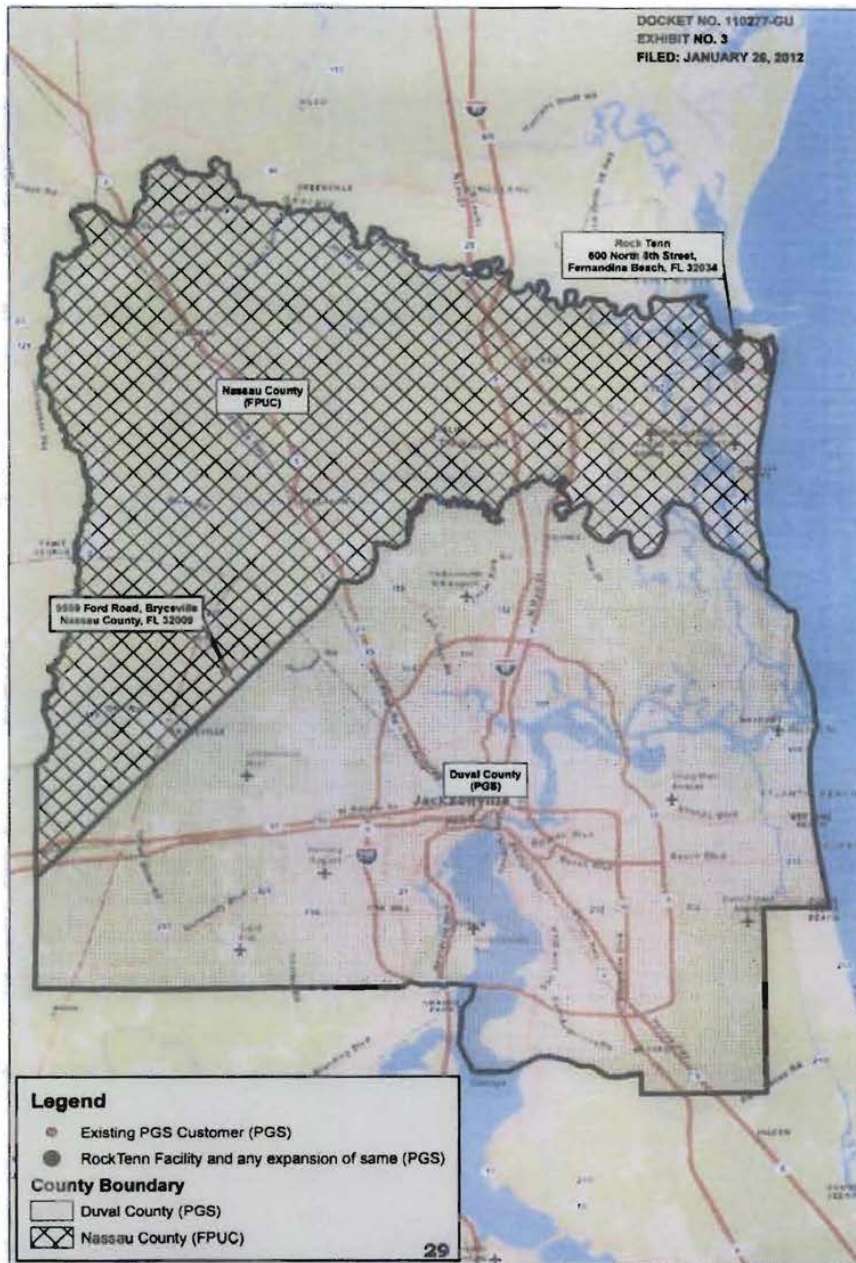
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

PEOPLES GAS SYSTEM, a division of  
Tampa Electric Company

By:   
Bruce Narzissenfeld  
Vice President - Fuels

FLORIDA PUBLIC UTILITIES COMPANY

By:   
Jeffrey Householder  
President





**PALM COAST  
NATURAL GAS FRANCHISE**

THIS AGREEMENT is made this 18<sup>th</sup> day of November, 2008, by and between the **CITY OF PALM COAST**, a Florida municipal corporation, (hereinafter referred to as the "City"), whose address is 160 Cypress Point Parkway, Palm Coast, FL 32164, and **PEOPLES GAS SYSTEM**, a division of Tampa Electric Company, a Florida corporation, (hereinafter referred to as the "Company"), whose address is 702 N. Franklin Street, Tampa, FL 33602.

***WITNESSETH:***

**WHEREAS**, Peoples Gas System and the City of Palm Coast, Florida (City) desire to enter into a franchise agreement for a period of twenty (20) years commencing from the date provided herein; and

**WHEREAS**, the City Council finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System; and

**WHEREAS**, the City is authorized to grant one or more non-exclusive franchises to construct, reconstruct, operate, and maintain a natural gas system within the City; and

**WHEREAS**, the City finds it in the public interest to make available within its corporate limits high-quality and reliable natural gas service; and

**WHEREAS**, the City finds it in the public interest to retain control over the use of public rights-of-way by providers of natural gas to prohibit interference with the public convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right-of-way space, and to protect the public investment in right-of-way property; and

**WHEREAS**, the City Council of the City of Palm Coast finds that the granting of a non-exclusive natural gas franchise is the best means of assuring that the above-described interests of the City are promoted and maintained; and

**WHEREAS**, the City, after public hearings and due evaluations, has determined that it is in the best interests of the public health, safety and welfare of the City and its residents to approve this Gas Franchise Agreement with the Peoples Gas System.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration each to the other provided, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**SECTION 1: RECITALS**

Each and all of the foregoing recitals are hereby incorporated herein and acknowledged to be true and correct. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Franchise Agreement.

**SECTION 2: SHORT TITLE**

This Agreement shall be known and may be cited as "Palm Coast Natural Gas Franchise."

**SECTION 3: PURPOSE**

The City finds that the development of a natural gas distribution system has the potential of having great benefit and impact upon the people of the City. The City further finds that the public convenience, safety and general welfare can best be served by exercising regulatory powers which are vested in the City or such persons as the City shall designate.

**SECTION 4: DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the meaning given herein.

- A. "**Customer**" shall mean any person, firm, public or private corporation, or governmental agency served by the Company within the corporate limits of the City.
- B. "**City**" shall mean the City of Palm Coast, Flagler County, Florida, its successor and assigns.
- C. "**Company**" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "**Distribution System**" shall mean any and all transmission pipe lines, main pipe lines and service pipe lines, together with all necessary and desirable appurtenances, including all traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and facilities, that are situated within the corporate limits of the City and are used or useful in the sale, distribution or transportation of Natural Gas for the public and private use of Customers.
- E. "**Gas**" or "**Natural Gas**" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas") or any other fuel that is typically delivered by truck and stored in tanks.
- F. "**Gross Revenues**" shall mean all revenues (as defined by the Florida Public Service



Commission) received by the Company from any Customer from the sale, distribution or transportation of Gas.

G. **"Franchise"** or **"Franchise Agreement"** shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 23 below.

H. **"FPSC"** shall mean the Florida Public Service Commission or any successor agency.

**SECTION 5: GRANT**

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all of the public streets, alleys, highways, waterways, bridges, easements and other public places of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, to the extent of the City's ownership, a Distribution System subject to the terms and conditions herein contained. All rights granted for the construction, reconstruction, maintenance, and operation of the Natural Gas Distribution System shall be subject to the rights and obligations contained in this Franchise, including, but not limited to, Sections 9(C) and 12.

**SECTION 6: TERM**

Except as provided in Section 18, the Franchise hereby granted shall be for a period of twenty (20) years from the effective date of this Agreement.

**SECTION 7: ASSIGNMENT**

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City Council of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City.

B. Notwithstanding the foregoing, the Company may lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger and consolidation with, or transfer to, any other corporation engaged in similar business (including any affiliate or subsidiary of the Company), or pledge or mortgage such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company without the express consent of the City Council of the City. The Company shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Company.

**SECTION 8: CITY COVENANT**

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

**SECTION 9: USE OF PUBLIC RIGHTS-OF-WAY**

A. The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of said streets, alleys, avenues, easements, and public rights of way, and said streets shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the streets, alleys, or other public rights of way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. The Company shall, with due diligence and dispatch, place such streets, easements or public rights of way in as good condition and repair as before such excavation or disturbance was made, and in default thereof the City may make such repairs and charge the reasonable cost thereof to the Company and collect the same from it.

B. To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish; provided, however, the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

C. **City's Right to Perform Public Works.** Nothing in this Agreement shall be in hindrance to the right of the City or any governmental authority to perform or carry on, directly or indirectly, any public works or public improvements of any description. Should the Natural Gas Distribution System in any way interfere with the construction, maintenance or repair of such public works or public improvements, the Company shall, at its own cost and expense, protect or relocate its Natural Gas Distribution System, or part thereof, as reasonably directed by the City officials or any governmental authority.

**SECTION 10: MAINTENANCE**

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission or other regulatory body having jurisdiction over the Company.

**SECTION 11: LAYING OF PIPE**

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations, laws, and specifications contained in City permits.

**SECTION 12: CONSTRUCTION WORK**

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any street, alley, public way, easement, place, or other public rights of way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, or other public rights of way, or in the location or manner of construction of any water pipes, electric conduits, sewers, cables or other underground structure, it shall be deemed necessary by the City to alter, change, adapt or conform any portion of the Distribution System of the Company hereto, such alterations, or changes, shall be made by the Company as ordered in writing by the City, without claim for reimbursement. If the City shall require the Company to adapt or conform any portion of its Distribution System or in any way to alter, relocate or change its property to enable any other person or entity other than the City to use said street, alley, easement, highway or public rights-of-way of the City, as part of its permitting or approval process, the City shall require the person or entity desiring or occasioning such alteration, relocation or change to reimburse the Company for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of the Company's facilities. The Company further agrees that it will not intentionally interfere with, change, or take any action that might impact any water pipes, drains, sewers or cables of said City unless it has received specific permission from the City or its duly authorized representative.

**SECTION 13: FRANCHISE FEE**

A. Within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the City and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale, distribution or transportation of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

B. **Franchise Fees in Addition to Other Taxes or Payments.** Payment of the Franchise Fee made by the Company to the City shall not be considered in the nature of a tax, but shall be in addition to any and all taxes of general applicability which are now or may be required hereafter to be paid by any Federal, State, or local law.

C. **Acceptance by the City.** Subject to applicable law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim that the City may have for further or additional sums payable as a Franchise Fee under this Agreement or for the performance of any other obligation of the Company.

D. **Failure to Make Required Payment.** In the event that any Franchise Fee or recomputed amount is not made on or before the dates specified herein, the Company shall pay as additional compensation an interest charge, computed from such due date, at an annualized rate equal to the commercial prime interest rate of the City's primary depository bank during the period that such unpaid amount is owed.

**SECTION 14: FRANCHISE PARITY**

A. If, during the term of this Franchise Agreement, the City, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters ("Alternate Gas Providers") the right, privilege or franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public rights of way of the City, for the purpose of supplying or delivering Natural Gas to customers located within the corporate limits of the City or receiving such gas from a person other than the Company within such corporate limits, and imposes a franchise compensation obligation or an equivalent on such Alternate Gas Provider for any customer or class of customers that is less than that imposed with respect to the same Customer or class of Customers under this Franchise Agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of customers shall be reduced under this Franchise Agreement so that the franchise compensation paid hereunder for such Customer class is no greater than the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance applicable to it, when compared on a dollars-per-therm basis. In the event that the City determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Company's obligation to pay a franchise fee under this Franchise Agreement with respect to revenues derived from the provision of service by the Company to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

B. In the event the Company enters into a franchise or other agreement with Flagler County or any other city within Flagler County which provides to the County or other city more favorable franchise fees than provided to the City under this Franchise, the City and the Company mutually agree to renegotiate the Franchise Fee of this Franchise. This Franchise shall remain in full force and effect until any negotiated amendments have been duly approved by both the City and the Company, however, if the Company fails to negotiate said amendments in good faith and in a timely manner, the City shall have the right to terminate this Franchise pursuant to Section 18 herein.

**SECTION 15: ACCOUNTS AND RECORDS**

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida, and be open at all reasonable times for inspection by the duly authorized representatives of the City. Upon request by the City, or its designated representative, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based; provided, however, that no audit of the Company's records relating to Gross Revenues shall take place later than thirty-six (36) months following the close of each of the Company's fiscal years. Access to the aforementioned records shall not be denied by the Company on the basis that said records contain "proprietary" information, unless Company takes appropriate steps to ensure applicable law exempts said records. Notwithstanding the foregoing, no information specific to an individual customer shall be made available to the City unless the City can satisfy the Company that such information is necessary for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. Audits that uncover a discrepancy in Franchise Fees during one year of \$5000 or more shall be at the expense of the Company. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) Days of notice by the City, unless the Company disputes the results of the audit. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

No less than thirty (30) days prior to the effective date of a change in the City limits, whether by addition, annexation, or consolidation, the City shall deliver to the Company written notice of such occurrence, and include in such notice a description of the affected territory.

**SECTION 16: INSURANCE**

A. During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies covering Company's activities within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$2,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$2,000,000.00 for damage to property resulting from any one accident, and include coverage for comprehensive, premises operations, explosion and collapse hazard, underground hazard, products completed operations hazard, contractual insurance, broad form property damage, and personal injury. The Company shall produce insurance certificates evidencing automobile liability coverage for owned, non-owned or rented vehicles, in the minimum sum of \$2,000,000 single limit liability for bodily injury or death, and \$2,000,000 for property damage; and evidencing worker's compensation in the minimum amount required by Florida statute. Company shall obtain a

waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by the policies described above. The minimum sums for all of the above coverages shall remain in full force and shall be undiminished during the Term of this Franchise. The City shall be named as an additional insured on the foregoing policies (except for worker's compensation) for liability arising out of this Franchise. To offset the effects of inflation, the City may, at the five year anniversary of the Effective Date, request in writing that the Company adjust the coverage limitations contained in this Section 16 to reflect amounts typically provided in franchises by similarly situated natural gas utilities, but not to exceed the percentage increase in the Consumer Price Index over the same period.

B. The Company may meet the policy requirements of this Section 16, in whole or in part, with self-insurance.

C. Every such insurance policy shall contain a provision whereby every insurer shall obligate itself to notify the City Clerk, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

#### **SECTION 17: INDEMNIFICATION**

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, caused by or arising out of and to the extent of the Company's negligent operation of the Distribution System or intentional acts within the City or failure to comply with any applicable federal, state or local law during the term of this franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof, **except** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, suits, actions, damages, expenditures, including attorney's fees, or causes of action arising out of injury, loss of life or damage to persons or property caused by or arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

#### **SECTION 18: TERMINATION BY CITY**

A material breach by the Company of any of the covenants, terms, and conditions hereof (including a failure to provide insurance in accordance with Section 16), or a material violation

of any orders or rulings of the FPSC relative to this Franchise, or the insolvency or bankruptcy of the Company, shall authorize and empower the City to declare a termination of this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the FPSC with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice or, in the event such cure reasonably requires a period of more than sixty (60) days, to present a plan, satisfactory to the City, acting reasonably, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the reasonable control of the Company shall not constitute grounds for termination. If by the end of the cure period the Company does not remedy the violation or convince the City Manager there is no violation, the City Manager shall schedule a public meeting of the City Council for purposes of addressing the alleged violation. The Council meeting shall be held within thirty (30) days from the expiration of the cure period. The City Manager shall promptly provide the Company written notice of the Council meeting. During the Council meeting, the City Manager, Company, and all interested parties shall have the right to be heard in person and through counsel, present evidence, and cross examine adverse witnesses. At the conclusion of the Council meeting, the Council may suspend or revoke the Franchise, if it determines that there are sufficient grounds which warrant such action; otherwise, the Franchise remains in full force and effect. The foregoing process shall not restrict the Company from pursuing its available remedies.

**SECTION 19: CHANGES IN PROVISIONS HEREOF**

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

**SECTION 20: MISCELLANEOUS PROVISIONS**

A. **No Joint Venture.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner, which would indicate any such relationship with the other.

B. **Notices.** All notices from the Company to the City pursuant to this Agreement shall be sent to: City Manager, City of Palm Coast, 160 Cypress Point Parkway, Palm Coast, Florida, 32164. All notices to the Company shall be sent to: Peoples Gas System, Vice-President of Operations, 702 N. Franklin St., Tampa, Florida 33602; with a copy to TECO Energy, Inc., General Counsel, 702 N. Franklin St., Tampa, Florida 33602. The names and addresses in this section may be unilaterally amended by either party at anytime by giving written notice to the other party.

C. **Attorney's Fees.** In the event of any litigation or arbitration arising out of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and court costs incurred in such action.

**SECTION 21: SEVERABILITY; CHANGE IN LAW**

A. If any section, part of a section, paragraph, sentence, or clause of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

B. Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

**SECTION 22: GOVERNING LAW**

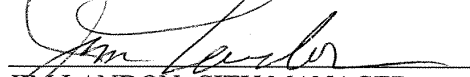
This franchise shall be governed by the laws of the State of Florida and applicable federal law.

**SECTION 23: EFFECTIVE DATE**

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

IN WITNESS WHEREOF, the parties have executed this agreement on the date indicated below their signature.

**CITY OF PALM COAST, FLORIDA**

  
\_\_\_\_\_  
JIM LANDON, CITY MANAGER

ATTEST:

  
\_\_\_\_\_  
CLARE M. HOENI, CITY CLERK

Date: 11/18/08





PEOPLES GAS SYSTEM, INC. v. SEBRING GAS SYSTEM, INC.  
FILED MAR 23, 2015  
DOCUMENT NO. 01623-15  
DOCKET NO. 150093-GU  
FPSC - COMMISSION CLERK  
STAFF'S SECOND REQUEST FOR  
PRODUCTION OF DOCUMENTS  
REQUEST NO. 4  
FILED: 08/17/2020

  
**MESSER CAPARELLO**  
Attorneys At Law  
*Strategically Positioned in Florida's Capital*

March 23, 2015

RECEIVED-PPSC  
15 MAR 23 PM 3:51  
COMMISSION  
CLERK

**BY HAND DELIVERY**

Ms. Carlotta S. Stauffer, Director  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

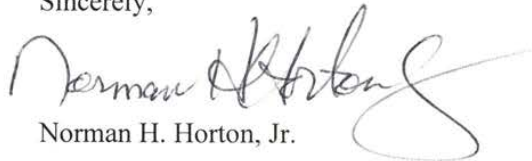
Dear Ms. Stauffer:

Enclosed for filing on behalf of Peoples Gas System and Sebring Gas System, Inc. are an original and 10 copies of a Joint Petition.

Please indicate receipt of these documents by stamping the enclosed extra copy of this letter.

Thank you for your assistance in this matter.

Sincerely,

  
Norman H. Horton, Jr.

NHH:amb  
Enclosures

cc: Mr. Jerry H. Melendy, Jr.  
Ansley Watson, Jr., Esq.

COM \_\_\_\_\_  
AFD \_\_\_\_\_  
APA \_\_\_\_\_  
ECO 5 \_\_\_\_\_  
ENG \_\_\_\_\_  
GCL 5 \_\_\_\_\_  
IDM \_\_\_\_\_  
TEL \_\_\_\_\_  
CLK \_\_\_\_\_

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint petition for approval of territorial agreement in Hardee County, by Peoples Gas System and Sebring Gas System, Inc. : DOCKET NO.  
: Submitted for Filing:  
: 3-23-15  
:

**JOINT PETITION**

Petitioners, Peoples Gas System ("Peoples") and Sebring Gas System, Inc. ("Sebring") (collectively, "Petitioners"), by their respective undersigned attorneys and pursuant to Section 366.04(3)(a), *Florida Statutes*, and Rule 25-7.0471, *Florida Administrative Code* ("F.A.C."), jointly file this petition for an order approving a territorial agreement between Petitioners in a portion of Hardee County located within and adjacent to the corporate limits of the City of Wauchula, said agreement being attached hereto as Exhibit A. In support of this Joint Petition, Petitioners state as follows:

1. The names and mailing addresses of the petitioners are:

|   |  |
|---|--|
| Peoples Gas System<br>P. O. Box 2562<br>Tampa, Florida 33601-2562 | Sebring Gas System, Inc.<br>3515 U.S. Highway 27 South<br>Sebring, Florida 33870 |
|---|--|

2. The names and mailing addresses of the persons authorized to receive notices and communications with respect to this petition are:

As to Peoples:

Ansley Watson, Jr., Esq.  
Andrew M. Brown, Esq.  
Ashley R. Kellgren, Esq.  
Macfarlane Ferguson & McMullen  
P. O. Box 1531  
Tampa, Florida 33601-1531

Paula K. Brown  
Peoples Gas System  
P. O. Box 111  
Tampa, Florida 33601-0111

Kandi M. Floyd  
Peoples Gas System  
P. O. Box 111  
Tampa, Florida 33601-0111

As to Sebring:

Norman H. Horton, Jr., Esq.  
Messer Capareello  
P. O. Box 15579  
Tallahassee, Florida 32317

Jerry H. Melendy, Jr.  
Sebring Gas System, Inc.  
3515 U.S. Highway 27 South  
Sebring, Florida 33870

3. Each petitioner owns and operates natural gas distribution facilities in Hardee County, and each is a natural gas utility subject to the Commission's jurisdiction under Section 366.04(3), *Florida Statutes*, for the purposes of resolving territorial disputes and approving territorial agreements.

**Background**

4. PGS provides natural gas service to customers in Hardee County, Florida. Peoples plans to continue expanding its distribution system in Hardee County and the surrounding area as provided in the extension of facilities policy contained in its tariff on file with the Commission. Sebring has, for many years, provided natural gas service to customers within and adjacent to the City of Sebring, Florida, and has recently obtained a franchise from the City of Wauchula. Sebring also plans to continue expanding its distribution system consistent with the demand for natural gas service within the areas in which Sebring operates.

5. Peoples provides gas transportation service to the supplier/gas marketer supplying natural gas to customers on Sebring's gas distribution system.

**Requested Relief**

6. The parties seek Commission approval of the Territorial Agreement attached hereto as Exhibit A. The agreement stipulates that approval by the Commission is a condition precedent to its effectiveness. Any future modification to the service areas described in the agreement must be reviewed and/or approved by the Commission.

7. Both Peoples and Sebring represent that approval and implementation of the Territorial Agreement will not cause a decrease in the availability or reliability of natural gas service from either of the Petitioners, or to the existing or future ratepayers of either of them,

and that the Commission's approval of the agreement would be consistent with the standards set forth in Section 366.04, *Florida Statutes*, and Rule 25-7.0471, *F.A.C.*

8. All terms and conditions pertaining to the Territorial Agreement, and the implementation thereof, are set forth in such agreement.

9. Absent the Commission's approval of the agreement, the plans of Peoples and Sebring for providing retail natural gas service in the portion of Hardee County covered by the agreement might well overlap. Petitioners submit that approval of the agreement by the Commission will assist in avoiding future uneconomic duplication of facilities by the parties, will expedite the handling of applications for service by future potential natural gas customers, and that the agreement is therefore in the public interest.

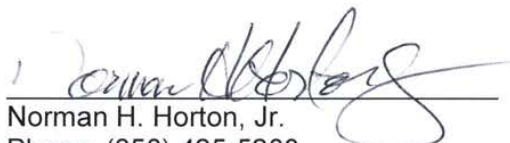
WHEREFORE, Peoples and Sebring respectfully request that the Commission enter its order approving the Territorial Agreement.

Respectfully submitted,



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E-mail: [aw@macfar.com](mailto:aw@macfar.com)  
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Attorneys for Peoples Gas System



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Attorneys for Sebring Gas System, Inc.

**EXHIBIT A**  
**TERRITORIAL AGREEMENT**

**TERRITORIAL AGREEMENT**

THIS TERRITORIAL AGREEMENT (this "Agreement") is made and entered into this 5th day of March, 2015, by and between **PGS Gas System, a division of Tampa Electric Company**, a Florida corporation ("PGS"), and **Sebring Gas System, Inc.**, a Florida corporation ("Sebring"). PGS and Sebring are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

**WITNESSETH:**

WHEREAS, each of PGS and Sebring is a natural gas public utility subject to the regulatory jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, *Florida Statutes*, including the Commission's jurisdiction to resolve territorial disputes and approve territorial agreements pursuant to Section 366.04(3), *Florida Statutes*; and

WHEREAS, as pertinent to this Agreement, both Sebring and PGS are presently providing natural gas ("gas") service to customers in portions of Hardee County, Florida; and

WHEREAS, Sebring has been granted a non-exclusive franchise by the City of Wauchula permitting Sebring to provide gas service to customers within the corporate limits of the city; and

WHEREAS, the parties desire to avoid future unnecessary and uneconomic duplication of gas distribution facilities in and around the City of Wauchula, which would be contrary to Commission policies and detrimental to the interests of their customers and the general public, and to expedite the handling of applications for service by future potential gas customers within the areas in and around the City; and

WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities.

NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties, subject to and upon the terms and conditions herein set forth, agree as follows:

**Section 1.**

(a) That area located within the corporate limits of the City of Wauchula and certain adjoining areas (excluding the premise located at 205 Hanchey Rd., Wauchula, Florida 33873, which shall, as between the parties, be deemed to be a service area of PGS) identified and more particularly described in Exhibit A to this Agreement shall, as between the parties, be deemed to be a service area of Sebring.

(b) Except as specifically otherwise provided herein, each party agrees that it will not provide or offer to provide gas service to existing or potential customers within the service area herein reserved to the other party.

(c) Except as specifically otherwise provided herein, nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are now or which may in the future be located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the general office level of the parties. No such facilities shall be used by PGS to provide natural gas service to customers located in the service area reserved hereunder to Sebring.

(d) This Agreement shall have no effect on the boundaries of the respective service areas of the parties hereto as the same may now or hereafter exist except as specifically provided herein.

**Section 2.** Notwithstanding the provisions of Section 1, Sebring may request that PGS provide natural gas service to potential customers within the service area reserved hereunder to Sebring. In the event of any such request, PGS may elect to provide service to such potential customers in its sole discretion subject to the approval of the Commission.

**Section 3.** If Sebring determines, in a specific instance, that good engineering practices or economic constraints indicate that a small service area and/or future natural gas customer within Sebring's service area under Section 1 hereof should not be served by Sebring, Sebring shall notify PGS and request that PGS serve such small service area and/or potential customer. If the parties reach agreement thereon, the parties shall jointly and expeditiously seek approval of the Commission for modification of this Agreement in order to permit PGS to provide such service to such small service area and/or future natural gas customer.

**Section 4.** This Agreement, after execution by the parties, shall be submitted jointly by the parties to the Commission for approval. It shall become effective on the date that a Commission order approving it becomes final and effective (the "Effective Date"), and continue in effect until termination or modification shall be mutually agreed upon by the parties and approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction. In the event that the Commission declines to approve this Agreement, the same shall be of no force or effect, and neither party shall have any claim against the other arising out of this Agreement.

**Section 5.** As soon as practicable after the Effective Date, each party agrees to file any revisions to its tariff on file with the Commission which may be required as a result of the Commission's approval of this Agreement, and shall provide a copy of any such tariff revisions to the other party upon the filing with the Commission of such revisions.

**Section 6.** The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

**Section 7.** This Agreement shall become void and unenforceable if the Commission's jurisdiction with respect to approval and supervision of territorial agreements between natural gas utilities is terminated by statute or ruled invalid by a court of final appellate jurisdiction.

**Section 8.** This Agreement shall be governed by the laws of the State of Florida.

**Section 9.** All notices under this Agreement shall be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand delivery, to



the parties at the addresses and facsimile numbers set forth below:

To PGS:

President  
Peoples Gas System  
702 N. Franklin Street  
Tampa, Florida 33602  
Phone: (813) 228-4111  
Facsimile: (813) 228-4811

To Sebring:

President  
Sebring Gas System  
3515 U.S. Highway 27 South  
Sebring, Florida 33870  
Phone: (863) 385-0194  
Facsimile: (863) 385-3423

Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Notices sent by facsimile shall be deemed to have been 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, the receipt is after 5:00 p.m. on a business day, then such facsimile shall be deemed to have been received on the next succeeding business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving party. Notice by first class mail shall be deemed to have been received on the third business day following deposit in the mail. A party may from time to time change the address to which notice hereunder is to be sent by providing notice to the other party pursuant to this section.

**Section 10.** This Agreement, on and after the Effective Date, shall be binding in accordance with its terms upon the parties hereto and their respective successors and assigns with regard to the retail distribution of natural gas.

**Section 11.** This Agreement may be executed in one or more counterparts and by original and/or facsimile signatures, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

REQUEST NO. 4


FILED: 08/17/2020

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

**PEOPLES GAS SYSTEM, a division of  
Tampa Electric Company**

By:   
Gordon Gillette  
President

**SEBRING GAS SYSTEM, INC.**

By:   
Jerry H. Melendy, Jr.  
President

**EXHIBIT A**

***Sebring Gas System, Inc.  
Service Area for the  
Wauchula, Florida area***

That the City of Service Area includes the area within the city limits of Wauchula, Florida and adjacent areas described herein.

Bounded on the west by the western right of way of Altman Road and Terrel Road; on the North from the intersection of Terrel Road and Metheny Road along the northern right of way of Metheny Road east to an intersection with Airport Road as if Metheny extended that far; on the East along the easternmost right of way of Airport Road and Shackelford Road south to point where Causey Road and Shackelford Road would intersect if both were extended and on the South from the point where Shackelford and Causey would meet along the southernmost right of way of Causey Road as extended, and Altman Road. The service area includes any area which may be outside the described boundaries but included within the city limits of the City of Wauchula, Florida.



**CITY OF SPRINGFIELD  
BAY COUNTY, FLORIDA  
ORDINANCE NO. 431**

**NATURAL GAS FRANCHISE AGREEMENT**

**AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF SPRINGFIELD, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE.**

WHEREAS, Peoples Gas System and the City of Springfield desire to enter into a franchise agreement for a period of fifteen (15) years commencing from the date provided herein;  
and

WHEREAS, the City Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

**NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF SPRINGFIELD, FLORIDA, THAT:**

**SECTION 1: DEFINITIONS**

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any person, firm, public or private corporation, or governmental agency served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Springfield, Bay County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric

Company, a Florida corporation, its successors and assigns.

- D. "Gas" or "Natural Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases, which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas") or any other fuel that is typically delivered by truck and stored in tanks.
- E. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.
- F. "Facilities" or "equipment" shall mean pipe, pipe line, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas, located or to be located in, upon, along, across, or under the streets or within the public rights of way.
- G. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 19 below.
- H. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- I. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and Customer pipe lines, together with all necessary and desirable appurtenances, that are situated within the corporate limits of the

City and are reasonably necessary for the sale, distribution or delivery of Natural Gas for the public and private use of Customers.

- J. "Public Rights-of-Way" shall mean all public streets, alleys, highways, waterways, bridges, easements, sidewalks, parks, and other public places of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

SECTION 2:            GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all of the public streets, alleys, highways, waterways, bridges, easements and other public places of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 3:            TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of fifteen (15) years from the effective date of this ordinance.

SECTION 4:            ASSIGNMENT

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City Commission of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City.

B. Notwithstanding the foregoing, the Company may lease, assign or otherwise

alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger and consolidation with, or transfer to, any other corporation engaged in similar business (including any affiliate or subsidiary of the Company), or pledge or mortgage such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company without the express consent of the City Commission of the City.

SECTION 5: CITY COVENANT

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

SECTION 6: USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of said streets, alleys, avenues, easements, and public rights of way, and said streets shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the streets, alleys, or other public rights of way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. The Company shall, with due diligence and dispatch, place such streets, easements or public rights of way in as good condition and repair as before such excavation or disturbance was made, and in default thereof the City may make such repairs and charge the reasonable cost thereof to the Company and collect the same from it.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the



rules and regulations and ordinances which the City has passed or might pass in the future, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish; provided, however, the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

SECTION 7:            MAINTENANCE

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission or other regulatory body having jurisdiction over the Company.

SECTION 8:            LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits.

SECTION 9:            CONSTRUCTION WORK

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City or other governmental body having jurisdiction in, across, along, or under any street, alley, public way, easement, place, or other public rights of way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, or other public rights of way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure, it shall be deemed necessary by the City or other

governmental body to alter, change, adapt, or conform any portion of the Distribution System of the Company hereto, such alterations, or changes, shall be made by the Company as ordered in writing by the City or other governing body, without claim for reimbursement. If the City shall require the Company to adapt or conform any portion of its Distribution System or in any way to alter, relocate or change its property to enable any other person or entity to use said street, alley, easement, highway or public rights-of-way of the City, as part of its permitting or approval process, the City shall require the person or entity desiring or occasioning such alteration, relocation or change to reimburse the Company for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of the Company's facilities. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said City unless it has received specific permission from the City or its duly authorized representative.

SECTION 10:            FRANCHISE FEE

Within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the City and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month. City shall collect from Company interest of one and one-half percent (1.5%) per month on any delinquent payment.

SECTION 11:            FRANCHISE PARITY

If, during the term of this Franchise Agreement, the City, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters ("Alternate Gas Providers") the right, privilege or franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public rights of way of the City, for the purpose of supplying or delivering Natural Gas to customers located within the corporate limits of the City or receiving such gas from a person other than the Company within such corporate limits, and imposes a franchise compensation obligation or an equivalent on such Alternate Gas Provider for any customer or class of customers that is less than that imposed with respect to the same Customer or class of Customers under this Franchise Agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of customers shall be reduced under this Franchise Agreement so that the franchise compensation paid hereunder for such Customer class is no greater than the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance applicable to it, when compared on a dollars-per-therm basis. In the event that the City determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Company's obligation to pay a franchise fee under this Franchise Agreement with respect to revenues derived from the provision of service by the Company to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

SECTION 12:            ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as

prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida, and be open at all reasonable times for inspection by the duly authorized representatives of the City pursuant to an appropriate confidentiality agreement. Upon request by the City, or its designated representative, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

No less than thirty (30) days prior to the effective date of a change in the City limits, whether by addition, annexation, or consolidation, the City shall deliver to the Company written notice of such occurrence, and include in such notice a description of the affected territory.

SECTION 13:        INSURANCE

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance, the terms and conditions whereof shall provide that the City is an addition insured as to the Company's construction, maintenance, or operation of a Nature Gas Distribution System within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person

involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective. If such insurance is altered or modified to be out of compliance with this section, or is cancelled and not replaced by Company prior to such cancellation, then this franchise shall be subject to forfeiture under Section 14 hereof.

SECTION 14:            INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, caused by or arising out of and to the extent of the Company's negligent operation of the Distribution System within the City during the term of this franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof, **except** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any

claims, suits, actions, damages, expenditures, including attorney's fees, or causes of action arising out of injury, loss of life or damage to persons or property caused by or arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

SECTION 15:            TERMINATION BY CITY

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Commission with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, in the event such cure reasonably requires a period of more than sixty (60) days, to present a plan, satisfactory to the City, acting reasonably, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16:            CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the

City and the Company.

SECTION 17:            SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 18:            GOVERNING LAW

This franchise shall be governed by the laws of the State of Florida and applicable federal law.


SECTION 19:            EFFECTIVE DATE

This Franchise Agreement shall become effective upon its acceptance by the Company,

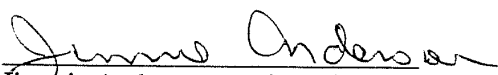
which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

**PASSED AND ADOPTED** by the City Commission of the City of Springfield this 17<sup>th</sup> day of May, 2004.

**CITY OF SPRINGFIELD**

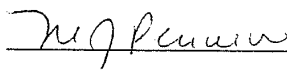
BY:   
Robert E. Walker, Mayor

**ATTEST:**

  
Jimmie Anderson, Acting City Clerk

Accepted this 23 day of June, 2004.

**PEOPLES GAS SYSTEM,  
A DIVISION OF  
TAMPA ELECTRIC COMPANY**

By:   
Title: VP - Energy Delivery - P&S



*2200 AIA S.  
St. Augustine Beach, FL 32080*

**ORDINANCE 08-27**

**AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Peoples Gas System and the City of St. Augustine Beach desire to enter into a franchise agreement for a period of fifteen (15) years commencing from the date provided herein; and

WHEREAS, the City Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, THAT:

**SECTION 1: DEFINITIONS**

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of St. Augustine Beach, St. Johns County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 19 below.

- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" of "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the City.

**SECTION 2: GRANT**

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

**SECTION 3: TERM**

Except as provided in Section 15, the Franchise hereby granted shall be for a period of fifteen (15) years from the effective date of this ordinance.

**SECTION 4: ASSIGNMENT**

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City .

B. Notwithstanding the foregoing, the Company may, without the consent of the City, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

**SECTION 5: CITY COVENANT**

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

**SECTION 6: USE OF STREETS**

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

**SECTION 7: MAINTENANCE**

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

**SECTION 8: LAYING OF PIPE**

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits.

**SECTION 9: CONSTRUCTION WORK**

The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the City without claim for reimbursement. If the City shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said City unless it has received specific permission from the City or its duly authorized representative.

**SECTION 10: FRANCHISE FEE**

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the City and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

**SECTION 11: IDENTIFICATION OF CITY RESIDENTS**

No less than thirty (30) days prior to the Effective Date, the City shall deliver to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the City limits. The City shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's

request. The Company shall be relieved of any obligation to pay franchise fees to the extent the City has failed to provide information in accordance with this Section 11.

**SECTION 12: ACCOUNTS AND RECORDS**

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

**SECTION 13: INSURANCE**

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

**SECTION 14: INDEMNIFICATION**

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the City during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; provided, however, that neither the Company nor any of its employees, agents,

contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

**SECTION 15: TERMINATION BY CITY**

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the City, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

**SECTION 16: CHANGES IN PROVISIONS HEREOF**

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

**SECTION 17: SEVERABILITY; CHANGE IN LAW**

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

**SECTION 18: GOVERNING LAW**

This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

**SECTION 19: EFFECTIVE DATE**

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

PASSED by the City Commission of the City of St. Augustine Beach, Florida upon second reading this 6th day of October, 2008.

CITY COMMISSION OF THE CITY OF  
ST. AUGUSTINE BEACH, FLORIDA

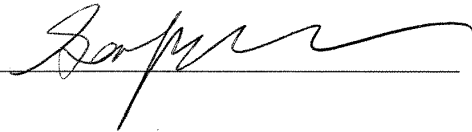
BY:   
\_\_\_\_\_  
Mayor - Commissioner

ATTEST:   
\_\_\_\_\_  
City Manager


First Reading: September 8, 2008

Second Reading: October 6, 2008

APPROVED AS TO FORM AND CORRECTNESS

  
\_\_\_\_\_

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

By:   
\_\_\_\_\_  
Title: President

**FRANCHISE AGREEMENT BETWEEN THE VILLAGE OF TEQUESTA, FLORIDA (the "Village") AND PEOPLES GAS SYSTEMS, A DIVISION OF TAMPA, ELECTRIC COMPANY ("Company") FOR A GRANT TO USE RIGHTS-OF-WAY AND PUBLIC EASEMENTS WITHIN THE VILLAGE OF TEQUESTA, FLORIDA FOR GAS SERVICE LINES AND APPURTENANCES.**

**SECTION 1: DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the meaning given herein.

A. "Customer" shall mean any Person who is provided Services by the Company, within the corporate limits of the Village.

B. "Village" shall mean the Village of Tequesta, Florida, as such may be expanded by annexation in the future or contracted pursuant to applicable law, its successor and assigns.

C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.

D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of natural gas Services and as are situated within the corporate limits of the Village.

E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 24 below.

F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the Village and accepted by the Company, as provided in Section 24 below.

G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.

H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.

I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.

J. "Natural Gas" of "Gas" shall mean natural gas and/or manufactured gas and/or a



mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").

K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the Village.

L. "Services" shall mean any services that Company is authorized to provide by the FPSC. The relevant filings with regard to the regulation of the Company by the PSC are incorporated by reference into this Franchise Agreement.

## **SECTION 2: GRANT**

Subject to all the terms and conditions contained herein, and to all Federal, State and local laws, the Village hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, over, across, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the incorporated limits of the Village, or in such territory as may be hereafter added or annexed to, or consolidated with, the Village, a Distribution System subject to the terms and conditions herein contained. The Company understands that space in the Right-of-way is allotted, as among the Company and other franchisees, on a first-come first-serve basis.

## **SECTION 3: TERM**

Except as provided in Section 12, the Franchise hereby granted shall be for a period of thirty (30) years from the effective date of this Agreement.

## **SECTION 4: ASSIGNMENT**

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the Village, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the Village

B. Notwithstanding the foregoing, the Company may, without the consent of the Village, lease, assign or otherwise alienate and transfer this Franchise in connection with the

lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company).

**SECTION 5: VILLAGE COVENANT**

As a further consideration for this Franchise Agreement, the Village covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the Village, as modified, during the term of this Franchise Agreement.

**SECTION 6: COMPANY'S DISTRIBUTION SYSTEM**

A. Company may install the Distribution System within the public Rights-of-way and public utility easements in conformity with this Franchise Agreement. The Franchisee shall, at all times, keep an accurate map showing the location of all Gas System Facilities laid and maintained by Franchisee under this Franchise, which shall be accessible for inspection by Village Officials at all times during reasonable hours.

B. The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate Village authority. As a condition of any permits so issued, such officials may impose such reasonable conditions and regulations as are required for compliance with this Franchise Agreement and may also impose such reasonable conditions and regulations as are necessary for the purpose of protecting any structures within the public Rights-of-way and/or public easements which are imposed on other service providers and as are consistent with local laws. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. The Village shall use its best efforts to assist Company in obtaining all such local licenses, permits and authorizations in an expeditious and timely manner.

C. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made at the Company's

expense, in accordance with applicable Village standards and specifications; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the Village, to restore such Rights-of-way, then the Village may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof, plus ten (10%) percent of the costs for administration management, incurred for such repairs to the Company.

D. To the extent consistent with Florida law, the Company hereby agrees to construct, install, operate and maintain the Distribution System provided for in the Franchise in a manner consistent with all the rules and regulations and ordinances which the Village has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the Village or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the Village shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

E. All such components of the Distribution System of the Company located within the Village shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

F. The Village reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the Village in, across, along, or under any Right-of-way.

G. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the Village to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the Village without claim for reimbursement. If the Village shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the Village, as part

of its permitting or approval process, the Village shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said Village until it has received the required written permits issued by the proper departments of the Village.

H. At all times during the term of the Franchise, Company shall furnish an adequate supply of Gas to its Customers in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

**SECTION 7: FRANCHISE FEE**

Within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the Village, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the Village and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale of Natural Gas to Customers within the corporate limits of the Village (hereinafter referred to as "Franchise Fee"). The Franchise Fee payment shall be deemed paid on time if received within thirty (30) days of the close of the preceding billing month and Company shall file, with the Village's Manager, a statement, signed by an authorized accounting or financial representative of Company, of the Gross Revenues derived in the preceding billing month. Acceptance of any fee payment shall not be deemed a waiver or release of any claims the Village may have for additional sums, nor be construed as an accord that the amount paid is correct, until the expiration of 90 days following receipt by the Village of records the Village requests to review in accordance with Section 9 below. The Village Council reserves the right to reduce the franchise fee on an annual basis commencing at the beginning of each fiscal year with 60 days notice to the Company; However, at no time shall the franchise fee be increased to exceed six percent (6%).

**SECTION 8: IDENTIFICATION OF VILLAGE RESIDENTS**

No less than thirty (30) days prior to the Effective Date, the Village shall deliver to the Company such information (including Village limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the Village limits. The Village shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's request. The Company shall be relieved of any obligation to pay franchise fees to the extent the Village has failed to provide information in accordance with this Section.

**SECTION 9: ACCOUNTS AND RECORDS**

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records, in such detail that Gross Revenues within the corporate limits of the Village are consistently declared separately from all other revenues, and such Records shall be maintained within the State of Florida. Upon request by the Village, or its designated representative, or agent, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the Village, or its designated representative or agent for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

**SECTION 10: INSURANCE**

During the term of this Franchise, the Company shall self insure and/or maintain, or cause to be maintained, in full force and effect, at its sole cost and expense, at all times during the effective period hereof, the following insurance policies or evidence of self-insurance within the corporate limits of the Village, as they currently exist or may exist in the future:

A. Workers' compensation insurance within Florida statutory limits and employers' liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident.

B. Comprehensive general liability insurance with minimum limits of Five Million Dollars (\$5,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, and independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

C. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Company, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of the applicable State law, and with minimum limits of Five Million Dollars (\$5,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

Every such insurance policy (except the Worker's Compensation policy) shall name the Village of Tequesta, Florida as an additional insured for the liability arising from this agreement and shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the Village, in writing, by registered mail, at least thirty (30) days before any intention not to renew, material alteration, material modification, or cancellation of such policy is to become effective. The Company shall furnish the Village clerk all such certificates of insurance.

#### **SECTION 11: INDEMNIFICATION**

The Company shall and hereby agrees to save, indemnify and hold harmless the Village, its officers, boards, commissions, legal counsel, agents and employees from and against any claims, suits, actions, injuries, demands, judgments, executions, liabilities, debts, damages, penalties, reasonable attorney's fees, expenses and causes of action, arising out of, resulting from, or alleged to rise out of or result from any act or omission by the Company relating to its performance under this Franchise, including the Company's negligent operation of the Distribution System, and including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however**, that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section

for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the Village, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

**SECTION 12: TERMINATION BY VILLAGE**

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, or if Company files a voluntary petition in bankruptcy or is adjudicated insolvent, shall authorize and empower the Village to declare a termination this Franchise Agreement; provided, however, that before such action by the Village shall become operative and effective, the Company shall have been served by the Village with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Village with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the Village to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

**SECTION 13: CHANGES IN PROVISIONS HEREOF**

The parties hereto may from time to time consider it in their best interest to change, modify or extend a term, condition or covenant of this Franchise. Any such change, addition, deletion, extension or modification, which is mutually agreed upon by and between the Village and Company shall be incorporated in written amendments (herein referred to as "Amendments") to this Agreement and be formally approved by the Village Council and the Company. Such Amendments shall not invalidate this Franchise Agreement nor relieve or release either party of any of their respective obligations under this Franchise except as expressly

stated in such Amendment. No Amendment to this Franchise shall be effective and binding upon the parties unless it expressly makes reference to this Franchise Agreement.

**SECTION 14: SEVERABILITY; CHANGE IN LAW**

A. If any section, part of a section, paragraph, sentence, or clause of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

B. Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the Village or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact Franchise Fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or Village may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

**SECTION 15: REMEDIES NOT EXCLUSIVE**

The rights and remedies of the Village set forth in this Franchise Agreement shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity.

**SECTION 16: GOVERNING LAW**

This Franchise shall be governed by the laws of the State of Florida and applicable federal law. The Village and Company agree that the venue for any action arising out of the terms of the Franchise lies in Palm Beach County, Florida.

**SECTION 17: NOTICES**



Except as otherwise specified herein, all notices, consents, approvals, requests and other communications (herein collectively referred to as “Notices”) required or permitted under this Franchise shall be effective only when given in writing and mailed by registered or certified first-class mail, return receipt requested, or overnight delivery, or hand delivery, addressed as follows:

|   |  |
|---|--|
| If to the Village   | If to Company  |
| Village of Tequesta<br>345 Tequesta Drive<br>Tequesta, Florida 33469<br>Attention: Village Manager  | Lance Horton<br>Peoples Gas System<br>702 North Franklin Street<br>Tampa, FL 33602 |
| With Copy to  |  |
| Trela J. White, Esq.<br>Village Attorney<br>1111 Hypoluxo Road, Suite 207<br>Lantana, Florida 33462 | Rick Wall<br>Peoples Gas System<br>5101 NW 21st Ave<br>Ft. Lauderdale, FL 33309    |

All Notices shall be deemed given on the date of certified receipt for certified mail, on the day after overnight delivery, or upon hand delivery. Either party may change its address for the receipt of Notices at any time by giving notice thereof to the other as provided in this Section. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

**SECTION 18: TERMINOLOGY**

Unless the context otherwise expressly requires, the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision.

**SECTION 19: CAPTIONS**

The headings of the Sections in this Franchise Agreement are for convenience only to facilitate reading and reference to its provisions and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.

**SECTION 20: FORCE MAJEURE**

In the event of forced delay in the performance by either party of obligations under this Franchise due to acts of God or of the public enemy, fires, floods, epidemics, riots, insurrection, war, unavoidable casualties, strike, lockout or other conditions or events beyond either party's control, the time for performance of such obligations shall be extended for the period of the forced delay.

**SECTION 21: WAIVER OF COMPLIANCE**

No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Franchise, or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Franchise, but each and every covenant, agreement, term or condition of this Franchise shall continue in full force and effect with respect to any other existing or subsequent breach hereof.

**SECTION 22: RELATIONSHIP OF THE PARTIES**

Nothing contained in this Agreement shall be read or interpreted to create an employer-employee relationship between the Village and the Company. No liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities or other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise or accrue to either party or either party's agents or employees as a result of the performance of this Franchise, unless expressly stated in this Franchise.

**SECTION 23: ENTIRE FRANCHISE**

This Franchise Agreement sets forth all of the terms and conditions under which Company will operate its Franchise. Neither party has made any representations except those expressly set forth herein and no rights or remedies are or shall be acquired by either party by implication or otherwise unless expressly set forth herein.

**SECTION 24: EFFECTIVE DATE**

This Franchise Agreement shall be signed by the Mayor and attested by the Village Clerk. The Franchise Agreement shall be approved in accordance with the requirements of Florida law, and shall take effect upon the date when the Franchise Agreement is approved and accepted by both the Village Council and Company, which acceptance must be evidenced in writing within sixty days of the Village's passage and adoption, which date is the 9th day of April, 2009.

**PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY**

*Will A. [Signature]*

ATTEST:

*Lance Horton*  
*Lance Horton Director, Business Services*

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

*Matthew Costa*  
Peoples Gas System, a division of Tampa  
Electric Company, a Florida corporation,  
Attorney *Matthew Costa*

Y:\docs\Tequesta\Agreements\Natural Gas Franchise Agreement 2008.doc

**VILLAGE OF TEQUESTA**

*Pat Watkins*  
Pat Watkins, Mayor

ATTEST:

*Lori McWilliams*  
Lori Mc Williams, Village Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

*Trela J. White*  
Trela J. White, Village Attorney



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial agreement in Duval and St. Johns Counties between Peoples Gas System and the City of Jacksonville Beach d/b/a Beaches Energy Services.

DOCKET NO. 130256-GU  
ORDER NO. PSC-14-0109-PAA-GU  
ISSUED: February 24, 2014

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

On October 18, 2013, Peoples Gas System (Peoples) and the City of Jacksonville Beach d/b/a Beaches Energy Services (BES) filed a joint petition for approval of a territorial boundary agreement for portions of Duval and St. Johns Counties. The Petitioners own and operate natural gas distribution facilities in Duval and St. Johns Counties, and each is a natural gas utility subject to our jurisdiction under Section 366.04(3), Florida Statutes (F.S.), for the purposes of resolving territorial disputes and approving territorial agreements. Peoples provides natural gas service to approximately 20,000 customers in Duval and St. Johns Counties and plans to continue expanding its distribution system in those counties as provided for in its tariff on file with the Commission. BES also operates a natural gas distribution system in select locations in Duval and St. Johns Counties and plans to continue expanding its distribution system consistent with the demand for natural gas service within its service area. A copy of the complete Agreement is attached (Attachment A) as well as maps that show the service territory for BES (Attachment B).

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Absent our approval of the agreement, the plans of Peoples and BES for providing retail natural gas service in Duval and St. Johns Counties might overlap. Therefore, the Agreement will assist in avoiding future disputes, uneconomic duplication of facilities, and will expedite the handling of applications for service by future potential natural gas customers. No customers will be transferred upon the approval of the Agreement. However, pursuant to Section 2.5 of the Agreement, a customer transfer from Peoples to BES may occur in the future. We have jurisdiction over this matter pursuant to Section 366.04, F.S.

#### Decision

Pursuant to Section 366.04(3)(a), F.S., we have the jurisdiction to approve territorial agreements between and among natural gas utilities. Rule 25-7.0471(2), F.A.C., states that in approving territorial agreements, we may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of gas service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless we determine that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

The Petitioners represent that approval and implementation of the agreement will not cause a decrease in the availability or reliability of natural gas service to the existing or future ratepayers. No customers of either party will be transferred upon the approval of the agreement. However, Peoples currently provides natural gas service to customers located in Neptune Beach, Florida, which is situated within BES territory according to the pending agreement. Provided the agreement is in effect, Section 2.5 states that Peoples shall transfer the Neptune Beach customers to BES within 90 days following receipt of written notice from BES that its natural gas distribution system is capable of providing natural gas service to these customers. At the time of such transfer, Peoples would also convey to BES the facilities necessary to serve Neptune Beach at the depreciated book value. Once approved, the Agreement will remain in effect until modifications are mutually agreed upon by the parties and approved by us, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction.

If Section 2.5 was exercised today, approximately 20 customers (19 primarily small commercial customers and 1 residential customer) would be transferred from Peoples to BES. These customers were sent notice advising of the possible future transfer and were provided examples of monthly bill calculations under the current Peoples and BES rates. Customers were also notified that neither Peoples nor BES knows whether or when any such transfer may occur and the current differences in rates may or may not exist in the future. Since the notices have been sent, neither company has received any calls or inquiries from their customers about the possible transfer.

Peoples and BES represent that approval and implementation of the territorial agreement will not cause a decrease in the availability or reliability of natural gas service from either company, or to the existing or future ratepayers. In addition, they assert that approval of the

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territorial agreement by us will assist in avoiding future uneconomic duplication of facilities by the parties, and will expedite the handling of applications for service by future potential natural gas customers; therefore, we find that the agreement is in the public interest.

It appears that the proposed agreement eliminates the potential uneconomic duplication of facilities and will not cause a decrease in the reliability of gas service. In addition, the purchase price of the facilities (at their depreciated book value), if transfer occurs in the future, appears reasonable. Therefore, based on the above, we find that the proposed territorial agreement will not cause a detriment to the public interest and shall be approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint petition for approval of a territorial boundary agreement for portions of Duval and St. Johns Counties by Peoples Gas System and the City of Jacksonville Beach d/b/a Beaches Energy Services will not cause a detriment to the public interest and shall be approved. If is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, F.A.C., is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of February, 2014.

  
\_\_\_\_\_  
CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KY

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 17, 2014.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**TERRITORIAL BOUNDARY AGREEMENT**

THIS TERRITORIAL BOUNDARY AGREEMENT (this "Agreement") is made and entered into this 11 day of September, 2013, by and between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("PGS"), and the City of Jacksonville Beach, Florida, a municipality organized and existing under the laws of the State of Florida ("City"). PGS and City are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

PGS is presently providing natural gas service throughout the State of Florida, including portions of Duval and St. Johns Counties near the City of Jacksonville Beach; and

City has constructed a natural gas distribution system within the service area in which City currently provides electric utility services, and provides natural gas service to its customers through such distribution system; and

There is a potential for disputes between PGS and City regarding service to potential natural gas customers located in Duval and St. Johns Counties; and

PGS and City desire to preclude any potential disputes between them in order that present and future applicants for natural gas service may expeditiously obtain such service from one or the other of them; and

The respective areas of service of the parties are contiguous in certain areas with the result that duplication of service facilities is likely to occur in the future unless such duplication is precluded by virtue of this Agreement; and

The parties recognize that any duplication of said service facilities may result in needless and wasteful expenditures and investments that are detrimental to the public interest; and

The parties desire to avoid and eliminate the circumstances giving rise to the aforesaid potential duplications and toward that end have entered into this Agreement to delineate their respective service areas in the localities where such potential duplications are likely; and

The Florida Public Service Commission (the "FPSC") is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities; and

The parties' execution of this Agreement is not conditioned upon the acceptance of, or agreement to, any other contractual arrangements pending or contemplated by or between the parties.

In fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties, subject to and upon the terms and conditions herein set forth, hereby agree as follows:



**ARTICLE I**  
**TERM OF AGREEMENT**

**Section 1.1** After this Agreement becomes effective pursuant to Sections 3.4 and Section 3.5 hereof, it shall continue in effect until modifications are mutually agreed upon by the parties and approved by the FPSC, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction.

**ARTICLE II**  
**BOUNDARY PROVISIONS**

**Section 2.1** The map attached hereto and labeled Exhibit A depicts boundary lines delineating, as between the parties, a natural gas service area reserved to the City with respect to service to natural gas customers. Said boundary lines are more specifically described as follows:

**Western Boundary:** Intracoastal Waterway

**Southern Boundary:** Guana Dam Drive

**Northern Boundary:** South side of Atlantic Boulevard (SR 10)

**Eastern Boundary:** Atlantic Ocean

That area in Duval and St. Johns Counties lying outside of the boundaries described in this Section 2.1 is reserved (as between PGS and the City) to PGS with respect to service to natural gas customers.

**Section 2.2** Each of the parties agrees that it will not, except as provided in Section 2.3, provide or offer to provide natural gas service to customers within the territory herein reserved to the other party.

**Section 2.3** To help facilitate the provision of natural gas service to customers and to minimize costs and delays in providing such service, a party to this Agreement which has a gas main installed on its side of a boundary line established in Section 2.1 of this Agreement may temporarily serve customers located on the other side of such boundary line in territory herein reserved to another party; provided, however, that when such temporary service is contemplated by a party, it shall give written notice, setting forth the details of such contemplated service, to the party in whose territory the customer is located under Section 2.1 of this Agreement, before installing any additional facilities needed for the provision of such temporary service. At such time as the party in whose territory such customers are located under Section 2.1 has a gas main available for providing natural gas service to such customers, the party providing temporary service pursuant to this section shall surrender any such customers upon the request of the party in whose territory such customers are located, and shall convey to such other party, at depreciated book value, such gas mains, service lines, and appurtenances thereto (previously used by the party in providing temporary service and located in the territory of the party which will provide service thereafter) as may be required by the party to serve such customers. Any customer who receives temporary natural gas service under the provisions of this section shall be notified in advance that when service is available from the party in whose territory such customer is located, the customer will be

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required to receive service from such party at such party's then-current rates, and that such temporary service is provided only as a temporary convenience to the customer.

**Section 2.4** Nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the senior management level of the parties. No such facilities shall be used by one party to provide natural gas service to customers located in the service area of the other party except as may be necessary to implement the provisions of Section 2.3 hereof.

**Section 2.5** PGS is currently providing natural gas service to customers located in Neptune Beach (the "Existing Customers"), which is situated within territory reserved under this Agreement to the City. Provided this Agreement has become effective pursuant to Section 3.4, PGS shall transfer such Existing Customers to the City within 90 days following receipt of written notice from the City that the City's natural gas distribution system is capable of providing natural gas service to the Existing Customers. At the time of such transfer, PGS shall also convey to the City such lateral gas mains (excluding mains used by PGS in providing natural gas service to customers other than the Existing Customers and customers located outside the territory herein reserved to the City), service lines and appurtenances thereto (the "Neptune Facilities") previously used by PGS in providing service to the Existing Customers. The Neptune Facilities shall be conveyed in total to the City, whether or not any particular part of the Neptune Facilities is necessary for the provision by the City of natural gas service to the Existing Customers. At the time of such conveyance, the City shall pay to PGS the depreciated book value of the Neptune Facilities for the Existing Customers.

**ARTICLE III  
MISCELLANEOUS PROVISIONS**

**Section 3.1** The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

**Section 3.2** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**Section 3.3** This Agreement shall be governed by the laws of the State of Florida.

**Section 3.4** The parties hereto recognize and agree that each of them is subject to the jurisdiction of the FPSC with regard to the subject of their respective territories as set forth in this Agreement and further agree that this Agreement shall have no force or effect unless and until it is submitted to and approved by the FPSC in accordance with applicable procedures. The parties further agree that this Agreement, if and when approved by the FPSC, shall be subject to the continuing jurisdiction of the FPSC and may be terminated or modified only by order of the FPSC. No modification or termination of this Agreement by the parties hereto shall be effective unless and until approved by the FPSC (or any successor agency with power to consider approval or modification hereof). Each party agrees to promptly notify the other in writing of any petition, application or request for modification of this Agreement made to the FPSC and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

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**Section 3.5** This Agreement shall be effective on the date it is approved by the FPSC in accordance with Section 3.4 hereof. As soon as practicable following the effective date of this Agreement, each party agrees to file any revisions to its tariffs (if any) on file with the FPSC which may be required as a result of the FPSC's approval hereof, and shall provide a copy of any such tariff revisions to the other party.

**Section 3.6** Prior to the second anniversary of the effective date of this Agreement and no more than every fifth anniversary thereafter, the parties shall confer to review the status of this Agreement and shall submit a joint status report to the FPSC (or any successor agency with power to consider approval or modification hereof).


**Section 3.7** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one agreement.

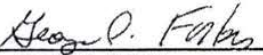
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

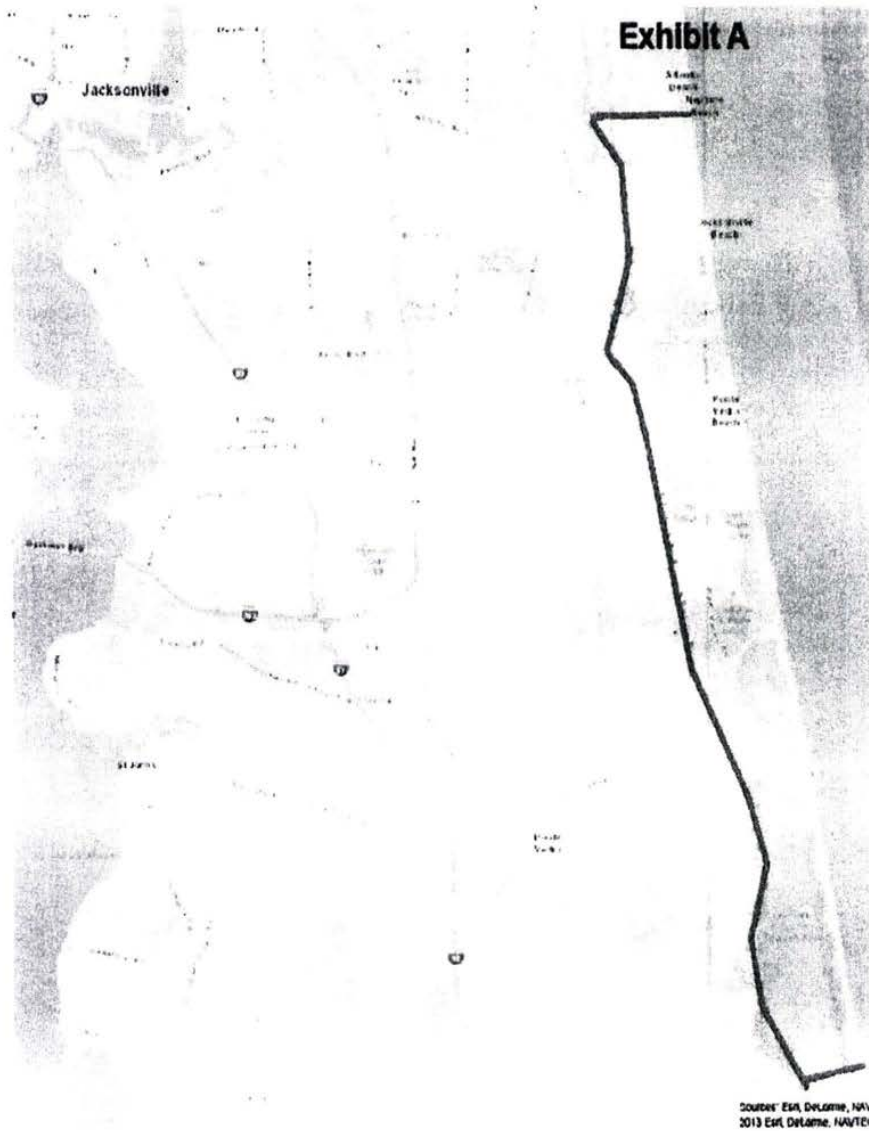
THE CITY OF JACKSONVILLE  
BEACH, FLORIDA

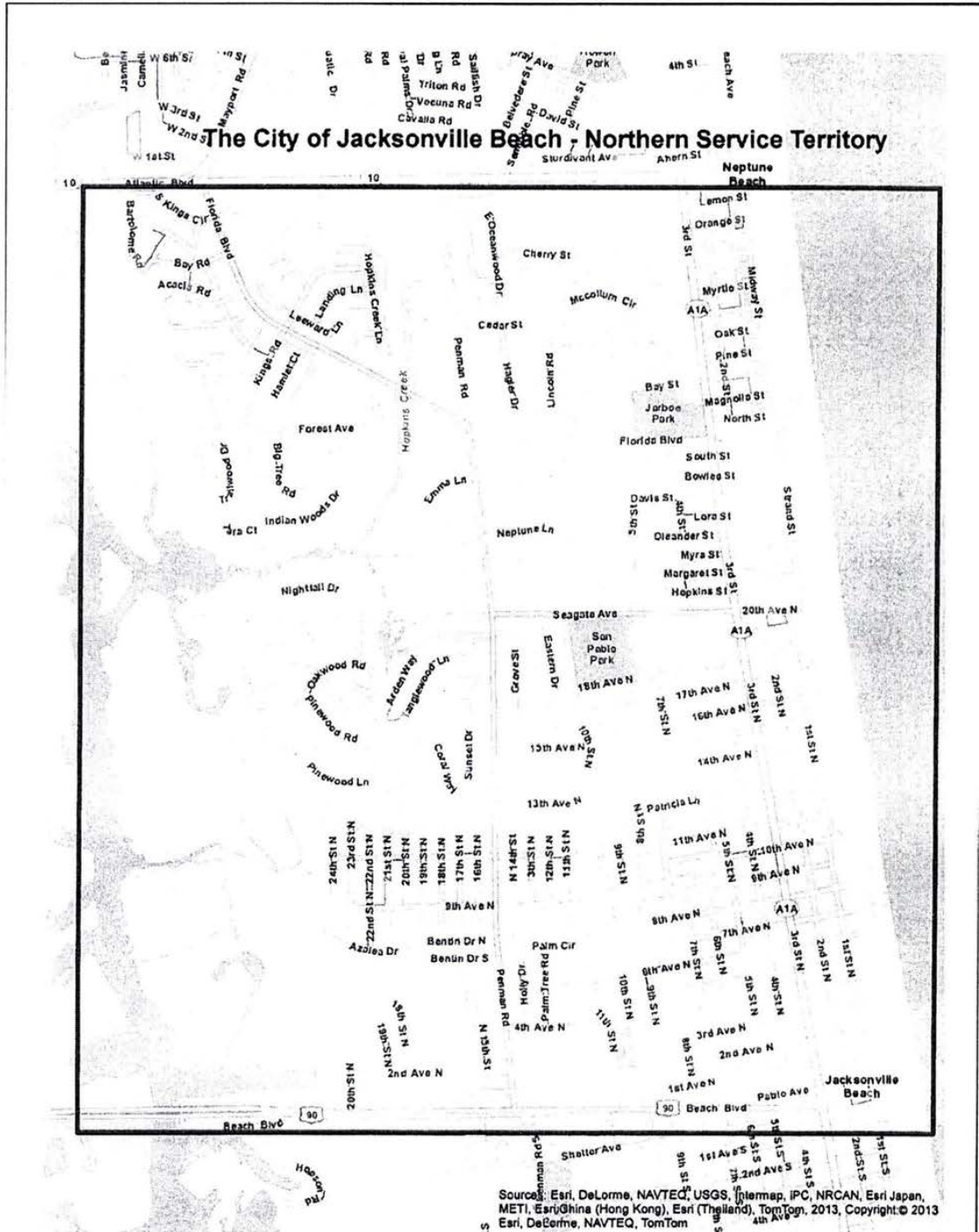
By:   
William G. Labem  
Mayor

PEOPLES GAS SYSTEM, a division  
of Tampa Electric Company

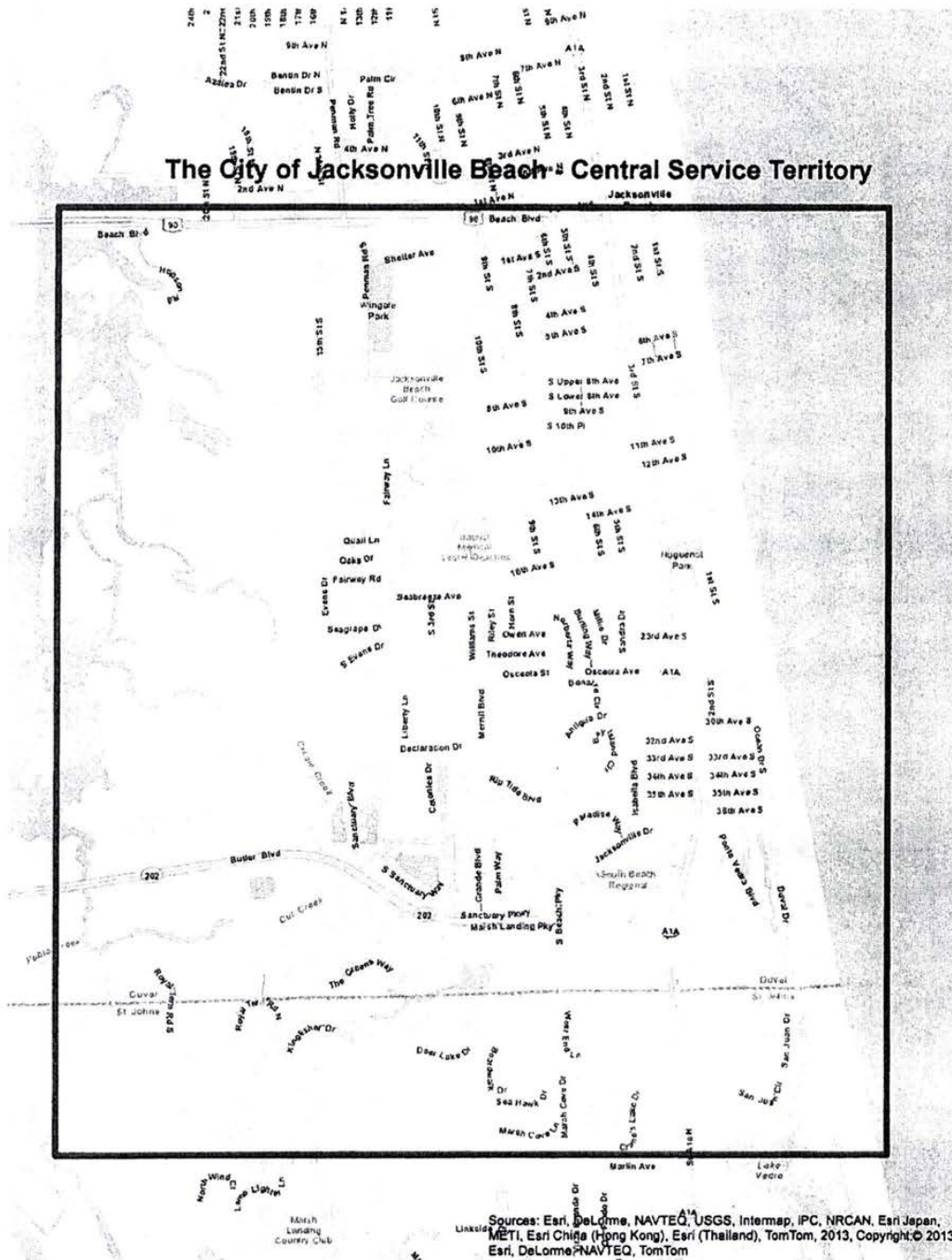
By:   
Bruce Narzissenfeld  
Vice President

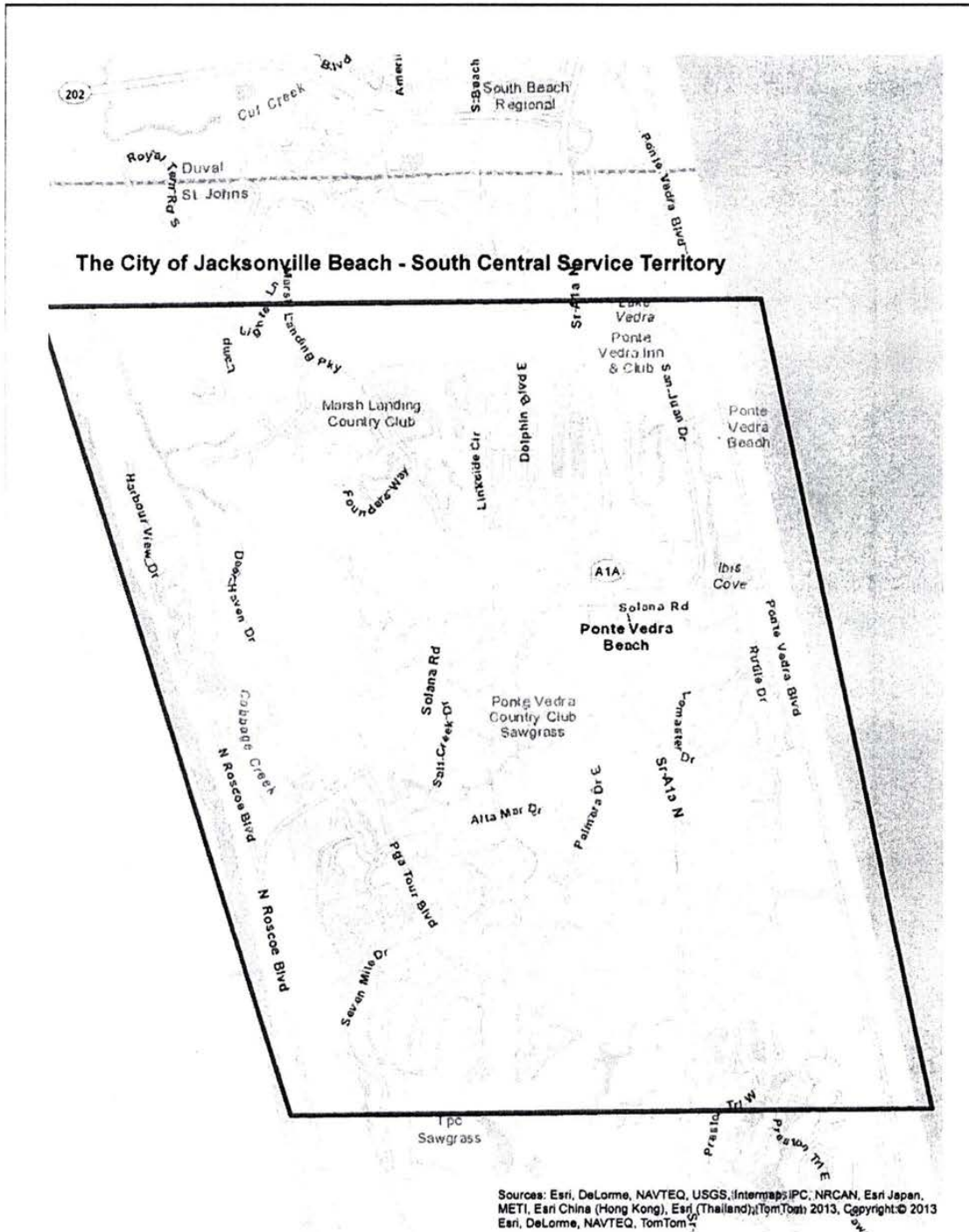
By:   
George D. Forbes  
City Manager





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ORDINANCE NO. 2013-05

AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE TOWN OF ZOLFO SPRINGS, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Peoples Gas System and the Town of Zolfo Springs desire to enter into a franchise agreement for a period of fifteen (15) years commencing from the date provided herein, subject to the renewal provision set forth herein; and

WHEREAS, the Town Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

NOW THEREFORE, BE IT ENACTED BY THE TOWN COMMISSION OF THE TOWN OF ZOLFO SPRINGS, FLORIDA, THAT:

SECTION 1: DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the Town.
- B. "Town" shall mean the Town of Zolfo Springs, Hardee County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the Town.
- E. "Effective Date" shall mean the date this Franchise Agreement becomes Effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the Town and accepted by the Company, as provided in Section 19 below.

- G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale or transportation of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" of "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the Town.

SECTION 2:            GRANT

The Town hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the Town, or in such territory as may be hereafter added or annexed to, or consolidated with, the Town, a Distribution System subject to the terms and conditions herein contained.

SECTION 3:            TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of fifteen (15) years from the effective date of this ordinance; provided, however, that the Franchise will automatically renew for one fifteen (15) year term, unless one of the parties notifies the other, with no less than one hundred and eighty (180) days' written notice, prior to the expiration of the initial term, that it does not want the Franchise to automatically renew. If either party elects not to renew the Franchise, then the Franchise shall expire upon the conclusion of the initial term.

SECTION 4:            ASSIGNMENT

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the Town, which shall not be

unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the Town.

B. Notwithstanding the foregoing, the Company may, without the consent of the Town, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5:            TOWN COVENANT

As a further consideration for this Franchise Agreement, the Town covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the Town, as modified, during the term of this Franchise Agreement.

SECTION 6:            USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate Town authority. The Town shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this agreement, the Town shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the Town, to restore such Rights-of-way, then the Town may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the Town has passed or might pass in the future, in

the exercise of its police power, and further agrees to abide by any established policy which the Town or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the Town shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

SECTION 7:            MAINTENANCE

All such components of the Distribution System of the Company located within the Town shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 8:            LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in Town permits.

SECTION 9:            CONSTRUCTION WORK

The Town reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the Town in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the Town to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the Town without claim for reimbursement. If the Town shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the Town, as part of its permitting or approval process, the Town shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of

the Distribution System. The Company further agrees that it will not intentionally interfere with, change, or injure any water pipes, drains, or sewers of said Town unless it has received specific permission from the Town or its duly authorized representative.

SECTION 10:      FRANCHISE FEE

A.      Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the Town, or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale or transportation of Natural Gas to Customers within the corporate limits of the Town. The payment of the franchise fee payment shall be deemed on time if post-marked within thirty (30) days of the close of the preceding billing month.

B.      In the event the Company enters into a franchise agreement with another Florida municipality or government entity located in Hardee, Polk or Highlands County that contains substantially similar terms and conditions as this Franchise and that provides for a franchise fee calculation that would result in a franchise fee being paid to such municipality or government entity that is higher (as a percentage of Gross Revenues) than that promised hereunder, then the Town may, at its option, demand that the franchise fee payable hereunder be adjusted so as to be consistent with the franchise fee calculation extended to such Florida municipality or government entity.

C.      If Town imposes a lesser fee, or no fee, or is permitted by law to impose a fee on another gas provider that is utilizing the rights-of-way and providing or seeking to provide services in competition with Company to customers within Town's municipal boundaries and does not collect such a fee or collects a fee less than that provided herein, the Company, at its option, may request the fee for such services to be reduced to the lesser fee charged the other gas provider (or to zero, if no fee is charged such other gas provider).

SECTION 11:      IDENTIFICATION OF TOWN RESIDENTS

No less than thirty (30) days prior to the Effective Date, the Town shall deliver to the Company such information (including Town limit streets and block numbers) as is reasonably needed by the Company to determine which of its customer are located within the Town limits.

The Town shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's request. Failure by the Town to comply with this Section 11 shall not be deemed a breach of contract, however, the Company shall be relieved of any obligation to backbill or pay on its own accord any franchise fees for customers for which the Town has failed to provide information in accordance with this Section 11.

SECTION 12: ACCOUNTS AND RECORDS

A. The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the Town are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida, and be open at all reasonable times for inspection by the duly authorized representative of the Town pursuant to an appropriate confidentiality agreement. Said records may be inspected by the Town or its duly authorized representatives during normal business hours, upon reasonable notice to the Company at Company's local office.

SECTION 13: INSURANCE

During the term of this Franchise, the Company shall file with the Town Clerk and shall keep in full force and effect at all times during the effective period hereof insurance and/or self-insurance as follows:

1) A general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the Town, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$2,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$2,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The insurance will include Contractual Liability Coverage.

2) Business Automobile Liability. Business Automobile Liability shall be provided with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence, combined

single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Owned Vehicles, if applicable.
- Hired and Non-Owned Vehicles, if applicable.
- Employers' Non-Ownership, if applicable.

3) Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include Employers' Liability with a limit of Five Hundred Thousand Dollars (\$ 500,000.00) each accident.

4) Professional Liability shall be provided with minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$ 2,000,000) per aggregate.

5) Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the Town, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective. The policies shall include contractual liability coverage. Certificates of insurance will be provided upon the initiation of this agreement, and new certificates will be submitted annually upon request. Said insurance coverage procured by the Company as required herein shall be considered, and the Company agrees that said insurance coverage it procures as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to the Town, and that any other insurance, or self-insurance available to the Town shall be considered secondary to, or in excess of, the insurance coverage procured by the Company as required herein.

SECTION 14: INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the Town, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the Town during the term

of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the Town in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however,** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the Town, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

Nothing contained in this Franchise Agreement shall be considered a waiver of the Town's sovereign immunity, whether constitutional, statutory or common law, and nothing herein shall be construed to extend the Town's liability beyond that provided in section 768.28, Florida Statutes.

SECTION 15:           TERMINATION BY TOWN

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the Town to declare a termination this Franchise Agreement; provided, however, that before such action by the Town shall become operative and effective, the Company shall have been served by the Town with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Town with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the Town, to effect such cure; and provided



further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16: CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the Town and the Company.

SECTION 17: SEVERABILITY; CHANGE IN LAW

If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

SECTION 18: COMPLIANCE WITH TOWN, STATE AND FEDERAL LAWS.

Notwithstanding any other provision of this Franchise to the contrary, the Company shall at all times comply with all applicable laws, rules and regulations of the State of Florida and the federal government and any administrative agencies thereof and, to the extent not inconsistent with the foregoing, with all laws, rules and regulations of the Town of Zolfo Springs.

SECTION 19: DOCUMENT IS THE RESULT OF MUTUAL DRAFTSMANSHIP.

The terms and conditions in this Franchise are the product of mutual draftsmanship by both parties, each being represented by counsel, and any ambiguities in this Franchise or any documentation prepared pursuant to it shall not be construed against any of the parties because of authorship. The parties acknowledge that all the terms of this Franchise were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its, his, her, or their own interest.

SECTION 20: DEFAULT AND ATTORNEY'S FEES.

If either party defaults on its obligations under this franchise, the other party shall have the right to institute legal proceedings to collect damages or to exercise any other rights and remedies

afforded in law or equity. The prevailing party shall be entitled to an award of its costs and attorneys' fees resulting from any action to enforce the franchise. In no event, however, shall Town be liable for damages in excess of its sovereign immunity limits set by Florida Statute, § 768.28, as subsequently amended, nor shall this franchise be deemed a waiver of any of the Town's sovereign immunity rights granted by law.

SECTION 21: GOVERNING LAW

This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 22: EFFECTIVE DATE

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance shall be evidenced in writing within sixty (60) days of the Town's passage and adoption hereof, or this Franchise Agreement and all rights and duties hereunder shall be terminated.

=====  
This ordinance was read for the first time at the Regular Meeting of the Town Commission on the 23 day of January, 2014 when it was voted on by members of the Town Commission as follows:

Yeas 4 Nays 0 Absent 1

This ordinance was read for a second and final time at the regular meeting of the Town Commission on the 17 day of March, 2014 when it was voted on by members of the Town Commission as follows:

Yeas 4 Nays 0 Absent 1

TOWN OF ZOLFO SPRINGS, FLORIDA

Didi White  
Didi White, Vice Mayor

ATTEST:

Amanda Gibson  
Amanda Gibson, Town Clerk


Approved as to Form and Content:

Gerald T. Buhr  
Gerald T. Buhr, Town Attorney

Accepted this 2<sup>nd</sup> day of April, 2014

PEOPLES GAS SYSTEM  
DOCKET NO. 20200051-GU  
DOCKET NO. 20200166-GU  
STAFF'S SECOND REQUEST FOR  
PRODUCTION OF DOCUMENTS  
REQUEST NO. 4  
FILED: 08/17/2020

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

  
By: Gordon C. Gillette  
Title: President

PEOPLES GAS SYSTEM  
DOCKET NO. 20200051-GU  
DOCKET NO. 20200166-GU  
STAFF'S SECOND REQUEST FOR  
PRODUCTION OF DOCUMENTS  
REQUEST NO. 4  
FILED: 08/17/2020



Writer's Direct Dial Number: (850) 521-1706  
Writer's E-Mail Address: bkeating@gunster.com

May 27, 2011

**BY HAND DELIVERY**

Ms. Ann Cole, Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

110192-GU  
RECEIVED-FPSC  
11 MAY 27 PM 2:41  
COMMISSION  
CLERK

Re: Joint Petition for Approval of Territorial Agreement

Dear Ms. Cole:

Enclosed for filing, please find the original and 15 copies of the Joint Petition for Approval of Territorial Agreement between Florida Public Utilities Company and Peoples Gas System addressing the eastern portion of Volusia County, which is hereby jointly submitted for approval.

Thank you for your kind assistance with this filing, and as always, please do not hesitate to let me know if you have any questions or concerns.

Sincerely,

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

COM \_\_\_  
APA \_\_\_  
ECR 10  
GCL 2 MEK  
RAD \_\_\_  
SSC 2  
ADM \_\_\_  
OPC 1  
CLK \_\_\_

DOCUMENT NUMBER-DATE  
03739 MAY 27 =

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint petition for approval of :  
territorial agreement in Volusia County, :  
by Peoples Gas System and Florida :  
Public Utilities Company. :

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DOCKET NO. 110192-GU

Filed: May 27, 2011

**JOINT PETITION FOR APPROVAL OF TERRITORIAL AGREEMENT**

Petitioners, Peoples Gas System ("Peoples") and Florida Public Utilities Company ("FPUC") (collectively, "Petitioners"), by their respective undersigned attorneys and pursuant to Section 366.04(3)(a), *Florida Statutes*, and Rule 25-7.0471, *Florida Administrative Code* ("F.A.C."), jointly file this petition for an order approving a territorial agreement between Petitioners in the eastern portion of Volusia County, said agreement being attached hereto as Attachment A. In support of this Petition, Petitioners state as follows:

1. The names and mailing addresses of the petitioners are:

Peoples Gas System  
P. O. Box 2562  
Tampa, Florida 33601-2562

Florida Public Utilities Company  
401 S. Dixie Highway  
P. O. Box 3395  
West Palm Beach, Florida 33402

2. The names and mailing addresses of the persons authorized to receive notices and communications with respect to this petition are:

As to Peoples:

Ansley Watson, Jr., Esq.  
Macfarlane Ferguson & McMullen  
P. O. Box 1531  
Tampa, Florida 33601-1531

Paula K. Brown  
Peoples Gas System  
P. O. Box 2562  
Tampa, Florida 33601-2562

DOCUMENT NUMBER-DATE

03739 MAY 27 =

FPSC-COMMISSION CLERK

As to FPUC:

Beth Keating, Esq.  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe Street, Suite 618  
Tallahassee, Florida 32301-1839

Thomas A. Geoffroy  
Vice President  
Florida Public Utilities Company  
401 S. Dixie Highway  
P.O. Box 3395  
West Palm Beach, Florida 33402

3. Each petitioner owns and operates natural gas distribution facilities in various portions of Florida, and each is a public natural gas utility subject to the Commission's regulatory jurisdiction under Chapter 366, *Florida Statutes*.

**Background**

4. Peoples operates a natural gas distribution system in Volusia County, primarily in the northern areas of the county, with the greatest concentration of customers in the Daytona Beach area. Peoples plans to continue expanding its distribution system in Volusia County as provided in the extension of facilities policy contained in its tariff on file with the Commission. FPUC also operates a natural gas distribution system in Volusia County, primarily in the southern areas of the county, with the greatest concentration of customers in the New Smyrna Beach area. FPUC also plans to continue expanding its distribution system in Volusia County as provided in the extension of facilities policy contained in its tariff on file with the Commission.

5. In mid-2010, Peoples became aware that FPUC was in negotiations with Florida Gas Transmission Company, LLC ("FGT"), for the purchase of an FGT lateral transmission line extending south from the FGT mainline in northern Volusia County through a portion of the areas of Volusia County currently identified as the service territory of Peoples, and continuing generally south-southeast through the county to the

New Smyrna Beach area currently identified as the service territory of FPUC. Peoples then held (and currently holds) franchises from both the City of Port Orange and the City of Daytona Beach, and provides natural gas service to customers in both locations. Through discussions between representatives of FPUC and Peoples, it became clear, however, that FPUC was interested in obtaining the FGT lateral primarily in connection with planned improvements to its New Smyrna Beach distribution system, and did not intend to duplicate any existing Peoples facilities used to serve customers in Daytona Beach and Port Orange.

6. The discussions between the Petitioners – even before FPUC’s purchase of the FGT lateral transmission line was agreed to and consummated – led to an agreement in principle between the Petitioners, and ultimately to the Volusia County Territorial Agreement attached hereto as Attachment A to this Petition.

**Requested Relief**

7. The parties seek Commission approval of the Volusia County Territorial Agreement. The agreement stipulates that approval by the Commission is a condition precedent to its effectiveness. Any modification to the service areas described in the agreement must be reviewed and/or approved by the Commission. Prior to the second anniversary of the Commission's approval of the agreement, and no less frequently than every five years thereafter, the Petitioners will meet to review the status of the agreement and provide a written status report to the Commission.

8. Both Peoples and FPUC represent that approval and implementation of the Volusia County Territorial Agreement will not cause a decrease in the availability or

reliability of natural gas service from either company, or to the existing or future ratepayers of either company, and that the Commission's approval of the agreement would be consistent with the standards set forth in Section 366.04, *Florida Statutes*, and Rule 25-7.0471, *F.A.C.*

9. In the eastern part of Volusia County, the agreement separates the service areas of the Petitioners by a boundary line (the "Spruce Creek Boundary," as defined in Section 1 of the agreement and as depicted on the map attached as Exhibit A to the agreement). Each service area reserved by the agreement for each Petitioner is bounded on the east by the Atlantic Ocean. Both of these are natural boundaries. On the west, each Petitioner's service area is bounded by a line which was constructed to be generally parallel to, and five miles west of, the northern portion of the FGT lateral transmission line FPUC purchased from FGT. Areas in Volusia County west of this boundary are not affected by the agreement. As the boundaries of the service areas reserved by the agreement to the parties have been constructed, neither party will be required to transfer any customers to the other party.

10. All terms and conditions pertaining to the Volusia County Territorial Agreement, and the implementation thereof, are set forth in such agreement.

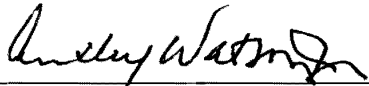
11. Absent the Commission's approval of the agreement, the plans of Peoples and FPUC for providing retail natural gas service in eastern Volusia County might well overlap. Petitioners submit that approval of the agreement by the Commission will assist in avoiding future uneconomic duplication of facilities by the parties, will expedite the handling of applications for service by future potential natural gas customers, and is



therefore in the public interest.

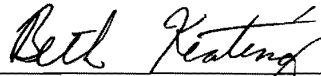
WHEREFORE, FPUC and Peoples respectfully request that the Commission enter its order approving the Volusia County Territorial Agreement.

Respectfully submitted,



ANSLEY WATSON, JR.  
Macfarlane Ferguson & McMullen  
P. O. Box 1531  
Tampa, Florida 33601-1531  
(813) 273-4321  
[aw@macfar.com](mailto:aw@macfar.com)

Attorneys for Peoples Gas System



BETH KEATING  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe Street, Suite 618  
Tallahassee, Florida 32301-1839  
(850) 521-1706  
[bkeating@gunster.com](mailto:bkeating@gunster.com)

Attorneys for Florida Public Utilities  
Company

**VOLUSIA COUNTY TERRITORIAL AGREEMENT**

THIS VOLUSIA COUNTY TERRITORIAL AGREEMENT (this "Agreement") is made and entered into this 13<sup>th</sup> day of May, 2011, by and between **Peoples Gas System, a division of Tampa Electric Company**, a Florida corporation ("PGS"), and **Florida Public Utilities Company**, a Florida corporation ("FPUC"). PGS and FPUC are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

**WITNESSETH:**

WHEREAS, FPUC and PGS are natural gas utilities subject to the regulatory jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, *Florida Statutes*; and

WHEREAS, as pertinent to this Agreement, both FPUC and PGS are presently providing natural gas service to customers in portions of Volusia County, Florida; and

WHEREAS, FPUC has purchased from Florida Gas Transmission Company, LLC ("FGT") a lateral transmission line extending south from the FGT mainline through a portion of the areas of Volusia County currently identified as the service territory of PGS, and continuing generally south-southeast through the county to the New Smyrna Beach area currently identified as the service territory of FPUC; and

WHEREAS, in order to enable as many persons and businesses as possible within Volusia County to receive economical and reliable natural gas service, the parties have entered into this Agreement to avoid any unnecessary and uneconomic duplication of natural gas facilities which would be contrary to Commission policies and detrimental to the interests of their customers and the general public; and

WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities; and

WHEREAS, the execution of this Agreement by the parties is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties, subject to and upon the terms and conditions herein set forth, agree as follows:

**Section 1.**

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below:

"POINT "A"" has the meaning given for such term in the definition of "Spruce Creek Boundary" (as hereinafter defined).

"FPUC Western Boundary" means a line described as follows:

Begin at POINT "A"; thence South 23°04'08" East, a distance of 129,075 feet, more or less to a point on the Easterly County Line of Volusia County, Florida (separating Volusia and Brevard Counties).

"PGS Western Boundary" means a line described as follows:

Begin at POINT "A"; thence North 23°04'08" West, a distance of 82,334 feet, more or less to a point on the Northerly County Line of Volusia County, Florida (separating Volusia and Flagler Counties).

"Spruce Creek Boundary" means a line described as follows:

Commence at coordinates 1,716,497.98 North, and 616,362.90 East, Florida State Plane Coordinate System, East Zone as referenced to the North American Datum of 1983 and represented herein in U.S. Survey Feet ("SPC"), said point being hereinafter referred to as POINT "A"; thence North 69°47'09" East, a distance of 14,515.56 feet to a point located at coordinates 1,721,513.57 North, and 629,984.40 East SPC, said point being located in the approximate centerline thread of Spruce Creek; thence along the thread of said Spruce Creek being witnessed by the following thirty-six (36) courses running near said centerline thread: (1) North 85°58'41" East, a distance of 2198.21 feet; (2) North 02°08'40" East, a distance of 748.12 feet; (3) North 78°41'16" East, a distance of 1845.72 feet; (4) South 79°56'42" East, a distance of 2355.38 feet; (5) North 57°01'07" East, a distance of 672.83 feet; (6) North 28°13'55" East, a distance of 3718.14 feet; (7) North 52°40'52" East, a distance of 4057.29 feet; (8) South 84°23'09" East, a distance of 1103.98 feet more or less to a point on said Florida Gas Lateral said point being approximately located at coordinates 1,728,360 North, and 642,983 East SPC; (9) North 88°36'47" East, a distance of 451.16 feet; (10) North 60°50'21" East, a distance of 1049.46 feet; (11) South 51°53'57" East, a distance of 2523.28 feet; (12) North 85°41'54" East, a distance of 712.25 feet; (13) North 09°17'21" West, a distance of 804.30 feet; (14) North 32°21'14" East, a distance of 1255.84 feet; (15) North 43°01'12" East, a distance of 929.09 feet; (16) South 13°26'21" East, a distance of 1051.52 feet; (17) North 60°05'36" East, a distance of 1224.62 feet; (18) North 71°55'41" East, a distance of 1409.48 feet; (19) South 10°08'26" East, a distance of 1604.95 feet; (20) South 89°20'03" East, a distance of 1970.49 feet; (21) South 09°59'42" East, a distance of 1500.36 feet; (22) South 50°16'31" East, a distance of 883.73 feet; (23) North 60°02'39" East, a distance of 1436.78 feet; (24) South 40°29'08" East, a distance of 1776.18 feet; (25) South 13°46'06"

East, a distance of 1866.19 feet; (26) South 09°05'45" West, a distance of 1352.66 feet; (27) South 61°47'10" East, a distance of 823.34 feet; (28) North 13°21'03" West, a distance of 1223.71 feet; (29) North 82°56'16" East, a distance of 931.15 feet; (30) South 39°29'24" East, a distance of 1345.01 feet; (31) North 39°27'45" East, a distance of 3705.96 feet; (32) North 87°19'44" East, a distance of 3800.60 feet; (33) North 31°40'18" East, a distance of 3050.07 feet; (34) North 62°20'01" East, a distance of 1345.10 feet; (35) South 63°26'58" East, a distance of 1440.92 feet; (36) North 90°00'00" East, a distance of 3085.70 feet to a point on the Intracoastal Waterway; thence along said Waterway, South 25°33'40" East, a distance of 3439.97 feet; thence North 62°18'55" East, a distance of 2646.55 feet to a point in the Matanzas River; thence along said River, South 61°03'27" East, a distance of 3994.50 feet; thence along and through the Matanzas Inlet, North 87°44'57" East, a distance of 3263.96 feet to the POINT OF TERMINATION in the Atlantic Ocean, said point being approximately at coordinates 1,724,325 North, and 682,816 East SPC.

**Section 2.**

(a) The parties' respective service areas in Volusia County shall be as designated on the map attached hereto as Exhibit A, which is hereby incorporated into and made a part of this Agreement.

(b) The service area reserved hereunder for PGS shall consist of that area in Volusia County bounded on the west by the PGS Western Boundary, on the north by the Volusia County line from its point of intersection with the PGS Western Boundary, along said county line to the Atlantic Ocean, on the east by the Atlantic Ocean, and on the south by the Spruce Creek Boundary. As between the parties, PGS shall have the authority to serve all customers within said area.

(c) The service area reserved hereunder for FPUC shall consist of that area in Volusia County bounded on the north by the Spruce Creek Boundary, on the west by the FPUC Western Boundary, on the south by the Volusia County line from its point of intersection with the FPUC Western Boundary, along said county line to the Atlantic Ocean, and on the east by the Atlantic Ocean. As between the parties, FPUC shall have the authority to serve all customers within said area.

(d) Except as specifically otherwise provided herein, each party agrees that it will not provide or offer to provide natural gas service to existing or potential customers within the service area herein reserved to the other party.

(e) Except as specifically otherwise provided herein, nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are now or which may in the future be located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the general office level of the parties. No such facilities shall be used by one party to provide natural gas service to customers located in the service area reserved hereunder to the other party.

(f) This Agreement shall have no effect on the boundaries of the respective service areas of the parties hereto as the same may now or hereafter exist except as specifically provided herein.

**Section 3.** Notwithstanding the provisions of Section 2, either party may request that the other party provide natural gas service to potential customers within the service area reserved hereunder to the requesting party. The party receiving the request may elect to provide service to such potential customers in its sole discretion subject to the approval of the Commission.

**Section 4.** If a party determines, in a specific instance, that good engineering practices or economic constraints on that party indicate that any small service area and/or future natural gas customer within that party's service area under Section 1 hereof should not be served by that party, such party shall notify the other party and request the other party to serve such small service area and/or potential customer. If the parties reach agreement thereon, the parties shall jointly and expeditiously seek approval of the Commission for modification of this Agreement in order to permit the appropriate party to provide such service to such small service area and/or future natural gas customer.

**Section 5.** This Agreement, after execution by the parties, shall be submitted jointly by the parties to the Commission for approval. It shall become effective on the date that a Commission order approving it becomes final and effective (the "Effective Date"), and continue in effect until termination or modification shall be mutually agreed upon by the parties and approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction. In the event that the Commission declines to approve this Agreement, the same shall be of no force or effect, and neither party shall have any claim against the other arising out of this Agreement.

**Section 6.** Prior to the second anniversary of the Effective Date and no more than every fifth anniversary thereafter, the Parties shall meet to review the status of this Agreement and shall submit a joint status report to the Commission (or any successor agency with power to consider approval or modification hereof).

**Section 7.** As soon as practicable after the Effective Date, each party agrees to file any revisions to its tariffs on file with the Commission which may be required as a result of the Commission's approval of this Agreement, and shall provide a copy of any such tariff revisions to the other party upon their filing with the Commission.

**Section 8.** The failure of either party to enforce any provision of this Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

**Section 9.** This Agreement shall become void and unenforceable if the Commission's jurisdiction with respect to approval and supervision of territorial agreements between natural gas utilities is terminated by statute or ruled invalid by a court of final appellate jurisdiction.

**Section 10.** This Agreement shall be governed by the laws of the State of Florida.

**Section 11.** This Agreement does not provide for the transfer of any existing customers or facilities.

**Section 12.** All notices under this Agreement shall be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand delivery, to the parties at the addresses and facsimile numbers set forth below:

To PGS:

President  
Peoples Gas System  
702 N. Franklin Street  
Tampa, Florida 33602  
Phone: (813) 228-4111  
Facsimile: (813)

To FPUC:

Vice President/Business Development and Gas  
Operations  
Florida Public Utilities Company  
401 S. Dixie Highway  
P.O. Box 3395  
West Palm Beach, Florida 33402  
Phone: (561) 818-7762  
Facsimile: (561)

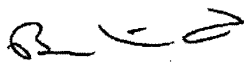
Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a business day or, the receipt is after 5:00 p.m. on a business day, then such facsimile shall be deemed to have been received on the next succeeding business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving party. Notice by first class mail shall be deemed to have been received on the third business day following deposit in the mail. A party may from time to time change the address to which notice hereunder is to be sent by providing notice to the other party pursuant to this section.

**Section 13.** This Agreement, on and after the Effective Date, shall be binding in accordance with its terms upon the parties hereto and their respective successors and assigns with regard to the retail distribution of natural gas. This Agreement shall not affect or bind affiliates or subsidiaries of PGS and FPUC.

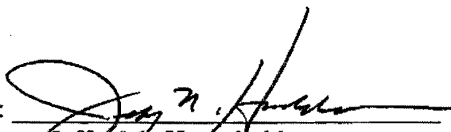
*[signature page follows]*

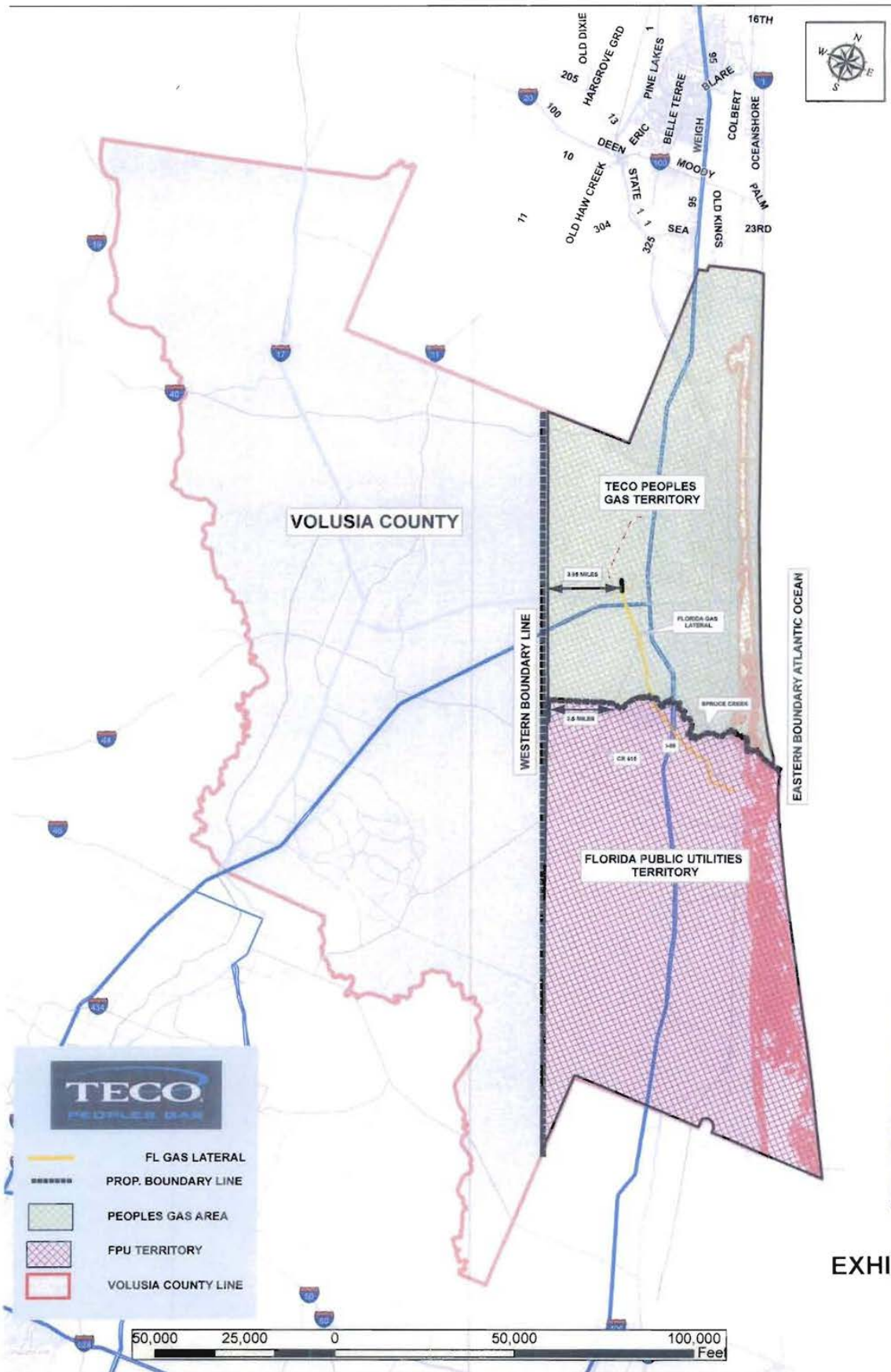
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first above stated.

**PEOPLES GAS SYSTEM, a division of  
Tampa Electric Company**

By:   
\_\_\_\_\_  
Bruce Narzissenfeld  
Vice President - Fuels

**FLORIDA PUBLIC UTILITIES COMPANY**

By:   
\_\_\_\_\_  
Jeffrey M. Householder  
President



DOCUMENT NUMBER-DATE

03739 MAY27 =

FPSC-COMMISSION CLERK

EXHIBIT A



NATURAL GAS  
FRANCHISE AGREEMENT  
ORDINANCE NO. O2009-13

AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF WILDWOOD, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE.

WHEREAS, Peoples Gas System and the City of Wildwood desire to enter into a franchise agreement for a period of thirty (30) years commencing from the date provided herein; and

WHEREAS, the City Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System.

NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WILDWOOD, FLORIDA, THAT:

SECTION 1:                    DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Wildwood, Sumter County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.
- E. "Effective Date" shall mean the date this Franchise becomes Effective as described in Section 19 below.
- F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 19 below.
- G. "FPSC" shall mean the Florida Public Service Commission or any successor

agency.

- H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale, transportation or distribution of Gas.
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Natural Gas" of "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the City.

SECTION 2:            GRANT

The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 3:            TERM

Except as provided in Section 15, the Franchise hereby granted shall be for a period of thirty (30) years from the effective date of this ordinance.

SECTION 4:            ASSIGNMENT

A. The Franchise hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the City.

B. Notwithstanding the foregoing, the Company may, without the consent of the City, lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger or consolidation with, or transfer to, a corporation engaged in

similar business (including an affiliate or subsidiary of the Company), or pledge or mortgage of such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 5: CITY COVENANT

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

SECTION 6: USE OF STREETS

The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company and submission by the Company of all information necessary to process the application. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

SECTION 7:                    MAINTENANCE

All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission and any City rules or ordinances that are not inconsistent with State law.

SECTION 8:                    LAYING OF PIPE

All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits and any City rules or ordinances that are not inconsistent with State law.

SECTION 9:                    CONSTRUCTION WORK

The City reserves the right to permit to be laid electric conduits, water, reuse water and gas pipes and lines, cables, sewers, and any other lines deemed necessary by the City and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, reuse water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company at the Company's cost as ordered in writing by the City without claim for reimbursement. If the City shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it

will not intentionally interfere with, change, or injure any water pipes, reuse water pipes, drains, or sewers of said City unless it has received specific permission from the City or its duly authorized representative and that the Company will be responsible for the cost of repair of any water pipe, reuse water pipe, sewer or main or any other portion of a City owned utility.

SECTION 10:            FRANCHISE FEE

Subject to Section 11 below, within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the City, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the City and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale, transportation or distribution of Natural Gas to Customers within the corporate limits of the City. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

The franchise fee shall be revisited by the parties for equitable adjustment every five (5) years as follows: In the event the Company is granted a franchise, with similar terms and conditions, from another Florida municipality or governmental entity within the Central Florida Gas Service Area, for similarly situated users and providers, in excess of six percent (6%) of the Company's Gross Revenues, as described above, then the franchise fee paid to the City, at the City's option, shall be adjusted to said higher franchise fee.

SECTION 11:            IDENTIFICATION OF CITY RESIDENTS

No less than thirty (30) days prior to the Effective Date, the City shall deliver to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the City limits. The City shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether by addition, annexation or consolidation, or upon the Company's request. The Company shall be relieved of any

obligation to pay franchise fees to the extent the City has failed to provide information in accordance with this Section 11.

SECTION 12: ACCOUNTS AND RECORDS

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

SECTION 13: INSURANCE

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14:            INDEMNIFICATION

In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the City during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; **provided, however**, that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

SECTION 15:            TERMINATION BY CITY

Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the City, to effect such cure; and

provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 16:                    CHANGES IN PROVISIONS HEREOF

Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 17:                    SEVERABILITY; CHANGE IN LAW

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

(B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 18:                    GOVERNING LAW

This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 19:                    EFFECTIVE DATE

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

APPROVED AS TO FORM AND CORRECTNESS:

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DONE AND ORDAINED this 10<sup>th</sup> day of August, 2009, by the City Commission of the City of Wildwood, Florida.

CITY COMMISSION  
CITY OF WILDWOOD, FLORIDA

(SEAL)

ATTEST:

Joseph Jacobs  
Joseph Jacobs, City Clerk

Ed Wolf  
Ed Wolf, Mayor

First Reading: July 27, 2009  
Second Reading: August 10, 2009

Approved as to form:

Jerry A. Blair  
Jerry A. Blair, City Attorney

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2009.

PEOPLES GAS SYSTEM, A DIVISION OF  
TAMPA ELECTRIC COMPANY

Gordon L. Gillette  
By: Gordon L. Gillette  
Title: President