

ORIGINAL

## FIRM PURCHASE/SALE AGREEMENT

[REDACTED] ("Seller"), and Peoples Gas System, Inc., a Florida corporation ("Buyer"), referred to collectively as the "Parties," enter into this Firm Purchase/Sale Agreement (this "Agreement") effective as of the 15th Day of February, 1995 (the "Effective Date"). The General Provisions set forth in Appendix '1' shall apply to this Agreement.

**ARTICLE 1. TERM** This Agreement shall be in effect from February 15, 1995 through October 31, 2002.

**ARTICLE 2. SCOPE OF AGREEMENT** Omitted

**ARTICLE 3. QUANTITY OBLIGATIONS** 3.1. Seller's Sales Obligation. Seller shall Schedule, or cause to be Scheduled, at the Receipt Point(s) on a firm basis each Gas Day a quantity of Gas equal to the quantity properly requested by Buyer up to the DCQ ("Buyer's Requested Quantity"). In the event Seller is unable to Schedule the DCQ for a given Gas Day, Seller may Schedule a quantity of Gas less than the DCQ by giving notice to Buyer no later than one Day prior to Buyer's Transporter's nomination deadline for such Gas Day.

3.2. Seller's Failure to Schedule. If on any Gas Day Seller fails to Schedule Buyer's Requested Quantity, then such occurrence shall constitute a "Seller's Deficiency Default" and "Seller's Deficiency Quantity" shall be the numerical difference between Buyer's Requested Quantity and the amount of Gas Scheduled for such Gas Day. In the event of a Seller's Deficiency Default, Seller shall pay Buyer the sum of the following: (i) an amount equal to the product of the Seller's Deficiency Quantity multiplied by the Replacement Price Differential, plus (ii) liquidated damages equal to \$0.15 multiplied by Seller's Deficiency Quantity to cover Buyer's administrative and operational costs. During any Month in which Seller's nonperformance continues for a period of five consecutive Gas Days Buyer may elect upon notice to Seller, without liability, not to recommence Scheduling Gas hereunder for the remainder of such Month, but for no longer period. Subject to offset pursuant to Section 3.5, payment to Buyer shall be made no later than 10 Days after receipt by Seller of Buyer's invoice for same.

3.3. Buyer's Purchase Obligation. Buyer shall Schedule, or cause to be Scheduled, at the Receipt Point(s) on a firm basis each Gas Day a quantity of Gas equal to the DCQ. In the event Buyer is unable to Schedule the DCQ for a given Gas Day, Buyer may Schedule a quantity of Gas less than the DCQ by giving notice to Buyer no later than one Day prior to Seller's Transporter's nomination deadline for such Gas Day.

3.4. Buyer's Failure to Schedule. If on any Gas Day Buyer fails to Schedule the DCQ, then such occurrence shall constitute a "Buyer's Deficiency Default" and "Buyer's Deficiency Quantity" shall be the numerical difference between the DCQ, and the quantity of Gas Scheduled for such Gas Day. In the event of a Buyer's Deficiency Default, Buyer shall pay Seller the sum of the following: (i) an amount equal to the product of Buyer's Deficiency Quantity multiplied by the Replacement Price Differential, plus (ii) liquidated damages equal to \$0.15 multiplied by Buyer's Deficiency Quantity to cover Seller's administrative and operational costs. During any Month in which Buyer's nonperformance continues for a period of five consecutive Gas Days Seller may elect upon notice to Buyer, without liability, not to recommence Scheduling Gas for the remainder of such Month, but for no longer period. Subject to offset pursuant to Section 3.5, payment to Seller shall be made in accordance with the Billing and Payment provisions set forth in Appendix '1'.

3.5. Offset. In the event that Buyer and Seller are each required to pay an amount in the same Month under Section 3.2 and Section 3.4, or under Section 3.2 and the Billing and Payment provisions set forth in Appendix '1', then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations to pay through offset. In which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

**ARTICLE 4. DEFAULTS AND REMEDIES** 4.1. Early Termination. If a Triggering Event (defined in Section 4.2) occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (i) upon thirty (30) Business Days written notice to the first Party, which notice shall be given no later than 60 Days after the discovery of the occurrence of the Triggering Event, terminate this Agreement ("Early Termination") except as provided in Section 6.4 and (ii) withhold any payments due; provided, upon the occurrence of any Triggering Event listed in item (iv) of Section 4.2 of this Agreement shall automatically terminate, without notice, as if an Early Termination had been immediately declared except as provided in Section 6.4. In the event of Early Termination, the Notifying Party shall in good faith calculate its damages, including its associated costs and attorneys' fees, resulting from the termination of the Agreement (the "Termination Payment"). The Termination Payment will be determined by (i) comparing the value of (a) the remaining terms, quantities and prices under this Agreement had it not been terminated to (b) the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract and (ii) ascertaining the associated costs and attorneys' fees. To ascertain the market prices of a replacement contract the Notifying Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in Gas swap contracts and other bona fide third party offers, all adjusted for the length of the remaining term and the basis differential. If the calculation of the Termination Payment does not result in damages to the Notifying Party, the Termination Payment shall be zero. The Notifying Party shall give the Affected Party (defined in Section 4.2) written notice of the amount of the Termination Payment, inclusive of a statement showing its determination. The Affected Party shall pay the Termination Payment to the Notifying Party within 30 Days of receipt of such notice. At the time for payment of any amount due under this Article 4, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder. If the Affected Party disagrees with the calculation of the Termination Payment, the issue shall be submitted to arbitration pursuant to this Agreement and the resulting Termination Payment shall be due and payable within three Days after the award. Notwithstanding the foregoing, in the event the Affected Party owes the Notifying Party a Termination Payment in excess of \$200,000.00, the Affected Party shall be permitted the option of paying the Notifying Party in monthly installments, each in an amount not to exceed \$483,000.00, until such time as the total Termination Payment due has been paid.

4.2. Triggering Event shall mean, with respect to a Party (the "Affected Party"): (i) the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within ten Business Days after written notice of such failure is given to the Affected Party; provided, the payment is not the subject of a good faith dispute as described in the Billing and Payment provisions or (ii) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made or deemed to be repeated or (iii) the failure by the Affected Party to perform any covenant set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Section 4.2 as a separate Triggering Event), and such failure is not excused by Force Majeure or cured within ten Business Days after written notice thereof to the Affected Party or (iv) the Affected Party shall (a) make an assignment or any general arrangement for the benefit of creditors, (b) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismitted for 30 Days, (c) otherwise become bankrupt or insolvent (however evidenced) or (d) be unable to pay its debts as they fall due or (v) Seller's unexcused failure to Schedule the Buyer's Requested Quantity requested by Buyer for a cumulative period of 30 or more Gas Days in a 12 Month period or (vi) Buyer's unexcused failure to Schedule the DCQ or MinDQ for a cumulative period of 30 or more Gas Days in a 12 Month period or (vii) the occurrence of a Material Adverse Change of the Affected Party; provided, such Material Adverse Change shall not be considered if the Affected Party establishes, and maintains throughout the term hereof, a Letter of Credit (naming the Notifying Party as the beneficiary) in an amount equal to the sum of (in each case rounding upwards for any fractional amount

DOCUMENT NUMBER-DATE

1.2255 DEC-25

RECORDS REPORTING

to the next \$500,000.00) (a) the Notifying Party's Termination Payment plus (b) if the Notifying Party is Seller, the aggregate of the amounts Seller is entitled to receive under the Agreement for Gas Scheduled during the 60 Day period preceding the Material Adverse Change (the amount of said Letter of Credit to be adjusted quarterly to reflect amounts owing at that point in time) or (iii) the Affected Party fails to establish, maintain, extend or increase a Letter of Credit when required pursuant to this Agreement, or after reasonable notice fails to replace the issuing bank with another bank acceptable to the beneficiary or (b) with respect to Seller, at any time, Seller shall have defaulted on its indebtedness to third parties resulting in an acceleration of obligations of Seller in excess of \$25,000,000.00, or with respect to Buyer, at any time, Buyer shall have defaulted on its indebtedness to third parties, resulting in an acceleration of obligations of Buyer in excess of \$5,000,000.00.

**4.3. Other Events:** In the event Buyer is regulated by a federal, state or local regulatory body, and such body shall disallow all or any portion of any costs incurred or yet to be incurred by Buyer under any provision of this Agreement, such action shall not operate to excuse Buyer from performance of any obligation nor shall such action give rise to any right of Buyer to any refund or retroactive adjustment of the Contract Price. Notwithstanding the foregoing, if the Affected Party's activities hereunder become subject to regulation of any kind whatsoever under any law (other than with respect to New Taxes) to a greater or different extent than that existing on the Effective Date and such regulation either (i) renders this Agreement illegal or unenforceable or (ii) materially adversely affects the business of the Affected Party, with respect to its financial position or otherwise, then in the case of (i) above, either Party, and in the case of (ii) above, only the Affected Party, shall at such time have the right to declare an Early Termination in accordance with the provisions hereof; provided, notwithstanding the rights of the Parties to declare an Early Termination as above stated, the Affected Party shall be liable for payment of the Termination Payment calculated by the non-Affected Party as provided in Section 4.1.

**4.4. Offset:** Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and defenses consistent with Section 8.3 (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or out of this Agreement.

**4.5. Collateral Requirement/Termination Payment Threshold:** If at any time and from time to time during the term of this Agreement (and notwithstanding whether a Triggering Event has occurred) the Termination Payment that would be owed to a Party should exceed \$15,000,000.00, such Party as the Beneficiary Party may request the other Party to establish a Letter of Credit as the Account Party in an amount equal to the Termination Payment in excess of \$15,000,000.00 (rounding upwards for any fractional amount to the next \$500,000.00), or such other collateral as may be reasonably acceptable to the Beneficiary Party. The Letter of Credit or other collateral shall be delivered within five (5) Business Days of the date of such notice. On a quarterly basis, such Letter of Credit may be increased or reduced correspondingly to the amount of such excess Termination Payment (rounding upwards for any fractional amount to the next \$500,000.00).

**ARTICLE 5. FORCE MAJEURE:** This Article 5 is the sole and exclusive excuse of performance permitted under this Agreement and all other excuses at law or in equity are WAIVED to the extent permitted by law. Except with respect to payment obligations, in the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations hereunder, it is agreed that upon such Party's giving notice and full particulars of such Force Majeure to the other Party as soon as reasonably possible (such notice to be confirmed in writing), the obligations of the Party giving such notice, to the extent they are affected by such event, shall be suspended from the inception and during the continuance of the Force Majeure for a period of up to 120 Days in the aggregate during any 12 Month period, but for no longer period. The Party receiving notice of Force Majeure may immediately take such action as it deems necessary at its expense for the entire 120 Day period or any part thereof. The Parties expressly agree that upon the expiration of the 30 Day period Force Majeure shall no longer apply to the obligations

hereunder and both Buyer and Seller shall be obligated to perform. The cause of the Force Majeure shall be remedied with all reasonable diligence and dispatch, provided, unless otherwise agreed no provision herein shall require or permit Seller or Buyer to Schedule quantities of Gas (i) in excess of the DCO, or (ii) at points other than the Receipt Point(s).

**ARTICLE 6. TAXES:** 6.1. **Allocation of and Indemnity for Taxes:** The Contract Price includes full reimbursement for, and Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all Taxes applicable to the Gas sold upstream of the Receipt Point(s). In the event Buyer is required to remit such Tax, the amount thereof shall be deducted from any sums becoming due to Seller hereunder. Seller shall indemnify, defend and hold harmless Buyer from any Claims for such Taxes. The Contract Price does not include reimbursement for and Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller has paid, all Taxes applicable to the Gas sold downstream of or at the Receipt Point(s), including any Taxes imposed or collected by a taxing authority with jurisdiction over Buyer. Buyer shall indemnify, defend and hold harmless Seller from any Claims for such Taxes.

6.2. **Cooperation:** Upon request, a Party shall provide a certificate of exemption or other evidence of exemption from any Tax and each Party agrees to cooperate with the other in obtaining an exemption and minimizing Taxes payable in respect of all Transactions.

**ARTICLE 7. TITLE, RISK OF LOSS, INDEMNITY AND BALANCING:** 7.1. **Title, Risk of Loss and Indemnity:** As between the parties, Seller shall be deemed to be in exclusive control and possession of Gas Scheduled hereunder and responsible for any damage or injury caused thereby prior to the time the same shall have been delivered to Buyer. After delivery of Gas to Buyer at the Receipt Point(s), Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby. Title to Gas Scheduled hereunder shall pass from Seller to Buyer at the Receipt Point(s). Seller and Buyer each assumes all liability for and shall indemnify, defend and hold harmless the other Party from any Claims, including injury to and death of persons arising from any act or incident occurring when title to the Gas is vested in the indemnifying Party. IT IS THE INTENT OF THE PARTIES THAT THIS INDEMNITY AND THE LIABILITY ASSUMED UNDER IT BE WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, INCLUDING WITHOUT LIMITATION, THE NEGLIGENCE OF ANY INDEMNIFIED PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

7.2. **Correction of Imbalances, Cashouts and Penalties:** Differences between Scheduled quantities and actual quantities delivered and received hereunder ("Imbalances") will be corrected or settled in cash or Gas or by offset as the Parties agree. Additionally, in the event of (i) an Imbalance on Buyer's Transporter's system caused by Seller or Seller's Transporter's delivery of less or more than the Scheduled quantity for any Gas Day (in which case Seller shall be the "Responsible Party") or (ii) an Imbalance on Seller's Transporter's system caused by Buyer or Buyer's Transporter's receipt of more or less than the Scheduled quantity for any Gas Day (in which case Buyer shall be the "Responsible Party"), the Responsible Party shall be liable for and reimburse to the other Party any associated Transporter penalties or cashout costs and losses incurred by such other Party.

**ARTICLE 8. MISCELLANEOUS:** 8.1. **Notices:** All notices, including, without limitation, consents, and communications made pursuant to this Agreement shall be made as follows:

TO SELLER:  
Notice/Correspondence:



Invoices:

[Redacted]

Payments:

[Redacted]

Nominations:

[Redacted]

Confirmations:

[Redacted]

TO BUYER:

Notices/Correspondence:

111 Madison Street, P O Box 2562  
Tampa, Florida 33601  
Attn: Adrene Gudry  
Phone \_\_\_\_\_  
Facsimile \_\_\_\_\_

Invoices:

111 Madison Street, P O Box 2562  
Tampa, Florida 33601  
Attn: Ed Elliott  
Phone \_\_\_\_\_  
Facsimile \_\_\_\_\_

Payments:

Nominations

Phone # \_\_\_\_\_  
Facsimile # \_\_\_\_\_

Confirmations:

Phone # \_\_\_\_\_  
Facsimile # \_\_\_\_\_

Notices required to be in writing shall be delivered in written form by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day) or such earlier time confirmed by the receiving Party. Notice by overnight mail or courier shall be deemed to have been received two Business Days after it was sent or such earlier time confirmed by the receiving Party. Any notices given hereunder in respect of the declaration of Early Termination shall be also addressed and sent to the attention of the Corporate Secretary of Buyer or Seller. Any Party may change its addresses by providing notice of same in accordance herewith.

**8.2. Transfer** This Agreement, including, without limitation, each indemnification, shall inure to and bind the permitted successors and assigns of the Parties; provided, neither Party shall transfer this Agreement without the prior written approval of the other Party which may be withheld entirely at the option of such Party; provided further, either Party may transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other Party, but no such transfer shall operate to relieve the transferor Party of its obligations hereunder. Any Party's transfer in violation of this Section 8.2 shall be void.

**8.3. Limitation of Remedies, Liability and Damages and Mitigation.** THE PARTIES DO HEREBY CONFIRM THAT THE EXPRESS REMEDIES AND

MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED. SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED. THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, IN TORT, CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. BUYER ACKNOWLEDGES THAT IT HAS ENTERED INTO THIS AGREEMENT AND IS CONTRACTING FOR THE GOODS TO BE SUPPLIED BY SELLER BASED SOLELY UPON THE EXPRESS REPRESENTATIONS AND WARRANTIES HEREIN SET FORTH AND SUBJECT TO SUCH REPRESENTATIONS AND WARRANTIES. EACH PARTY HEREBY WAIVES ALL RIGHTS UNDER ARISING OUT OF OR ASSOCIATED WITH TEXAS & BUSINESS COMMERCE CODE SECTIONS 17.41 THROUGH 17.63 KNOWN AS THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT TO THE EXTENT ALLOWED BY LAW. The Parties acknowledge the duty to mitigate damages hereunder. In this connection, the Parties recognize that the ability to effectuate arrangements for the sale or purchase of Gas is conditioned upon the volatility of Gas markets, the creditworthiness and reliability of potential customers, the complexity and size of the portfolios of contracts managed by each Party and the need to conduct market business in an orderly manner. Therefore, the Parties agree that (i) thirty (30) Business Days is a commercially reasonable period to purchase or sell Gas in respect of a Seller's or Buyer's Deficiency Default and (ii) thirty (30) Business Days after the end of the Month in which Early Termination occurs is a commercially reasonable period after the establishment of Early Termination to determine the Termination Payment, provided notwithstanding the foregoing, if the basis of a Party's Deficiency Default or Termination Payment includes thirty (30) or more consecutive Gas Days, the Parties recognize that a longer period may ordinarily be required to effectuate cover or determine the Termination Payment. Each Party may utilize its discretion, with commercially reasonable foresight, to adjust the timing and staggering of the purchases or sales of Gas volumes in its efforts to mitigate damages. No claim that a Party failed to mitigate damages shall be grounded solely on the basis of counter Gas market movement.

**8.4. Winding Up Arrangements.** Upon the expiration of the Parties sale and purchase obligations under this Agreement, any monies, penalties or other charges due and owing Seller shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds due Buyer made, within 60 Days. Any imbalances in receipts or deliveries shall be corrected to zero balance within 60 Days. All indemnity obligations and audit rights shall survive the termination of this Agreement. The Parties' obligations provided in this Agreement shall remain in effect for the purpose of complying herewith.

**8.5. Applicable Law** THIS AGREEMENT AND EACH TRANSACTION AND THE RIGHTS AND DUTIES OF THE PARTIES ARISING OUT OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE

OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THE PARTIES AGREE THAT THIS AGREEMENT AND ALL TRANSACTIONS SHALL BE ACCEPTED AND FORMED IN THE STATE OF TEXAS ACCORDING TO THE PROCEDURES HEREIN SET FORTH.

**8.6. Document, Record Retention and Evidence** This Agreement and Appendices hereto, constitute the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. There are no prior or contemporaneous agreements or representations (whether oral or written) affecting the subject matter other than those herein expressed. No amendment or modification to this Agreement shall be enforceable, unless reduced to writing and executed by both Parties. The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization not a Party or not bound as a Party, or not a permitted successor or assignee of a Party bound to this Agreement. Except as otherwise herein stated, any provision, article or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties or deemed unlawful because of a statutory change will not otherwise affect the lawful obligations that arise under this Agreement. The headings used for the Articles herein are for convenience and reference purposes only. All Exhibits and Appendices referenced in this Agreement, if any, are incorporated.

**8.7. Confidentiality.** Each Party shall not disclose the terms set forth in Appendix "2" of this Agreement to a third party (other than the Party's and its affiliates' employees, lenders, counsel or accountants who have agreed to keep such terms confidential) except in order to comply with any applicable law, order, regulation or exchange rule, provided, each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure and use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation; provided, all monetary damages shall be limited to actual direct damages.

The Parties have executed this Agreement in multiple counterparts to be construed as one effective as of the Effective Date

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

PEOPLES GAS SYSTEM, INC.

By: DR Panting  
Title: SA JP 12/19

g

APPENDIX '1'

GENERAL PROVISIONS

Usage and Definitions All references to Articles and Sections are to those set forth in the Agreement to which this Appendix '1' is attached. Reference to any document means such document as amended from time to time and reference to any Party includes any permitted successor or assignee thereof. The following definitions and any terms defined internally in this Agreement shall apply to this Agreement and all notices and communications made pursuant to this Agreement.

Btu means the amount of energy required to raise the temperature of one pound of pure water one degree Fahrenheit from 59 degrees Fahrenheit to 60 degrees Fahrenheit. The term MMBtu means one million Btus.

Buyer means Peoples Gas System, Inc., a Florida corporation, its successors and assigns.

C.T. means Central Time.

Claims means all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matters of the indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

Contract Price means the price for the purchase or sale of Gas specified in Appendix "2" to the Agreement.

DCQ means the applicable quantity of Gas specified as the "Daily Contract Quantity" in Appendix "2" to the Agreement.

Day means a period of 24 consecutive hours, beginning at midnight C.T. on any calendar Day. Business Day means a Day on which Federal Reserve member banks in New York City are open for business and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time. Gas Day means a period of 24 consecutive hours beginning at the time of the applicable Transporter's gas day.

Receipt Point(s) means the agreed point(s) of delivery specified in Appendix "2" to the Agreement.

Force Majeure means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party claiming suspension, and which by the exercise of due diligence such Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute performance therefor; provided, neither (i) the loss of Buyer's markets nor Buyer's inability economically to use or resell Gas purchased hereunder nor (ii) the loss or failure of Seller's Gas supply, including, without limitation, depletion of reserves or failure of production resulting from well freeze-offs, nor Seller's ability to sell Gas to a market at a more advantageous price, shall constitute an event of Force Majeure.

Force Majeure shall include an event of Force Majeure occurring with respect to the facilities or services of Buyer's or Seller's Transporter.

Funded Debt means liabilities, debts and obligations of the subject party not coming due or maturing within one year.

GAAP means generally accepted accounting principles, consistently applied.

Gas means methane and other gaseous hydrocarbons meeting the quality standards and specifications of Buyer's Transporter.

Indemnified Party and Indemnifying Party mean the Party receiving and providing an indemnity, respectively.

Interest Rate means, for any date, two percent over the per annum rate of interest announced as the "Prime Rate" from time to time for commercial loans by Citibank, N. A. as established by the administrative body of such bank charged with the responsibility of establishing such rate, as same may change from time to time; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable law.

Letter of Credit means an irrevocable standby letter of credit established by a Party (the Account Party) issued or confirmed in a form and by a commercial bank acceptable to the Party in whose favor it is issued (the Beneficiary Party).

Material Adverse Change means (i) with respect to Seller, [redacted] shall have long-term debt unsupported by third party credit enhancement that is rated by Standard & Poor's Corporation below BBB- or (ii) with respect to Buyer, Buyer shall have either (a) Funded Debt at any one time which exceeds 170% of Net Worth or (b) Net Worth below \$70,000,000.00.

Month means a period of time beginning at midnight C.T. on the

first Day of any calendar Month and ending at midnight C.T. on the first Day of the following calendar Month.

Net Worth means total assets (exclusive of intangible assets) minus total liabilities, each as would be reflected on a balance sheet of the subject party prepared in accordance with GAAP.

Period of Receipt means the period from the date Scheduling obligations are to commence to the date same are to terminate as specified in Appendix "2" to this Agreement.

Pipeline means a company authorized to transport Gas on behalf of itself or others on physical Gas transmission facilities.

Pricing Hours means the hours C.T. from 8:00 a.m. to 5:00 p.m. of each Business Day.

Replacement Price Differential means (i) in the event of a Seller's Deficiency Default, the positive difference, if any, obtained by subtracting the Contract Price from the greater of (a) the cost to Buyer, including incremental transportation costs and other basis adjustments, to replace Seller's Deficiency Quantity for such Gas Day (but excluding penalties or charges for unauthorized receipts of Gas by Buyer) or (b) the Spot Price for the Gas Day in which Seller's Deficiency Default occurred, and (ii) in the event of a Buyer's Deficiency Default, the positive difference, if any, obtained by subtracting the lesser of (a) the price obtained by Seller in an incremental, arms-length sale(s) to a third party of a quantity equal to Buyer's Deficiency Quantity for such Gas Day, less incremental transportation charges to Seller, and including other basis adjustments, or (b) the Spot Price for the Gas Day in which Buyer's Deficiency Default occurred from the Contract Price.

Scheduling or Schedule, when used in reference to Seller, means to make Gas available, or cause Gas to be made available at the Receipt Point(s) for receipt by or for the account of Buyer, including making all Pipeline nominations, and when used in reference to Buyer, means to cause Buyer's Transporter to make available at the Receipt Point(s) transportation capacity sufficient to permit Buyer's Transporter to receive on a firm basis the quantities Seller has available at such Receipt Point(s), including making all Pipeline nominations. Gas shall be deemed to have been Scheduled when confirmed by Transporter.

Seller means [redacted] its successors and assigns.

Spot Price means the price set forth in Gas Dailys (Pasha Publications, Inc.), or successor publication, in the column "Daily Price Survey" under the listing applicable to the geographic location agreed specified in Appendix "2" for the relevant Gas Day. If there is no single price published for that particular Gas Day, but there is published a range of prices under the above column and listing, then the Spot Price shall be the average of such high and low prices. In the event that no price or range of prices is published for that particular Gas Day, then the Spot Price shall be the average of the following: the price (determined as stated above) for each of the first Gas Day immediately preceding and following the Gas Day in which the default occurred for which a Spot Price can be determined.

Taxes means any or all ad valorem, property, occupation, severance, production, extraction, first use, conservation, Btu or energy, gathering, transport, Pipeline, utility, gross receipts, gas or oil revenue, gas or oil import, privilege, sales, use, consumption, excise, lease, transaction, and other or new taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

Transporter means either the Pipeline delivering or receiving Gas at a Receipt Point in a Transaction.

Representations and Warranties As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party continuing throughout the term of this Agreement as follows: (i) there are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform this Agreement or the rights of the other Party under this Agreement, (ii) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and it has the legal right, power and authority and is qualified to conduct its business, and to execute and deliver this Agreement and perform its obligations under the same, and all regulatory authorizations have been maintained as necessary for it to legally perform its obligations hereunder, (iii) the making and performance by it of this Agreement is within its powers, has been duly authorized by all necessary action on its part, and does not and will not violate any provision of law or any rule

regulation, order, writ, judgment, decree or other determination presently in effect applicable to it or its governing documents. (iv) this Agreement constitutes a legal, valid and binding act and obligation of it, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending. (v) there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it. (vi) it has assets of \$8,000,000 or more according to its most recent financial statements prepared in accordance with GAAP and knowledge and experience in financial matters that enable it to evaluate the merits and risks of this Agreement, and (vii) it is not in a disparate bargaining position with the other Party.

**-Operations and Delivery Scheduling Requests.** Not later than two Business Days prior to the earlier of Buyer's or Seller's Transporter's nomination deadline for the first Gas Day of each Month during a Period of Receipt, Buyer agrees to provide to Seller facsimile notice of the quantities Buyer requests Seller to Schedule for each Gas Day of such Month. Should Buyer desire to change the requested quantities Scheduled, Buyer shall provide to Seller facsimile notice thereof not later than one Business Day prior to the earlier of Buyer's or Seller's Transporter's nomination deadline for the applicable Gas Day. In the event the nomination or Scheduling deadline of a Transporter conflicts with these notification dates, Buyer and Seller agree to modify the notification dates accordingly. Buyer and Seller may establish in writing a uniform daily quantity in which instance Buyer shall not be required to Schedule daily quantities of Gas for purchase hereunder until Buyer requests a change in such uniform daily quantity.

**Transportation.** Seller shall obtain, or cause to be obtained, transportation to the Receipt Point, and Buyer shall obtain, or cause to be obtained, transportation from the Receipt Point.

**Gas Specifications.** Seller represents that all Gas delivered hereunder shall meet or exceed the specifications of Buyer's Transporter.

**Multiple Receipt Point Utilization.** Unless amended in writing, the selection of points for the receipt of Gas on a given Gas Day shall be limited to those Receipt Points specified in Appendix "2" to this Agreement. As between equally available Receipt Points, quantity through a specific Receipt Point shall be determined upon the mutual agreement of the parties; provided, however, that Buyer shall have the right, upon notice to the Seller no later than five Days prior to the Month in which such Gas is to be received by Buyer, to Schedule through the Secondary Point(s) listed in Appendix "2" to the Agreement a portion of the DCQ up or equal to fifty percent (50%) of the total DCQ for any Gas Day in such Month.

**-Financial Matters Billing, Invoice Date, Charges and Payment.** By the 10th Day of each calendar Month, Seller shall provide Buyer with a written statement setting forth Gas Scheduled during the preceding Month by Buyer in accordance with Article 3 of the Agreement, and other charges due Seller, including, without limitation, deficiency charges under Article 3. Within five Business Days of the request of either Party, the other Party shall provide, to the extent it has a legal right of access thereto and/or such statement is then available, a copy of the Transporter's allocation or imbalance statement applicable to Gas sold hereunder for the requested period. The difference, if any, between Scheduled and actual quantities delivered or accepted shall be treated as imbalances under Article 7. Buyer shall remit any amounts due by the 10th Day following Buyer's receipt of Seller's statement. Payment of all funds shall be made by wire transfer, in U. S. funds on a same day basis to the account designated in Section 8.1. If Buyer or Seller should fail to remit any amounts in full when due hereunder interest on the unpaid portion shall accrue from the date due at a rate equal to the interest rate. Billings, payments and statements shall be made by wire transfer to the accounts or the addresses/facsimiles specified in Section 8.1.

**Suspension of Performance.** If either Party fails to make a timely payment and such failure is not remedied within two Business Days after such Party receives written notice of default, the nondefaulting Party, in addition to other remedies, may suspend the Scheduling of Gas until such amount, including interest, is paid; provided, if the defaulting Party, in good faith, shall dispute the amount of any such billing or part thereof and shall pay such amounts as it concedes to be correct, no suspension shall be permitted.

**Audit Rights.** For a period of two years from the date of termination of this Agreement, Buyer or Seller or any third party representative thereof shall have the right, upon reasonable notice and at reasonable times to examine the books and records of the other to the extent reasonably necessary to verify the accuracy of any billing statement, payment demand, charge, payment or computation made under this Agreement. The records of the Parties shall be retained in accordance with Section 8.9 for a like period to facilitate the audit rights of the Parties.

**Financial Information.** If requested by Buyer, Seller shall deliver (i) within 120 Days following the end of each fiscal year, a copy of the annual report of Enron Corp. containing consolidated financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 Days after the end of each of its first three fiscal quarters of each fiscal year, a copy of the quarterly report of Enron Corp. containing unaudited consolidated financial statements for such fiscal quarter. If requested by Seller, Buyer shall deliver (i) within 120 Days following the end of each fiscal year, a copy of its annual report containing consolidated financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 Days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP; provided, should any such statements not be timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

**-Warranty of Title to Gas.** Seller warrants that title to Gas to be Scheduled by Seller is free from all production burdens, liens and adverse claims and warrants its right to sell the same. Seller agrees to indemnify, defend and hold harmless Buyer against all Claims to or against the title of said Gas. In the event any Claim is asserted to said Gas, Buyer, in addition to other remedies, may suspend its obligation to pay for said Gas up to the amount of such Claim.

**-Alternate Price Redetermination.** If any or all of the indices used to determine the Spot Price are not available in the future, the Parties agree to promptly negotiate a mutually satisfactory alternate index for the Spot Price (an "Alternate Price"). If the Parties cannot agree by the end of the first Month for which the Spot Price could not be determined, then Seller and Buyer shall each prepare a prioritized list of up to five alternative published reference postings or prices representative of spot prices for Gas delivered in the same geographic area. Each Party shall submit its list to the other within 10 Days after the end of the first Month for which the price could not be determined. The first listed index appearing in Seller's list that also appears in Buyer's list shall constitute the replacement index. If no common indices appear on the lists, each Party shall submit a new list adding two indices within 10 Days. If either Party fails to provide timely a list, such Party's list shall not be considered. From and after the "Renegotiation Date," which shall be the date the Spot Price is no longer available, until the Alternate Price is determined, the Alternate Price shall be the average of the Spot Price(s) in effect during the 12 Months preceding the Month in which the Renegotiation Date occurred, which price shall be effective until the Alternate Price is determined. Upon determination of a new Alternate Price, the Spot Price will be adjusted retroactively to the Renegotiation Date.

**-Effect of Waiver or Consent.** No waiver or consent by either Party, express or implied, of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver or consent of any other default or defaults whether of a like or different nature. Failure by a Party to complain of any act of the other Party or to declare the other Party in default with respect to this Agreement, regardless of how long that failure continues, shall not constitute a waiver by that Party of its rights with respect to that default until the applicable statute of limitations period has run.

**-Indemnifications.** With respect to each indemnification included in this Agreement the indemnity is given to the extent authorized by law and the following provisions shall be considered applicable. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume the investigation and defense thereof, including the employment of counsel, and shall be obligated to pay the related attorneys' fees; provided, the indemnified Party shall have the right to employ separate counsel and participate in

the defense of any Claim, however, the attorneys' fees of such counsel shall be paid by the Indemnified Party unless the employment of such counsel has been consented to in writing by the Indemnifying Party or the Indemnifying Party has failed to assume the defense and employ counsel in a timely manner; provided further, if the named parties to any Claim include both Parties, and the Indemnified Party shall have been advised by counsel that there may be a legal defense available to it which is different from those available to the Indemnifying Party, the Indemnified Party may elect to employ separate counsel at the expense of the Indemnifying Party, in which case the Indemnifying Party shall pay all attorneys' fees of such counsel and shall not have the right to assume the defense of the Claim on behalf of the Indemnified Party. The Parties shall use reasonable efforts to cooperate in the defense of any Claim. The Indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. The Indemnified Party shall reimburse the Indemnifying Party for payments made or costs incurred in respect of an indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made with respect to an event covered by the indemnity.

Arbitration Any dispute or need of interpretation arising out of this Agreement pertaining to the calculation of a Termination Payment shall be submitted to binding arbitration by one arbitrator with over eight years of professional experience in the commodity futures markets, derivative products and the Gas Industry and who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within 30 Days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the American Arbitration Association (the "AAA") using the above criteria. Such arbitration shall be held in alternating locations of the home offices of Seller and Buyer, commencing with Seller's office. The rules of the AAA shall apply to the extent not inconsistent with the rules herein specified. Either Party may initiate arbitration by written notice to the other Party and the arbitration shall be conducted according to the following: (i) not later than seven Days prior to the hearing date set by the arbitrator each Party shall submit a brief with a single dollar figure for settlement, (ii) the hearing shall be conducted on a confidential basis without continuance or adjournment, (iii) the arbitrator shall be limited to selecting only one of the two figures submitted by the Parties, (iv) each Party shall divide equally the cost of the hearing and each shall be responsible for its own expenses and those of its counsel and representatives and (v) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to arbitration and the cost to the Parties of their representatives and counsel shall not be permissible.

**APPENDIX "Z"**  
**FIRM PURCHASE/SALE AGREEMENT**  
 February 15, 1995

This Appendix "Z" to the Firm Purchase and Sale Agreement shall confirm and effectuate the specific terms and conditions reached between Peoples Gas System, Inc. ("Buyer") and Citrus Trading Corp. ("Seller") regarding the firm purchase of Gas

Period of Receipt	Daily Contract Quantity	Primary Receipt Point(s)	Secondary Receipt Point(s)	Contract Price
02-15-95 to 05-31-95	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06-01-95 to 10-31-95	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11-01-95 to 10-31-00	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11-01-00 to 10-31-01	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11-01-01 to 10-31-02	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

SPOT PRICE (LOCATION). [REDACTED]

Buyer and Seller hereby agree that all Gas Scheduled for receipt at the Primary Receipt Point(s) on any given Gas Day shall be allocated amongst such Primary Receipt Point(s) so that fifty percent (50%) of the quantity Scheduled for receipt at the Primary Receipt Point(s) shall be received at a point in [REDACTED] and fifty percent (50%) of the quantity Scheduled for receipt at the Primary Receipt Point(s) shall be received at a point in [REDACTED]

This Appendix "Z" is provided pursuant to and in accordance with the Firm Purchase/Sale Agreement in effect between Buyer and Seller and constitutes part of and is subject to all of the terms and provisions of such Agreement.

PEOPLES GAS SYSTEM, INC

*DR Pountney*  
 \_\_\_\_\_  
 (Title) *SR VP TRADING*  
 (Date) *2/22/95*

*JH*

[REDACTED SIGNATURE]



AMENDMENT TO FIRM PURCHASE SALE AGREEMENT

This Amendment to Firm Purchase/Sale Agreement dated August 20, 1997 (this "Amendment") and is between Peoples Gas System, a division of Tampa Electric Company (successor by merger to Peoples Gas System, Inc.) ("Buyer") and [redacted] ("Seller"), each hereinafter referred to from time to time as a "Party" or collectively as "Parties".

WITNESSETH:

WHEREAS, Seller and Buyer are Parties to that certain Firm Purchase/Sale Agreement dated as of February 18, 1995, as amended by amendments dated as of March 27, 1996, and August 1, 1996 (as amended, the "Agreement"); and

WHEREAS, Seller and Buyer desire to amend the Agreement to place certain restrictions and conditions on the FTS transportation capacity required to be released by Buyer to Seller to enable Seller to deliver Gas at the Receipt Point.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

- 1. In Appendix "2" for the Period of Delivery of 9/1/97 through October 31, 2002, the first paragraph below the table shall be deleted and replaced with the following:

Buyer and Seller agree that Buyer shall release to Seller sufficient FTS transportation capacity on FGT to enable Seller to deliver Gas to the Receipt Point. Said release shall be at maximum rate and shall have a term running from 9/1/97 through October 31, 2002. Said capacity shall be used by Seller only for the delivery of Gas sold by Seller pursuant to this Agreement. Buyer shall have the right to temporarily recall the capacity released to Seller pursuant to this paragraph at the commencement, and for the duration, of any period for which Seller fails, or is unable, to schedule the full amount of Buyer's Requested Quantity for delivery at the Receipt Point. If Buyer recalls such capacity pursuant to the preceding sentence, Seller shall reimburse Buyer for the FT capacity (other than the capacity subject to the recall) which Buyer uses on such first day and until Buyer's recalled capacity becomes available for transportation of the Requested Quantity to the Receipt Point, plus any amounts payable by Seller to Buyer pursuant to Section 3.2. The provisions of Section 3.4 of this Agreement shall not apply during the period of any such recall by Buyer. Prior to exercising any right of recall hereunder, Buyer must notify Seller that Gas is not being delivered at the Receipt Point and Seller must confirm verbally with FGT, and Seller shall have until 10:00 a.m. central time on the following Gas Day to either correct the confirmation and ensure gas is scheduled to flow, or, to arrange delivery of replacement Gas into FGT for Buyer's account.

- 2. Except as amended herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed in multiple originals as of the date first above written.

PEOPLES GAS SYSTEM, a division of TAMPA ELECTRIC COMPANY

By: [Signature]

Name: MICHAEL R. SCHMIDT

Title: DIRECTOR GAS SUPPLY AND REGULATORY AFFAIRS

[Redacted signature line]

By: [Redacted signature]

Name: [Redacted name]

Title: [Redacted title]



BASE LOAD - PRO FORMA AGREEMENT

## GAS SALES AGREEMENT

A

This GAS SALES AGREEMENT (the "Agreement") is made and entered into as of the 1st day of April, 1997, by and between [REDACTED] ("Seller"), and Peoples Gas System, Inc., a division of Tampa Electric Company a Florida corporation ("PGS") (each of Seller and PGS being sometimes referred to individually as a "party" and collectively as the "parties").

## WITNESSETH:

WHEREAS, PGS owns and operates a natural gas distribution system in the State of Florida and has a need to acquire supplies of Gas;

WHEREAS, Seller has a supply of Gas available for sale, and PGS desires to purchase such Gas directly from Seller.

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

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the following words and phrases shall have the following meanings:

"Alternate Receipt Point" shall have the meaning given for such term in Article IV of this Agreement.

"Agreement" shall mean this Gas Sales Agreement, including the appendices attached hereto, as the same may be amended from time to time.

"British thermal unit" or "Btu" shall mean the quantity of heat required to raise the temperature of one pound of water from 59°F. to 60°F. at a constant pressure of 14.73 pounds per square inch absolute.

"Business Day" shall have the meaning given for the term "working day" in FGT's FERC Tariff.

**"Contact Person"** shall have the meaning given for such term in Section 17.9(b) of this Agreement.

**"Daily Quantity"** shall mean, for each Day during the term of this Agreement, the quantity of Gas specified as the Daily Quantity in Appendix A to this Agreement.

**"Day"** shall have the meaning given for the term "Receipt Gas Day" in FGT's FERC Tariff; provided, however, that if FGT's FERC Tariff is amended to eliminate the distinction between the terms "Receipt Gas Day" and "Delivery Gas Day", all references in this Agreement to either such term shall thereafter have the meaning given for the term in FGT's FERC Tariff which replaces such terms.

**"°F."** shall mean degree(s) Fahrenheit.

**"FGT"** shall mean Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.

**"FGT's FERC Tariff"** shall mean FGT's FERC Gas Tariff, Third Revised Volume No. 1, as amended, supplemented or superseded from time to time during the term of this Agreement, as such tariff applies to Firm transportation service under FGT's Rate Schedules FTS-1 or FTS-2.

**"Firm"** means, (i) with respect to the sale and purchase of Gas, that Seller is obligated to sell and deliver and PGS is obligated to purchase and receive the quantity of Gas specified, except as excused by an event of Force Majeure and, (ii) with respect to transportation required to be scheduled by a party hereunder, that such party's transporter is obligated to make available a quantity of pipeline capacity, without interruption except as excused by an event of force majeure under such transporter's tariff, sufficient to enable such party to perform its obligations under this Agreement.

**"Force Majeure"** shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, sinkholes, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, in each of the above cases, by the exercise of due diligence such party is unable to prevent or overcome; provided, however, that such term shall not include the interruption or failure of Interruptible transportation. Such term shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way, grants, permits, permissions, licenses, or required governmental orders, necessary to enable such party to fulfill its obligations hereunder.

"Gas" shall mean natural gas meeting the quality specifications which FGT requires with regard to deliveries into its pipeline system.

"Imbalance" shall have the meaning given for such term in Article VIII of this Agreement

"Interruptible" means, with respect to transportation, that a transporter is not obligated to make available any particular quantity of pipeline capacity and that such transporter may, for reasons other than Force Majeure, interrupt and/or decline to schedule such transportation service without incurring liability to the shipper.

"MMBtu" shall mean one million (1,000,000) Btu.

"month" shall mean a calendar month.

"PGS" shall mean Peoples Gas System, Inc., a Florida corporation, and its successors and assigns.

"Primary Receipt Point" shall mean the point or points of interconnection between the facilities of Seller or Seller's Transporter and the pipeline facilities of FGT which point(s) of interconnection are identified on Appendix A to this Agreement.

"Replacement Quantity" shall have the meaning given for such term in Section 9.1 of this Agreement.

"Responsible Party" shall have the meaning given for such term in Article VIII of this Agreement.

"Schedule" shall mean the acts required of a shipper to properly nominate, notify or request service from, and to obtain confirmation of service by, the shipper's transporter for the receipt, transportation and delivery of a quantity of gas on a given day.

"Seller" shall mean [REDACTED] and its successors and assigns.

"Shortfall Quantity" shall have the meaning given for such term in Section 9.2 of this Agreement.

"Termination Date" shall mean the end of the Day commencing on March 31, 1998.

**ARTICLE II**  
**TERM**

This Agreement shall become effective on the date first written above. The term of this Agreement, and the obligations of the parties hereunder, shall commence at the beginning of the Day commencing on April 1, 1997 and shall continue, unless earlier terminated pursuant to the provisions of this Agreement, until the Termination Date.

**ARTICLE III**  
**QUANTITIES**

On each Day during the term of this Agreement, unless excused by Force Majeure, Seller shall sell and deliver to PGS, and PGS shall receive and purchase from Seller, on a Firm basis, the Daily Quantity.

**ARTICLE IV**  
**POINT OF DELIVERY**

All Gas sold hereunder shall be delivered by Seller to or for the account of PGS at the Primary Receipt Point. Seller may, if agreed by PGS, deliver Gas sold hereunder at other points of receipt on the FGT pipeline system (any such other point of receipt being hereinafter referred to as an "Alternate Receipt Point"); provided, however, that, notwithstanding any agreement by PGS to receive Gas sold hereunder at an Alternate Receipt Point, if any portion of the Daily Quantity cannot be delivered by Seller at such Alternate Receipt Point (due to proration, loss or interruption by FGT or Seller's transporter, or any other cause except Force Majeure), Seller shall be obligated to deliver such portion at either the Primary Receipt Point or at another point of receipt on the FGT pipeline system located in the same FGT zone as the Primary Receipt Point, which point PGS and Seller, acting in good faith, shall mutually designate.

**ARTICLE V**  
**BILLING AND PAYMENT**

5.1 **Billing.** On or before the tenth (10th) Day of each month, Seller shall deliver to PGS via facsimile (optional) a bill for the preceding month showing the total quantity of Gas delivered and the amount due either party from the other party pursuant to this Agreement, and shall mail to PGS the original of such bill and any supporting documents). If the actual quantity delivered is not known by the date such bill is delivered to PGS, Seller shall prepare such bill

based on the quantities scheduled during the preceding month. Any bill based on such estimated quantity shall be corrected to reflect the actual quantity on the following month's bill or as soon thereafter as actual delivery information is available.

**5.2 Payment.** PGS shall pay the bill rendered by Seller pursuant to Section 5.1 hereof, minus any disputed amounts, to Seller by electronic funds transfer or wire transfer to the account and bank specified in Seller's bill by the the twenty-fifth (25th) Day of the month in which the bill is rendered.

**5.3 Billing Disputes.** In the event either party is served by the other party with written notice of a bona fide billing dispute, PGS or Seller, as the case may be, shall (i) pay (or credit) to the other party all amounts not in dispute, and (ii) pay any disputed amount, if not resolved within sixty (60) calendar days after the giving of the aforesaid written notice. The parties shall exercise commercially reasonable efforts to resolve any such billing dispute as soon as reasonably practicable.

**5.4 Errors.** If an error is discovered in any bill rendered (or credit given or payment made) hereunder, or in any of the information used in the calculation of such bill (or such credit or payment), Seller shall, to the extent practicable, make an adjustment to correct such error in the next bill rendered after the date on which the error is confirmed. The provisions of this section shall survive the termination of this Agreement; provided, however, that no billing adjustment shall be made, and all bills and payments hereunder shall be deemed final and not subject to any claim or adjustment if a party fails to assert an error within Six (6) months following the occurrence of such error.

## **ARTICLE VI FAILURE TO MAKE PAYMENT**

**6.1 Interest.** If, subject to Section 5.3, either party fails to pay (or credit) the full amount due the other party within the time allowed, interest on the unpaid portion shall accrue from the date due to the date such amount is paid (or credited) at a rate equal to the lesser of (i) the then effective prime rate of interest for large U.S. Money Center commercial banks, published under "Money Rates" by the *Wall Street Journal*, or (ii) the maximum applicable lawful rate of interest.

**6.2 Other Remedy of Seller.** If PGS fails to make any payment when due and such failure is not remedied by or on behalf of PGS within five (5) Business Days after written notice by Seller of such default in payment, then Seller, in addition to any other remedy it may have, may without incurring any liability to PGS and without terminating this Agreement, suspend further deliveries of Gas pursuant to this Agreement until such amount is paid; provided, however, that Seller shall not suspend deliveries of Gas pursuant to this Agreement if (i) PGS's failure to pay is the result of a bona fide dispute, (ii) PGS has paid Seller for all amounts not in dispute and (iii) PGS is in compliance with Section 5.3 of this Agreement.

**6.3 Other Remedy of PGS.** If Seller is required pursuant to Section 5.1, but fails, to provide a credit (or make payment) to PGS, and such failure is not remedied by or on behalf of Seller within five (5) Business Days after PGS's written notice of such default, then PGS, in addition to any other remedy it may have, may without incurring any liability to Seller and without terminating this Agreement, suspend payment of any amounts due Seller under this Agreement until such failure is remedied; provided, however, that PGS shall not so suspend payment of any such amounts if (i) Seller's failure to provide a credit (or make payment) to PGS as required by Section 5.1 is the result of a bona fide dispute, (ii) Seller has provided a credit (or made payment) to PGS for all amounts not in dispute and (iii) Seller is in compliance with Section 5.3 of this Agreement.

## **ARTICLE VII** **TRANSPORTATION**

Subject to the provisions of Article IV, each party shall prior to 9:00 A.M. Florida time schedule the Daily Quantity for Firm transportation in accordance with the scheduling procedures and deadlines set forth in FGT's FERC Tariff or the FERC tariff of Seller's transporter (as applicable) so that the Daily Quantity will be delivered and received at the Primary Receipt Point (or the agreed Alternate Receipt Point) on each Day. If, on any Day, Seller desires to use an Alternate Receipt Point, Seller's request to use such point shall be communicated to PGS not later than two (2) hours prior to the FGT nomination deadline for the Day on which the Daily Quantity is to be delivered at such Alternate Receipt Point. If, for any Day, either party is for any reason unable to schedule all or any portion of the Daily Quantity for Firm transportation in accordance with the foregoing provisions, such party shall immediately notify the other party by telephone (such notification to be confirmed thereafter by facsimile).

## **ARTICLE VIII** **SCHEDULING AND IMBALANCE PENALTIES**

Any difference between quantities scheduled and quantities actually delivered and received hereunder (an "Imbalance") at the Primary Receipt Point or at any Alternate Receipt Point shall be resolved between PGS and Seller on the basis of the "cash out" price formulas set forth in FGT's FERC Tariff. In the event of (i) an Imbalance on PGS's transporter's system caused by Seller or Seller's transporter's delivery of less or more than the quantity scheduled by Seller for transportation on any Day (in which case Seller shall be the "Responsible Party") or (ii) an Imbalance on Seller's transporter's system caused by PGS or PGS's transporter's delivery of less or more than the quantity scheduled by PGS for transportation on any Day (in which case PGS shall be the "Responsible Party"), the Responsible Party shall be liable for and reimburse to the other party any associated transporter penalties or cash out costs incurred by such other party.

**ARTICLE IX**  
**FAILURE TO PERFORM**

**9.1 Seller's Failure to Perform.** In the event (unless excused by Force Majeure) Seller fails to schedule all or any portion of the Daily Quantity for delivery on any Day during the term of this Agreement, Seller shall pay to PGS the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the portion of the Daily Quantity (the "Replacement Quantity") Seller failed to schedule:

(a) If PGS was able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the positive difference determined by subtracting the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller, from PGS's incremental cost (including all costs for transportation of the Replacement Quantity to the point(s) of receipt at which the Replacement Quantity was delivered for the account of PGS) of the Replacement Quantity;

(b) If PGS was not able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by PGS as a result of Seller's failure to schedule the full amount of the Daily Quantity;

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

**9.2 PGS's Failure to Perform.** In the event (unless excused by Force Majeure) PGS fails to schedule on any Day during the term of this Agreement any portion (the "Shortfall Quantity") of the Daily Quantity as has been scheduled by Seller for delivery on such Day, PGS shall pay to Seller the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the Shortfall Quantity:

(a) If Seller was able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the positive difference determined by subtracting the price at which Seller was able to sell the Shortfall Quantity (including all incremental costs incurred by Seller for transportation of the Shortfall Quantity to the point(s)



at which the Shortfall Quantity was delivered for the account of the buyer) from the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(b) If Seller was not able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by Seller as a result of PGS's failure to schedule the full amount of the Daily Quantity; and

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

9.3 Time of Payment. Each party shall pay the other party any amounts to which the other party is entitled pursuant to this article on or before the twentieth Business Day following the date of the other party's mailing (as signified by the postmark) or other delivery of an invoice therefor. The provisions of Sections 5.3 and 5.4 and of Article VI shall apply to any such invoice rendered pursuant to this Article IX.

## **ARTICLE X QUALITY AND MEASUREMENT**

10.1 Quality. All Gas purchased and sold pursuant to this Agreement shall be merchantable.

10.2 Measurement. The parties shall accept measurements of quantities and heating value made by FGT at the Primary Receipt Point(s) and any Alternate Receipt Point in accordance with FGT's FERC Tariff as final and correct for all purposes under this Agreement subject only to any adjustments as may be agreed to by FGT.

## **ARTICLE XI PRICE**

The price for all Gas purchased and sold pursuant to this Agreement shall be determined in accordance with the provisions of Appendix A to this Agreement, which Appendix is hereby incorporated by reference.

**ARTICLE XII  
TAXES**

The price payable by PGS to Seller for Gas delivered pursuant to this Agreement includes full reimbursement for, and Seller is liable for and shall pay, or reimburse PGS if PGS has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise upstream of the Primary Receipt Point or any Alternate Receipt Point. Seller shall indemnify, defend and hold harmless PGS from any claims for such taxes, fees or assessments. Such price does not include reimbursement for, and PGS is liable for and shall pay, or reimburse Seller if Seller has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise at or downstream of the Primary Receipt Point or any Alternate Receipt Point. PGS shall indemnify, defend and hold harmless Seller from any claims for such taxes, fees or assessments. If PGS claims exemption from any such taxes, PGS shall provide to Seller a certificate of exemption or other appropriate documentation thereof.

**ARTICLE XIII  
TITLE AND RISK OF LOSS**

Title to, risk of loss with respect to, and liability for all Gas sold and purchased hereunder shall pass from Seller to PGS at the Primary Receipt Point (or such other point of receipt on the FGT pipeline system at which the Gas is delivered by Seller to or for the account of PGS). Seller warrants that it has good and marketable title to all Gas sold hereunder and shall indemnify, defend and hold harmless PGS from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to such Gas.

**ARTICLE XIV  
FORCE MAJEURE: LIMITATION OF LIABILITY**

14.1 Force Majeure. Unless otherwise provided, the obligations of each party under this Agreement, and the performance thereof, other than a failure or delay in the payment of money due hereunder, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

14.2 Resumption of Performance. The party whose performance is excused by an event of Force Majeure shall promptly notify the other party of such occurrence and its estimated duration, and shall promptly remedy such Force Majeure if and to the extent reasonably possible and resume such performance when possible; provided, however, that neither party shall be required to settle any labor dispute against its will.

**14.3 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY PERSON CLAIMING THROUGH THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST OPPORTUNITY COSTS RELATING TO ANY MATTER COVERED BY THIS AGREEMENT.

**ARTICLE XV**  
**EVENTS OF DEFAULT; REMEDIES; FINANCIAL INFORMATION**

(a) The occurrence of any of the following events shall be deemed to be an event of default ("Event of Default") as to the non-performing party under this Agreement:

(i) Failure by a party to make, when due, any payment required to be made hereunder if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to such party; or

(ii) Failure by a party to comply in any material respect with any material term or provision of this Agreement, other than a failure specified in clause (i) above, and such failure shall continue for ten (10) Business Days after written notice thereof has been given to the non-performing party; or

(iii) the dissolution or liquidation of a party; or the failure of a party within sixty (60) days to lift any execution, garnishment or attachment of such consequence as may materially impair its ability to carry on its operations; or the failure of a party generally to pay its debts as such debts become due; or the making by a party of a general assignment for the benefit of creditors; or the commencement by a party (as the debtor) of a voluntary case in bankruptcy under the Federal Bankruptcy Code (as now or hereafter in effect) or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against a party (as the debtor) and such proceeding remains undismissed for thirty (30) days; or the appointment or authorization of a trustee, receiver, custodian, liquidator or agent, however named, to take charge of a substantial part of the property of a party for the purpose of general administration of such property for the benefit of creditors; or the taking of any corporate action by a party for the purpose of effecting any of the foregoing.

(b) Upon the occurrence and continuation of an Event of Default, the non-defaulting party may, at its option, and in addition to and cumulatively of any other rights and remedies it may have hereunder, at law, in equity or otherwise, terminate this Agreement upon five (5) days' prior written notice to the defaulting party, or enforce, by all lawful means, its rights hereunder, including without limitation, the collection of sums due hereunder without terminating this Agreement, and should it be necessary for such party to take any legal action in connection with such enforcement, the defaulting party shall pay such non-defaulting party all costs and reasonable attorneys' fees so incurred.

(c) If requested by PGS, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. If requested by Seller, PGS shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided however, that should any such statements not be timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such party diligently pursues the preparation, certification and delivery of the statements. A party may require the party making a request for financial statements to execute a reasonable confidentiality agreement as a precondition to the delivery of such financial statements.

(d) If, during the term of this Agreement, a party reasonably determines in good faith that the creditworthiness of the other party has become unsatisfactory, such party may require the other party to furnish reasonable security for the performance required of it by this Agreement. Any dispute between the parties resulting from a party's determination that the creditworthiness of the other party has become unsatisfactory, or the nature or amount of the security required by a party, shall be subject to arbitration in accordance with Article XVI of this Agreement.

## **ARTICLE XVI ARBITRATION**

In the event of a dispute between the Parties arising under paragraph (d) of Article XV of this Agreement, the Parties shall negotiate in good faith in an attempt to resolve the dispute prior to submitting the dispute to arbitration as provided hereinbelow. Any dispute which is not resolved through such good faith negotiations shall be settled by binding arbitration. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the Rules for Non-Administered Arbitration of Business Disputes (the "CPR Rules"), as adopted by the Center for Public Resources and as in effect at the commencement of the arbitration. The place of arbitration shall be Tampa, Florida. Before the close of business on the tenth calendar day following the calendar day (the "Commencement Day") on which the arbitration is considered, pursuant to the CPR Rules, to have commenced, each party shall furnish to the other party a list of not less than five (5) persons (the "Candidates") who are acceptable as arbitrator to the party

furnishing the list. For each Candidate, such list shall show each Candidate's name, address, telephone number, employer or organization with which associated, current professional position, and the number of arbitrations, if any, before the Candidate to which the party furnishing the list was a party. No Candidate shall (i) be, or have ever been, an employee, officer or director of either party or of any affiliate or supplier of either party, or (ii) have a direct or indirect financial interest in either party or the subject matter of the arbitration. In the ten-calendar day period comprising the eleventh through the twentieth calendar days following the Commencement Date, the parties will exercise diligent efforts to agree upon a single Candidate to serve as the arbitrator, and on the twentieth calendar day following the Commencement Date, each party shall serve on the other party a written statement proposing a specific resolution of the issue or issues to be arbitrated. If no such agreement is reached during such time period, the CPR, acting pursuant to the CPR Rules, shall appoint the arbitrator. Thereafter, the arbitration shall proceed according to the CPR Rules, except there shall be no prehearing conference. The arbitrator's award shall resolve each issue by adopting either one or the other of the resolutions on the issue by the parties. Except as otherwise agreed by the parties, no other resolution of an issue shall be permitted. In making an award, the arbitrator shall be subject to any provisions of this Agreement which expressly limit remedies or damages. The award of the arbitrator shall be final and binding. The parties shall share equally the compensation and expenses of the arbitrator and the expense of any hearing, and each party shall bear the compensation and expenses its own counsel and other representatives (if any).

## **ARTICLE XVII MISCELLANEOUS**

**17.1 Independent Parties.** Seller and PGS shall perform hereunder as independent parties and neither party is in any way or for any purpose, by nature of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

**17.2 Assignment and Transfer.** This Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and assigns; provided, however, that neither party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other party.

**17.3 Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Texas and shall be subject to all applicable laws, rules, orders and regulations of any Federal, state or local governmental authority having jurisdiction over the parties, their facilities or the transactions contemplated. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State

of Florida having jurisdiction.

**17.4 Headings.** All article headings, section headings and subheadings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

**17.5 Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

**17.6 Entire Agreement.** This Agreement, including the appendix attached hereto, sets forth the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior negotiations, agreements and understandings with respect to such subject matter. Neither party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

**17.7 Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**17.8 Inspection.** Each party hereto shall have the right throughout the term of this Agreement and for a period of two (2) years thereafter, upon reasonable prior notice and during normal business hours, to examine the books, records and documents of the other party to the extent necessary (i) to verify the accuracy of any statement, charge, computation or demand made pursuant to this Agreement, or (ii) to determine whether there has been compliance with the requirements of Section 17.14 of this Agreement. Each party shall keep any and all such books, records and documents for a period of two (2) years from the date such book, record or document is created or any entry or adjustment thereto is made.

**17.9 Notices.** (a) Except as otherwise provided herein, any notice, request, demand or other communication under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered personally, or by a recognized overnight delivery service, or by facsimile, to the party to whom the notice, request, demand or other communication is to be given, or (ii) on the fifth day after mailing if mailed by United States mail to the party to whom the notice, request, demand or other communication is to be given, by first-class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed to the party at the address set forth below, or such other address set forth in a written notice given pursuant hereto.

Seller:

Administrative Matters:

[REDACTED]

[REDACTED]  
Telephone: [REDACTED]  
Facsimile: [REDACTED]

Payment:

[REDACTED]

PGS:

Notices:

Peoples Gas System  
a division of Tampa Electric Company  
702 N. Franklin Street  
P. O. Box 2562  
Tampa, Florida 33601-2562  
Attention: Debby Williams  
Telephone: (813)228-4666  
Facsimile: (813) 228-4742

General Notices:

Attention: Wraye Grimard  
Telephone: (813) 228-4697  
Facsimile: (813) 228-4742

**Accounting and Billing:**

Attention: Ed Elliott  
Telephone: (813) 228-4149  
Facsimile: (813) 228-4194

(b) Each party shall designate in writing an individual to act as its "Contact Person", which individual shall be (i) duly authorized by such party to act for it with respect to all operational matters arising under this Agreement and (ii) accessible to the other party at all times during each Day during the term of this Agreement. In the performance of its obligations hereunder, a party shall be entitled to rely upon any instruction, consent or acknowledgement given by the other party's Contact Person with respect to operational matters arising hereunder.

**17.10 Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as Contact Person pursuant to Section 17.9(b) shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 17.9(a) of this Agreement.

**17.11 Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

**17.12 Legal Fees.** In the event of litigation between the parties hereto arising out of or in connection with this Agreement, the reasonable attorneys' fees and costs of the party prevailing in such litigation shall be paid by the other party.

**17.13 Confidentiality.** Neither party shall disclose the terms of this Agreement to any person not employed, or retained as a consultant or legal counsel, by such party, except to the extent such disclosure is (i) required by law, regulation or order of a court having jurisdiction, (ii) requested by the independent public accountants of the party making the disclosure, (iii) required by a loan agreement of the party making the disclosure, (iv) required of the party making the disclosure in connection with the defense of any litigation, (v) made to a person (e.g., a royalty owner) to whom the party has an obligation to make such disclosure, (vi) made to the party's transporter in order to schedule quantities for transportation in the performance of this Agreement, or (vii) otherwise agreed in writing by the parties to be disclosed. If a party makes disclosure of any of the terms of this Agreement pursuant to (i) through (vi) above, (a) such party



shall, prior to making such disclosure, promptly notify the other party in writing that such disclosure will be made so that such other party may seek a protective order, and (b) both parties agree to use commercially reasonable efforts to require the recipient(s) of any information disclosed to maintain the confidentiality thereof.

17.14 Conflict of Interest. No director, employee, agent or other representative of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement or the performance thereof.

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

**PEOPLES GAS SYSTEM, a division of  
TAMPA ELECTRIC COMPANY**

By: M. R. Schuyler  
Michael R. Schuyler  
Director, Gas Supply and Regulatory Affairs

[REDACTED]

By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]

[REDACTED]  
**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART I**

TERM: October 1, 1997 - October 31, 1997

TYPE: **BASE LOAD**

PRIMARY RECEIPT POINT:

POI#

DESCRIPTION:

ZONE:

PIPELINE:

DAILY QUANTITY: [REDACTED] MMBtu's

PRICE OPTIONS:

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]  
**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART II**

TERM: October 1, 1997 - October 31, 1997

TYPE: **BASE LOAD**

PRIMARY RECEIPT POINT:

POI# [REDACTED]

DESCRIPTION: [REDACTED]

ZONE: [REDACTED]

PIPELINE: [REDACTED]

DAILY QUANTITY: [REDACTED] MMBtu's

PRICE OPTIONS:

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]  
[REDACTED]

## APPENDIX A - GAS SALES AGREEMENT

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

### PART III

TERM: April 1, 1997 - June 30, 1997

TYPE: **BASE LOAD**

PRIMARY RECEIPT POINT.

POI#

DESCRIPTION:

ZONE:

PIPELINE:

DAILY QUANTITY: [REDACTED] MMBtu

PRICE OPTIONS.

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART IV**

TERM: July 1, 1997 - October 31, 1997

TYPE: Base Load

PRIMARY RECEIPT POINT:

POI#

DESCRIPTION:

ZONE:

PIPELINE



DAILY QUANTITY

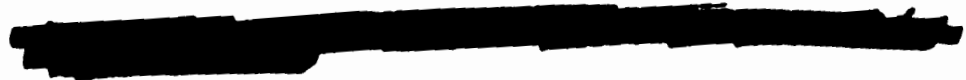
 MMBtu's

PRICE OPTIONS:

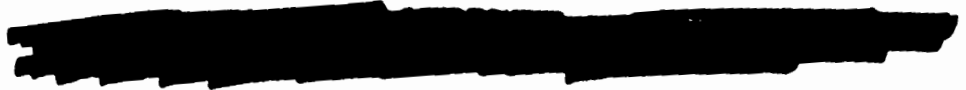
1.



a.



b.



2.



3.



4.



**ATTACHMENT I  
TO  
APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Attachment I shall have the meanings given for such terms in the Gas Sales Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**DEFAULTS AND REMEDIES IF** [REDACTED]

A. **Early Termination.** If a Triggering Event (defined in Paragraph B of this Attachment I) occurs with respect to either party at any time during the term of this Agreement, the other party (the "Notifying Party") may (i) upon thirty (30) Business Days written notice to the first party, which notice shall be given no later than sixty (60) Days after the discovery of the occurrence of the Triggering Event, terminate this Agreement ("Early Termination"), and (ii) withhold any payments due; provided, upon the occurrence of any Triggering Event listed in item (iv) of Paragraph B of this Attachment I, this Agreement shall automatically terminate, without notice, as if an Early Termination had been immediately declared. In the event of Early Termination, the Notifying Party shall in good faith calculate its damages, including its associated costs and attorneys' fees, resulting from the termination of the Agreement (the "Termination Payment"). The Termination Payment will be determined by (i) comparing the value of (a) the remaining terms, quantities and prices under this Agreement had it not been terminated to (b) the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract and (ii) ascertaining the

associated costs and attorneys' fees

If the calculation of the Termination Payment does not result in damages to the Notifying Party, the Termination Payment shall be zero. The Notifying Party shall give the Affected Party (defined in Paragraph B of this Attachment 1) written notice of the amount of the Termination Payment, inclusive of a statement showing its determination. The Affected Party shall pay the Termination Payment to the Notifying Party within thirty (30) Days of receipt of such notice. At the time for payment of any amount due under this Attachment 1, each party shall pay to the other party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder

B. "Triggering Event" shall mean, with respect to a party (the "Affected Party"): (i) the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Affected Party or (ii) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made or deemed to be repeated or (iii) the failure by the Affected Party to perform any covenant set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Paragraph B as a separate Triggering Event), and such failure is not excused by Force Majeure or cured within ten (10) Business Days after written notice thereof to the Affected Party or (iv) the Affected Party shall (a) make an assignment or any general arrangement for the benefit of creditors, (b) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) Days, (c) otherwise become bankrupt or insolvent (however evidenced) or (d) be unable to pay its debts as they fall due or (v) the Affected Party fails to establish, maintain, extend or increase security for the performance of its obligations under this Agreement requested by the other party pursuant to paragraph (d) of Article XV of this Agreement (provided such security has been confirmed by an arbitrator pursuant to Article XVI of this Agreement if such arbitration has been requested), or (vi) with respect to Seller, at any time, Seller shall have defaulted on its indebtedness to third parties resulting in an acceleration of obligations of Seller in excess of \$5,000,000.00, or with respect to PGS, at any time, PGS shall have defaulted on its indebtedness to third parties, resulting in an acceleration of obligations of PGS in excess of \$5,000,000.00.

BASE LOAD - PRO FORMA AGREEMENT

**GAS SALES AGREEMENT**

B

This GAS SALES AGREEMENT (the "Agreement") is made and entered into as of the 1st day of April, 1997, by and between [REDACTED] ("Seller"), and Peoples Gas System, a division of Tampa Electric Company a Florida corporation ("PGS") (each of Seller and PGS being sometimes referred to individually as a "party" and collectively as the "parties").

**WITNESSETH:**

WHEREAS, PGS owns and operates a natural gas distribution system in the State of Florida and has a need to acquire supplies of Gas;

WHEREAS, Seller has a supply of Gas available for sale, and PGS desires to purchase such Gas directly from Seller.

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

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the following words and phrases shall have the following meanings:

"Alternate Receipt Point" shall have the meaning given for such term in Article IV of this Agreement.

"Agreement" shall mean this Gas Sales Agreement, including the appendices attached hereto, as the same may be amended from time to time.

"British thermal unit" or "Btu" shall mean the quantity of heat required to raise the temperature of one pound of water from 59°F. to 60°F. at a constant pressure of 14.73 pounds per square inch absolute.

"Business Day" shall have the meaning given for the term "working day" in FGT's FERC Tariff.

"Contact Person" shall have the meaning given for such term in Section 17.9(b) of this Agreement.



**"Daily Quantity"** shall mean, for each Day during the term of this Agreement, the quantity of Gas specified as the Daily Quantity in Appendix A to this Agreement.

**"Day"** shall have the meaning given for the term "Receipt Gas Day" in FGT's FERC Tariff; provided, however, that if FGT's FERC Tariff is amended to eliminate the distinction between the terms "Receipt Gas Day" and "Delivery Gas Day", all references in this Agreement to either such term shall thereafter have the meaning given for the term in FGT's FERC Tariff which replaces such terms.

**"°E."** shall mean degree(s) Fahrenheit.

**"FGT"** shall mean Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.

**"FGT's FERC Tariff"** shall mean FGT's FERC Gas Tariff, Third Revised Volume No. 1, as amended, supplemented or superseded from time to time during the term of this Agreement, as such tariff applies to Firm transportation service under FGT's Rate Schedules FTS-1 or FTS-2.

**"Firm"** means, (i) with respect to the sale and purchase of Gas, that Seller is obligated to sell and deliver and PGS is obligated to purchase and receive the quantity of Gas specified, except as excused by an event of Force Majeure and, (ii) with respect to transportation required to be scheduled by a party hereunder, that such party's transporter is obligated to make available a quantity of pipeline capacity, without interruption except as excused by an event of force majeure under such transporter's tariff, sufficient to enable such party to perform its obligations under this Agreement.

**"Force Majeure"** shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, sinkholes, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, in each of the above cases, by the exercise of due diligence such party is unable to prevent or overcome; provided, however, that such term shall not include the interruption or failure of Interruption transportation. Such term shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way, grants, permits, permissions, licenses, or required governmental orders, necessary to enable such party to fulfill its obligations hereunder.

**"Gas"** shall mean natural gas meeting the quality specifications which FGT requires with regard to deliveries into its pipeline system.

**"Imbalance"** shall have the meaning given for such term in Article VIII of this Agreement:

**"Interruptible"** means, with respect to transportation, that a transporter is not obligated to make available any particular quantity of pipeline capacity and that such transporter may, for reasons other than Force Majeure, interrupt and/or decline to schedule such transportation service without incurring liability to the shipper.

**"MMBtu"** shall mean one million (1,000,000) Btu.

**"month"** shall mean a calendar month.

**"PGS"** shall mean Peoples Gas System, Inc., a Florida corporation, and its successors and assigns.

**"Primary Receipt Point"** shall mean the point or points of interconnection between the facilities of Seller or Seller's Transporter and the pipeline facilities of FGT which point(s) of interconnection are identified on Appendix A to this Agreement.

**"Replacement Quantity"** shall have the meaning given for such term in Section 9.1 of this Agreement.

**"Responsible Party"** shall have the meaning given for such term in Article VIII of this Agreement.

**"Schedule"** shall mean the acts required of a shipper to properly nominate, notify or request service from, and to obtain confirmation of service by, the shipper's transporter for the receipt, transportation and delivery of a quantity of gas on a given day.

**"Seller"** shall mean [REDACTED] and its successors and assigns.

**"Shortfall Quantity"** shall have the meaning given for such term in Section 9.2 of this Agreement.

**"Termination Date"** shall mean the end of the Day commencing on March 31, 1998

## **ARTICLE II TERM**

This Agreement shall become effective on the date first written above. The term of this Agreement, and the obligations of the parties hereunder, shall commence at the beginning of the Day commencing on April 1, 1997 and shall continue, unless earlier terminated pursuant to the provisions of this Agreement, until the Termination Date.

## **ARTICLE III QUANTITIES**

On each Day during the term of this Agreement, unless excused by Force Majeure, Seller shall sell and deliver to PGS, and PGS shall receive and purchase from Seller, on a Firm basis, the Daily Quantity.

## **ARTICLE IV POINT OF DELIVERY**

All Gas sold hereunder shall be delivered by Seller to or for the account of PGS at the Primary Receipt Point. Seller may, if agreed by PGS, deliver Gas sold hereunder at other points of receipt on the FGT pipeline system (any such other point of receipt being hereinafter referred to as an "Alternate Receipt Point"); provided, however, that, notwithstanding any agreement by PGS to receive Gas sold hereunder at an Alternate Receipt Point, if any portion of the Daily Quantity cannot be delivered by Seller at such Alternate Receipt Point (due to proration, loss or interruption by FGT or Seller's transporter, or any other cause except Force Majeure), Seller shall be obligated to deliver such portion at either the Primary Receipt Point or at another point of receipt on the FGT pipeline system located in the same FGT zone as the Primary Receipt Point, which point PGS and Seller, acting in good faith, shall mutually designate.

## **ARTICLE V BILLING AND PAYMENT**

**5.1 Billing.** On or before the tenth (10th) Day of each month, Seller shall deliver to PGS via facsimile (optional) a bill for the preceding month showing the total quantity of Gas delivered and the amount due either party from the other party pursuant to this Agreement, and shall mail to PGS the original of such bill and any supporting documents). If the actual quantity delivered is not known by the date such bill is delivered to PGS, Seller shall prepare such bill based on the quantities scheduled during the preceding month. Any bill based on such estimated quantity shall be corrected to reflect the actual quantity on the following month's bill or as soon thereafter as actual delivery information is available.

**5.2 Payment.** PGS shall pay the bill rendered by Seller pursuant to Section 5.1 hereof, minus any disputed amounts, to Seller by electronic funds transfer or wire transfer to the account and bank specified in Seller's bill by the twenty-fifth (25th) Day of the month in which the bill is rendered.

**5.3 Billing Disputes.** In the event either party is served by the other party with written notice of a bona fide billing dispute, PGS or Seller, as the case may be, shall (i) pay (or credit) to the other party all amounts not in dispute, and (ii) pay any disputed amount, if not resolved within sixty (60) calendar days after the giving of the aforesaid written notice, into an escrow account established for the benefit of the parties with an escrow agent and pursuant to terms reasonably acceptable to the parties. The parties shall exercise commercially reasonable efforts to resolve any such billing dispute as soon as reasonably practicable. Any amounts deposited into the escrow account (together with any interest accrued thereon) shall be paid by the escrow agent to the party in whose favor the dispute is resolved. Failure by a party to pay a disputed amount into the applicable escrow account shall be deemed a conclusive resolution of the dispute in favor of the other party.

**5.4 Errors.** If an error is discovered in any bill rendered (or credit given or payment made) hereunder, or in any of the information used in the calculation of such bill (or such credit or payment), Seller shall, to the extent practicable, make an adjustment to correct such error in the next bill rendered after the date on which the error is confirmed. The provisions of this section shall survive the termination of this Agreement; provided, however, that no billing adjustment shall be made, and all bills and payments hereunder shall be deemed final and not subject to any claim or adjustment if a party fails to assert an error within six (6) months following the occurrence of such error.

## **ARTICLE VI FAILURE TO MAKE PAYMENT**

**6.1 Interest.** If, subject to Section 5.3, either party fails to pay (or credit) the full amount due the other party within the time allowed, interest on the unpaid portion shall accrue from the date due to the date such amount is paid (or credited) at a rate equal to the lesser of (i) the then effective prime rate of interest for large U.S. Money Center commercial banks, published under "Money Rates" by the *Wall Street Journal*, or (ii) the maximum applicable lawful rate of interest

**6.2 Other Remedy of Seller.** If PGS fails to make any payment when due and such failure is not remedied by or on behalf of PGS within five (5) Business Days after written notice by Seller of such default in payment, then Seller, in addition to any other remedy it may have, may without incurring any liability to PGS and without terminating this Agreement, suspend further deliveries of Gas pursuant to this Agreement until such amount is paid; provided,

however, that Seller shall not suspend deliveries of Gas pursuant to this Agreement if (i) PGS's failure to pay is the result of a bona fide dispute, (ii) PGS has paid Seller for all amounts not in dispute and (iii) PGS is in compliance with Section 5.3 of this Agreement.

**6.3 Other Remedy of PGS.** If Seller is required pursuant to Section 5.1, but fails, to provide a credit (or make payment) to PGS, and such failure is not remedied by or on behalf of Seller within five (5) Business Days after PGS's written notice of such default, then PGS, in addition to any other remedy it may have, may without incurring any liability to Seller and without terminating this Agreement, suspend payment of any amounts due Seller up to the amount owed to Buyer by Seller under this Agreement until such failure is remedied; provided, however, that PGS shall not so suspend payment of any such amounts if (i) Seller's failure to provide a credit (or make payment) to PGS as required by Section 5.1 is the result of a bona fide dispute, (ii) Seller has provided a credit (or made payment) to PGS for all amounts not in dispute and (iii) Seller is in compliance with Section 5.3 of this Agreement.

## **ARTICLE VII TRANSPORTATION**

Subject to the provisions of Article IV, each party shall schedule the Daily Quantity for Firm transportation in accordance with the scheduling procedures and deadlines set forth in FGT's FERC Tariff or the FERC tariff of Seller's transporter (as applicable) so that the Daily Quantity will be delivered and received at the Primary Receipt Point (or the agreed Alternate Receipt Point) on each Day. If, on any Day, Seller desires to use an Alternate Receipt Point, Seller's request to use such point shall be communicated to PGS not later than two (2) hours prior to the FGT nomination deadline for the Day on which the Daily Quantity is to be delivered at such Alternate Receipt Point. If, for any Day, either party is for any reason unable to schedule all or any portion of the Daily Quantity for Firm transportation in accordance with the foregoing provisions, such party shall immediately notify the other party by telephone (such notification to be confirmed thereafter by facsimile).

## **ARTICLE VIII SCHEDULING AND IMBALANCE PENALTIES**

Any difference between quantities scheduled and quantities actually delivered and received hereunder (an "Imbalance") at the Primary Receipt Point or at any Alternate Delivery Point shall be resolved between PGS and Seller on the basis of the "cash out" price formulas set forth in FGT's FERC Tariff. In the event of (i) an Imbalance on PGS's transporter's system caused by Seller or Seller's transporter's delivery of less or more than the quantity scheduled by Seller for

transportation on any Day (in which case Seller shall be the "Responsible Party") or (ii) an Imbalance on Seller's transporter's system caused by PGS or PGS's transporter's delivery of less or more than the quantity scheduled by PGS for transportation on any Day (in which case PGS shall be the "Responsible Party"), the Responsible Party shall be liable for and reimburse to the other party any associated transporter penalties or cash out costs incurred by such other party.

## **ARTICLE IX FAILURE TO PERFORM**

**9.1 Seller's Failure to Perform.** In the event (unless excused by Force Majeure) Seller fails to schedule all or any portion of the Daily Quantity for delivery on any Day during the term of this Agreement, Seller shall pay to PGS the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the portion of the Daily Quantity (the "Replacement Quantity") Seller failed to schedule:

(a) If PGS was able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the positive difference determined by subtracting the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller, from PGS's incremental cost (including all costs for transportation of the Replacement Quantity to the point(s) of receipt at which the Replacement Quantity was delivered for the account of PGS) of the Replacement Quantity;

(b) If PGS was not able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by PGS as a result of Seller's failure to schedule the full amount of the Daily Quantity;

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

**9.2 PGS's Failure to Perform.** In the event (unless excused by Force Majeure) PGS fails to schedule on any Day during the term of this Agreement any portion (the "Shortfall Quantity") of the Daily Quantity as has been scheduled by Seller for delivery on such Day, PGS shall pay to Seller the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the Shortfall Quantity:

(a) If Seller was able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the positive difference determined by subtracting the price at which Seller was able to sell the Shortfall Quantity (including all incremental costs incurred by Seller for transportation of the Shortfall Quantity to the point(s) at which the Shortfall Quantity was delivered for the account of the buyer) from the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(b) If Seller was not able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by Seller as a result of PGS's failure to schedule the full amount of the Daily Quantity; and

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

9.3 Time of Payment. Each party shall pay the other party any amounts to which the other party is entitled pursuant to this article on or before the twentieth Business Day following the date of the other party's mailing (as signified by the postmark) or other delivery of an invoice therefor. The provisions of Sections 5.3 and 5.4 and of Article VI shall apply to any such invoice rendered pursuant to this Article IX.

## **ARTICLE X QUALITY AND MEASUREMENT**

10.1 Quality. All Gas purchased and sold pursuant to this Agreement shall be merchantable.

10.2 Measurement. The parties shall accept measurements of quantities and heating value made by FGT at the Primary Receipt Point(s) and any Alternate Receipt Point in accordance with FGT's FERC Tariff as final and correct for all purposes under this Agreement subject only to any adjustments as may be agreed to by FGT.

**ARTICLE XI  
PRICE**

The price for all Gas purchased and sold pursuant to this Agreement shall be determined in accordance with the provisions of Appendix A to this Agreement, which Appendix is hereby incorporated by reference.

**ARTICLE XII  
TAXES**

The price payable by PGS to Seller for Gas delivered pursuant to this Agreement includes full reimbursement for, and Seller is liable for and shall pay, or reimburse PGS if PGS has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise upstream of the Primary Receipt Point or any Alternate Receipt Point. Seller shall indemnify, defend and hold harmless PGS from any claims for such taxes, fees or assessments. Such price does not include reimbursement for, and PGS is liable for and shall pay, or reimburse Seller if Seller has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise at or downstream of the Primary Receipt Point or any Alternate Receipt Point. PGS shall indemnify, defend and hold harmless Seller from any claims for such taxes, fees or assessments. If PGS claims exemption from any such taxes, PGS shall provide to Seller a certificate of exemption or other appropriate documentation thereof.

**ARTICLE XIII  
TITLE AND RISK OF LOSS**

Title to, risk of loss with respect to, and liability for all Gas sold and purchased hereunder shall pass from Seller to PGS at the Primary Receipt Point (or such other point of receipt on the FGT pipeline system at which the Gas is delivered by Seller to or for the account of PGS). Seller warrants that it has good and marketable title to all Gas sold hereunder and shall indemnify, defend and hold harmless PGS from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to such Gas.

**ARTICLE XIV  
FORCE MAJEURE: LIMITATION OF LIABILITY**

**14.1 Force Majeure.** Unless otherwise provided, the obligations of each party under this Agreement, and the performance thereof, other than a failure or delay in the payment of money due hereunder, shall be cancelled during such times and to the extent such performance is prevented by reason of Force Majeure.



**14.2 Resumption of Performance.** The party whose performance is cancelled by an event of Force Majeure shall promptly notify the other party of such occurrence and its estimated duration, and shall promptly remedy such Force Majeure if and to the extent reasonably possible and resume such performance when possible; provided, however, that neither party shall be required to settle any labor dispute against its will.

**14.3 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY PERSON CLAIMING THROUGH THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST OPPORTUNITY COSTS RELATING TO ANY MATTER COVERED BY THIS AGREEMENT.

## ARTICLE XV

### EVENTS OF DEFAULT; REMEDIES; FINANCIAL INFORMATION

(a) The occurrence of any of the following events shall be deemed to be an event of default ("Event of Default") as to the non-performing party under this Agreement:

(i) Failure by a party to make, when due, any payment required to be made hereunder if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to such party; or

(ii) Failure by a party to comply in any material respect with any material term or provision of this Agreement, other than a failure specified in clause (i) above, and such failure shall continue for ten (10) Business Days after written notice thereof has been given to the non-performing party; or

(iii) the dissolution or liquidation of a party; or the failure of a party within sixty (60) days to lift any execution, garnishment or attachment of such consequence as may materially impair its ability to carry on its operations; or the failure of a party generally to pay its debts as such debts become due; or the making by a party of a general assignment for the benefit of creditors; or the commencement by a party (as the debtor) of a voluntary case in bankruptcy under the Federal Bankruptcy Code (as now or hereafter in effect) or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against a party (as the debtor) and such proceeding remains undismissed for thirty (30) days; or the appointment or authorization of a trustee, receiver, custodian, liquidator or agent, however named, to take charge of a substantial part of the property of a party for the purpose of general administration of such property for the benefit of creditors; or the taking of any corporate action by a party for the purpose of effecting any of the foregoing.

(b) Upon the occurrence and continuation of an Event of Default, the non-defaulting party may, at its option, and in addition to and cumulatively of any other rights and remedies it may have hereunder, at law, in equity or otherwise, terminate this Agreement upon five (5) days' prior written notice to the defaulting party, or enforce, by all lawful means, its rights hereunder, including without limitation, the collection of sums due hereunder without terminating this Agreement, and should it be necessary for such party to take any legal action in connection with such enforcement, the defaulting party shall pay such non-defaulting party all costs and reasonable attorneys' fees so incurred.

(c) If requested by PGS, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. If requested by Seller, PGS shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided however, that should any such statements not be timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such party diligently pursues the preparation, certification and delivery of the statements. A party may require the party making a request for financial statements to execute a reasonable confidentiality agreement as a precondition to the delivery of such financial statements.

(d) If, during the term of this Agreement, a party reasonably determines in good faith that the creditworthiness of the other party has become unsatisfactory, such party may require the other party to furnish reasonable security for the performance required of it by this Agreement. Any dispute between the parties resulting from a party's determination that the creditworthiness of the other party has become unsatisfactory, or the nature or amount of the security required by a party, shall be subject to arbitration in accordance with Article XVI of this Agreement.

## **ARTICLE XVI ARBITRATION**

In the event of a dispute between the Parties arising under this paragraph (d) of Article XV of this agreement, the Parties shall negotiate in good faith in an attempt to resolve the dispute prior to submitting the dispute to arbitration as provided hereinbelow. Any dispute which is not resolved through such good faith negotiations, shall be settled by binding arbitration. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the Rules for

Non-Administered Arbitration of Business Disputes (the "CPR Rules"), as adopted by the Center for Public Resources and as in effect at the commencement of the arbitration. The place of arbitration shall be Tampa, Florida. Before the close of business on the tenth calendar day following the calendar day (the "Commencement Day") on which the arbitration is considered, pursuant to the CPR Rules, to have commenced, each party shall furnish to the other party a list of not less than five (5) persons (the "Candidates") who are acceptable as arbitrator to the party furnishing the list. For each Candidate, such list shall show each Candidate's name, address, telephone number, employer or organization with which associated, current professional position, and the number of arbitrations, if any, before the Candidate to which the party furnishing the list was a party. No Candidate shall (i) be, or have ever been, an employee, officer or director of either party or of any affiliate or supplier of either party, or (ii) have a direct or indirect financial interest in either party or the subject matter of the arbitration. In the ten-calendar day period comprising the eleventh through the twentieth calendar days following the Commencement Date, the parties will exercise diligent efforts to agree upon a single Candidate to serve as the arbitrator, and on the twentieth calendar day following the Commencement Date, each party shall serve on the other party a written statement proposing a specific resolution of the issue or issues to be arbitrated. If no such agreement is reached during such time period, the CPK, acting pursuant to the CPR Rules, shall appoint the arbitrator. Thereafter, the arbitration shall proceed according to the CPR Rules, except there shall be no prehearing conference. The arbitrator's award shall resolve each issue by adopting either one or the other of the resolutions on the issue by the parties. Except as otherwise agreed by the parties, no other resolution of an issue shall be permitted. In making an award, the arbitrator shall be subject to any provisions of this Agreement which expressly limit remedies or damages. The award of the arbitrator shall be final and binding. The parties shall share equally the compensation and expenses of the arbitrator and the expense of any hearing, and each party shall bear the compensation and expenses its own counsel and other representatives (if any).

## **ARTICLE XVII MISCELLANEOUS**

**17.1 Independent Parties.** Seller and PGS shall perform hereunder as independent parties and neither party is in any way or for any purpose, by nature of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

**17.2 Assignment and Transfer.** This Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and assigns; provided, however, that neither party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other party.

**17.3 Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Texas and shall be subject to all applicable laws, rules, orders and regulations of any Federal, state or local governmental authority having jurisdiction over the parties, their facilities or the transactions contemplated. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

**17.4 Headings.** All article headings, section headings and subheadings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

**17.5 Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

**17.6 Entire Agreement.** This Agreement, including the appendix attached hereto, sets forth the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior negotiations, agreements and understandings with respect to such subject matter. Neither party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

**17.7 Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**17.8 Inspection.** Each party hereto shall have the right throughout the term of this Agreement and for a period of two (2) years thereafter, upon reasonable prior notice and during normal business hours, to examine the books, records and documents of the other party to the extent necessary (i) to verify the accuracy of any statement, charge, computation or demand made pursuant to this Agreement, or (ii) to determine whether there has been compliance with the requirements of Section 17.14 of this Agreement. Each party shall keep any and all such books, records and documents for a period of two (2) years from the date such book, record or document is created or any entry or adjustment thereto is made.

**17.9 Notices.** (a) Except as otherwise provided herein, any notice, request, demand or other communication under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered personally, or by a recognized overnight delivery service, or by facsimile, to the party to whom the notice, request, demand or other communication is to be given, or (ii) on the fifth day after mailing if mailed by United States

mail to the party to whom the notice, request, demand or other communication is to be given, by first-class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed to the party at the address set forth below, or such other address set forth in a written notice given pursuant hereto.

Seller:

Administrative Matters:

[REDACTED]

Attention: [REDACTED]  
Telephone: [REDACTED]  
Facsimile: [REDACTED]

Payment:

[REDACTED]

PGS:

Notices

Peoples Gas System, a division of  
Tampa Electric Company  
702 N. Franklin Street  
P. O. Box 2562  
Tampa, Florida 33601-2562  
Attention: Debby Williams  
Telephone: (813) 228-4666  
Facsimile: (813) 228-4742

**General Notices:**

Attention: Wraye Grimard  
Telephone: (813) 228-4697  
Facsimile: (813) 228-4742

**Accounting and Billing:**

Attention: Ed Elliott  
Telephone: (813) 228-4149  
Facsimile: (813) 228-4194

(b) Each party shall designate in writing an individual to act as its "Contact Person", which individual shall be (i) duly authorized by such party to act for it with respect to all operational matters arising under this Agreement and (ii) accessible to the other party at all times during each Day during the term of this Agreement. In the performance of its obligations hereunder, a party shall be entitled to rely upon any instruction, consent or acknowledgement given by the other party's Contact Person with respect to operational matters arising hereunder.

**17.10 Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as Contact Person pursuant to Section 17.9(b) shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 17.9(a) of this Agreement.

**17.11 Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

**17.12 Legal Fees.** In the event of litigation between the parties hereto arising out of or in connection with this Agreement, the reasonable attorneys' fees and costs of the party prevailing in such litigation shall be paid by the other party.

**17.13 Confidentiality.** Neither party shall disclose the terms of this Agreement to any person not employed, or retained as a consultant or legal counsel, by such party, except to the extent such disclosure is (i) required by law, regulation or order of a court having jurisdiction, (ii) requested by the independent public accountants of the party making the disclosure, (iii) required by a loan agreement of the party making the disclosure, (iv) required of the party

making the disclosure in connection with the defense of any litigation, (v) made to a person (e.g., a royalty owner) to whom the party has an obligation to make such disclosure, (vi) made to the party's transporter in order to schedule quantities for transportation in the performance of this Agreement, or (vii) otherwise agreed in writing by the parties to be disclosed. If a party makes disclosure of any of the terms of this Agreement pursuant to (i) through (vi) above, (a) such party shall, prior to making such disclosure, promptly notify the other party in writing that such disclosure will be made so that such other party may seek a protective order, and (b) both parties agree to use commercially reasonable efforts to require the recipient(s) of any information disclosed to maintain the confidentiality thereof.

**17.14 Conflict of Interest.** No director, employee, agent or other representative of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement or the performance thereof.

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

**PEOPLES GAS SYSTEM, a division  
of TAMPA ELECTRIC COMPANY**

By: Michael R. Schuyler  
Michael R. Schuyler  
Director, Gas Supply and Regulatory Affairs

[REDACTED]

By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]

[REDACTED]

**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART I**

**TERM:** April 1, 1997 - March 31, 1998

**TYPE:** **BASE LOAD**

**PRIMARY RECEIPT POINT:**

POI#

DESCRIPTION:

ZONE:

PIPELINE:

**DAILY QUANTITY:** [REDACTED] MMBtu's

**PRICE OPTIONS:**

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

[REDACTED]



**ATTACHMENT 1  
TO  
APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Attachment 1 shall have the meanings given for such terms in the Gas Sales Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**DEFAULTS AND REMEDIES IF** [REDACTED]

**A. Early Termination.** If a Triggering Event (defined in Paragraph B of this Attachment 1) occurs with respect to either party at any time during the term of this Agreement, the other party (the "Notifying Party") may (i) upon thirty (30) Business Days written notice to the first party, which notice shall be given no later than sixty (60) Days after the discovery of the occurrence of the Triggering Event, terminate this Agreement ("Early Termination"), and (ii) withhold any payments due; provided, upon the occurrence of any Triggering Event listed in item (iv) of Paragraph B of this Attachment 1, this Agreement shall automatically terminate, without notice, as if an Early Termination had been immediately declared. In the event of Early Termination, the Notifying Party shall in good faith calculate its damages, including its associated costs and attorneys' fees, resulting from the termination of the Agreement (the "Termination

Termination, the Notifying Party shall in good faith calculate its damages, including its associated costs and attorneys' fees, resulting from the termination of the Agreement (the "Termination Payment"). The Termination Payment will be determined by (i) comparing the value of (a) the remaining terms, quantities and prices under this Agreement had it not been terminated to (b) the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract and (ii) ascertaining the associated costs and attorneys' fees.

If the calculation of the Termination Payment does not result in damages to the Notifying Party, the Termination Payment shall be zero. The Notifying Party shall give the Affected Party (defined in Paragraph B of this Attachment 1) written notice of the amount of the Termination Payment, inclusive of a statement showing its determination. The Affected Party shall pay the Termination Payment to the Notifying Party within thirty (30) Days of receipt of such notice. At the time for payment of any amount due under this Attachment 1, each party shall pay to the other party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

B. "Triggering Event" shall mean, with respect to a party (the "Affected Party"): (i) the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Affected Party or (ii) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made or deemed to be repeated or (iii) the failure by the Affected Party to perform any covenant set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Paragraph B as a separate Triggering Event), and such failure is not excused by Force Majeure or cured within ten (10) Business Days after written notice thereof to the Affected Party or (iv) the Affected Party shall (a) make an assignment or any general arrangement for the benefit of creditors, (b) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) Days, (c) otherwise become bankrupt or insolvent (however evidenced) or (d) be unable to pay its debts as they fall due or (v) the Affected Party fails to establish, maintain, extend or increase security for the performance of its obligations under this Agreement requested by the other party pursuant to paragraph (d) of Article XV of this Agreement (provided such security has been confirmed by an arbitrator pursuant to Article XVI of this Agreement if such arbitration has been requested), or (vi) with respect to Seller, at any time, Seller shall have defaulted on its indebtedness to third parties resulting in an acceleration of obligations of Seller in excess of \$5,000,000.00, or with respect to PGS, at any time, PGS shall have defaulted on its indebtedness to third parties, resulting in an acceleration of obligations of PGS in excess of \$5,000,000.00.

**GAS SALES AGREEMENT** (C)

This GAS SALES AGREEMENT (the "Agreement") is made and entered into as of the 1st day of October, 1997, by and between [REDACTED] ("Seller"), and Peoples Gas System, Inc., a division of Tampa Electric Company a Florida corporation ("PGS") (each of Seller and PGS being sometimes referred to individually as a "party" and collectively as the "parties").

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

WHEREAS, PGS owns and operates a natural gas distribution system in the State of Florida and has a need to acquire supplies of Gas;

WHEREAS, Seller has a supply of Gas available for sale, and PGS desires to purchase such Gas directly from Seller.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto, intending to be legally bound, hereby agree as follows.

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the following words and phrases shall have the following meanings

"Alternate Receipt Point" shall have the meaning given for such term in Article IV of this Agreement.

"Agreement" shall mean this Gas Sales Agreement, including the appendices attached hereto, as the same may be amended from time to time.

"British thermal unit" or "Btu" shall mean the quantity of heat required to raise the temperature of one pound of water from 59°F. to 60°F. at a constant pressure of 14.73 pounds per square inch absolute.

"Business Day" shall have the meaning given for the term "working day" in FGT's FERC Tariff.

"Contact Person" shall have the meaning given for such term in Section 17.9(b) of this Agreement.

"Daily Quantity" shall mean, for each Day during the term of this Agreement, the quantity

**"Day"** shall have the meaning given for the term "Receipt Gas Day" in FGT's FERC Tariff; provided, however, that if FGT's FERC Tariff is amended to eliminate the distinction between the terms "Receipt Gas Day" and "Delivery Gas Day", all references in this Agreement to either such term shall thereafter have the meaning given for the term in FGT's FERC Tariff which replaces such terms.

**"°F"** shall mean degree(s) Fahrenheit.

**"FGT"** shall mean Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.

**"FGT's FERC Tariff"** shall mean FGT's FERC Gas Tariff, Third Revised Volume No. 1, as amended, supplemented or superseded from time to time during the term of this Agreement, as such tariff applies to Firm transportation service under FGT's Rate Schedules FTS-1 or FTS-2.

**"Firm"** means, (i) with respect to the sale and purchase of Gas, that Seller is obligated to sell and deliver and PGS is obligated to purchase and receive the quantity of Gas specified, except as excused by an event of Force Majeure and, (ii) with respect to transportation required to be scheduled by a party hereunder, that such party's transporter is obligated to make available a quantity of pipeline capacity, without interruption except as excused by an event of force majeure under such transporter's tariff, sufficient to enable such party to perform its obligations under this Agreement.

**"Force Majeure"** shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, sinkholes, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, in each of the above cases, by the exercise of due diligence such party is unable to prevent or overcome; provided, however, that such term shall not include the interruption or failure of Interruptible transportation. Such term shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way, grants, permits, permissions, licenses, or required governmental orders, necessary to enable such party to fulfill its obligations hereunder.

**"Gas"** shall mean natural gas meeting the quality specifications which FGT requires with regard to deliveries into its pipeline system.

**"Imbalance"** shall have the meaning given for such term in Article VIII of this Agreement.

**"Interruptible"** means, with respect to transportation, that a transporter is not obligated to make available any particular quantity of pipeline capacity and that such transporter may, for

**"Interruptible"** means, with respect to transportation, that a transporter is not obligated to make available any particular quantity of pipeline capacity and that such transporter may, for reasons other than Force Majeure, interrupt and/or decline to schedule such transportation service without incurring liability to the shipper.

**"MMBtu"** shall mean one million (1,000,000) Btu.

**"month"** shall mean a calendar month.

**"PGS"** shall mean Peoples Gas System, Inc., a Florida corporation, and its successors and assigns.

**"Primary Receipt Point"** shall mean the point or points of interconnection between the facilities of Seller or Seller's Transporter and the pipeline facilities of FGT which point(s) of interconnection are identified on Appendix A to this Agreement.

**"Replacement Quantity"** shall have the meaning given for such term in Section 9.1 of this Agreement.

**"Responsible Party"** shall have the meaning given for such term in Article VIII of this Agreement.

**"Schedule"** shall mean the acts required of a shipper to properly nominate, notify or request service from, and to obtain confirmation of service by, the shipper's transporter for the receipt, transportation and delivery of a quantity of gas on a given day.

**"Seller"** shall mean [REDACTED] and its successors and assigns.

**"Shortall Quantity"** shall have the meaning given for such term in Section 9.2 of this Agreement.

**"Termination Date"** shall mean the end of the Day commencing on March 31, 1998

## ARTICLE II TERM

This Agreement shall become effective on the date first written above. The term of this Agreement, and the obligations of the parties hereunder, shall commence at the beginning of the Day commencing on April 1, 1997 and shall continue, unless earlier terminated pursuant to the provisions of this Agreement, until the Termination Date.

### **ARTICLE III QUANTITIES**

On each Day during the term of this Agreement, unless excused by Force Majeure, Seller shall sell and deliver to PGS, and PGS shall receive and purchase from Seller, on a Firm basis, the Daily Quantity.

### **ARTICLE IV POINT OF DELIVERY**

All Gas sold hereunder shall be delivered by Seller to or for the account of PGS at the Primary Receipt Point. Seller may, if agreed by PGS, deliver Gas sold hereunder at other points of receipt on the FGT pipeline system (any such other point of receipt being hereinafter referred to as an "Alternate Receipt Point"); provided, however, that, notwithstanding any agreement by PGS to receive Gas sold hereunder at an Alternate Receipt Point, if any portion of the Daily Quantity cannot be delivered by Seller at such Alternate Receipt Point (due to proration, loss or interruption by FGT or Seller's transporter, or any other cause except Force Majeure), Seller shall be obligated to deliver such portion at either the Primary Receipt Point or at another point of receipt on the FGT pipeline system located in the same FGT zone as the Primary Receipt Point, which point PGS and Seller, acting in good faith, shall mutually designate

### **ARTICLE V BILLING AND PAYMENT**

**5.1 Billing.** On or before the tenth (10th) Day of each month, Seller shall deliver to PGS via facsimile (optional) a bill for the preceding month showing the total quantity of Gas delivered and the amount due either party from the other party pursuant to this Agreement, and shall mail to PGS the original of such bill and any supporting documents). If the actual quantity delivered is not known by the date such bill is delivered to PGS, Seller shall prepare such bill based on the quantities scheduled during the preceding month. Any bill based on such estimated quantity shall be corrected to reflect the actual quantity on the following month's bill or as soon thereafter as actual delivery information is available.

**5.2 Payment.** PGS shall pay the bill rendered by Seller pursuant to Section 5.1 hereof, minus any disputed amounts, to Seller by electronic funds transfer or wire transfer to the account and bank specified in Seller's bill by the twenty-fifth (25th) Day of the month in which the bill is rendered.

**5.3 Billing Disputes.** In the event either party is served by the other party with written notice of a bona fide billing dispute, PGS or Seller, as the case may be, shall (i) pay (or credit) to the other party all amounts not in dispute, and (ii) pay any disputed amount, if not resolved within sixty (60) calendar days after the giving of the aforesaid written notice, into an escrow account established for the benefit of the parties with an escrow agent and pursuant to terms reasonably acceptable to the parties. The parties shall exercise commercially reasonable efforts to resolve any such billing dispute as soon as reasonably practicable. Any amounts deposited into the escrow account (together with any interest accrued thereon) shall be paid by the escrow agent to the party in whose favor the dispute is resolved. Failure by a party to pay a disputed amount into the applicable escrow account shall be deemed a conclusive resolution of the dispute in favor of the other party.

**5.4 Errors.** If an error is discovered in any bill rendered (or credit given or payment made) hereunder, or in any of the information used in the calculation of such bill (or such credit or payment), Seller shall, to the extent practicable, make an adjustment to correct such error in the next bill rendered after the date on which the error is confirmed. The provisions of this section shall survive the termination of this Agreement; provided, however, that no billing adjustment shall be made, and all bills and payments hereunder shall be deemed final and not subject to any claim or adjustment if a party fails to assert an error within six (6) months following the occurrence of such error.

## **ARTICLE VI FAILURE TO MAKE PAYMENT**

**6.1 Interest.** If, subject to Section 5.3, either party fails to pay (or credit) the full amount due the other party within the time allowed, interest on the unpaid portion shall accrue from the date due to the date such amount is paid (or credited) at a rate equal to the lesser of (i) the then effective prime rate of interest for large U.S. Money Center commercial banks, published under "Money Rates" by the *Wall Street Journal*, or (ii) the maximum applicable lawful rate of interest.

**6.2 Other Remedy of Seller.** If PGS fails to make any payment when due and such failure is not remedied by or on behalf of PGS within five (5) Business Days after written notice by Seller of such default in payment, then Seller, in addition to any other remedy it may have, may without incurring any liability to PGS and without terminating this Agreement, suspend further deliveries of Gas pursuant to this Agreement until such amount is paid; provided, however, that Seller shall not suspend deliveries of Gas pursuant to this Agreement if (i) PGS's failure to pay is the result of a bona fide dispute, (ii) PGS has paid Seller for all amounts not in dispute and (iii) PGS is in compliance with Section 5.3 of this Agreement.

**6.3 Other Remedy of PGS.** If Seller is required pursuant to Section 5.1, but fails, to provide a credit (or make payment) to PGS, and such failure is not remedied by or on behalf of Seller within five (5) Business Days after PGS's written notice of such default, then PGS, in addition to any other remedy it may have, may without incurring any liability to Seller and without terminating this Agreement, suspend payment of any amounts due Seller up to the amount owed to Buyer by Seller under this Agreement until such failure is remedied; provided, however, that PGS shall not so suspend payment of any such amounts if (i) Seller's failure to provide a credit (or make payment) to PGS as required by Section 5.1 is the result of a bona fide dispute, (ii) Seller has provided a credit (or made payment) to PGS for all amounts not in dispute and (iii) Seller is in compliance with Section 5.3 of this Agreement.

## **ARTICLE VII** **TRANSPORTATION**

Subject to the provisions of Article IV, each party shall schedule the Daily Quantity for Firm transportation in accordance with the scheduling procedures and deadlines set forth in FGT's FERC Tariff or the FERC tariff of Seller's transporter (as applicable) so that the Daily Quantity will be delivered and received at the Primary Receipt Point (or the agreed Alternate Receipt Point) on each Day. If, on any Day, Seller desires to use an Alternate Receipt Point, Seller's request to use such point shall be communicated to PGS not later than two (2) hours prior to the FGT nomination deadline for the Day on which the Daily Quantity is to be delivered at such Alternate Receipt Point. If, for any Day, either party is for any reason unable to schedule all or any portion of the Daily Quantity for Firm transportation in accordance with the foregoing provisions, such party shall immediately notify the other party by telephone (such notification to be confirmed thereafter by facsimile).

## **ARTICLE VIII** **SCHEDULING AND IMBALANCE PENALTIES**

Any difference between quantities scheduled and quantities actually delivered and received hereunder (an "Imbalance") at the Primary Receipt Point or at any Alternate Delivery Point shall be resolved between PGS and Seller on the basis of the "cash out" price formulas set forth in FGT's FERC Tariff. In the event of (i) an Imbalance on PGS's transporter's system caused by Seller or Seller's transporter's delivery of less or more than the quantity scheduled by Seller for transportation on any Day (in which case Seller shall be the "Responsible Party") or (ii) an Imbalance on Seller's transporter's system caused by PGS or PGS's transporter's delivery of less or more than the quantity scheduled by PGS for transportation on any Day (in which case PGS shall be the "Responsible Party"), the Responsible Party shall be liable for and reimburse to the other party any associated transporter penalties or cash out costs incurred by such other party.



**ARTICLE IX**  
**FAILURE TO PERFORM**

**9.1 Seller's Failure to Perform.** In the event (unless excused by Force Majeure) Seller fails to schedule all or any portion of the Daily Quantity for delivery on any Day during the term of this Agreement, Seller shall pay to PGS the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the portion of the Daily Quantity (the "Replacement Quantity") Seller failed to schedule:

(a) If PGS was able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the positive difference determined by subtracting the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller, from PGS's incremental cost (including all costs for transportation of the Replacement Quantity to the point(s) of receipt at which the Replacement Quantity was delivered for the account of PGS) of the Replacement Quantity.

(b) If PGS was not able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller:

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by PGS as a result of Seller's failure to schedule the full amount of the Daily Quantity;

(d) A fee of \$ 15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

**9.2 PGS's Failure to Perform.** In the event (unless excused by Force Majeure) PGS fails to schedule on any Day during the term of this Agreement any portion (the "Shortfall Quantity") of the Daily Quantity as has been scheduled by Seller for delivery on such Day, PGS shall pay to Seller the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the Shortfall Quantity:

(a) If Seller was able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the positive difference determined by subtracting the price at which Seller was able to sell the Shortfall Quantity (including all incremental costs incurred by Seller for transportation of the Shortfall Quantity to the point(s)

at which the Shortfall Quantity was delivered for the account of the buyer) from the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(b) If Seller was not able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by Seller as a result of PGS's failure to schedule the full amount of the Daily Quantity; and

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

9.3 Time of Payment. Each party shall pay the other party any amounts to which the other party is entitled pursuant to this article on or before the twentieth Business Day following the date of the other party's mailing (as signified by the postmark) or other delivery of an invoice therefor. The provisions of Sections 5.3 and 5.4 and of Article VI shall apply to any such invoice rendered pursuant to this Article IX.

## **ARTICLE X QUALITY AND MEASUREMENT**

10.1 Quality. All Gas purchased and sold pursuant to this Agreement shall be merchantable.

10.2 Measurement. The parties shall accept measurements of quantities and heating value made by FGT at the Primary Receipt Point(s) and any Alternate Receipt Point in accordance with FGT's FERC Tariff as final and correct for all purposes under this Agreement subject only to any adjustments as may be agreed to by FGT.

## **ARTICLE XI PRICE**

The price for all Gas purchased and sold pursuant to this Agreement shall be determined in accordance with the provisions of Appendix A to this Agreement, which Appendix is hereby incorporated by reference.

**ARTICLE XII  
TAXES**

The price payable by PGS to Seller for Gas delivered pursuant to this Agreement includes full reimbursement for, and Seller is liable for and shall pay, or reimburse PGS if PGS has paid all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise upstream of the Primary Receipt Point or any Alternate Receipt Point. Seller shall indemnify, defend and hold harmless PGS from any claims for such taxes, fees or assessments. Such price does not include reimbursement for, and PGS is liable for and shall pay, or reimburse Seller if Seller has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise at or downstream of the Primary Receipt Point or any Alternate Receipt Point. PGS shall indemnify, defend and hold harmless Seller from any claims for such taxes, fees or assessments. If PGS claims exemption from any such taxes, PGS shall provide to Seller a certificate of exemption or other appropriate documentation thereof.

**ARTICLE XIII  
TITLE AND RISK OF LOSS**

Title to, risk of loss with respect to, and liability for all Gas sold and purchased hereunder shall pass from Seller to PGS at the Primary Receipt Point (or such other point of receipt on the FGT pipeline system at which the Gas is delivered by Seller to or for the account of PGS). Seller warrants that it has good and marketable title to all Gas sold hereunder and shall indemnify, defend and hold harmless PGS from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to such Gas.

**ARTICLE XIV  
FORCE MAJEURE: LIMITATION OF LIABILITY**

**14.1 Force Majeure.** Unless otherwise provided, the obligations of each party under this Agreement, and the performance thereof, other than a failure or delay in the payment of money due hereunder, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

**14.2 Resumption of Performance.** The party whose performance is excused by an event of Force Majeure shall promptly notify the other party of such occurrence and its estimated duration, and shall promptly remedy such Force Majeure if and to the extent reasonably possible and resume such performance when possible; provided, however, that neither party shall be required to settle any labor dispute against its will.

**14.3 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY PERSON CLAIMING THROUGH THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST OPPORTUNITIES COSTS RELATING TO ANY MATTER COVERED BY THIS AGREEMENT.

**ARTICLE XV**  
**EVENTS OF DEFAULT; REMEDIES; FINANCIAL INFORMATION**

(a) The occurrence of any of the following events shall be deemed to be an event of default ("Event of Default") as to the non-performing party under this Agreement:

(i) Failure by a party to make, when due, any payment required to be made hereunder if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to such party; or

(ii) Failure by a party to comply in any material respect with any material term or provision of this Agreement, other than a failure specified in clause (i) above, and such failure shall continue for ten (10) Business Days after written notice thereof has been given to the non-performing party; or

(iii) the dissolution or liquidation of a party; or the failure of a party within sixty (60) days to lift any execution, garnishment or attachment of such consequence as may materially impair its ability to carry on its operations; or the failure of a party generally to pay its debts as such debts become due; or the making by a party of a general assignment for the benefit of creditors; or the commencement by a party (as the debtor) of a voluntary case in bankruptcy under the Federal Bankruptcy Code (as now or hereafter in effect) or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against a party (as the debtor) and such proceeding remains undismissed for thirty (30) days; or the appointment or authorization of a trustee, receiver, custodian, liquidator or agent, however named, to take charge of a substantial part of the property of a party for the purpose of general administration of such property for the benefit of creditors; or the taking of any corporate action by a party for the purpose of effecting any of the foregoing.

(b) Upon the occurrence and continuation of an Event of Default, the non-defaulting party may, at its option, and in addition to and cumulatively of any other rights and remedies it may have hereunder, at law, in equity or otherwise, terminate this Agreement upon five (5) days' prior written notice to the defaulting party, or enforce, by all lawful means, its rights hereunder, including without limitation, the collection of sums due hereunder without terminating this Agreement, and should it be necessary for such party to take any legal action in connection with such enforcement, the defaulting party shall pay such non-defaulting party all costs and reasonable attorneys' fees so incurred.

(c) If requested by PGS, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. If requested by Seller, PGS shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided however, that should any such statements not be timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such party diligently pursues the preparation, certification and delivery of the statements. A party may require the party making a request for financial statements to execute a reasonable confidentiality agreement as a precondition to the delivery of such financial statements.

(d) If, during the term of this Agreement, a party reasonably determines in good faith that the creditworthiness of the other party has become unsatisfactory, such party may require the other party to furnish reasonable security for the performance required of it by this Agreement. Any dispute between the parties resulting from a party's determination that the creditworthiness of the other party has become unsatisfactory, or the nature or amount of the security required by a party, shall be subject to arbitration in accordance with Article XVI of this Agreement.

## **ARTICLE XVI ARBITRATION**

In the event of a dispute between the Parties arising under this paragraph (d) of Article XV of this agreement, the Parties shall negotiate in good faith in an attempt to resolve the dispute prior to submitting the dispute to arbitration as provided hereinbelow. Any dispute which is not resolved through such good faith negotiations, shall be settled by binding arbitration. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the Rules for Non-Administered Arbitration of Business Disputes (the "CPR Rules"), as adopted by the Center for Public Resources and as in effect at the commencement of the arbitration. The place of arbitration shall be Tampa, Florida. Before the close of business on the tenth calendar day following the calendar day (the "Commencement Day") on which the arbitration is considered, pursuant to the CPR Rules, to have commenced, each party shall furnish to the other party a list of not less than five (5) persons (the "Candidates") who are acceptable as arbitrator to the party.

furnishing the list. For each Candidate, such list shall show each Candidate's name, address, telephone number, employer or organization with which associated, current professional position, and the number of arbitrations, if any, before the Candidate to which the party furnishing the list was a party. No Candidate shall (i) be, or have ever been, an employee, officer or director of either party or of any affiliate or supplier of either party, or (ii) have a direct or indirect financial interest in either party or the subject matter of the arbitration. In the ten-calendar day period comprising the eleventh through the twentieth calendar days following the Commencement Date, the parties will exercise diligent efforts to agree upon a single Candidate to serve as the arbitrator, and on the twentieth calendar day following the Commencement Date, each party shall serve on the other party a written statement proposing a specific resolution of the issue or issues to be arbitrated. If no such agreement is reached during such time period, the CPR, acting pursuant to the CPR Rules, shall appoint the arbitrator. Thereafter, the arbitration shall proceed according to the CPR Rules, except there shall be no prehearing conference. The arbitrator's award shall resolve each issue by adopting either one or the other of the resolutions on the issue by the parties. Except as otherwise agreed by the parties, no other resolution of an issue shall be permitted. In making an award, the arbitrator shall be subject to any provisions of this Agreement which expressly limit remedies or damages. The award of the arbitrator shall be final and binding. The parties shall share equally the compensation and expenses of the arbitrator and the expense of any hearing, and each party shall bear the compensation and expenses its own counsel and other representatives (if any).

## **ARTICLE XVII MISCELLANEOUS**

**17.1 Independent Parties.** Seller and PGS shall perform hereunder as independent parties and neither party is in any way or for any purpose, by nature of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

**17.2 Assignment and Transfer.** This Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and assigns; provided, however, that neither party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other party.

**17.3 Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Texas and shall be subject to all applicable laws, rules, orders and regulations of any Federal, state or local governmental authority having jurisdiction over the parties, their facilities or the transactions contemplated. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

**17.4 Headings.** All article headings, section headings and subheadings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

**17.5 Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

**17.6 Entire Agreement.** This Agreement, including the appendix attached hereto, sets forth the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior negotiations, agreements and understandings with respect to such subject matter. Neither party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

**17.7 Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**17.8 Inspection.** Each party hereto shall have the right throughout the term of this Agreement and for a period of two (2) years thereafter, upon reasonable prior notice and during normal business hours, to examine the books, records and documents of the other party to the extent necessary (i) to verify the accuracy of any statement, charge, computation or demand made pursuant to this Agreement, or (ii) to determine whether there has been compliance with the requirements of Section 17.14 of this Agreement. Each party shall keep any and all such books, records and documents for a period of two (2) years from the date such book, record or document is created or any entry or adjustment thereto is made.

**17.9 Notices.** (a) Except as otherwise provided herein, any notice, request, demand or other communication under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered personally, or by a recognized overnight delivery service, or by facsimile, to the party to whom the notice, request, demand or other communication is to be given, or (ii) on the fifth day after mailing if mailed by United States mail to the party to whom the notice, request, demand or other communication is to be given, by first-class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed to the party at the address set forth below, or such other address set forth in a written notice given pursuant hereto.

Seller:

Administrative Matters:

[REDACTED]

[REDACTED]  
Telephone: [REDACTED]  
Facsimile: [REDACTED]

Payment

[REDACTED]

PGS

Notices:

Peoples Gas System  
A division of Tampa Electric Company  
702 N. Franklin Street  
P. O. Box 2562  
Tampa, Florida 33601-2562  
Attention: Debby Williams  
Telephone: (813) 228-4666  
Facsimile: (813) 228-4742

General Notices:

Attention: Wraye Grimard  
Telephone: (813) 228-4697  
Facsimile: (813) 228-4742



**Accounting and Billing:**

Attention: Ed Elliott  
Telephone: (813) 228-4149  
Facsimile: (813) 228-4194

(b) Each party shall designate in writing an individual to act as its "Contact Person", which individual shall be (i) duly authorized by such party to act for it with respect to all operational matters arising under this Agreement and (ii) accessible to the other party at all times during each Day during the term of this Agreement. In the performance of its obligations hereunder, a party shall be entitled to rely upon any instruction, consent or acknowledgement given by the other party's Contact Person with respect to operational matters arising hereunder.

**17.10 Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as Contact Person pursuant to Section 17.9(b) shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 17.9(a) of this Agreement.

**17.11 Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

**17.12 Legal Fees.** In the event of litigation between the parties hereto arising out of or in connection with this Agreement, the reasonable attorneys' fees and costs of the party prevailing in such litigation shall be paid by the other party.

**17.13 Confidentiality.** Neither party shall disclose the terms of this Agreement to any person not employed, or retained as a consultant or legal counsel, by such party, except to the extent such disclosure is (i) required by law, regulation or order of a court having jurisdiction, (ii) requested by the independent public accountants of the party making the disclosure, (iii) required by a loan agreement of the party making the disclosure, (iv) required of the party making the disclosure in connection with the defense of any litigation, (v) made to a person (e.g., a royalty owner) to whom the party has an obligation to make such disclosure, (vi) made to the party's transporter in order to schedule quantities for transportation in the performance of this

shall, prior to making such disclosure, promptly notify the other party in writing that such disclosure will be made so that such other party may seek a protective order, and (b) both parties agree to use commercially reasonable efforts to require the recipient(s) of any information disclosed to maintain the confidentiality thereof.

17.14 Conflict of Interest. No director, employee, agent or other representative of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement or the performance thereof.

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

**PEOPLES GAS SYSTEM, a division of  
TAMPA ELECTRIC COMPANY**

By: M. R. Schuyler  
Michael R. Schuyler  
Director, Gas Supply and Regulatory Affairs

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

**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART I**

**TERM:** October 1, 1997 - March 31, 1998

**TYPE:** Base Load

**PRIMARY RECEIPT POINT:**

**POI#** [REDACTED]

**DESCRIPTION:** [REDACTED]

**ZONE:** [REDACTED]

**PIPELINE:** [REDACTED]

**DAILY QUANTITY:** [REDACTED]

**PRICE OPTIONS:**

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

[REDACTED]

**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART II**

**TERM:** December 1, 1997 - January 31, 1998

**TYPE:** Base Load

**PRIMARY RECEIPT POINT:**

POI#

DESCRIPTION:

ZONE:

PIPELINE:

[REDACTED]

**DAILY QUANTITY:**

[REDACTED]

**PRICE OPTIONS:**

1. [REDACTED]
  - a. [REDACTED]
  - b. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

[REDACTED]

**ATTACHMENT 1  
TO  
APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Attachment 1 shall have the meanings given for such terms in the Gas Sales Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**DEFAULTS AND REMEDIES IF** [REDACTED]

**A. Early Termination.** If a Triggering Event (defined in Paragraph B of this Attachment 1) occurs with respect to either party at any time during the term of this Agreement, the other party (the "Notifying Party") may (i) upon thirty (30) Business Days written notice to the first party, which notice shall be given no later than sixty (60) Days after the discovery of the occurrence of the Triggering Event, terminate this Agreement ("Early Termination"), and (ii) withhold any payments due; provided, upon the occurrence of any Triggering Event listed in item (iv) of Paragraph B of this Attachment 1, this Agreement shall automatically terminate, without

notice, as if an Early Termination had been immediately declared. In the event of Early Termination, the Notifying Party shall in good faith calculate its damages, including its associated costs and attorneys' fees, resulting from the termination of the Agreement (the "Termination Payment"). The Termination Payment will be determined by (i) comparing the value of (a) the remaining terms, quantities and prices under this Agreement had it not been terminated to (b) the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract and (ii) ascertaining the associated costs and attorneys' fees.

[REDACTED]

If the calculation of the Termination Payment does not result in damages to the Notifying Party, the Termination Payment shall be zero. The Notifying Party shall give the Affected Party (defined in Paragraph B of this Attachment 1) written notice of the amount of the Termination Payment, inclusive of a statement showing its determination. The Affected Party shall pay the Termination Payment to the Notifying Party within thirty (30) Days of receipt of such notice. At the time for payment of any amount due under this Attachment 1, each party shall pay to the other party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

B. "Triggering Event" shall mean, with respect to a party (the "Affected Party"): (i) the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Affected Party or (ii) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made or deemed to be repeated or (iii) the failure by the Affected Party to perform any covenant set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Paragraph B as a separate Triggering Event), and such failure is not excused by Force Majeure or cured within ten (10) Business Days after written notice thereof to the Affected Party or (iv) the Affected Party shall (a) make an assignment or any general arrangement for the benefit of creditors, (b) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) Days, (c) otherwise become bankrupt or insolvent (however evidenced) or (d) be unable to pay its debts as they fall due or (v) the Affected Party fails to establish, maintain, extend or increase security for the performance of its obligations under this Agreement requested by the other party pursuant to paragraph (d) of Article XV of this Agreement (provided such security has been confirmed by an arbitrator pursuant to Article XVI of this Agreement if such arbitration has been requested), or (vi) with respect to Seller, at any time, Seller shall have defaulted on its indebtedness to third parties resulting in an acceleration of obligations of Seller in excess of \$5,000,000.00, or with respect to PGS, at any time, PGS shall have defaulted on its indebtedness to third parties, resulting in an acceleration of obligations of PGS in excess of \$5,000,000.00.

**GAS SALES AGREEMENT** (D)

This GAS SALES AGREEMENT (the "Agreement") is made and entered into as of the 1st day of November, 1997, by and between [REDACTED] ("Seller"), and Peoples Gas System, Inc., a division of Tampa Electric Company a Florida corporation ("PGS") (each of Seller and PGS being sometimes referred to individually as a "party" and collectively as the "parties").

**WITNESSETH:**

WHEREAS, PGS owns and operates a natural gas distribution system in the State of Florida and has a need to acquire supplies of Gas;

WHEREAS, Seller has a supply of Gas available for sale, and PGS desires to purchase such Gas directly from Seller.

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

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the following words and phrases shall have the following meanings:

"Alternate Receipt Point" shall have the meaning given for such term in Article IV of this Agreement.

"Agreement" shall mean this Gas Sales Agreement, including the appendices attached hereto, as the same may be amended from time to time.

"British thermal unit" or "Btu" shall mean the quantity of heat required to raise the temperature of one pound of water from 59°F. to 60°F. at a constant pressure of 14.73 pounds per square inch absolute.

"Business Day" shall have the meaning given for the term "working day" in FGT's FERC Tariff.

**"Contact Person"** shall have the meaning given for such term in Section 17.9(b) of this Agreement.

**"Daily Quantity"** shall mean, for each Day during the term of this Agreement, the quantity of Gas specified as the Daily Quantity in Appendix A to this Agreement.

**"Day"** shall have the meaning given for the term "Receipt Gas Day" in FGT's FERC Tariff; provided, however, that if FGT's FERC Tariff is amended to eliminate the distinction between the terms "Receipt Gas Day" and "Delivery Gas Day", all references in this Agreement to either such term shall thereafter have the meaning given for the term in FGT's FERC Tariff which replaces such terms.

**"°F"** shall mean degree(s) Fahrenheit.

**"FGT"** shall mean Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.

**"FGT's FERC Tariff"** shall mean FGT's FERC Gas Tariff, Third Revised Volume No. 1, as amended, supplemented or superseded from time to time during the term of this Agreement as such tariff applies to Firm transportation service under FGT's Rate Schedules FTS-1 or FTS-2.

**"Firm"** means, (i) with respect to the sale and purchase of Gas, that Seller is obligated to sell and deliver and PGS is obligated to purchase and receive the quantity of Gas specified, except as excused by an event of Force Majeure and, (ii) with respect to transportation required to be scheduled by a party hereunder, that such party's transporter is obligated to make available a quantity of pipeline capacity, without interruption except as excused by an event of force majeure under such transporter's tariff, sufficient to enable such party to perform its obligations under this Agreement.

**"Force Majeure"** shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, sinkholes, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, in each of the above cases, by the exercise of due diligence such party is unable to prevent or overcome; provided, however, that such term shall not include the interruption or failure of Interruptible transportation. Such term shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way, grants, permits, permissions, licenses, or required governmental orders, necessary to enable such party to fulfill its obligations hereunder.



"Gas" shall mean natural gas meeting the quality specifications which FGT requires with regard to deliveries into its pipeline system.

"Imbalance" shall have the meaning given for such term in Article VIII of this Agreement:

"Interruptible" means, with respect to transportation, that a transporter is not obligated to make available any particular quantity of pipeline capacity and that such transporter may, for reasons other than Force Majeure, interrupt and/or decline to schedule such transportation service without incurring liability to the shipper.

"MMBtu" shall mean one million (1,000,000) Btu.

"month" shall mean a calendar month.

"PGS" shall mean Peoples Gas System, Inc., a Florida corporation, and its successors and assigns.

"Primary Receipt Point" shall mean the point or points of interconnection between the facilities of Seller or Seller's Transporter and the pipeline facilities of FGT which point(s) of interconnection are identified on Appendix A to this Agreement.

"Replacement Quantity" shall have the meaning given for such term in Section 9.1 of this Agreement.

"Responsible Party" shall have the meaning given for such term in Article VIII of this Agreement.

"schedule" shall mean the acts required of a shipper to properly nominate, notify or request service from, and to obtain confirmation of service by, the shipper's transporter for the receipt, transportation and delivery of a quantity of gas on a given day.

"Seller" shall mean [REDACTED] and its successors and assigns.

"Shortfall Quantity" shall have the meaning given for such term in Section 9.2 of this Agreement.

"Termination Date" shall mean the end of the Day commencing on March 31, 1998

## **ARTICLE II TERM**

This Agreement shall become effective on the date first written above. The term of this Agreement, and the obligations of the parties hereunder, shall commence at the beginning of the Day commencing on April 1, 1997 and shall continue, unless earlier terminated pursuant to the provisions of this Agreement, until the Termination Date.

## **ARTICLE III QUANTITIES**

On each Day during the term of this Agreement, unless excused by Force Majeure, Seller shall sell and deliver to PGS, and PGS shall receive and purchase from Seller, on a Firm basis, the Daily Quantity.

## **ARTICLE IV POINT OF DELIVERY**

All Gas sold hereunder shall be delivered by Seller to or for the account of PGS at the Primary Receipt Point. Seller may, if agreed by PGS, deliver Gas sold hereunder at other points of receipt on the FGT pipeline system (any such other point of receipt being hereinafter referred to as an "Alternate Receipt Point"); provided, however, that, notwithstanding any agreement by PGS to receive Gas sold hereunder at an Alternate Receipt Point, if any portion of the Daily Quantity cannot be delivered by Seller at such Alternate Receipt Point (due to proration, loss or interruption by FGT or Seller's transporter, or any other cause except Force Majeure), Seller shall be obligated to deliver such portion at either the Primary Receipt Point or at another point of receipt on the FGT pipeline system located in the same FGT zone as the Primary Receipt Point, which point PGS and Seller, acting in good faith, shall mutually designate.

## **ARTICLE V BILLING AND PAYMENT**

**5.1 Billing.** On or before the tenth (10th) Day of each month, Seller shall deliver to PGS via facsimile (optional) a bill for the preceding month showing the total quantity of Gas delivered and the amount due either party from the other party pursuant to this Agreement, and shall mail to PGS the original of such bill and any supporting documents). If the actual quantity delivered is not known by the date such bill is delivered to PGS, Seller shall prepare such bill based on the quantities scheduled during the preceding month. Any bill based on such estimated quantity shall be corrected to reflect the actual quantity on the following month's bill or as soon

thereafter as actual delivery information is available.

**5.2 Payment.** PGS shall pay the bill rendered by Seller pursuant to Section 5.1 hereof, minus any disputed amounts, to Seller by electronic funds transfer or wire transfer to the account and bank specified in Seller's bill by the twenty-fifth (25th) Day of the month in which the bill is rendered.

**5.3 Billing Disputes.** In the event either party is served by the other party with written notice of a bona fide billing dispute, PGS or Seller, as the case may be, shall (i) pay (or credit) to the other party all amounts not in dispute, and (ii) pay any disputed amount, if not resolved within sixty (60) calendar days after the giving of the aforesaid written notice, into an escrow account established for the benefit of the parties with an escrow agent and pursuant to terms reasonably acceptable to the parties. The parties shall exercise commercially reasonable efforts to resolve any such billing dispute as soon as reasonably practicable. Any amounts deposited into the escrow account (together with any interest accrued thereon) shall be paid by the escrow agent to the party in whose favor the dispute is resolved. Failure by a party to pay a disputed amount into the applicable escrow account shall be deemed a conclusive resolution of the dispute in favor of the other party.

**5.4 Errors.** If an error is discovered in any bill rendered (or credit given or payment made) hereunder, or in any of the information used in the calculation of such bill (or such credit or payment), Seller shall, to the extent practicable, make an adjustment to correct such error in the next bill rendered after the date on which the error is confirmed. The provisions of this section shall survive the termination of this Agreement; provided, however, that no billing adjustment shall be made, and all bills and payments hereunder shall be deemed final and not subject to any claim or adjustment if a party fails to assert an error within six (6) months following the occurrence of such error.

## **ARTICLE VI FAILURE TO MAKE PAYMENT**

**6.1 Interest.** If, subject to Section 5.3, either party fails to pay (or credit) the full amount due the other party within the time allowed, interest on the unpaid portion shall accrue from the date due to the date such amount is paid (or credited) at a rate equal to the lesser of (i) the then effective prime rate of interest for large U.S. Money Center commercial banks, published under "Money Rates" by the *Wall Street Journal*, or (ii) the maximum applicable lawful rate of interest

**6.2 Other Remedy of Seller.** If PGS fails to make any payment when due and such failure is not remedied by or on behalf of PGS within five (5) Business Days after written notice by Seller of such default in payment, then Seller, in addition to any other remedy it may have, may without incurring any liability to PGS and without terminating this Agreement, suspend

further deliveries of Gas pursuant to this Agreement until such amount is paid, provided, however, that Seller shall not suspend deliveries of Gas pursuant to this Agreement if (i) PGS's failure to pay is the result of a bona fide dispute, (ii) PGS has paid Seller for all amounts not in dispute and (iii) PGS is in compliance with Section 5.3 of this Agreement.

**6.3 Other Remedy of PGS.** If Seller is required pursuant to Section 5.1, but fails, to provide a credit (or make payment) to PGS, and such failure is not remedied by or on behalf of Seller within five (5) Business Days after PGS's written notice of such default, then PGS, in addition to any other remedy it may have, may without incurring any liability to Seller and without terminating this Agreement, suspend payment of any amounts due Seller under this Agreement until such failure is remedied; provided, however, that PGS shall not so suspend payment of any such amounts if (i) Seller's failure to provide a credit (or make payment) to PGS as required by Section 5.1 is the result of a bona fide dispute, (ii) Seller has provided a credit (or made payment) to PGS for all amounts not in dispute and (iii) Seller is in compliance with Section 5.3 of this Agreement.

## **ARTICLE VII** **TRANSPORTATION**

Subject to the provisions of Article IV, each party shall prior to 9:00 A.M. Florida time schedule the Daily Quantity for Firm transportation in accordance with the scheduling procedures and deadlines set forth in FGT's FERC Tariff or the FERC tariff of Seller's transporter (as applicable) so that the Daily Quantity will be delivered and received at the Primary Receipt Point (or the agreed Alternate Receipt Point) on each Day. If, on any Day, Seller desires to use an Alternate Receipt Point, Seller's request to use such point shall be communicated to PGS not later than two (2) hours prior to the FGT nomination deadline for the Day on which the Daily Quantity is to be delivered at such Alternate Receipt Point. If, for any Day, either party is for any reason unable to schedule all or any portion of the Daily Quantity for Firm transportation in accordance with the foregoing provisions, such party shall immediately notify the other party by telephone (such notification to be confirmed thereafter by facsimile).

## **ARTICLE VIII** **SCHEDULING AND IMBALANCE PENALTIES**

Any difference between quantities scheduled and quantities actually delivered and received hereunder (an "Imbalance") at the Primary Receipt Point or at any Alternate Receipt Point shall be resolved between PGS and Seller on the basis of the "cash out" price formulas set forth in FGT's FERC Tariff. In the event of (i) an Imbalance on PGS's transporter's system caused by

Seller or Seller's transporter's delivery of less or more than the quantity scheduled by Seller for transportation on any Day (in which case Seller shall be the "Responsible Party") or (ii) an Imbalance on Seller's transporter's system caused by PGS or PGS's transporter's delivery of less or more than the quantity scheduled by PGS for transportation on any Day (in which case PGS shall be the "Responsible Party"), the Responsible Party shall be liable for and reimburse to the other party any associated transporter penalties or cash out costs incurred by such other party.

## **ARTICLE IX FAILURE TO PERFORM**

**9.1 Seller's Failure to Perform.** In the event (unless excused by Force Majeure) Seller fails to schedule all or any portion of the Daily Quantity for delivery on any Day during the term of this Agreement, Seller shall pay to PGS the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the portion of the Daily Quantity (the "Replacement Quantity") Seller failed to schedule:

(a) If PGS was able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the positive difference determined by subtracting the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller, from PGS's incremental cost (including all costs for transportation of the Replacement Quantity to the point(s) of receipt at which the Replacement Quantity was delivered for the account of PGS) of the Replacement Quantity;

(b) If PGS was not able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by PGS as a result of Seller's failure to schedule the full amount of the Daily Quantity;

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

**9.2 PGS's Failure to Perform.** In the event (unless excused by Force Majeure) PGS fails to schedule on any Day during the term of this Agreement any portion (the "Shortfall Quantity") of the Daily Quantity as has been scheduled by Seller for delivery on such Day, PGS shall pay to Seller the amount (in dollars per MMBtu) determined under either (a) or (b) below

(as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the Shortfall Quantity:

(a) If Seller was able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the positive difference determined by subtracting the price at which Seller was able to sell the Shortfall Quantity (including all incremental costs incurred by Seller for transportation of the Shortfall Quantity to the point(s) at which the Shortfall Quantity was delivered for the account of the buyer) from the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(b) If Seller was not able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by Seller as a result of PGS's failure to schedule the full amount of the Daily Quantity; and

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

9.3 Time of Payment. Each party shall pay the other party any amounts to which the other party is entitled pursuant to this article on or before the twentieth Business Day following the date of the other party's mailing (as signified by the postmark) or other delivery of an invoice therefor. The provisions of Sections 5.3 and 5.4 and of Article VI shall apply to any such invoice rendered pursuant to this Article IX.

## **ARTICLE X QUALITY AND MEASUREMENT**

10.1 Quality. All Gas purchased and sold pursuant to this Agreement shall be merchantable.

10.2 Measurement. The parties shall accept measurements of quantities and heating value made by FGT at the Primary Receipt Point(s) and any Alternate Receipt Point in accordance with FGT's FERC Tariff as final and correct for all purposes under this Agreement subject only to any adjustments as may be agreed to by FGT.

**ARTICLE XI  
PRICE**

The price for all Gas purchased and sold pursuant to this Agreement shall be determined in accordance with the provisions of Appendix A to this Agreement, which Appendix is hereby incorporated by reference.

**ARTICLE XII  
TAXES**

The price payable by PGS to Seller for Gas delivered pursuant to this Agreement includes full reimbursement for, and Seller is liable for and shall pay, or reimburse PGS if PGS has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise upstream of the Primary Receipt Point or any Alternate Receipt Point. Seller shall indemnify, defend and hold harmless PGS from any claims for such taxes, fees or assessments. Such price does not include reimbursement for, and PGS is liable for and shall pay, or reimburse Seller if Seller has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise at or downstream of the Primary Receipt Point or any Alternate Receipt Point. PGS shall indemnify, defend and hold harmless Seller from any claims for such taxes, fees or assessments. If PGS claims exemption from any such taxes, PGS shall provide to Seller a certificate of exemption or other appropriate documentation thereof.

**ARTICLE XIII  
TITLE AND RISK OF LOSS**

Title to, risk of loss with respect to, and liability for all Gas sold and purchased hereunder shall pass from Seller to PGS at the Primary Receipt Point (or such other point of receipt on the FGT pipeline system at which the Gas is delivered by Seller to or for the account of PGS). Seller warrants that it has good and marketable title to all Gas sold hereunder and shall indemnify, defend and hold harmless PGS from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to such Gas.

**ARTICLE XIV  
FORCE MAJEURE; LIMITATION OF LIABILITY**

14.1 Force Majeure. Unless otherwise provided, the obligations of each party under this Agreement, and the performance thereof, other than a failure or delay in the payment of money due hereunder, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

**14.2 Resumption of Performance.** The party whose performance is excused by an event of Force Majeure shall promptly notify the other party of such occurrence and its estimated duration, and shall promptly remedy such Force Majeure if and to the extent reasonably possible and resume such performance when possible; provided, however, that neither party shall be required to settle any labor dispute against its will.

**14.3 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY PERSON CLAIMING THROUGH THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST OPPORTUNITY COSTS RELATING TO ANY MATTER COVERED BY THIS AGREEMENT.

**ARTICLE XV**  
**EVENTS OF DEFAULT; REMEDIES; FINANCIAL INFORMATION**

(a) The occurrence of any of the following events shall be deemed to be an event of default ("Event of Default") as to the non-performing party under this Agreement:

(i) Failure by a party to make, when due, any payment required to be made hereunder if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to such party; or

(ii) Failure by a party to comply in any material respect with any material term or provision of this Agreement, other than a failure specified in clause (i) above, and such failure shall continue for ten (10) Business Days after written notice thereof has been given to the non-performing party; or

(iii) the dissolution or liquidation of a party; or the failure of a party within sixty (60) days to lift any execution, garnishment or attachment of such consequence as may materially impair its ability to carry on its operations; or the failure of a party generally to pay its debts as such debts become due; or the making by a party of a general assignment for the benefit of creditors; or the commencement by a party (as the debtor) of a voluntary case in bankruptcy under the Federal Bankruptcy Code (as now or hereafter in effect) or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against a party (as the debtor) and such proceeding remains undismissed for thirty (30) days; or the appointment or authorization of a trustee, receiver, custodian, liquidator or agent, however named, to take charge of a substantial part of the property of a party for the purpose of general administration of such property for the benefit of creditors; or the taking of any corporate action by a party for the purpose of effecting any of the foregoing.

(b) Upon the occurrence and continuation of an Event of Default, the non-defaulting party may, at its option, and in addition to and cumulatively of any other rights and remedies it



may have hereunder, at law, in equity or otherwise, terminate this Agreement upon five (5) days' prior written notice to the defaulting party, or enforce, by all lawful means, its rights hereunder, including without limitation, the collection of sums due hereunder without terminating this Agreement, and should it be necessary for such party to take any legal action in connection with such enforcement, the defaulting party shall pay such non-defaulting party all costs and reasonable attorneys' fees so incurred.

(c) If requested by PGS, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. If requested by Seller, PGS shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided however, that should any such statements not be timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such party diligently pursues the preparation, certification and delivery of the statements. A party may require the party making a request for financial statements to execute a reasonable confidentiality agreement as a precondition to the delivery of such financial statements.

(d) If, during the term of this Agreement, a party reasonably determines in good faith that the creditworthiness of the other party has become unsatisfactory, such party may require the other party to furnish reasonable security for the performance required of it by this Agreement. Any dispute between the parties resulting from a party's determination that the creditworthiness of the other party has become unsatisfactory, or the nature or amount of the security required by a party, shall be subject to arbitration in accordance with Article XVI of this Agreement.

## **ARTICLE XVI ARBITRATION**

In the event of a dispute between the Parties arising under paragraph (d) of Article XV of this agreement, the Parties shall negotiate in good faith in an attempt to resolve the dispute prior to submitting the dispute to arbitration as provided hereinbelow. Any dispute which is not resolved through such good faith negotiations, shall be settled by binding arbitration. Except as

otherwise provided herein, the arbitration shall be conducted in accordance with the Rules for Non-Administered Arbitration of Business Disputes (the "CPR Rules"), as adopted by the Center for Public Resources and as in effect at the commencement of the arbitration. The place of arbitration shall be Tampa, Florida. Before the close of business on the tenth calendar day following the calendar day (the "Commencement Day") on which the arbitration is considered pursuant to the CPR Rules, to have commenced, each party shall furnish to the other party a list of not less than five (5) persons (the "Candidates") who are acceptable as arbitrator to the party furnishing the list. For each Candidate, such list shall show each Candidate's name, address, telephone number, employer or organization with which associated, current professional position, and the number of arbitrations, if any, before the Candidate to which the party furnishing the list was a party. No Candidate shall (i) be, or have ever been, an employee, officer or director of either party or of any affiliate or supplier of either party, or (ii) have a direct or indirect financial interest in either party or the subject matter of the arbitration. In the ten-calendar day period comprising the eleventh through the twentieth calendar days following the Commencement Date, the parties will exercise diligent efforts to agree upon a single Candidate to serve as the arbitrator, and on the twentieth calendar day following the Commencement Date, each party shall serve on the other party a written statement proposing a specific resolution of the issue or issues to be arbitrated. If no such agreement is reached during such time period, the CPR, acting pursuant to the CPR Rules, shall appoint the arbitrator. Thereafter, the arbitration shall proceed according to the CPR Rules, except there shall be no prehearing conference. The arbitrator's award shall resolve each issue by adopting either one or the other of the resolutions on the issue by the parties. Except as otherwise agreed by the parties, no other resolution of an issue shall be permitted. In making an award, the arbitrator shall be subject to any provisions of this Agreement which expressly limit remedies or damages. The award of the arbitrator shall be final and binding. The parties shall share equally the compensation and expenses of the arbitrator and the expense of any hearing, and each party shall bear the compensation and expenses its own counsel and other representatives (if any).

## **ARTICLE XVII MISCELLANEOUS**

**17.1 Independent Parties.** Seller and PGS shall perform hereunder as independent parties and neither party is in any way or for any purpose, by nature of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

**17.2 Assignment and Transfer.** This Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and assigns; provided, however, that neither party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other party.

**17.3 Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Texas and shall be subject to all applicable laws, rules, orders and regulations of any Federal, state or local governmental authority having jurisdiction over the parties, their facilities or the transactions contemplated. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

**17.4 Headings.** All article headings, section headings and subheadings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

**17.5 Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

**17.6 Entire Agreement.** This Agreement, including the appendix attached hereto, sets forth the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior negotiations, agreements and understandings with respect to such subject matter. Neither party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

**17.7 Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**17.8 Inspection.** Each party hereto shall have the right throughout the term of this Agreement and for a period of two (2) years thereafter, upon reasonable prior notice and during normal business hours, to examine the books, records and documents of the other party to the extent necessary (i) to verify the accuracy of any statement, charge, computation or demand made pursuant to this Agreement, or (ii) to determine whether there has been compliance with the requirements of Section 17.14 of this Agreement. Each party shall keep any and all such books, records and documents for a period of two (2) years from the date such book, record or document is created or any entry or adjustment thereto is made.

**17.9 Notices.** (a) Except as otherwise provided herein, any notice, request, demand or other communication under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered personally, or by a recognized overnight delivery service, or by facsimile, to the party to whom the notice, request, demand or other communication is to be given, or (ii) on the fifth day after mailing if mailed by United States

mail to the party to whom the notice, request, demand or other communication is to be given, by first-class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed to the party at the address set forth below, or such other address set forth in a written notice given pursuant hereto.

Seller:

Administrative Matters:

[REDACTED]

Attention: [REDACTED]  
Telephone: [REDACTED]  
Facsimile: [REDACTED]

Payment:

[REDACTED]

PGS:

Notices

Peoples Gas System, Inc.  
A division of Tampa Electric Company  
702 N. Franklin Street  
P. O. Box 2562  
Tampa, Florida 33602-2562  
Attention: Debby Williams  
Telephone: (813) 228-4666  
Facsimile: (813) 228-4742

General Notices:

Attention: Wraye Grimard  
Telephone: (813) 228-4697  
Facsimile: (813) 228-4742

**Accounting and Billing:**

Attention: Ed Ellion  
Telephone: (813) 228-4149  
Facsimile: (813) 228-4194

(b) Each party shall designate in writing an individual to act as its "Contact Person" which individual shall be (i) duly authorized by such party to act for it with respect to all operational matters arising under this Agreement and (ii) accessible to the other party at all times during each Day during the term of this Agreement. In the performance of its obligations hereunder, a party shall be entitled to rely upon any instruction, consent or acknowledgement given by the other party's Contact Person with respect to operational matters arising hereunder.

**17.10 Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as Contact Person pursuant to Section 17.9(b) shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 17.9(a) of this Agreement.

**17.11 Counterparts.** This Agreement may be executed in two (2) or more counterparts all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

**17.12 Legal Fees.** In the event of litigation between the parties hereto arising out of or in connection with this Agreement, the reasonable attorneys' fees and costs of the party prevailing in such litigation shall be paid by the other party.

**17.13 Confidentiality.** Neither party shall disclose the terms of this Agreement to any person not employed, or retained as a consultant or legal counsel, by such party, except to the extent such disclosure is (i) required by law, regulation or order of a court having jurisdiction, (ii) requested by the independent public accountants of the party making the disclosure, (iii) required by a loan agreement of the party making the disclosure, (iv) required of the party making the disclosure in connection with the defense of any litigation, (v) made to a person (e.g., a royalty owner) to whom the party has an obligation to make such disclosure, (vi) made to the party's transporter in order to schedule quantities for transportation in the performance of this Agreement, or (vii) otherwise agreed in writing by the parties to be disclosed. If a party makes

disclosure of any of the terms of this Agreement pursuant to (i) through (vi) above, (a) such party shall, prior to making such disclosure, promptly notify the other party in writing that such disclosure will be made so that such other party may seek a protective order, and (b) both parties agree to use commercially reasonable efforts to require the recipient(s) of any information disclosed to maintain the confidentiality thereof.

17.14 Conflict of Interest. No director, employee, agent or other representative of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement or the performance thereof.

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

**PEOPLES GAS SYSTEM, a division of  
TAMPA ELECTRIC COMPANY**

By: M. R. Schuyler  
Micheal R. Schuyler  
Director, Gas Supply and Regulatory Affairs

[REDACTED]

By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]

**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART I**

**TERM:** April 1, 1997 - July 31, 1997

**TYPE:** Base Load

**PRIMARY RECEIPT POINT:**

POI#

DESCRIPTION.

ZONE:

PIPELINE.

**DAILY QUANTITY.**

MBtu's

**PRICE OPTIONS.**

1.

[REDACTED]

a.

[REDACTED]

b.

[REDACTED]

2.

[REDACTED]

3.

[REDACTED]

4.

[REDACTED]

[REDACTED]

**ATTACHMENT 1  
TO  
APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Attachment 1 shall have the meanings given for such terms in the Gas Sales Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**DEFAULTS AND REMEDIES IF** [REDACTED]

A. **Early Termination.** If a Triggering Event (defined in Paragraph B of this Attachment 1) occurs with respect to either party at any time during the term of this Agreement, the other party (the "Notifying Party") may (i) upon thirty (30) Business Days written notice to the first party, which notice shall be given no later than sixty (60) Days after the discovery of the occurrence of the Triggering Event, terminate this Agreement ("Early Termination"), and (ii) withhold any payments due; provided, upon the occurrence of any Triggering Event listed in item (iv) of Paragraph B of this Attachment 1, this Agreement shall automatically terminate, without notice, as if an Early Termination had been immediately declared. In the event of Early Termination, the Notifying Party shall in good faith calculate its damages, including its associated costs and attorneys' fees, resulting from the termination of the Agreement (the "Termination Payment"). The Termination Payment will be determined by (i) comparing the value of (a) the remaining terms, quantities and prices under this Agreement had it not been terminated to (b) the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract and (ii) ascertaining the associated costs and attorneys' fees.

[REDACTED] If the calculation of the Termination Payment does not result



in damages to the Notifying Party, the Termination Payment shall be zero. The Notifying Party shall give the Affected Party (defined in Paragraph B of this Attachment 1) written notice of the amount of the Termination Payment, inclusive of a statement showing its determination. The Affected Party shall pay the Termination Payment to the Notifying Party within thirty (30) Days of receipt of such notice. At the time for payment of any amount due under this Attachment 1, each party shall pay to the other party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

B. "Triggering Event" shall mean, with respect to a party (the "Affected Party"): (i) the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Affected Party or (ii) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made or deemed to be repeated or (iii) the failure by the Affected Party to perform any covenant set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Paragraph B as a separate Triggering Event), and such failure is not excused by Force Majeure or cured within ten (10) Business Days after written notice thereof to the Affected Party or (iv) the Affected Party shall (a) make an assignment or any general arrangement for the benefit of creditors, (b) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) Days, (c) otherwise become bankrupt or insolvent (however evidenced) or (d) be unable to pay its debts as they fall due or (v) the Affected Party fails to establish, maintain, extend or increase security for the performance of its obligations under this Agreement requested by the other party pursuant to paragraph (d) of Article XV of this Agreement (provided such security has been confirmed by an arbitrator pursuant to Article XVI of this Agreement if such arbitration has been requested), or (vi) with respect to Seller, at any time Seller shall have defaulted on its indebtedness to third parties resulting in an acceleration of obligations of Seller in excess of \$5,000,000.00, or with respect to PGS, at any time, PGS shall have defaulted on its indebtedness to third parties, resulting in an acceleration of obligations of PGS in excess of \$5,000,000.00.

**GAS SALES AGREEMENT** (E)

This GAS SALES AGREEMENT (the "Agreement") is made and entered into as of the 1st day of April, 1997, by and between [REDACTED] ("Seller"), and Peoples Gas System, Inc., a Florida corporation ("PGS") (each of Seller and PGS being sometimes referred to individually as a "party" and collectively as the "parties").

**WITNESSETH:**

WHEREAS, PGS owns and operates a natural gas distribution system in the State of Florida and has a need to acquire supplies of Gas;

WHEREAS, Seller has a supply of Gas available for sale, and PGS desires to purchase such Gas directly from Seller.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto, intending to be legally bound, hereby agree as follows.

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the following words and phrases shall have the following meanings:

"Alternate Receipt Point" shall have the meaning given for such term in Article IV of this Agreement.

"Agreement" shall mean this Gas Sales Agreement, including the appendices attached hereto, as the same may be amended from time to time.

"British thermal unit" or "Btu" shall mean the quantity of heat required to raise the temperature of one pound of water from 59°F. to 60°F. at a constant pressure of 14.73 pounds per square inch absolute.

"Business Day" shall have the meaning given for the term "working day" in FGT's FERC Tariff.

"Contact Person" shall have the meaning given for such term in Section 17.9(b) of this Agreement.

**"Daily Quantity"** shall mean, for each Day during the term of this Agreement, the quantity of Gas specified as the Daily Quantity in Appendix A to this Agreement.

**"Day"** shall have the meaning given for the term "Receipt Gas Day" in FGT's FERC Tariff; provided, however, that if FGT's FERC Tariff is amended to eliminate the distinction between the terms "Receipt Gas Day" and "Delivery Gas Day", all references in this Agreement to either such term shall thereafter have the meaning given for the term in FGT's FERC Tariff which replaces such terms.

**"°F"** shall mean degree(s) Fahrenheit.

**"FGT"** shall mean Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.

**"FGT's FERC Tariff"** shall mean FGT's FERC Gas Tariff, Third Revised Volume No. 1, as amended, supplemented or superseded from time to time during the term of this Agreement, as such tariff applies to Firm transportation service under FGT's Rate Schedules FTS-1 or FTS-2.

**"Firm"** means, (i) with respect to the sale and purchase of Gas, that Seller is obligated to sell and deliver and PGS is obligated to purchase and receive the quantity of Gas specified, except as excused by an event of Force Majeure and, (ii) with respect to transportation required to be scheduled by a party hereunder, that such party's transporter is obligated to make available a quantity of pipeline capacity, without interruption except as excused by an event of force majeure under such transporter's tariff, sufficient to enable such party to perform its obligations under this Agreement.

**"Force Majeure"** shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, sinkhole, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, in each of the above cases, by the exercise of due diligence such party is unable to prevent or overcome; provided, however, that such term shall not include the interruption or failure of Interruptible transportation. Such term shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitude, rights of way, grants, permits, permissions, licenses, or required governmental orders, necessary to enable such party to fulfill its obligations hereunder.

**"Gas"** shall mean natural gas meeting the quality specifications which FGT requires with regard to deliveries into its pipeline system.

**"Imbalance"** shall have the meaning given for such term in Article VIII of this Agreement.

**"Interruptible"** means, with respect to transportation, that a transporter is not obligated to make available any particular quantity of pipeline capacity and that such transporter may, for reasons other than Force Majeure, interrupt and/or decline to schedule such transportation service without incurring liability to the shipper.

**"MMBtu"** shall mean one million (1,000,000) Btu.

**"month"** shall mean a calendar month.

**"PGS"** shall mean Peoples Gas System, Inc., a Florida corporation, and its successors and assigns.

**"Primary Receipt Point"** shall mean the point or points of interconnection between the facilities of Seller or Seller's Transporter and the pipeline facilities of FGT which point(s) of interconnection are identified on Appendix A to this Agreement.

**"Replacement Quantity"** shall have the meaning given for such term in Section 9.1 of this Agreement.

**"Responsible Party"** shall have the meaning given for such term in Article VIII of this Agreement.

**"Schedule"** shall mean the acts required of a shipper to properly nominate, notify or request service from, and to obtain confirmation of service by, the shipper's transporter for the receipt, transportation and delivery of a quantity of gas on a given day.

**"Seller"** shall mean [REDACTED] and its successors and assigns.

**"Shortfall Quantity"** shall have the meaning given for such term in Section 9.2 of this Agreement.

**"Termination Date"** shall mean the end of the Day commencing on March 31, 1998

## **ARTICLE II**

### **TERM**

This Agreement shall become effective on the date first written above. The term of this Agreement, and the obligations of the parties hereunder, shall commence at the beginning of the Day commencing on April 1, 1997 and shall continue, unless earlier terminated pursuant to the provisions of this Agreement, until the Termination Date.

## **ARTICLE III**

### **QUANTITIES**

On each Day during the term of this Agreement, unless excused by Force Majeure, Seller shall sell and deliver to PGS, and PGS shall receive and purchase from Seller, on a Firm basis the Daily Quantity.

## **ARTICLE IV**

### **POINT OF DELIVERY**

All Gas sold hereunder shall be delivered by Seller to or for the account of PGS at the Primary Receipt Point. Seller may, if agreed by PGS, deliver Gas sold hereunder at other points of receipt on the FGT pipeline system (any such other point of receipt being hereinafter referred to as an "Alternate Receipt Point"); provided, however, that, notwithstanding any agreement by PGS to receive Gas sold hereunder at an Alternate Receipt Point, if any portion of the Daily Quantity cannot be delivered by Seller at such Alternate Receipt Point (due to proration, loss or interruption by FGT or Seller's transporter, or any other cause except Force Majeure), Seller shall be obligated to deliver such portion at either the Primary Receipt Point or at another point of receipt on the FGT pipeline system located in the same FGT zone as the Primary Receipt Point, which point PGS and Seller, acting in good faith, shall mutually designate.

## **ARTICLE V**

### **BILLING AND PAYMENT**

**5.1 Billing.** On or before the tenth (10th) Day of each month, Seller shall deliver to PGS via facsimile (optional) a bill for the preceding month showing the total quantity of Gas delivered and the amount due either party from the other party pursuant to this Agreement, and shall mail to PGS the original of such bill and any supporting documents). If the actual quantity delivered is not known by the date such bill is delivered to PGS, Seller shall prepare such bill based on the quantities scheduled during the preceding month. Any bill based on such estimated quantity shall be corrected to reflect the actual quantity on the following month's bill or as soon thereafter as actual delivery information is available.

**5.2 Payment.** PGS shall pay the bill rendered by Seller pursuant to Section 5.1 hereof, minus any disputed amounts, to Seller by electronic funds transfer or wire transfer to the account and bank specified in Seller's bill by the twenty-fifth (25th) Day of the month in which the bill is rendered.

**5.3 Billing Disputes.** In the event either party is served by the other party with written notice of a bona fide billing dispute, PGS or Seller, as the case may be, shall (i) pay (or credit) to the other party all amounts not in dispute, and (ii) pay any disputed amount, if not resolved within sixty (60) calendar days after the giving of the aforesaid written notice, into an escrow account established for the benefit of the parties with an escrow agent and pursuant to terms reasonably acceptable to the parties. The parties shall exercise commercially reasonable efforts to resolve any such billing dispute as soon as reasonably practicable. Any amounts deposited into the escrow account (together with any interest accrued thereon) shall be paid by the escrow agent to the party in whose favor the dispute is resolved. Failure by a party to pay a disputed amount into the applicable escrow account shall be deemed a conclusive resolution of the dispute in favor of the other party.

**5.4 Errors.** If an error is discovered in any bill rendered (or credit given or payment made) hereunder, or in any of the information used in the calculation of such bill (or such credit or payment), Seller shall, to the extent practicable, make an adjustment to correct such error in the next bill rendered after the date on which the error is confirmed. The provisions of this section shall survive the termination of this Agreement; provided, however, that no billing adjustment shall be made, and all bills and payments hereunder shall be deemed final and not subject to any claim or adjustment if a party fails to assert an error within six (6) months following the occurrence of such error.

## **ARTICLE VI FAILURE TO MAKE PAYMENT**

**6.1 Interest.** If, subject to Section 5.3, either party fails to pay (or credit) the full amount due the other party within the time allowed, interest on the unpaid portion shall accrue from the date due to the date such amount is paid (or credited) at a rate equal to the lesser of (i) the then effective prime rate of interest for large U.S. Money Center commercial banks, published under "Money Rates" by the *Wall Street Journal*, or (ii) the maximum applicable lawful rate of interest.

**6.2 Other Remedy of Seller.** If PGS fails to make any payment when due and such failure is not remedied by or on behalf of PGS within five (5) Business Days after written notice by Seller of such default in payment, then Seller, in addition to any other remedy it may have, may without incurring any liability to PGS and without terminating this Agreement, suspend further deliveries of Gas pursuant to this Agreement until such amount is paid; provided,

however, that Seller shall not suspend deliveries of Gas pursuant to this Agreement if (i) PGS's failure to pay is the result of a bona fide dispute, (ii) PGS has paid Seller for all amounts not in dispute and (iii) PGS is in compliance with Section 5.3 of this Agreement.

**6.3 Other Remedy of PGS.** If Seller is required pursuant to Section 5.1, but fails, to provide a credit (or make payment) to PGS, and such failure is not remedied by or on behalf of Seller within five (5) Business Days after PGS's written notice of such default, then PGS, in addition to any other remedy it may have, may without incurring any liability to Seller and without terminating this Agreement, suspend payment of any amounts due Seller up to the amount owed to Buyer by Seller under this Agreement until such failure is remedied; provided, however, that PGS shall not so suspend payment of any such amounts if (i) Seller's failure to provide a credit (or make payment) to PGS as required by Section 5.1 is the result of a bona fide dispute, (ii) Seller has provided a credit (or made payment) to PGS for all amounts not in dispute and (iii) Seller is in compliance with Section 5.3 of this Agreement.

## **ARTICLE VII TRANSPORTATION**

Subject to the provisions of Article IV, each party shall schedule the Daily Quantity for Firm transportation in accordance with the scheduling procedures and deadlines set forth in FGT's FERC Tariff or the FERC tariff of Seller's transporter (as applicable) so that the Daily Quantity will be delivered and received at the Primary Receipt Point (or the agreed Alternate Receipt Point) on each Day. If, on any Day, Seller desires to use an Alternate Receipt Point, Seller's request to use such point shall be communicated to PGS not later than two (2) hours prior to the FGT nomination deadline for the Day on which the Daily Quantity is to be delivered at such Alternate Receipt Point. If, for any Day, either party is for any reason unable to schedule all or any portion of the Daily Quantity for Firm transportation in accordance with the foregoing provisions, such party shall immediately notify the other party by telephone (such notification to be confirmed thereafter by facsimile).

## **ARTICLE VIII SCHEDULING AND IMBALANCE PENALTIES**

Any difference between quantities scheduled and quantities actually delivered and received hereunder (an "Imbalance") at the Primary Receipt Point or at any Alternate Delivery Point shall be resolved between PGS and Seller on the basis of the "cash out" price formulas set forth in FGT's FERC Tariff. In the event of (i) an Imbalance on PGS's transporter's system caused by Seller or Seller's transporter's delivery of less or more than the quantity scheduled by Seller for

transportation on any Day (in which case Seller shall be the "Responsible Party") or (ii) an Imbalance on Seller's transporter's system caused by PGS or PGS's transporter's delivery of less or more than the quantity scheduled by PGS for transportation on any Day (in which case PGS shall be the "Responsible Party"), the Responsible Party shall be liable for and reimburse to the other party any associated transporter penalties or cash out costs incurred by such other party.

## **ARTICLE IX FAILURE TO PERFORM**

**9.1 Seller's Failure to Perform.** In the event (unless excused by Force Majeure) Seller fails to schedule all or any portion of the Daily Quantity for delivery on any Day during the term of this Agreement, Seller shall pay to PGS the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the portion of the Daily Quantity (the "Replacement Quantity") Seller failed to schedule:

(a) If PGS was able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the positive difference determined by subtracting the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller, from PGS's incremental cost (including all costs for transportation of the Replacement Quantity to the point(s) of receipt at which the Replacement Quantity was delivered for the account of PGS) of the Replacement Quantity;

(b) If PGS was not able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by PGS as a result of Seller's failure to schedule the full amount of the Daily Quantity;

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

**9.2 PGS's Failure to Perform.** In the event (unless excused by Force Majeure) PGS fails to schedule on any Day during the term of this Agreement any portion (the "Shortfall Quantity") of the Daily Quantity as has been scheduled by Seller for delivery on such Day, PGS shall pay to Seller the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the Shortfall Quantity:



(a) If Seller was able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the positive difference determined by subtracting the price at which Seller was able to sell the Shortfall Quantity (including all incremental costs incurred by Seller for transportation of the Shortfall Quantity to the point(s) at which the Shortfall Quantity was delivered for the account of the buyer) from the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(b) If Seller was not able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by Seller as a result of PGS's failure to schedule the full amount of the Daily Quantity; and

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

**9.3 Time of Payment.** Each party shall pay the other party any amounts to which the other party is entitled pursuant to this article on or before the twentieth Business Day following the date of the other party's mailing (as signified by the postmark) or other delivery of an invoice therefor. The provisions of Sections 5.3 and 5.4 and of Article VI shall apply to any such invoice rendered pursuant to this Article IX.

## **ARTICLE X QUALITY AND MEASUREMENT**

**10.1 Quality.** All Gas purchased and sold pursuant to this Agreement shall be merchantable.

**10.2 Measurement.** The parties shall accept measurements of quantities and heating value made by FGT at the Primary Receipt Point(s) and any Alternate Receipt Point in accordance with FGT's FERC Tariff as final and correct for all purposes under this Agreement subject only to any adjustments as may be agreed to by FGT.

## **ARTICLE XI PRICE**

The price for all Gas purchased and sold pursuant to this Agreement shall be determined in accordance with the provisions of Appendix A to this Agreement, which Appendix is hereby incorporated by reference.

## **ARTICLE XII TAXES**

The price payable by PGS to Seller for Gas delivered pursuant to this Agreement includes full reimbursement for, and Seller is liable for and shall pay, or reimburse PGS if PGS has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise upstream of the Primary Receipt Point or any Alternate Receipt Point. Seller shall indemnify, defend and hold harmless PGS from any claims for such taxes, fees or assessments. Such price does not include reimbursement for, and PGS is liable for and shall pay, or reimburse Seller if Seller has paid, all taxes, fees and assessments applicable to the Gas purchased and sold hereunder, which accrue or arise at or downstream of the Primary Receipt Point or any Alternate Receipt Point. PGS shall indemnify, defend and hold harmless Seller from any claims for such taxes, fees or assessments. If PGS claims exemption from any such taxes, PGS shall provide to Seller a certificate of exemption or other appropriate documentation thereof.

## **ARTICLE XIII TITLE AND RISK OF LOSS**

Title to, risk of loss with respect to, and liability for all Gas sold and purchased hereunder shall pass from Seller to PGS at the Primary Receipt Point (or such other point of receipt on the FGT pipeline system at which the Gas is delivered by Seller to or for the account of PGS). Seller warrants that it has good and marketable title to all Gas sold hereunder and shall indemnify, defend and hold harmless PGS from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to such Gas.

## **ARTICLE XIV FORCE MAJEURE: LIMITATION OF LIABILITY**

**14.1 Force Majeure.** Unless otherwise provided, the obligations of each party under this Agreement, and the performance thereof, other than a failure or delay in the payment of money due hereunder, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

**14.2 Resumption of Performance.** The party whose performance is excused by an event of Force Majeure shall promptly notify the other party of such occurrence and its estimated duration, and shall promptly remedy such Force Majeure if and to the extent reasonably possible and resume such performance when possible; provided, however, that neither party shall be required to settle any labor dispute against its will.

**14.3 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY PERSON CLAIMING THROUGH THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST OPPORTUNITY COSTS RELATING TO ANY MATTER COVERED BY THIS AGREEMENT.

**ARTICLE XV  
EVENTS OF DEFAULT; REMEDIES; FINANCIAL INFORMATION**

(a) The occurrence of any of the following events shall be deemed to be an event of default ("Event of Default") as to the non-performing party under this Agreement:

(i) Failure by a party to make, when due, any payment required to be made hereunder if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to such party; or

(ii) Failure by a party to comply in any material respect with any material term or provision of this Agreement, other than a failure specified in clause (i) above, and such failure shall continue for ten (10) Business Days after written notice thereof has been given to the non-performing party; or

(iii) the dissolution or liquidation of a party; or the failure of a party within sixty (60) days to lift any execution, garnishment or attachment of such consequence as may materially impair its ability to carry on its operations; or the failure of a party generally to pay its debts as such debts become due; or the making by a party of a general assignment for the benefit of creditors; or the commencement by a party (as the debtor) of a voluntary case in bankruptcy under the Federal Bankruptcy Code (as now or hereafter in effect) or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against a party (as the debtor) and such proceeding remains undismissed for thirty (30) days; or the appointment or authorization of a trustee, receiver, custodian, liquidator or agent, however named, to take charge of a substantial part of the property of a party for the purpose of general administration of such property for the benefit of creditors; or the taking of any corporate action by a party for the purpose of effecting any of the foregoing

(b) Upon the occurrence and continuation of an Event of Default, the non-defaulting party may, at its option, and in addition to and cumulatively of any other rights and remedies it

may have hereunder, at law, in equity or otherwise, terminate this Agreement upon five (5) days' prior written notice to the defaulting party, or enforce, by all lawful means, its rights hereunder, including without limitation, the collection of sums due hereunder without terminating this Agreement, and should it be necessary for such party to take any legal action in connection with such enforcement, the defaulting party shall pay such non-defaulting party all costs and reasonable attorneys' fees so incurred.

(c) If requested by PGS, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. If requested by Seller, PGS shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided however, that should any such statements not be timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such party diligently pursues the preparation, certification and delivery of the statements. A party may require the party making a request for financial statements to execute a reasonable confidentiality agreement as a precondition to the delivery of such financial statements.

(d) If, during the term of this Agreement, a party reasonably determines in good faith that the creditworthiness of the other party has become unsatisfactory, such party may require the other party to furnish reasonable security (ie; Surety Bond, Letter of Credit, Cash, etc.) for the performance required of it by this Agreement. Furthermore, Seller may withhold deliveries until such security is received and if such security is not provided within ten days after written notice to Seller to Buyer, Seller may terminate this Agreement upon providing written notice to Buyer. Any dispute between the parties resulting from a party's determination that the creditworthiness of the other party has become unsatisfactory, or the nature or amount of the security required by a party, shall be subject to arbitration in accordance with Article XVI of this Agreement.

## **ARTICLE XVI** **ARBITRATION**

In the event of a dispute between the Parties arising under this paragraph (d) of Article XV of this agreement, the Parties shall negotiate in good faith in an attempt to resolve the dispute prior to submitting the dispute to arbitration as provided hereinbelow. Any dispute which is not resolved through such good faith negotiations, shall be settled by binding arbitration. Except as

otherwise provided herein, the arbitration shall be conducted in accordance with the Rules for Non-Administered Arbitration of Business Disputes (the "CPR Rules"), as adopted by the Center for Public Resources and as in effect at the commencement of the arbitration. The place of arbitration shall be Tampa, Florida. Before the close of business on the tenth calendar day following the calendar day (the "Commencement Day") on which the arbitration is considered pursuant to the CPR Rules, to have commenced, each party shall furnish to the other party a list of not less than five (5) persons (the "Candidates") who are acceptable as arbitrator to the party furnishing the list. For each Candidate, such list shall show each Candidate's name, address, telephone number, employer or organization with which associated, current professional position, and the number of arbitrations, if any, before the Candidate to which the party furnishing the list was a party. No Candidate shall (i) be, or have ever been, an employee, officer or director of either party or of any affiliate or supplier of either party, or (ii) have a direct or indirect financial interest in either party or the subject matter of the arbitration. In the ten-calendar day period comprising the eleventh through the twentieth calendar days following the Commencement Date, the parties will exercise diligent efforts to agree upon a single Candidate to serve as the arbitrator, and on the twentieth calendar day following the Commencement Date, each party shall serve on the other party a written statement proposing a specific resolution of the issue or issues to be arbitrated. If no such agreement is reached during such time period, the CPR, acting pursuant to the CPR Rules, shall appoint the arbitrator. Thereafter, the arbitration shall proceed according to the CPR Rules, except there shall be no prehearing conference. The arbitrator's award shall resolve each issue by adopting either one or the other of the resolutions on the issue by the parties. Except as otherwise agreed by the parties, no other resolution of an issue shall be permitted. In making an award, the arbitrator shall be subject to any provisions of this Agreement which expressly limit remedies or damages. The award of the arbitrator shall be final and binding. The parties shall share equally the compensation and expenses of the arbitrator and the expense of any hearing, and each party shall bear the compensation and expenses its own counsel and other representatives (if any).

## **ARTICLE XVII MISCELLANEOUS**

**17.1 Independent Parties.** Seller and PGS shall perform hereunder as independent parties and neither party is in any way or for any purpose, by nature of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

**17.2 Assignment and Transfer.** This Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and assigns; provided, however, that neither party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other party.

**17.3 Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Texas and shall be subject to all applicable laws, rules, orders and regulations of any Federal, state or local governmental authority having jurisdiction over the parties, their facilities or the transactions contemplated. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

**17.4 Headings.** All article headings, section headings and subheadings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

**17.5 Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

**17.6 Entire Agreement.** This Agreement, including the appendix attached hereto, sets forth the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior negotiations, agreements and understandings with respect to such subject matter. Neither party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

**17.7 Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**17.8 Inspection.** Each party hereto shall have the right throughout the term of this Agreement and for a period of two (2) years thereafter, upon reasonable prior notice and during normal business hours, to examine the books, records and documents of the other party to the extent necessary (i) to verify the accuracy of any statement, charge, computation or demand made pursuant to this Agreement, or (ii) to determine whether there has been compliance with the requirements of Section 17.14 of this Agreement. Each party shall keep any and all such books, records and documents for a period of two (2) years from the date such book, record or document is created or any entry or adjustment thereto is made.

**17.9 Notices.** (a) Except as otherwise provided herein, any notice, request, demand or other communication under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered personally, or by a recognized overnight delivery service, or by facsimile, to the party to whom the notice, request, demand or other communication is to be given, or (ii) on the fifth day after mailing if mailed by United States

mail to the party to whom the notice, request, demand or other communication is to be given, by first-class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed to the party at the address set forth below, or such other address set forth in a written notice given pursuant hereto.

Seller:

Administrative Matters:

[REDACTED]

Attention: [REDACTED]  
Telephone: [REDACTED]  
Facsimile: [REDACTED]

Payment:

[REDACTED]

PGS:

Notices:

Peoples Gas System, Inc.  
a division of Tampa Electric Company  
702 N. Franklin Street  
Tampa, Florida 33601-2562  
Attention: Debby Williams  
Telephone: (813) 228-4666  
Facsimile: (813) 228-4742

**General Notices:**

Attention: Wraye Grimard  
Telephone: (813) 228-4697  
Facsimile: (813) 228-4742

**Accounting and Billing:**

Attention: Ed Elliott  
Telephone: (813) 228-4149  
Facsimile: (813) 228-4194

(b) Each party shall designate in writing an individual to act as its "Contact Person", which individual shall be (i) duly authorized by such party to act for it with respect to all operational matters arising under this Agreement and (ii) accessible to the other party at all times during each Day during the term of this Agreement. In the performance of its obligations hereunder, a party shall be entitled to rely upon any instruction, consent or acknowledgement given by the other party's Contact Person with respect to operational matters arising hereunder.

**17.10 Amendments** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as Contact Person pursuant to Section 17.9(b) shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 17.9(a) of this Agreement.

**17.11 Counterparts** This Agreement may be executed in two (2) or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

**17.12 Legal Fees** In the event of litigation between the parties hereto arising out of or in connection with this Agreement, the reasonable attorneys' fees and costs of the party prevailing in such litigation shall be paid by the other party.

**17.13 Confidentiality** Neither party shall disclose the terms of this Agreement to any person not employed, or retained as a consultant or legal counsel, by such party, except to the extent such disclosure is (i) required by law, regulation or order of a court having jurisdiction, (ii) requested by the independent public accountants of the party making the disclosure, (iii) required by a loan agreement of the party making the disclosure, (iv) required of the party



making the disclosure in connection with the defense of any litigation, (v) made to a person (e.g., a royalty owner) to whom the party has an obligation to make such disclosure, (vi) made to the party's transporter in order to schedule quantities for transportation in the performance of this Agreement, or (vii) otherwise agreed in writing by the parties to be disclosed. If a party makes disclosure of any of the terms of this Agreement pursuant to (i) through (vi) above, (a) such party shall, prior to making such disclosure, promptly notify the other party in writing that such disclosure will be made so that such other party may seek a protective order, and (b) both parties agree to use commercially reasonable efforts to require the recipient(s) of any information disclosed to maintain the confidentiality thereof.

**17.14 Conflict of Interest.** No director, employee, agent or other representative of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement or the performance thereof.

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

**PEOPLES GAS SYSTEM, INC. a division  
Tampa Electric Company**

By: \_\_\_\_\_  
Hugh M. Grey, III  
Director - Gas Transportation  
and Rates

\_\_\_\_\_

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

[REDACTED]  
**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART I**

**TERM:** December 1, 1997 - February 28, 1998

**TYPE:** **BASE LOAD**

**PRIMARY RECEIPT POINT:**

POI#

DESCRIPTION:

ZONE:

PIPELINE:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DAILY QUANTITY:** [REDACTED] MMBtu's

**PRICE OPTIONS:**

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

[REDACTED]  
**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART II**

**TERM:** November 1, 1997 - March 31, 1998

**TYPE:** **BASE LOAD**

**PRIMARY RECEIPT POINT:**

**POI#** [REDACTED]

**DESCRIPTION:** [REDACTED]

**ZONE:** [REDACTED]

**PIPELINE:** [REDACTED]

**DAILY QUANTITY:** [REDACTED]

**PRICE OPTIONS:**

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]  
**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART III**

**TERM:** April 1, 1997 - March 31, 1998

**TYPE:** **BASE LOAD**

**PRIMARY RECEIPT POINT:**

**POI#**

**DESCRIPTION:**

**ZONE:**

**PIPELINE:**

**DAILY QUANTITY:** [REDACTED] MMBtu's

**PRICE OPTIONS:**

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

[REDACTED]

[REDACTED]

**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART IV**

**TERM:** January 1, 1998 - January 31, 1998

**TYPE:** **BASE LOAD**

**PRIMARY RECEIPT POINT:**

**POI#**

**DESCRIPTION:**

**ZONE:**

**PIPELINE:**

**DAILY QUANTITY:**

**PRICE OPTIONS:**

1. [REDACTED]

a. [REDACTED]

b. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

[REDACTED]

**ATTACHMENT 1  
TO  
APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Attachment 1 shall have the meanings given for such terms in the Gas Sales Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**DEFAULTS AND REMEDIES IF** [REDACTED]

**A. Early Termination.** If a Triggering Event (defined in Paragraph B of this Attachment 1) occurs with respect to either party at any time during the term of this Agreement, the other party (the "Notifying Party") may (i) upon thirty (30) Business Days written notice to the first party, which notice shall be given no later than sixty (60) Days after the discovery of the occurrence of the Triggering Event, terminate this Agreement ("Early Termination"), and (ii) withhold any payments due; provided, upon the occurrence of any Triggering Event listed in item (iv) of Paragraph B of this Attachment 1, this Agreement shall automatically terminate, without notice, as if an Early Termination had been immediately declared. In the event of Early

Termination, the Notifying Party shall in good faith calculate its damages, including its associated costs and attorneys' fees, resulting from the termination of the Agreement (the "Termination Payment"). The Termination Payment will be determined by (i) comparing the value of (a) the remaining terms, quantities and prices under this Agreement had it not been terminated to (b) the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract and (ii) ascertaining the associated costs and attorneys' fees.

. If the calculation of the Termination Payment does not result in damages to the Notifying Party, the Termination Payment shall be zero. The Notifying Party shall give the Affected Party (defined in Paragraph B of this Attachment 1) written notice of the amount of the Termination Payment, inclusive of a statement showing its determination. The Affected Party shall pay the Termination Payment to the Notifying Party within thirty (30) Days of receipt of such notice. At the time for payment of any amount due under this Attachment 1, each party shall pay to the other party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

B. "Triggering Event" shall mean, with respect to a party (the "Affected Party"): (i) the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Affected Party or (ii) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made or deemed to be repeated or (iii) the failure by the Affected Party to perform any covenant set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Paragraph B as a separate Triggering Event), and such failure is not excused by Force Majeure or cured within ten (10) Business Days after written notice thereof to the Affected Party or (iv) the Affected Party shall (a) make an assignment or any general arrangement for the benefit of creditors, (b) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) Days, (c) otherwise become bankrupt or insolvent (however evidenced) or (d) be unable to pay its debts as they fall due or (v) the Affected Party fails to establish, maintain, extend or increase security for the performance of its obligations under this Agreement requested by the other party pursuant to paragraph (d) of Article XV of this Agreement (provided such security has been confirmed by an arbitrator pursuant to Article XVI of this Agreement if such arbitration has been requested), or (vi) with respect to Seller, at any time, Seller shall have defaulted on its indebtedness to third parties resulting in an acceleration of obligations of Seller in excess of \$5,000,000.00, or with respect to PGS, at any time, PGS shall have defaulted on its indebtedness to third parties, resulting in an acceleration of obligations of PGS in excess of \$5,000,000.00.

SWING SALES AGREEMENT

**SWING SALES AGREEMENT**

This SWING SALES AGREEMENT (the "Agreement") is made and entered into as of the 1st day of November, 1997, by and between [REDACTED] ("Seller"), and Peoples Gas System, Inc., a division of Tampa Electric Company, a Florida corporation ("PGS") (each of Seller and PGS being sometimes referred to individually as a "party" and collectively as the "parties").

**WITNESSETH:**

WHEREAS, PGS owns and operates a natural gas distribution system in the State of Florida and has a need to acquire supplies of Gas;

WHEREAS, Seller has a supply of Gas available for sale, and PGS desires to purchase such Gas directly from Seller.

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

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the following words and phrases shall have the following meanings:

"Alternate Receipt Point" shall have the meaning given for such term in Article IV of this Agreement.

"Agreement" shall mean this Gas Sales Agreement, including the appendices attached hereto, as the same may be amended from time to time.

"Average Daily Quantity" shall mean, for each Day during the term of this Agreement, the quantity of Gas specified as the Average Daily Quantity in Appendix A to this Agreement.

"British thermal unit" or "Btu" shall mean the quantity of heat required to raise the temperature of one pound of water from 59°F. to 60°F. at a constant pressure of 14.73 pounds per square inch absolute.



**"Business Day"** shall have the meaning given for the term "working day" in FGT's FERC Tariff.

**"Contact Person"** shall have the meaning given for such term in Section 17.9(b) of this Agreement.

**"Day"** shall have the meaning given for the term "Receipt Gas Day" in FGT's FERC Tariff; provided, however, that if FGT's FERC Tariff is amended to eliminate the distinction between the terms "Receipt Gas Day" and "Delivery Gas Day", all references in this Agreement to either such term shall thereafter have the meaning given for the term in FGT's FERC Tariff which replaces such terms.

**"°F."** shall mean degree(s) Fahrenheit.

**"FGT"** shall mean Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.

**"FGT's FERC Tariff"** shall mean FGT's FERC Gas Tariff, Third Revised Volume No. 1, as amended, supplemented or superseded from time to time during the term of this Agreement, as such tariff applies to Firm transportation service under FGT's Rate Schedules FTS-1 or FTS-2.

**"Firm"** means, (i) with respect to the sale and purchase of Gas, that Seller is obligated to sell and deliver and PGS is obligated to purchase and receive the quantity of Gas specified, except as excused by an event of Force Majeure and, (ii) with respect to transportation required to be scheduled by a party hereunder, that such party's transporter is obligated to make available a quantity of pipeline capacity, without interruption except as excused by an event of force majeure under such transporter's tariff, sufficient to enable such party to perform its obligations under this Agreement.

**"Force Majeure"** shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, sinkholes, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which, in each of the above cases, by the exercise of due diligence such party is unable to prevent or overcome; provided, however, that such term shall not include the interruption or failure of Interruptible transportation. Such term shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way, grants, permits, permissions, licenses, or required governmental orders, necessary to enable such party to fulfill its obligations hereunder.

"Gas" shall mean natural gas meeting the quality specifications which FGT requires with regard to deliveries into its pipeline system.

"Imbalance" shall have the meaning given for such term in Article VIII of this Agreement.

"Interruptible" means, with respect to transportation, that a transporter is not obligated to make available any particular quantity of pipeline capacity and that such transporter may, for reasons other than Force Majeure, interrupt and/or decline to schedule such transportation service without incurring liability to the shipper.

"Maximum Daily Quantity" shall mean two (2) times the Average Daily Quantity.

"MMBtu" shall mean one million (1,000,000) Btu.

"month" shall mean a calendar month.

"PGS" shall mean Peoples Gas System, Inc., a Florida corporation, and its successors and assigns.

"Primary Receipt Point" shall mean the point or points of interconnection between the facilities of Seller or Seller's Transporter and the pipeline facilities of FGT which point(s) of interconnection are identified on Appendix A to this Agreement.

"Purchase Quantity" shall mean the quantity of Gas PGS requests, pursuant to Article III of this Agreement, be delivered by Seller at the Receipt Point(s) on a Day.

"Replacement Quantity" shall have the meaning given for such term in Section 9.1 of this Agreement.

"Responsible Party" shall have the meaning given for such term in Article VIII of this Agreement.

"schedule" shall mean the acts required of a shipper to properly nominate, notify or request service from, and to obtain confirmation of service by, the shipper's transporter for the receipt, transportation and delivery of a quantity of gas on a given day.

"Seller" shall mean [REDACTED] and its successors and assigns.

"Shortfall Quantity" shall have the meaning given for such term in Section 9.2 of this Agreement.

**"Swing Commodity Charge"** shall mean the amount determined by multiplying the Swing Commodity Fee times the Average Daily Quantity times the number of days in the applicable month.

**"Swing Commodity Fee"** shall mean [REDACTED]

**"Termination Date"** shall mean the end of the Day commencing on March 31, 1998

## **ARTICLE II TERM**

This Agreement shall become effective on the date first written above. The term of this Agreement, and the obligations of the parties hereunder, shall commence at the beginning of the Day commencing on April 1, 1997 and shall continue, unless earlier terminated pursuant to the provisions of this Agreement, until the Termination Date.

## **ARTICLE III QUANTITIES**

On each Day during the term of this Agreement, unless excused by Force Majeure, Seller shall sell and deliver to PGS, and PGS shall receive and purchase from Seller, on a Firm basis, the quantity of Gas requested by PGS pursuant to this Article III (the "Purchase Quantity"). PGS shall notify Seller by telephone, at or before 9:30 a.m. EST on the Day preceding the Day on which the specified quantity is to be delivered pursuant to this Agreement, of the Purchase Quantity to be delivered by Seller; provided, however, that (a) Seller shall not be obligated on any Day to sell or deliver a quantity of Gas in excess of the Maximum Daily Quantity, and (b) PGS shall not be obligated on any Day to purchase or receive a quantity of Gas in excess of the Purchase Quantity for such Day.

## **ARTICLE IV POINT OF DELIVERY**

Each Purchase Quantity established pursuant to Article III shall be delivered by Seller to or for the account of PGS at the Primary Receipt Point. Seller may, if agreed by PGS, deliver a Purchase Quantity at other points of receipt on the FGT pipeline system (any such other point of receipt being hereinafter referred to as an "Alternate Receipt Point"); provided, however, that, notwithstanding any agreement by PGS to receive a Purchase Quantity at an Alternate Receipt Point, if any portion of such Purchase Quantity cannot be delivered by Seller at such Alternate Receipt Point (due to proration, loss or interruption by FGT or Seller's transporter, or any other

cause except Force Majeure), Seller shall be obligated to deliver such portion at either the Primary Receipt Point or at another point of receipt on the FGT pipeline system located in the same FGT zone as the Primary Receipt Point, which point PGS and Seller, acting in good faith, shall mutually designate.

## **ARTICLE V BILLING AND PAYMENT**

**5.1 Billing.** On or before the tenth (10th) Day of each month, Seller shall deliver to PGS via facsimile (optional) a bill for the preceding month showing the total quantity of Gas delivered and the amount due either party from the other party pursuant to this Agreement, and shall mail to PGS the original of such bill and any supporting documents). If the actual quantity delivered is not known by the date such bill is delivered to PGS, Seller shall prepare such bill based on the quantities scheduled during the preceding month. Any bill based on such estimated quantity shall be corrected to reflect the actual quantity on the following month's bill or as soon thereafter as actual delivery information is available.

**5.2 Payment.** PGS shall pay the bill rendered by Seller pursuant to Section 5.1 hereof, minus any disputed amounts, to Seller by electronic funds transfer or wire transfer to the account and bank specified in Seller's bill by the earliest of (a) the twenty-fifth (25th) Day of the month in which the bill is rendered, unless the actual quantity delivered during the preceding month is not known by that time.

**5.3 Billing Disputes.** In the event either party is served by the other party with written notice of a bona fide billing dispute, PGS or Seller, as the case may be, shall (i) pay (or credit) to the other party all amounts not in dispute, and (ii) pay any disputed amount, if not resolved within sixty (60) calendar days after the giving of the aforesaid written notice, into an escrow account established for the benefit of the parties with an escrow agent and pursuant to terms reasonably acceptable to the parties. The parties shall exercise commercially reasonable efforts to resolve any such billing dispute as soon as reasonably practicable. Any amounts deposited into the escrow account (together with any interest accrued thereon) shall be paid by the escrow agent to the party in whose favor the dispute is resolved. Failure by a party to pay a disputed amount into the applicable escrow account shall be deemed a conclusive resolution of the dispute in favor of the other party.

**5.4 Errors.** If an error is discovered in any bill rendered (or credit given or payment made) hereunder, or in any of the information used in the calculation of such bill (or such credit or payment), Seller shall, to the extent practicable, make an adjustment to correct such error in the next bill rendered after the date on which the error is confirmed. The provisions of this section shall survive the termination of this Agreement; provided, however, that no billing adjustment shall be made, and all bills and payments hereunder shall be deemed final and not

subject to any claim or adjustment if a party fails to assert an error within six (6) months following the occurrence of such error.

## **ARTICLE VI FAILURE TO MAKE PAYMENT**

**6.1 Interest.** If, subject to Section 5.3, either party fails to pay (or credit) the full amount due the other party within the time allowed, interest on the unpaid portion shall accrue from the date due to the date such amount is paid (or credited) at a rate equal to the lesser of (i) the then effective prime rate of interest for large U.S. Money Center commercial banks, published under "Money Rates" by the *Wall Street Journal*, or (ii) the maximum applicable lawful rate of interest

**6.2 Other Remedy of Seller.** If PGS fails to make any payment when due and such failure is not remedied by or on behalf of PGS within five (5) Business Days after written notice by Seller of such default in payment, then Seller, in addition to any other remedy it may have, may without incurring any liability to PGS and without terminating this Agreement, suspend further deliveries of Gas pursuant to this Agreement until such amount is paid; provided, however, that Seller shall not suspend deliveries of Gas pursuant to this Agreement if (i) PGS's failure to pay is the result of a bona fide dispute, (ii) PGS has paid Seller for all amounts not in dispute and (iii) PGS is in compliance with Section 5.3 of this Agreement.

**6.3 Other Remedy of PGS.** If Seller is required pursuant to Section 5.1, but fails, to provide a credit (or make payment) to PGS, and such failure is not remedied by or on behalf of Seller within five (5) Business Days after PGS's written notice of such default, then PGS, in addition to any other remedy it may have, may without incurring any liability to Seller and without terminating this Agreement, suspend payment of any amounts due Seller under this Agreement until such failure is remedied; provided, however, that PGS shall not so suspend payment of any such amounts if (i) Seller's failure to provide a credit (or make payment) to PGS as required by Section 5.1 is the result of a bona fide dispute, (ii) Seller has provided a credit (or made payment) to PGS for all amounts not in dispute and (iii) Seller is in compliance with Section 5.3 of this Agreement.

## **ARTICLE VII TRANSPORTATION**

Subject to the provisions of Article IV, each party shall schedule the Purchase Quantity for each Day for Firm transportation in accordance with the scheduling procedures and deadlines set forth in FGT's FERC Tariff or the FERC tariff of Seller's transporter (as applicable) so that

such Purchase Quantity will be delivered and received at the Primary Receipt Point (or the agreed Alternate Receipt Point) on the applicable Day. If, on any Day, Seller desires to use an Alternate Receipt Point, Seller's request to use such point shall be communicated to PGS not later than two (2) hours prior to the FGT nomination deadline for the Day on which the Purchase Quantity is to be delivered at such Alternate Receipt Point. If, for any Day, either party is for any reason unable to schedule all or any portion of the Purchase Quantity for Firm transportation in accordance with the foregoing provisions, such party shall immediately notify the other party by telephone (such notification to be confirmed thereafter by facsimile).

### **ARTICLE VIII SCHEDULING AND IMBALANCE PENALTIES**

Any difference between quantities scheduled and quantities actually delivered and received hereunder (an "Imbalance") at the Primary Receipt Point or at any Alternate Delivery Point shall be resolved between PGS and Seller on the basis of the "cash out" price formulas set forth in FGT's FERC Tariff. In the event of (i) an Imbalance on PGS's transporter's system caused by Seller or Seller's transporter's delivery of less or more than the quantity scheduled by Seller for transportation on any Day (in which case Seller shall be the "Responsible Party") or (ii) an Imbalance on Seller's transporter's system caused by PGS or PGS's transporter's delivery of less or more than the quantity scheduled by PGS for transportation on any Day (in which case PGS shall be the "Responsible Party"), the Responsible Party shall be liable for and reimburse to the other party any associated transporter penalties or cash out costs incurred by such other party.

### **ARTICLE IX FAILURE TO PERFORM**

**9.1 Seller's Failure to Perform.** In the event (unless excused by Force Majeure) Seller fails to schedule all or any portion of a Purchase Quantity for delivery on any Day during the term of this Agreement, Seller shall pay to PGS the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the portion of the Purchase Quantity (the "Replacement Quantity") Seller failed to schedule:

(a) If PGS was able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the positive difference determined by subtracting the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller (excluding the Swing Commodity Fee), from PGS's incremental cost (including all costs for transportation of the Replacement Quantity to the point(s) of receipt at which the

Replacement Quantity was delivered for the account of PGS) of the Replacement Quantity.

(b) If PGS was not able (through the exercise of commercially reasonable efforts) to obtain the Replacement Quantity from an alternate source of supply, the price PGS would have been required to pay Seller for the Replacement Quantity pursuant to this Agreement had the Replacement Quantity been scheduled by Seller;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by PGS as a result of Seller's failure to schedule the full amount of the Purchase Quantity;

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

**9.2 PGS's Failure to Perform.** In the event (unless excused by Force Majeure) PGS fails to schedule on any Day during the term of this Agreement any portion (the "Shortfall Quantity") of the Purchase Quantity as has been scheduled by Seller for delivery on such Day. PGS shall pay to Seller the amount (in dollars per MMBtu) determined under either (a) or (b) below (as applicable), and the amounts (each in dollars per MMBtu) determined under (c) and (d) below, for the Shortfall Quantity:

(a) If Seller was able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the positive difference determined by subtracting the price at which Seller was able to sell the Shortfall Quantity (including all incremental costs incurred by Seller for transportation of the Shortfall Quantity to the point(s) at which the Shortfall Quantity was delivered for the account of the buyer) from the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(b) If Seller was not able (through the exercise of commercially reasonable efforts) to sell the Shortfall Quantity to a buyer other than PGS, the price PGS would have been required to pay Seller for the Shortfall Quantity pursuant to this Agreement had the Shortfall Quantity been scheduled by PGS;

(c) The sum of any balancing, scheduling, alert day, operational flow order, or other penalties or charges incurred by Seller as a result of PGS's failure to schedule the full amount of the Purchase Quantity; and

(d) A fee of \$.15 per MMBtu as a liquidated amount representing incidental damages under the Uniform Commercial Code.

**9.3 Time of Payment.** Each party shall pay the other party any amounts to which the

other party is entitled pursuant to this article on or before the twentieth Business Day following the date of the other party's mailing (as signified by the postmark) or other delivery of an invoice therefor. The provisions of Sections 5.3 and 5.4 and of Article VI shall apply to any such invoice rendered pursuant to this Article IX.

## **ARTICLE X QUALITY AND MEASUREMENT**

**10.1 Quality.** All Gas purchased and sold pursuant to this Agreement shall be merchantable.

**10.2 Measurement.** The parties shall accept measurements of quantities and heating value made by FGT at the Primary Receipt Point(s) and any Alternate Receipt Point in accordance with FGT's FERC Tariff as final and correct for all purposes under this Agreement; subject only to any adjustments as may be agreed to by FGT.

## **ARTICLE XI PRICE**

The price for each Purchase Quantity purchased and sold pursuant to this Agreement shall be determined in accordance with the provisions of Appendix A to this Agreement, which Appendix is hereby incorporated by reference. In addition, PGS shall pay to Seller each month an amount equal to the Swing Commodity Charge (minus the product of the Swing Commodity Fee and any Replacement Quantities for such month).

## **ARTICLE XII TAXES**

The price payable by PGS to Seller for each Purchase Quantity delivered pursuant to this Agreement includes full reimbursement for, and Seller is liable for and shall pay, or reimburse PGS if PGS has paid, all taxes, fees and assessments applicable to such Purchase Quantity, which accrue or arise upstream of the Primary Receipt Point or any Alternate Receipt Point. Seller shall indemnify, defend and hold harmless PGS from any claims for such taxes, fees or assessments. Such price does not include reimbursement for, and PGS is liable for and shall pay, or reimburse Seller if Seller has paid, all taxes, fees and assessments applicable to each Purchase Quantity, which accrue or arise at or downstream of the Primary Receipt Point or any Alternate Receipt Point. PGS shall indemnify, defend and hold harmless Seller from any claims for such taxes, fees or assessments. If PGS claims exemption from any such taxes, PGS shall provide to Seller a certificate of exemption or other appropriate documentation thereof.



**ARTICLE XIII**  
**TITLE AND RISK OF LOSS**

Title to, risk of loss with respect to, and liability for all Gas sold and purchased hereunder shall pass from Seller to PGS at the Primary Receipt Point (or such other point of receipt on the FGT pipeline system at which the Gas is delivered by Seller to or for the account of PGS) Seller warrants that it has good and marketable title to all Gas sold hereunder and shall indemnify, defend and hold harmless PGS from and against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to such Gas.

**ARTICLE XIV**  
**FORCE MAJEURE: LIMITATION OF LIABILITY**

**14.1 Force Majeure.** Unless otherwise provided, the obligations of each party under this Agreement, and the performance thereof, other than a failure or delay in the payment of money due hereunder, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

**14.2 Resumption of Performance.** The party whose performance is excused by an event of Force Majeure shall promptly notify the other party of such occurrence and its estimated duration, and shall promptly remedy such Force Majeure if and to the extent reasonably possible and resume such performance when possible; provided, however, that neither party shall be required to settle any labor dispute against its will.

**14.3 Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY PERSON CLAIMING THROUGH THE OTHER FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST OPPORTUNITY COSTS RELATING TO ANY MATTER COVERED BY THIS AGREEMENT.

**ARTICLE XV**  
**EVENTS OF DEFAULT: REMEDIES: FINANCIAL INFORMATION**

(a) The occurrence of any of the following events shall be deemed to be an event of default ("Event of Default") as to the non-performing party under this Agreement:

(i) Failure by a party to make, when due, any payment required to be made hereunder if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to such party; or

(ii) Failure by a party to comply in any material respect with any material term or provision of this Agreement, other than a failure specified in clause (i) above, and such failure shall continue for ten (10) Business Days after written notice thereof has been given to the non-performing party; or

(iii) the dissolution or liquidation of a party; or the failure of a party within sixty (60) days to lift any execution, garnishment or attachment of such consequence as may materially impair its ability to carry on its operations; or the failure of a party generally to pay its debts as such debts become due; or the making by a party of a general assignment for the benefit of creditors; or the commencement by a party (as the debtor) of a voluntary case in bankruptcy under the Federal Bankruptcy Code (as now or hereafter in effect) or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against a party (as the debtor) and such proceeding remains undismissed for thirty (30) days; or the appointment or authorization of a trustee, receiver, custodian, liquidator or agent, however named, to take charge of a substantial part of the property of a party for the purpose of general administration of such property for the benefit of creditors; or the taking of any corporate action by a party for the purpose of effecting any of the foregoing

(b) Upon the occurrence and continuation of an Event of Default, the non-defaulting party may, at its option, and in addition to and cumulatively of any other rights and remedies it may have hereunder, at law, in equity or otherwise, terminate this Agreement upon five (5) days' prior written notice to the defaulting party, or enforce, by all lawful means, its rights hereunder, including without limitation, the collection of sums due hereunder without terminating this Agreement, and should it be necessary for such party to take any legal action in connection with such enforcement, the defaulting party shall pay such non-defaulting party all costs and reasonable attorneys' fees so incurred.

(c) If requested by PGS, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. If requested by Seller, PGS shall deliver (i) within 120 days following the end of each fiscal year, a copy of its financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its unaudited financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided however, that should

any such statements not be timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such party diligently pursues the preparation, certification and delivery of the statements. A party may require the party making a request for financial statements to execute a reasonable confidentiality agreement as a precondition to the delivery of such financial statements.

(d) If, during the term of this Agreement, a party reasonably determines in good faith that the creditworthiness of the other party has become unsatisfactory, such party may require the other party to furnish reasonable security for the performance required of it by this Agreement. Any dispute between the parties resulting from a party's determination that the creditworthiness of the other party has become unsatisfactory, or the nature or amount of the security required by a party, shall be subject to arbitration in accordance with Article XVI of this Agreement.

## **ARTICLE XVI ARBITRATION**

In the event of a dispute between the Parties arising under this agreement, the Parties will negotiate in good faith in an attempt to resolve the dispute prior to going to arbitration. If any dispute arising under paragraph (d) of Article XV of this Agreement is not resolved in good faith, it shall be settled by binding arbitration. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the Rules for Non-Administered Arbitration of Business Disputes (the "CPR Rules"), as adopted by the Center for Public Resources and as in effect at the commencement of the arbitration. The place of arbitration shall be Tampa, Florida. Before the close of business on the tenth calendar day following the calendar day (the "Commencement Day") on which the arbitration is considered, pursuant to the CPR Rules, to have commenced, each party shall furnish to the other party a list of not less than five (5) persons (the "Candidates") who are acceptable as arbitrator to the party furnishing the list. For each Candidate, such list shall show each Candidate's name, address, telephone number, employer or organization with which associated, current professional position, and the number of arbitrations, if any, before the Candidate to which the party furnishing the list was a party. No Candidate shall (i) be, or have ever been, an employee, officer or director of either party or of any affiliate or supplier of either party, or (ii) have a direct or indirect financial interest in either party or the subject matter of the arbitration. In the ten-calendar day period comprising the eleventh through the twentieth calendar days following the Commencement Date, the parties will exercise diligent efforts to agree upon a single Candidate to serve as the arbitrator, and on the twentieth calendar day following the Commencement Date, each party shall serve on the other party a written statement proposing a specific resolution of the issue or issues to be arbitrated. If no such agreement is reached during such time period, the CPR, acting pursuant to the CPR Rules, shall appoint the arbitrator. Thereafter, the arbitration shall proceed according to the CPR Rules, except there shall be no prehearing conference. The arbitrator's award shall resolve each issue

by adopting either one or the other of the resolutions on the issue by the parties. Except as otherwise agreed by the parties, no other resolution of an issue shall be permitted. In making an award, the arbitrator shall be subject to any provisions of this Agreement which expressly limit remedies or damages. The award of the arbitrator shall be final and binding. The parties shall share equally the compensation and expenses of the arbitrator and the expense of any hearing, and each party shall bear the compensation and expenses its own counsel and other representatives (if any).

## **ARTICLE XVII MISCELLANEOUS**

**17.1 Independent Parties.** Seller and PGS shall perform hereunder as independent parties and neither party is in any way or for any purpose, by nature of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

**17.2 Assignment and Transfer.** This Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and assigns; provided, however, that neither party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other party.

**17.3 Governing Law.** This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Texas and shall be subject to all applicable laws, rules, orders and regulations of any Federal, state or local governmental authority having jurisdiction over the parties, their facilities or the transactions contemplated. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

**17.4 Headings.** All article headings, section headings and subheadings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

**17.5 Severability.** If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

**17.6 Entire Agreement.** This Agreement, including the appendix attached hereto, sets forth the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior negotiations, agreements and understandings with respect to such subject matter. Neither party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

**17.7 Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**17.8 Inspection.** Each party hereto shall have the right throughout the term of this Agreement and for a period of two (2) years thereafter, upon reasonable prior notice and during normal business hours, to examine the books, records and documents of the other party to the extent necessary (i) to verify the accuracy of any statement, charge, computation or demand made pursuant to this Agreement, or (ii) to determine whether there has been compliance with the requirements of Section 17.14 of this Agreement. Each party shall keep any and all such books, records and documents for a period of two (2) years from the date such book, record or document is created or any entry or adjustment thereto is made.

**17.9 Notices.** (a) Except as otherwise provided herein, any notice, request, demand or other communication under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if delivered personally, or by a recognized overnight delivery service, or by facsimile, to the party to whom the notice, request, demand or other communication is to be given, or (ii) on the fifth day after mailing if mailed by United States mail to the party to whom the notice, request, demand or other communication is to be given, by first-class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed to the party at the address set forth below, or such other address set forth in a written notice given pursuant hereto.

**Seller:**

**Administrative Matters:**

[REDACTED]

Payment



PGS

Notices:

Peoples Gas System, Inc.  
A division of Tampa Electric Company  
702 N. Franklin Street  
P. O. Box 2562  
Tampa, Florida 33601-2562  
Attention: Debby Williams  
Telephone: (813) 228-4666  
Facsimile: (813) 228-4742

General Notices:

Attention: Wraye Grimard  
Telephone: (813) 228-4697  
Facsimile: (813) 228-4742

Accounting and Billing:

Attention: Ed Elliott  
Telephone: (813) 228-4149  
Facsimile: (813) 228-4194

(b) Each party shall designate in writing an individual to act as its "Contact Person", which individual shall be (i) duly authorized by such party to act for it with respect to all operational matters arising under this Agreement and (ii) accessible to the other party at all times during each Day during the term of this Agreement. In the performance of its obligations hereunder, a party shall be entitled to rely upon any instruction, consent or acknowledgement given by the other party's Contact Person with respect to operational matters arising hereunder

**17.10 Amendments.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as Contact Person pursuant to Section 17.9(b) shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 17.9(a) of this Agreement.

**17.11 Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

**17.12 Legal Fees.** In the event of litigation between the parties hereto arising out of or in connection with this Agreement, the reasonable attorneys' fees and costs of the party prevailing in such litigation shall be paid by the other party.

**17.13 Confidentiality.** Neither party shall disclose the terms of this Agreement to any person not employed, or retained as a consultant or legal counsel, by such party, except to the extent such disclosure is (i) required by law, regulation or order of a court having jurisdiction, (ii) requested by the independent public accountants of the party making the disclosure, (iii) required by a loan agreement of the party making the disclosure, (iv) required of the party making the disclosure in connection with the defense of any litigation, (v) made to a person (e.g., a royalty owner) to whom the party has an obligation to make such disclosure, (vi) made to the party's transporter in order to schedule quantities for transportation in the performance of this Agreement, or (vii) otherwise agreed in writing by the parties to be disclosed. If a party makes disclosure of any of the terms of this Agreement pursuant to (i) through (vi) above, (a) such party shall, prior to making such disclosure, promptly notify the other party in writing that such disclosure will be made so that such other party may seek a protective order, and (b) both parties agree to use commercially reasonable efforts to require the recipient(s) of any information disclosed to maintain the confidentiality thereof.

**17.14 Conflict of Interest.** No director, employee, agent or other representative of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement or the performance thereof.

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

**PEOPLES GAS SYSTEM, a division of  
TAMPA ELECTRIC COMPANY**

By: M. R. Schuyler  
Michael R. Schuyler  
Director, Gas Supply and Regulatory Affairs

[REDACTED]

By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]



**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART I**

**TERM:** November 1, 1997 - December 31, 1997

**TYPE:** Swing Load

**PRIMARY RECEIPT POINT:**

POI# [REDACTED]  
DESCRIPTION [REDACTED]  
ZONE [REDACTED]  
PIPELINE [REDACTED]

**AVERAGE DAILY QUANTITY:** [REDACTED]

**MAXIMUM DAILY QUANTITY:** [REDACTED]

**MINIMUM DAILY QUANTITY:** [REDACTED]

**PRICE OPTIONS:**

1. [REDACTED]
    - a. [REDACTED]
    - b. [REDACTED]
  2. [REDACTED]
  3. [REDACTED]
  4. [REDACTED]
- [REDACTED]

**APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Appendix A shall have the meanings given for such terms in the Gas Sales Agreement.

**PART II**

TERM: January 1, 1998 - March 31, 1998

TYPE Swing Load

PRIMARY RECEIPT POINT:

POI#

DESCRIPTION

ZONE

PIPELINE

[REDACTED]

AVERAGE DAILY QUANTITY: [REDACTED] MMBtu's

MAXIMUM DAILY QUANTITY: [REDACTED] MMBtu's

MINIMUM DAILY QUANTITY [REDACTED] MMBtu's

PRICE OPTIONS

1. [REDACTED]
  - a. [REDACTED]
  - b. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

[REDACTED]

**ATTACHMENT 1  
TO  
APPENDIX A - GAS SALES AGREEMENT**

All capitalized terms used and not otherwise defined in this Attachment 1 shall have the meanings given for such terms in the Gas Sales Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**DEFAULTS AND REMEDIES IF** [REDACTED]

A. **Early Termination.** If a Triggering Event (defined in Paragraph B of this Attachment 1) occurs with respect to either party at any time during the term of this Agreement, the other party (the "Notifying Party") may (i) upon thirty (30) Business Days written notice to the first party, which notice shall be given no later than sixty (60) Days after the discovery of the occurrence of the Triggering Event, terminate this Agreement ("Early Termination"), and (ii) withhold any payments due; provided, upon the occurrence of any Triggering Event listed in item (iv) of Paragraph B of this Attachment 1, this Agreement shall automatically terminate, without notice, as if an Early Termination had been immediately declared. In the event of Early Termination, the Notifying Party shall in good faith calculate its damages, including its associated costs and attorneys' fees, resulting from the termination of the Agreement (the "Termination Payment"). The Termination Payment will be determined by (i) comparing the value of (a) the remaining terms, quantities and prices under this Agreement had it not been terminated to (b) the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract and (ii) ascertaining the associated costs and attorneys' fees.

[REDACTED]

[REDACTED] If the calculation of the Termination Payment does not result

in damages to the Notifying Party, the Termination Payment shall be zero. The Notifying Party shall give the Affected Party (defined in Paragraph B of this Attachment 1) written notice of the amount of the Termination Payment, inclusive of a statement showing its determination. The Affected Party shall pay the Termination Payment to the Notifying Party within thirty (30) Days of receipt of such notice. At the time for payment of any amount due under this Attachment 1, each party shall pay to the other party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

B. "Triggering Event" shall mean, with respect to a party (the "Affected Party"): (i) the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Affected Party or (ii) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made or deemed to be repeated or (iii) the failure by the Affected Party to perform any covenant set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Paragraph B as a separate Triggering Event), and such failure is not excused by Force Majeure or cured within ten (10) Business Days after written notice thereof to the Affected Party or (iv) the Affected Party shall (a) make an assignment or any general arrangement for the benefit of creditors, (b) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) Days, (c) otherwise become bankrupt or insolvent (however evidenced) or (d) be unable to pay its debts as they fall due or (v) the Affected Party fails to establish, maintain, extend or increase security for the performance of its obligations under this Agreement requested by the other party pursuant to paragraph (d) of Article XV of this Agreement (provided such security has been confirmed by an arbitrator pursuant to Article XVI of this Agreement if such arbitration has been requested), or (vi) with respect to Seller, at any time Seller shall have defaulted on its indebtedness to third parties resulting in an acceleration of obligations of Seller in excess of \$5,000,000.00, or with respect to PGS, at any time, PGS shall have defaulted on its indebtedness to third parties, resulting in an acceleration of obligations of PGS in excess of \$5,000,000.00.

SALES ORDER  
CONTRACT

GAS SALES CONTRACT

between



"SELLER"

and

PEOPLES GAS SYSTEM, INC.

"BUYER"

0

---

RWB/az  
10/9/95  
002337

INDEX

<u>ARTICLE</u>		<u>PAGE</u>
I	DEFINITIONS	2
II	POINTS OF RECEIPT AND PRESSURES	5
III	QUANTITY, TAKE-OR-PAY AND MAKE-UP	7
IV	NOMINATIONS	10
V	PRICE	11
VI	TERM	12
VII	QUALITY AND MEASUREMENT	12
VIII	TAXES	12
IX	SCHEDULING AND IMBALANCE PENALTIES	13
X	NOTICES	14
XI	CONFIDENTIALITY OF TERMS	15
XII	EXHIBIT	16

EXHIBIT "A"

A-I	WARRANTY	A-1
A-II	LIABILITY	A-1
A-III	DEFAULT	A-3
A-IV	FORCE MAJEURE	A-4
A-V	GOVERNMENT REGULATIONS	A-8
A-VI	BILLINGS	A-8
A-VII	SUCCESSORS AND ASSIGNS	A-11
A-VIII	MISCELLANEOUS	A-12
A-IX	ARBITRATION	A-12

GAS SALES CONTRACT

THIS GAS SALES CONTRACT (herein the "Contract") is made and entered into as of the 1st day of November, 1992 by and between

[REDACTED]  
(herein "Seller") and PEOPLES GAS SYSTEM, INC., a Florida corporation, (herein "Buyer"). Seller and Buyer may hereinafter be referred to collectively as "Parties" or singularly as "Party"

W I T N E S S E T H

WHEREAS, Buyer owns and operates pipeline facilities for the distribution of natural gas in Florida for which Buyer has a need for a supply of gas; and

WHEREAS, Seller, owns, operates and maintains a [REDACTED]  
[REDACTED] and

WHEREAS, Seller and Buyer desire to enter into this Contract to provide for a supply of gas for Buyer's use in Florida up to the Maximum Daily Quantity, Maximum Monthly Quantity and Maximum Annual Quantity herein provided.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein set forth, Seller and Buyer do hereby stipulate and agree as follows:

ARTICLE I  
DEFINITIONS

1.1 Specific Terms. As used herein the following terms shall have the meanings defined below:

"British Thermal Unit" or "Btu" shall mean the quantity of heat required to raise the temperature of one pound of water one degree (1°) Fahrenheit at sixty degrees (60°) Fahrenheit. "MMBtu" shall mean 1,000,00 Btu's.

"Buyer" shall mean People's Gas System, Inc., a Florida corporation, its successors and assigns.

"Confirmation" shall mean that written authorization from a Transporter that it is prepared to receive or already has received at the applicable Point(s) of Receipt the Nominated Quantity.

"Confirmed" means that Buyer or Seller has received a Confirmation from its Transporter.

"Contract" shall mean this Contract, together with Exhibit "A" attached hereto, as the same may hereafter be supplemented modified or amended in accordance with the terms hereof.

"Contract Year" or "Year" shall mean a period beginning at 7:00 a.m., C.S.T. on November 1 of each year and ending at 7:00 a.m., C.S.T. on November 1 of the next year.

"Nominated Quantity" shall mean for each Day that quantity of Gas Nominated by Buyer with respect to such Day.

"Day" shall mean a period of twenty-four (24) consecutive hours beginning at 7:00 a.m., C.S.T. on one (1) calendar day and ending at 7:00 a.m., C.S.T. on the next succeeding calendar day



"Effective Date" shall mean 7:00 a.m., C.S.T. on November 1, 1992.

"Force Majeure" shall have the meaning set forth in Article A-IV.

"Gas" shall mean gas produced from gas wells and gas produced in association with oil from oil wells as classified by the regulatory body having jurisdiction of the production allowables of such wells, and residue gas remaining after processing such gas.

"Maximum Annual Quantity" shall mean for each Contract Year a quantity of Gas equal of 7,300,000 MMBtu's.

"Minimum Annual Quantity" shall mean the quantity of Gas equal to (a) either (i) 4,742,500 MMBtu's for all Contract Years other than that commencing on November 1, 1995, or (ii) 4,750,000 MMBtu's for the Contract Year commencing on November 1, 1995, less (b) those quantities that were Nominated but not received by Buyer due to (i) Seller's failure to deliver such quantities to the specified Points of Receipt, or (ii) the interruption of transportation from a Secondary Point of Receipt.

"Minimum Monthly Quantity" shall mean for each Month a quantity of Gas equal to an average of [REDACTED] MMBtu's per day.

"Maximum Monthly Quantity" shall mean for each month a quantity of Gas equal to [REDACTED] MMBtu's.

"Maximum Daily Quantity" shall mean for each Day a quantity of Gas equal to [REDACTED] MMBtu's.

"Minimum Daily Quantity" shall mean for each Day a quantity of Gas equal to [REDACTED] MMBtu's.

"MMBtu" shall mean 1,000,000 Btu's.

"Month" shall mean a period beginning at 7:00 a.m., C.S.T. on the first Day of a calendar month and ending at 7:00 a.m., C.S.T. on the first Day of the next succeeding calendar month.

"Nomination" shall mean Buyer's written notice to Seller of the quantity or quantities of Gas Buyer wishes to receive and purchase on a specified Day at the Primary Point of Receipt in accordance with Article 4 of this Contract. To "Nominate" means to make a Nomination.

"Monthly Purchase Quantity" shall mean for each Month that quantity of Gas requested by Buyer with respect to such Month in accordance with Section 3.2 not to be less than the Minimum Monthly Quantity or more than the Maximum Monthly Quantity and shall be subject to daily adjustments made in accordance with Article IV herein.

"Point of Receipt" shall mean the Primary or Secondary Point(s) of Receipt. The "Primary Point of Receipt" shall mean that point specified in 2.1(a) of this Contract and shall be a point at which Buyer is obligated to make available on a firm basis transportation capacity sufficient to permit Buyer's Transporter to receive the Nominated Quantity. "Secondary Point(s) of Receipt" shall mean any one or combination of the points specified in 2.1(b) of this contract and shall be a point or point(s) at which Buyer is obligated to make available on an interruptible basis transportation capacity sufficient to permit Buyer's Transporter to receive the Nominated Quantity. In no event shall Buyer be obligated to make available firm transportation capacity at a Secondary Point of Receipt.

"Seller" shall mean [REDACTED]  
[REDACTED] its successors and assigns.

"Term" shall have the meaning specified in Article VI of this Contract.

"Transporter" shall mean the pipeline(s) by which Buyer or Seller transports the Nominated Quantities to or from the Point of Receipt.

1.2 Other Terms. Other terms may be defined elsewhere in the text of this Contract and shall have the meaning indicated throughout this Contract.

1.3 Other Definitional Provisions.

(a) The words "hereof", and "herein", and "hereunder" and words of similar import, when used in this Contract shall refer to this Contract as a whole and not to any particular provision to this Contract.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice-versa.

ARTICLE II

POINTS OF RECEIPT AND PRESSURES

2.1 Points of Receipt. The Points of Receipt for all Gas sold hereunder shall be at the interconnections of:

(a) Primary Point.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b) Secondary Points.

[REDACTED]

2.2 Selection of Point(s) of Receipt. Seller shall deliver or cause to be delivered the Nominated Quantity at the Primary Point of receipt specified in 2.1(a) of this Contract. In the event Seller is unable to deliver or cause to be delivered all or any portion of the Nominated Quantity at the Primary Point of Receipt, Seller may, with Buyer's consent, make all or any portion of the Nominated Quantity available at one or more of the Secondary Points of Receipt; provided, however, that Buyer shall only be obligated to make available interruptible transportation capacity for all portions of the Nominated Quantity delivered by Seller to a Secondary Point of Receipt. Nothing contained in this Contract shall obligate Buyer to make firm transportation capacity available to transport Gas from a Secondary Point of Receipt.

2.3 Pressure. Gas shall be delivered at each Point of Receipt at the pressure sufficient to meet the tariff requirements of Buyer's Transporter, but not to exceed Transporters Maximum Allowable Operating Pressure (MAOP). During the Term of this

Contract, Seller further agrees to maintain a constant compression at the Primary Point of Receipt sufficient to deliver the Maximum Daily Quantity.

2.4 Title. Title to all Gas sold hereunder and full responsibility for further handling thereof, and liability therefore, subject to the terms and conditions of this Contract and particularly Article A-II, shall pass to and vest in Buyer at each Point of Receipt.

2.5 Notice of Shutdown. Each Party shall give as much advance written notice as possible to the other Party of a shutdown of any of its facilities for maintenance, replacements, repairs, or construction of new facilities affecting the quantities of gas to be delivered hereunder and shall cooperate in scheduling, to the extent practicable, such shutdown so as not to interfere with the operation of the facilities of the other Party.

### ARTICLE III

#### QUANTITY, TAKE-OR-PAY AND MAKE-UP

3.1 Buyer's and Seller's Obligations. Commencing on the Effective Date and continuing through the Term hereof, and subject to the terms and provisions of this Contract, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, (i) for any day during the Term hereof, the quantities of Gas Nominated by Buyer and Confirmed by Buyer's Transporter (ii) for any month during the Term hereof, the Minimum Monthly Quantity, and (iii) for any year of the Term hereof, the Minimum Annual Quantity, subject to the following limitations:

- (a) Seller shall not be obligated with respect to any Day to deliver a quantity of Gas in excess of the Maximum Daily Quantity;
- (b) Buyer shall not be obligated with respect to any Day to receive a quantity of Gas in excess of the quantities of gas nominated by Buyer and confirmed by Buyer's Transporter.
- (c) Seller shall be obligated to deliver and Buyer shall be obligated to purchase with respect to any Month a quantity of Gas equal to the Minimum Monthly Quantity, but not in excess of the Maximum Monthly Quantity; and
- (d) Buyer shall not be obligated with respect to any Day to receive a quantity of Gas in excess of the Minimum Daily Quantity; and
- (e) Seller shall be obligated to deliver and Buyer shall be obligated to purchase with respect to any Contract Year a quantity of Gas equal to the Minimum Annual Quantity, but not in excess of the Maximum Annual Quantity;

3.2 Monthly Purchase Quantity. On or before the twentieth (20th) Day of each Month, Buyer shall nominate the Monthly Purchase Quantity for the next succeeding Month.

3.3 Annual Take-or-Pay. Commencing on the Effective Date and continuing through the term hereof and subject to the terms and conditions of this Contract, during each Contract Year, Buyer

shall take and purchase, or if not taken nevertheless pay for, a quantity of Gas for such Contract Year equal to the Minimum Annual Quantity.

3.4 Take-or-Pay Billing. On or about November 5 of each Contract Year, Seller shall furnish in writing to Buyer a schedule indicating actual takes of Gas by Buyer through October 31 of the prior Contract Year and the deficiency from the Minimum Annual Quantity, if any, that may exist. If the quantity of Gas actually taken by Buyer during any Contract Year shall be less than the Minimum Annual Quantity for such Contract Year, then Buyer, pursuant to invoice rendered by Seller, shall pay Seller within ten (10) Days of receipt of such invoice for a quantity of Gas equal to such deficiency at a price equal to the average of the prices determined under Section 5.1 hereof for each month of such prior Contract Year, inclusive of ten percent (10%) of such price.

3.5 Special Remedies.

- (a) If Buyer exercises its right under Section 3.1 of Exhibit "A" to demand the early termination of this Agreement, and if Seller fails to remedy its default within the time prescribed in Section 3.1 of Exhibit "A", Buyer shall be relieved from its obligation to pay Seller for any amounts due under this Article for the Contract Year in which Seller's default occurred and for any Contract Year thereafter, and Seller shall pay Buyer, by the 20th day of each month following the early termination of this

Contract, up to and including the Month of November 1999, an amount calculated using the following formula:

[REDACTED]

Where "D" equals the number of days in the previous month at which the Contract was no longer in effect; where "(I - P)" means the positive difference (if any) after "P" is subtracted from "I"; where "I" is the average of the Gas Daily FGT Zone 2 index prices published in the previous month; and where "P" equals the price that would have been calculated under Section 5.1 for sales to Buyer during such month had Seller not caused the early termination of this Agreement.

- (b) If Buyer fails to remedy a default within the time prescribed in Section 3.1 of Exhibit "A", Buyer shall pay Seller for the Minimum Annual Quantity Buyer would have purchased from Seller, had Buyer not caused the early termination of this Contract at a price equal to the average of the prices determined under Section 5.1 for each Month of the Term prior to such default.

#### ARTICLE IV

##### NOMINATIONS

On or before 3:00 p.m. each Day, Buyer shall initially Nominate to Seller the Nominated Quantity for the following Day. The Buyer may increase or decrease the Nominated Quantity for a



Day within such Day provided such revised Nominated Quantity exceeds the Minimum Daily Quantity and does not exceed the Maximum Daily Quantity. Seller shall make reasonable efforts to accommodate adjustments requested by Buyer to the Nominated Quantity after the aforesaid 3:00 p.m. deadline.

ARTICLE V

PRICE

5.1 For all Gas sold by Seller and purchased by Buyer, the price per MMBtu shall equal [REDACTED]

[REDACTED]

## ARTICLE VI

### TERM

This Contract shall commence on the Effective Date and continue unless otherwise terminated in accordance with Article A-III of Exhibit "A" to this Contract, until 7:00 a.m., C.S.T. on November 1, 1999 (the "Term").

## ARTICLE VII

### QUALITY AND MEASUREMENT

7.1 Quality. All Gas purchased and received hereunder shall conform to the quality specifications as provided in the General Terms and Conditions of FGT's F.E.R.C. Gas Tariff.

7.2 Measurement. All gas sold and purchased hereunder shall be measured by FGT or FGT's designee in accordance with the terms and conditions for its effective Federal Energy Regulatory Commission tariff.

## ARTICLE VIII

### TAXES

The Price determined in 5.1 of this Contract includes full reimbursement for, and Seller is liable for and shall pay or reimburse Buyer if Buyer has paid, all Taxes applicable to the Gas sold hereunder which accrue or arise upstream of the Point of receipt. Seller shall indemnify, defend and hold harmless Buyer from any claims for such Taxes. The Price does not include reimbursement for, and Buyer is liable for and shall pay or reimburse Seller if Seller has paid, all Taxes applicable to Gas

sold hereunder which accrue or arise downstream of or at the Point of Receipt. Buyer shall indemnify, defend and hold harmless Seller from any claims for such Taxes.

## ARTICLE IX

### SCHEDULING AND IMBALANCE PENALTIES

9.1 It is recognized that due to pipeline and other operating conditions, there may be unrequested daily fluctuations and deliveries of Gas by Seller to Buyer. The Parties agree to take commercially reasonable efforts to avoid imbalances and to maintain delivery and receipt of Gas as scheduled with Buyer's and Seller's Transporter(s). Furthermore, the Parties agree to cooperate with one another to rectify any imbalances which may occur and to avoid the imposition of penalties. The rectification of any such imbalances shall be in accordance with the provisions of the applicable Transporter(s)' tariff, as amended from time to time.

9.2 Notwithstanding the above, if after any Month, either Buyer or Seller receives a transportation invoice from its Transporter(s) that includes a penalty charge, both Parties shall use commercially reasonable efforts to determine the validity, as well as the cause, of such penalty charge. If the penalty charge was imposed as a result of Buyer's actions including, but not limited to, Buyer's failure to accept a daily quantity of Gas equal to the quantity Nominated by Buyer and Confirmed by Buyer's Transporter, then Buyer shall pay such penalty charge. If the penalty charge was imposed as a result of Seller's actions including, but not limited to, Seller's failure to deliver a daily

quantity of Gas equal to the quantity Nominated by Buyer and Confirmed by Buyer's Transporter, then Seller shall bear such penalty charge.

ARTICLE X

NOTICES

All notices, requests, demands, nominations and other communications required or permitted to be given under this Contract shall be deemed to have been duly given if in writing (except in the cases of oral notifications expressly permitted hereby) and if delivered personally or if sent via first class mail, postage prepaid, registered or certified mail, if sent to the address indicated below or if received by telecopier at the telephone number indicated below:

SELLER:

Notices:

[REDACTED]

Attention: Contract Administration  
Telecopier: [REDACTED]

Payments:

[REDACTED]

BUYER:

Notices:

PEOPLES GAS SYSTEM, INC.  
111 Madison Street  
P. O. Box 2562  
Tampa, Florida 33601-2562

General Notices:

Attn: Ms. Adriene Guidry  
Phone: (813)272-0006  
Fax: (813)272-0063

Gas Nominations/Dispatching:

Attn: Gas Control Administrator  
Phone: (813)272-0126

or

Attn: Mr. Todd Davis  
Phone: (813)272-0366  
Fax: (813)272-0063

Accounting and Billing:

Attn: Mr. Ed Elliott  
Phone: (813)272-0058  
Fax: (813)272-0325

Either Buyer or Seller may change addresses or telephone numbers by giving the other Party written notice of such change stating therein its new address or telephone number, and commencing on the tenth (10th) Day of giving such notice such newly designated address or telephone number shall be such Party's address or telephone number for the purposes of this Article X.

ARTICLE XI

CONFIDENTIALITY OF TERMS

Seller and Buyer agree that the terms herein shall not be disclosed to any person or party not employed or retained as counsel by Seller or Buyer except to the extent disclosure is

(i) required by law, (ii) requested by the independent public accountants of Seller or Buyer, (iii) required pursuant to a loan agreement of Seller or Buyer, (iv) required to be disclosed by Seller or Buyer in connection with the defense of any litigation, or (v) otherwise agreed by the Parties in writing to be disclosed. In the event disclosure is made pursuant to (i) through (v), Seller and Buyer agree that they will use their reasonable efforts to have the recipients maintain the confidentiality of any documents or confidential information covered by this article.

ARTICLE XII

EXHIBIT

All other terms and conditions of this Contract are incorporated in Exhibit "A" which is attached hereto and made a part hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract in multiple originals as of the Day and Year first above written.

WITNESS:



WITNESS:

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

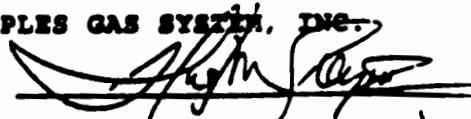
SELLER:



BUYER:

PEOPLES GAS SYSTEM, INC.

By:



Title: DIR - GAS TRANSPORTATION & RATES

THE STATE OF TEXAS

§

THE COUNTY OF \_\_\_\_\_

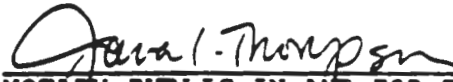
§

§

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said \_\_\_\_\_

and that he having been duly authorized by said partnership, executed the same as the free and voluntary act and deed of such partnership, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office the 5<sup>th</sup> day of December, 1996.



NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS  
My Commission Expires \_\_\_\_\_

THE STATE OF \_\_\_\_\_

§

THE COUNTY OF \_\_\_\_\_

§

§

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said Peoples Gas System, Inc. and that he having been duly authorized by said corporation, executed the same as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE the \_\_\_\_\_ day of \_\_\_\_\_, 1996.

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

Attached to and incorporated in the Gas Sales Contract dated as of the 1st day of November, 1992, between [REDACTED] [REDACTED] herein "Seller"), and PEOPLES GAS SYSTEM, INC. (herein "Buyer").

ARTICLE A-I

WARRANTY

Seller warrants title to all Gas sold hereunder. In addition, Seller agrees to indemnify Buyer from all suits, actions, debts, acts, demands, costs, losses, and expenses arising from or out of adverse claims of any or all persons to the title to the Gas sold hereunder and to royalties or liens on said Gas which accrue and are applicable prior to delivery thereof to Buyer. EXCEPT AS EXPRESSLY CONTAINED IN THE CONTRACT OR IN THIS EXHIBIT "A", SELLER MAKES NO WARRANTY OR REPRESENTATIONS AS TO QUALITY, CONDITION OR FITNESS OF THE GAS OR ITS SUITABLENESS FOR ANY INTENDED USE. FURTHER, SELLER HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE A-II

LIABILITY

2.1 As between the Parties hereto, Seller shall be fully responsible and liable for any and all damages, claims or actions including injury to and death of any persons which are caused by or resulting from the operation of Seller's or Seller's Designees' facilities, appurtenances and property and the possession and



handling of such Gas and which occur while same is in the possession or control of Seller. Seller shall be deemed to be in possession and control of the Gas until the same is delivered to Buyer at the Point of Receipt. For any and all such damages, claims or actions, Seller shall fully protect, defend, indemnify and hold Buyer, its successors and assigns, harmless from and against each and every claim, demand or cause of action and any liability, cost, expense, damage or loss in connection therewith including punitive, consequential, special, incidental, or indirect damages which may be made or asserted by Seller, or Seller's officers, employees, agents or assigns, or by third parties, on account of personal injury or death, or on account of property damage.

2.2 As between the Parties hereto, Buyer shall be fully responsible and liable for any and all damages, claims or actions including injury to and death of persons which are caused by or resulting from the operation of Buyer's facilities, appurtenances and property and the possession and handling of such Gas and which occur while same is in possession or control of Buyer. Buyer shall be deemed to be in possession and control of the Gas upon its delivery to Buyer at the Point of Receipt. For any and all such damages, claims or actions, Buyer shall fully protect, defend, indemnify and hold Seller, its successors and assigns, harmless from and against each and every claim, demand or cause of action and any liability, cost, expense, damage, or loss in connection therewith including punitive, consequential, special, incidental or indirect damages which may be made or asserted by

Buyer or Buyer's officers, employees, agents or assigns, or by third parties, on account of personal injury or death, or on account of property damage.

2.3 Each Party's liability to the other, whether based upon the provisions of this Article A-II, negligence, strict liability, breach of contract, breach of warranty, or otherwise, shall be limited to actual direct damages, and shall in no event include any liability for punitive, consequential, special, incidental or indirect damages.

#### ARTICLE A-III

##### DEFAULT

3.1 It is covenanted and agreed that if either Party hereto shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this Contract, except as provided in Article A-VI in the event Buyer fails to pay a sum for Gas delivered hereunder, then the other Party hereto may at its option terminate this Contract by proceeding as follows: The Party claiming default shall give written notice to the other Party allegedly in default, stating with reasonable specificity the default and declaring it to be the intention of the Party giving the notice to terminate this Contract. The Party in default shall have ten (10) Days after written notice is given hereunder in which to remedy the default set forth in such written notice, whereupon such notice shall be deemed to be withdrawn and this Contract shall continue in full force and effect. In case the Party in default does not remedy the default specified in such written notice then, while such default is continuing, the Party

not in default shall have the option of terminating this Contract at will, upon serving notice of such termination to the Party in default. Any such termination shall be effective as of the date specified in such notice.

3.2 Any termination of this Contract pursuant to the provisions of this Article A-III shall not be an election of remedies for breach of contract and shall be without prejudice to the right of Seller to collect any payments for Gas delivered due at the time of cancellation and without prejudice to any other rights of either Party.

#### ARTICLE A-IV

##### FORCE MAJEURE

4.1 If either Party is rendered unable, wholly or in part by reason of force majeure to perform its obligations under this Contract, other than the obligation to make payments then or thereafter due, it is agreed that performance of the respective obligations of the Parties hereto to deliver and receive Gas so far as they are affected by such force majeure, shall be suspended from the inception and during the continuance of any such force majeure but for no longer period. The Party claiming such force majeure shall give notice thereof to the other Party as soon as practicable after the occurrence of the force majeure. If such notice is first given orally, it shall be confirmed promptly in writing describing the force majeure event or condition in reasonable detail. The Party claiming such inability shall

promptly correct the force majeure event or condition to the extent it may be corrected through the exercise of reasonable diligence.

4.2 The term of this Contract shall not be extended beyond its normal expiration date by any period of time during which performance is suspended due to force majeure.

4.3 Except as provided in Article A-II, neither Party shall be liable to the other for any losses or damages, regardless of the nature thereof and howsoever occurring, whether such losses or damages be direct or indirect, immediate or remote, by reason of caused by, arising out of, or in any way attributable to the suspension of performance of any obligation of either Party when such suspension occurs because a Party is rendered unable, by force majeure to perform its obligations to the extent of such inability.

4.4 The term "force majeure" as used herein shall mean cover and include the following:

- (a) Acts of God or acts of providence including, without limitation, epidemics, landslides, hurricanes, floods, washouts, lightning, earthquakes, storm warnings, perils of the sea, and threats of any of the foregoing, and whether preceded by, concurrent with, or foiled by acts or omissions of any human agency, whether foreseeable or not;
- (b) Acts of government (whether later held valid or invalid) and/or the enforcement or administration thereof, including, without limitation, laws, orders, rules, decrees, judgments, judicial

actions, regulations, acts of arrest or restraint and threats of any of the foregoing, by any government (de jure or de facto), or any agency, subdivision or instrumentality thereof, having claiming or asserting authority or jurisdiction over the severance, production, gathering, transportation, handling, sale or delivery of Gas, or any part thereof, or over the materials, equipment, supplies or personnel, or any part thereof, necessary to the severance, production, gathering, transportation, handling, sale or delivery of Gas;

- (c) Acts of civil disorder including, without limitations, acts of sabotage, acts of a public enemy, acts of war (declared or undeclared), blockades, insurrections, riots, mass protests or demonstrations, and threats of any of the foregoing, and police action in connection with or in reaction to any such acts of civil disorder;
- (d) Acts of industrial disorder including, without limitation, strikes, lockouts, picketing, and threats of any of the foregoing; provided, however, that the settlement of any labor dispute to prevent or end any such acts of industrial disorder shall be within the sole discretion of the Party to this Contract involved in such labor dispute, and the above requirement that any inability shall be

corrected with reasonable diligence shall not apply to labor disputes;

- (e) Failure of facilities including, without limitation, freezing of wells or lines of pipe, failures resulting from fires, washouts, mechanical breakdowns of, malfunctions or, or the necessity for making unplanned or unscheduled tests, modifications, replacements or repairs to furnaces, reactors, plant installations machinery, lines of pipe, pumps, compressors valves, gauges or any of the equipment therein or thereon, and cratering or blowout, regardless of whether such failure of facilities may have resulted from fault, negligence, omission or inadvertence, directly or indirectly, of either Party hereto, or of any other Party;
- (f) In the event that it is impracticable to obtain or acquire at reasonable cost grants, servitudes rights-of-way, permits, licenses, or any other authorizations from governmental agencies required for the performance of any obligations under this Contract;
- (g) Any unplanned for or unscheduled occurrence, condition, situation, or threat thereof, not covered by subsections (a) through (f) above, which makes impracticable either Party's performance under this Contract, provided such occurrence, condition,

situation, or threat thereof, is beyond the reasonable control of the Party claiming such impracticability.

#### ARTICLE A-V

##### GOVERNMENT REGULATIONS

This Contract is subject to all present and future laws, orders, rules and regulations of any state, federal or other governmental authority. This Contract shall be controlled and governed by and construed in accordance with the laws of the State of Texas, both as to execution, performance and interpretation of the terms and conditions set forth in this Contract; excluding however, any such law which would direct the application of the law of a different jurisdiction.

#### ARTICLE A-VI

##### BILLINGS

6.1 Seller shall mail to Buyer each Month an original invoice and supporting documents of the amounts due Seller for the quantities of Gas purchased by Buyer during the preceding Month any any other amounts for which payment is due hereunder. For each Month, quantities of Gas purchased by the Buyer shall be the lesser of (i) the quantities Nominated by Buyer and confirmed by Buyer's Transporter, or (ii) the quantities actually received by Buyer. On the face of the invoice Seller shall show payee bank name; bank city and state; bank ABA number; payee bank account

number; and payee name. Buyer agrees to pay seller by wire transfer no later than fifteen (15) days succeeding the receipt of such invoice.

6.2 If Buyer fails to make full payment to Seller when the same is due and such default in payment continues for thirty (30) Days after written notice is sent from Seller to Buyer, Seller may, at its election, while such default continues, and in addition to all other remedies, on ten (10) Days written notice to Buyer, either suspend delivery of Gas hereunder or terminate this Contract, or both. Should Buyer fail to pay the full amount due Seller on or before the Day when due, interest thereon shall accrue from the due date until full payment is made at the prime rate of interest charged from time to time by Texas Commerce Bank Houston, plus two percent (2%) per annum; provided that such rate shall not exceed the maximum rate permitted by law.

6.3 In the event Buyer, in good faith, disputes the amount payable in any statement rendered, Buyer shall nevertheless pay the amount not in dispute to Seller pending resolution of the dispute. If it is determined that Buyer owes Seller the disputed amount, Buyer will pay Seller that amount plus interest in accordance with Section 2 of this Article A-VI. Payment by Buyer of a disputed amount shall not be deemed to be a waiver of the right by Buyer to recoup any overpayment, which shall be repaid by Seller together with interest calculated under the method set forth in Section 2 of this Article A-VI.

6.4 Buyer, upon at least sixty (60) Days prior written notice, shall have the right at reasonable hours to examine the books, records and charts of Seller to the extent necessary to



verify the accuracy of any statement, charge or computation made pursuant to the provisions of this Contract. If any such examination reveals any inaccuracy in any billing theretofore made, the necessary adjustment in such billing and payment shall be promptly made; provided, however, no adjustment for any billing or payment shall be made after the lapse of twelve (12) Months from the rendition thereof. Buyer shall have the option, by giving written notice as set forth above within twelve (12) Months from the date of any billing to appoint an independent certified public accountant, acceptable to Seller, to ascertain that the price paid by Buyer was computed in accordance with the terms of this Contract. The cost of the accounting firm will be paid by Buyer, except that if the accounting firm determines that the price paid by Buyer has not been computed in accordance with the terms of this Contract and that such price paid by Buyer is in excess of one hundred two percent (102%) of the price calculated in accordance with the terms of this Contract, then Seller shall pay the costs of such accounting firm. Such accountant shall have access to the books and records of Seller for such examination during normal business hours. Such accountant shall not disclose to Buyer any information gained by such examination other than its conclusion as to the fact that the price paid was or was not computed in accordance with the terms of this Contract and if not, the reasons therefor.

6.5 If the data to compute the actual price payable under this Contract is not available on the tenth (10th) Day following the Month in which Gas deliveries occurred, Seller shall estimate such price based on the best data available at the time of such

billing. As soon as practicable after actual data to compute the price hereunder becomes available, Seller shall make an adjustment on the next scheduled billing giving Buyer appropriate credit or making an additional billing; provided, however, that in no event shall any such adjustment be made after the expiration of twelve (12) Months following the Month in which the bill containing such estimated price was submitted to Buyer hereunder.

#### ARTICLE A-VII

##### SUCCESSORS AND ASSIGNS

This Contract may be assigned by either Party, without the consent of the other Party, to an affiliate or any company which shall succeed by purchase, merger, consolidation, or other transfer of substantially all the assets of such Party; in the event of any such assignment, such successor shall be entitled to the rights and shall be subject to the obligations of its predecessor under this Contract. Otherwise neither Party shall assign this Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld, and any attempted assignment shall be null and void. In either event, the Party assigning its interest shall not be released from any of its obligations hereunder by any such assignment or transfer without a written release of such obligation by the other Party. Nothing herein contained shall prevent or restrict either Party from pledging, granting a security interest in, or assigning as collateral all or any portion of such Party's interest in this Contract to secure any debt or obligation of such Party under any mortgage, deed of trust, security agreement or similar instrument.

ARTICLE A-VIII

MISCELLANEOUS

8.1 The descriptive headings of the provisions of this Contract are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such provisions.

8.2 No waiver by either Party hereto of any one (1) or more defaults by the other in the performance of any provision of this Contract shall operate to or be construed as a waiver of any future default or defaults, whether of a like or different character.

8.3 This Contract constitutes the entire agreement of the Parties as to the matters contained herein, and there are no agreements, understandings, obligations, promises or conditions precedent or otherwise, except those expressly set forth herein.

ARTICLE A-IX

ARBITRATION

Any controversy or claim arising out of or relating to Section 5.1 of Article V of this Contract shall be settled by arbitration in accordance with the rules of the American Arbitration Association ("AAA"), by three (3) arbitrators selected from a list supplied by the AAA, one (1) appointed by Seller and one (1) appointed by Buyer within fifteen (15) Days after receipt of such list, and the third (3rd) selected by the two (2) so appointed within fifteen (15) Days after the first two (2) arbitrators were appointed. In the event either Party shall fail to appoint its arbitrators within the fifteen (15) Day period, the

other Party may select the second (2nd) arbitrator and the two so appointed shall appoint the third (3rd) from the AAA list. Determination rendered by the arbitrators may be entered in a court having jurisdiction; provided, however, that the determination by the arbitrators shall be reported to the Parties as soon as possible and in no event later than one hundred eighty (180) Days following selection of the last arbitrator. Such determination will be binding on the Parties to this Contract.

## GAS SALES AGREEMENT

THIS AGREEMENT entered into as of this 1st day of September, 1990, by and between [REDACTED] [REDACTED] hereinafter referred to as [REDACTED] and PEOPLES GAS SYSTEM, INC., a Florida corporation, hereinafter referred to as "PGS."

## RECITALS:

WHEREAS, the parties hereto wish to make the following recitals and representations each to the other:

1. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] and [REDACTED]

are corporations duly organized and existing under the laws of their states of incorporation.

2. PGS is a Florida corporation which operates a natural gas distribution system and is engaged in the purchase of gas from various suppliers and the resale of said gas to distribution companies, public utilities, and residential, commercial and industrial end users, and in the transportation of customer-owned gas, in the State of Florida.

3. Southern Natural Gas Company ("SNG") and South Georgia Natural Gas Company ("SGNG") own and operate interconnecting interstate pipeline systems which extend from sources of supply of natural gas in the Southeastern United

States to an existing point of termination in Suwannee county, Florida. A pipeline extension of approximately 86 miles is proposed to be built and owned by SGNG from the existing point of termination to a proposed point of interconnection with the distribution system of PGS which will be extended approximately twenty (20) miles to a point in the vicinity of the town of Ingle in Nassau County, Florida.

4. [REDACTED] has entered or will enter into Gas Purchase Agreements with certain suppliers of natural gas identified on Exhibit A hereto (the "Suppliers") whose gas is deliverable into the gas transmission facilities of SNG and/or Florida Gas Transmission Company ("FGT") for the purposes of supplying certain gas requirements of PGS. PGS has entered or will enter into Gas Transportation Agreements with SGNG, SNG and FGT (the "Transporters") for the purpose of transporting, on an interruptible basis, gas to be purchased from [REDACTED]. PGS desires that [REDACTED] act as its agent for purposes of administration of the Gas Transportation Agreements with SNG and SGNG.

5. Conditioned upon the construction of the aforesaid pipeline extensions by SGNG and PGS, as well as the receipt of any necessary governmental approvals, for transportation of gas by Transporters under the Gas Transportation Agreements, and the availability to [REDACTED] of natural gas from Suppliers under the Gas Purchase Agreements, [REDACTED]

and PGS are willing to contract for the purchase and sale of a minimum of [REDACTED] therms of natural gas per year. Additionally, [REDACTED] may offer and PGS may request additional quantities of natural gas that may be available [REDACTED] [REDACTED] for the term of this Agreement.

6. SNG and SGNG offer interruptible transportation of natural gas on a "first-come, first-served" basis pursuant to self-implementing transportation regulations under Section 311 of the Natural Gas Policy Act of 1978 ("NGPA") and open-access transportation requirements under Order No. 500 of the Federal Energy Regulatory Commission ("FERC").

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements hereinafter contained, the parties hereto do hereby agree as follows:

#### ARTICLE I

#### DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

1. "British thermal unit" or "Btu" shall mean the amount of heat required to raise the temperature of one (1) pound of water from 59° F to 60° F at a constant pressure of 14.73 p.s.i.a.
2. "Contract Year" shall mean a period of twelve (12) consecutive months commencing with the first day of the month following the date that Seminole first delivers gas to PGS,

and successive like annual periods during the term of this Agreement.

3. "Cubic foot of gas" for billing purposes shall mean the amount of gas which occupies one (1) cubic foot of space when the gas is at a pressure of 14.73 pounds per square inch absolute and at a temperature of 60° F.

4. "Day" shall mean a period of twenty-four (24) consecutive hours beginning and ending at 7:00 a.m. local time at the Delivery Points. The date of each day shall be that of its beginning.

5. "° F" shall mean degree(s) Fahrenheit.

6. "Gas" shall mean natural gas.

7. "Mcf" shall mean one thousand (1,000) cubic feet of gas as defined above.

8. "MMBtu" shall mean a unit of heat equal to one million (1,000,000) British Thermal Units. 1 MMBtu = 10 Therms.

9. "Month" shall mean a period of time beginning at 7:00 a.m. local time on the first day of a calendar month and ending at 7:00 a.m. local time on the first day of the next calendar month.

10. "p.s.i.a." shall mean pounds per square inch absolute.

11. "Therm" shall mean a unit of heat equal to one hundred thousand (100,000) British thermal units.



## ARTICLE II

### TERM

1. Subject to the further provisions of this Agreement, the delivery and sale of natural gas by [REDACTED] to PGS and the purchase and receipt thereof by PGS from [REDACTED] as contemplated hereunder shall commence on the date that [REDACTED] is first able to deliver gas to the Transporters for the account of PGS, and the Transporters are able to redeliver said gas to PGS, and shall continue until the last day of the twentieth (20th) Contract year unless this Agreement is terminated earlier pursuant to the provisions hereof. Each party shall keep the other apprised of the status of the construction of the pipeline extensions by SGNG and PGS, it being projected currently that such work will not be completed prior to April 30, 1991.

2. In the event that deliveries of gas have not commenced within twelve (12) months of the execution of this Agreement and the party causing the delay cannot provide a definitive schedule for the timely commencement of such deliveries, either party may, at its sole option, exercisable at any time within thirty (30) days after the end of such period, terminate this Agreement upon providing written notice to the other party. Following such termination, neither party shall have any further obligation to the other party under this Agreement and each party shall be deemed to

have released the other party from any liability relating to or arising out of said Agreement.

ARTICLE III

QUANTITY

1. Seminole agrees to tender for sale to PGS a daily quantity of [REDACTED] of gas each day during the term hereof (the "Contract Gas"). PGS shall have the right to receive and purchase, or cause to be received and purchased, on any day all or any portion of the Contract Gas; provided, however, PGS shall purchase and take, or cause to be purchased and taken, the following minimum quantities of Contract Gas during the term hereof:

<u>Month</u>	<u>Monthly Minimums</u> (million therms)	<u>Weekly Minimums</u> (therms)
January	[REDACTED]	[REDACTED]
February	[REDACTED]	[REDACTED]
March	[REDACTED]	[REDACTED]
April	[REDACTED]	[REDACTED]
May	[REDACTED]	[REDACTED]
June	[REDACTED]	[REDACTED]
July	[REDACTED]	[REDACTED]
August	[REDACTED]	[REDACTED]
September	[REDACTED]	[REDACTED]
October	[REDACTED]	[REDACTED]
November	[REDACTED]	[REDACTED]
December	[REDACTED]	[REDACTED]

and provided, further, PGS shall purchase and take, or cause to be purchased and taken, a minimum annual quantity of [REDACTED] of Contract Gas each year during the term hereof (the "Annual Minimum"). The Annual Minimum to be

50

purchased and taken by PGS shall be reduced by the number of therms of gas taken by Jacksonville Electric Authority ("JEA") in each Contract Year pursuant to the Gas Sales Agreement dated September 8, 1988 between [REDACTED] and JEA (the "JEA Contract"). If during any month [REDACTED] is unable to make available PGS's nomination of Contract Gas up to the minimums specified in the above schedule, then PGS shall receive a credit against its Annual Minimum equal to the difference between the actual quantity of Contract Gas made available by [REDACTED] and the quantity of Contract Gas nominated by PGS pursuant to Paragraph 2 of Article VI.

2. During the term hereof, PGS may, provided that [REDACTED] obligations to its Suppliers have been met, request that [REDACTED] deliver, in addition to the Contract Gas provided hereinabove, a daily quantity of Spot Price Gas (the "Spot Gas"). [REDACTED] may, in its sole discretion, tender for sale to PGS all or any portion of the requested Spot Gas. If, during the term hereof, PGS desires to purchase a quantity of Spot Gas from a supplier other than [REDACTED] PGS shall, before making such purchase, first offer [REDACTED] the opportunity to meet the price (computed on a per therm basis for the desired quantity if delivered for PGS's account at the point of interconnection between the facilities of SGNG and PGS) at which PGS is able to purchase such quantity of gas from such supplier. If [REDACTED] offers to meet such price within the time specified by PGS, PGS shall purchase

such quantity of Spot Gas from [REDACTED] Provided that [REDACTED] obligations to its Suppliers have been met, purchases of Spot Gas by PGS shall be credited against the minimum purchase requirements imposed on PGS with respect to Contract Gas. In the event [REDACTED] has failed to meet its obligations to its Suppliers, purchases of Spot Gas hereunder by PGS shall have no effect on the minimum purchase requirements imposed on PGS with respect to Contract Gas, unless [REDACTED] in its sole discretion, allows all or a portion of such Spot Gas takes by PGS to be credited toward the Annual Minimum.

#### ARTICLE IV

##### CURTAILMENT AND INTERRUPTION

1. [REDACTED] performance of its obligation to supply Contract Gas as specified hereunder is contingent upon the availability of said gas from Suppliers. In the event that Suppliers fail, in whole or in part, to supply Contract Gas to [REDACTED] will be excused to the extent of such failure from performance of its obligations hereunder but will attempt to arrange acceptable alternatives to enable its continued performance by alternate methods.

2. [REDACTED] agrees to provide PGS, if reasonably practicable, with at least four (4) hours' telephonic notice of the curtailment or interruption of deliveries of gas. [REDACTED] shall be relieved from any and all liabilities,

penalties and claims of whatever kind or type, including demands for gas price adjustments or alternate fuels subsidies, resulting from or arising out of said curtailment or interruption of deliveries. Whenever, and to the extent that, [REDACTED] is unable to deliver the daily quantities of gas requested by PGS, PGS shall have the right to purchase from such other sources as may be available to PGS to make up the difference between the quantity of gas made available by [REDACTED] and the quantity of gas requested by PGS.

#### ARTICLE V

##### TRANSPORTATION AGENT

PGS hereby appoints [REDACTED] as its agent with respect to its Gas Transportation Agreements with SNG and SGNG for the limited purpose of making all nominations and giving all notices required of PGS by SNG or SGNG in accordance with information which PGS shall furnish to [REDACTED] on a timely basis. [REDACTED] may act, and shall be fully protected in acting, in reliance upon any and all information furnished to it by PGS.

#### ARTICLE VI

##### NOMINATIONS AND PRESSURE

1. Sixty (60) days prior to the beginning of each Contract year, PGS shall provide to [REDACTED] a projection of

its estimated monthly requirements for both Contract Gas and Spot Gas during the ensuing Contract Year.

2. Ten (10) days prior to each month (or at such other times as the parties may agree), PGS shall estimate the daily and monthly volumes required and shall advise [REDACTED] of the estimated daily and monthly quantities of Contract Gas and Spot Gas which it desires to purchase during the following month, and [REDACTED] shall advise PGS within two (2) days of the receipt of such notice of the estimated monthly and daily quantities of such gas that it expects to have available for sale to PGS.

3. All gas delivered for sale hereunder shall be made available to PGS at the pressures provided to [REDACTED] by Suppliers, from time to time, at the Point(s) of Delivery .

## ARTICLE VII

### POINT(S) OF DELIVERY

1. The Point(s) of Delivery for the sale and purchase of gas under this Agreement shall be the point or points designated from time to time by [REDACTED] from among the points set forth and described on Exhibit B to this Agreement as such points may be supplemented by [REDACTED] from time to time.

2. [REDACTED] shall cause gas nominated by PGS to be delivered to Point(s) of Delivery on the pipeline systems of SNG and/or FGT to the extent that capacity is available to

PGS on the pipeline systems of SNG and SGNG and/or FGT to transport gas nominated for purchase from [REDACTED] to the gas distribution system of PGS.

3. As between the parties hereto, [REDACTED] shall be in exclusive control and possession of the gas, and fully responsible for the gas, until it has been delivered to Transporters for the account of PGS at the Point(s) of Delivery, at which time PGS shall be in exclusive control and possession of the gas and fully responsible for the gas. The exact point at which delivery shall be deemed to be made and title passed shall be at the inlet valve of such billing meter or meters as shall be installed by Transporters at the Point(s) of Delivery identified on Exhibit A hereto.

ARTICLE VIII

[REDACTED]

[REDACTED]



[REDACTED]

ARTICLE IX

PRICE

1. The price payable each month by PGS per therm of Contract Gas sold and delivered by Seminole at Point(s) of Delivery on SNG shall be [REDACTED]

[REDACTED]

2. The price payable by PGS per therm of Spot Gas sold and delivered by Seminole in any month during the term hereof shall be [REDACTED]

[REDACTED]

[REDACTED] Nothing contained herein, however, shall prevent the parties from changing at any time by mutual written agreement the price in effect, from time to time, for Spot Gas under this Agreement.

3. The price set forth in paragraph 1 above will remain in effect until September 30, 1994 (the "Renegotiation Date"). Six (6) months prior to the Renegotiation Date, the parties agree to begin to renegotiate the pricing terms and renegotiation provisions to become effective following the Renegotiation Date. The parties agree to use their best efforts to renegotiate said terms and provisions. If the parties cannot reach agreement on new pricing terms by the Renegotiation Date, the Agreement shall remain in effect as if the same existed prior to the Renegotiation Date, but either party may, upon providing thirty (30) days written notice to the other party, terminate this Agreement; provided, however, in the event of termination of this Agreement by either party as provided herein, each party shall first release the other party from any liability relating to or arising out of this Agreement, except as to payments due for gas tendered or delivered.

#### ARTICLE X

##### QUALITY

1. All gas delivered by [REDACTED] shall be merchantable and shall, upon delivery, conform to each of the following quality specifications:

- a. be commercially free of objectionable substances, including dust, solids,

liquids, gums and gum forming  
constituents;

- b. contain not more than 200 grains of total sulphur, or 15 grains of hydrogen sulphide per Mcf; and
- c. have a gross heating value of not less than 950 Btu per cubic foot, measured at an absolute pressure of 14.73 pounds per square inch at 60° F on a dry basis.

2. The specifications and heating value of the gas shall be determined in accordance with the methods set forth in Transporters' currently effective FERC Gas Tariffs as the same may be amended from time to time. PGS shall have the right to refuse to accept at the Point(s) of Delivery any gas which fails to conform to the quality specifications and heating value set forth above, in addition to any other remedies available to PGS.

## ARTICLE XI

### BILLING AND PAYMENT

1. Within fifteen (15) calendar days after receipt by PGS of a billing statement from Seminole, PGS shall make payment to [REDACTED] of the amount due for gas purchased and taken during the preceding month. All payments shall be made by bank wire transfer of immediately available funds to the

account of [REDACTED] at [REDACTED]  
[REDACTED]

2. Should PGS fail to pay any amount when due, interest thereon shall accrue at the prime interest rate set by the Chase Manhattan Bank (NA) from the date when due until paid. If any such failure continues for five (5) days, [REDACTED] may suspend delivery of gas upon giving five (5) working days' written notice to Buyer, but the exercise of such right shall be in addition to any other remedy available to [REDACTED]. The provisions herein for accrual of interest, however, shall not apply if PGS's failure to pay is the result of a bona fide dispute, provided that PGS has paid all amounts under the agreement not in dispute.


## ARTICLE XII

### MEASUREMENT

1. Facilities and equipment necessary to receive and measure the quantities of the gas made available for sale hereunder shall be located at the Point(s) of Delivery. Measurement of the gas delivered shall be conducted using primary measurement devices of standard manufacture installed and operated in accordance with the applicable specifications in Report No. 3 or report No. 7 of the Gas Measurement Committee of the American Gas Association, as amended from time to time, or standards in the industry, whichever may apply. The determination of the volumes of gas delivered

hereunder shall be calculated from the measurements taken at the meter(s) and corrected for pressure, temperature and specific gravity in accordance with standard methods and practices in use in the natural gas pipeline industry.

2. For purposes of billing computations, a cubic foot of gas shall be that quantity of gas which at a pressure of 14.73 p.s.i.a. and a temperature of 60° F occupies one (1) cubic foot. The sales unit of gas shall be the therm. The number of therms billed to PGS shall be determined by multiplying the number of cubic feet of gas delivered as the sales volume (at 14.73 p.s.i.a. and 60° F) by the total heating value of such gas (in Btu's), and dividing the product by 100,000. Unless determined to be otherwise by a gravity balance, the specific gravity of the flowing gas shall be assumed to be 0.6. The total heating value of the gas delivered to PGS shall be that reported monthly by

 The total heating value shall be corrected to and expressed as that contained in the unit of sale volume as defined above. The average absolute atmospheric pressure for purposes of determining absolute static pressure for chart computations shall be assumed to be 14.73 p.s.i.a., irrespective of actual elevation or location of the point of delivery above sea level, or variations in such atmospheric pressure from time to time. The temperature of the gas measured shall be determined by the continuous use of a recording thermometer and correcting indices of temperature

compensating meters. Where recording or compensating devices are not installed, the temperature of the gas shall be assumed to be the climatological standard normal average monthly temperature as established by the nearest office of the National Oceanic and Atmospheric Administration Weather Bureau.

3. Measurements on billing meter or meters shall be conclusive on both parties except where the meter is defective or fails to register (in either of which cases [REDACTED] shall cause SNG to repair or replace the meter). If the meter is found defective or fails to register, the quantity of gas delivered while the meter was out of order or failed to register shall be estimated:

- a. By using the registration of any check meter, if installed and accurately registering, or in the absence of (a);
- b. By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, or, in the absence of both (a) and (b), then;
- c. By estimating the quantity of delivery from deliveries during periods under similar conditions when the meter was registering accurately.

An appropriate billing adjustment shall be made for such

period during which the billing meter was defective or failed to register.

4. Each party shall have the right to inspect and examine at all reasonable times the records and charts of the other party pertaining to the purchase and sale of gas hereunder. If any overcharge or undercharge in any amount whatsoever shall at any time be found and the statement thereof has been paid, [REDACTED] shall refund the amount of any overcharge received by Seminole and PGS shall pay the amount of any undercharge, within thirty (30) days after the final determination thereof; provided, however, no retroactive adjustment shall be made for any overcharge or undercharge beyond a period of one (1) year from the date the discrepancy occurred.

#### ARTICLE XIII

#### FORCE MAJEURE

1. Neither Buyer nor Seller shall be liable to the other for any failure to perform pursuant to the terms and conditions of this agreement to the extent such performance was prevented by an event of Force Majeure; provided, however, that an event of Force Majeure shall not excuse Buyer's obligation to pay [REDACTED]. A party shall not be relieved, however, of its liability (i) unless such party gives notice and full particulars of the same to the other party as soon as practicable after the

occurrence relied on, (ii) in the event of its negligence, (iii) to the extent the event relied upon was within the reasonable control of such party, (iv) to the extent of its failure to use due diligence to remedy the situation and remove the cause of the event of force majeure in an adequate manner and with all reasonable dispatch, or (v) for its obligations to make payments due under this agreement prior to the occurrence of the force majeure event. A failure of either party to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered negligence or failure to use due diligence to remedy the situation nor shall settlement or prevention of such strike or controversy be deemed to be within the reasonable control of the affected party.

2. The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, sinkholes, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery, generating equipment, or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery, generating equipment, or lines of pipe, freezing of wells or lines of pipe, failure or depletion of wells, loss or interruption of supply,



period during which the billing meter was defective or failed to register.

4. Each party shall have the right to inspect and examine at all reasonable times the records and charts of the other party pertaining to the purchase and sale of gas hereunder. If any overcharge or undercharge in any amount whatsoever shall at any time be found and the statement thereof has been paid, [REDACTED] shall refund the amount of any overcharge received by Seminole and PGS shall pay the amount of any undercharge, within thirty (30) days after the final determination thereof; provided, however, no retroactive adjustment shall be made for any overcharge or undercharge beyond a period of one (1) year from the date the discrepancy occurred.

#### ARTICLE XIII

#### FORCE MAJEURE

1. Neither Buyer nor Seller shall be liable to the other for any failure to perform pursuant to the terms and conditions of this agreement to the extent such performance was prevented by an event of Force Majeure; provided, however, that an event of Force Majeure shall not excuse Buyer's obligation to pay [REDACTED].  
A party shall not be relieved, however, of its liability (i) unless such party gives notice and full particulars of the same to the other party as soon as practicable after the

occurrence relied on, (ii) in the event of its negligence, (iii) to the extent the event relied upon was within the reasonable control of such party, (iv) to the extent of its failure to use due diligence to remedy the situation and remove the cause of the event of force majeure in an adequate manner and with all reasonable dispatch, or (v) for its obligations to make payments due under this agreement prior to the occurrence of the force majeure event. A failure of either party to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered negligence or failure to use due diligence to remedy the situation nor shall settlement or prevention of such strike or controversy be deemed to be within the reasonable control of the affected party.

2. The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, sinkholes, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery, generating equipment, or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery, generating equipment, or lines of pipe, freezing of wells or lines of pipe, failure or depletion of wells, loss or interruption of supply,

interruption or unavailability of transportation, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such terms shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way grants, permits, permissions, licenses, materials, or supplies which are required to enable such party to fulfill its obligations hereunder.

3. In addition to all of the specific references above, with the exception of the payment of [REDACTED] [REDACTED] performance by either party is excused, and shall not be a breach of duty under this Agreement if performance as agreed has been made impracticable by the occurrence of a contingency, the nonoccurrence of which was a basic assumption on which this Agreement was made, and impracticability of performance shall include economic or financial loss due to increased costs and expenses of performing or obtaining performance beyond those reasonably anticipated as occurring within the near future and regardless of the term of the Agreement. There shall be no requirement for allocation, proration or substitution on the part of Seminole in periods of curtailed or inadequate availability of gas to it.

## ARTICLE XIV

### MISCELLANEOUS

1. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns, and no assignment shall relieve either party of such party's obligations hereunder without written consent of the other party.

2. This Agreement shall be subject to all applicable laws, rules, orders, and regulations of any federal, state or local governmental authority having jurisdiction over the parties, their facilities, or the transactions contemplated. If at any time, any such governmental authority shall take any action as to any party hereto, or the Suppliers or Transporters, whereby the transportation, sale, or use of gas, as contemplated under this Agreement, shall be subjected to terms, conditions or restraints that in the sole judgment of the party hereto affected are unduly burdensome or unacceptable, such party may suggest amended terms and conditions under which it would be willing to perform under the Agreement, or alternatively, upon written notice to the other party may cancel and terminate this Agreement effective such date as shall be stated in written notice.

3. No waiver by either party of any default of the other party under this Agreement shall operate as a waiver of any future default, whether of like or different character or nature.

4. The headings throughout this Agreement are inserted for reference purposes only and shall not be construed or considered in interpreting the terms and provisions of any Article.

5. This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida.

6. Any notice, request or demand provided for in this Agreement shall be in writing and deemed given when delivered by hand or sent by certified U. S. mail, return receipt requested, directed to the following post office address:

PGS: Peoples Gas System, Inc.  
Post Office Box 2562  
Tampa, Florida 33601



or at such other address as either party may, from time to time, designate by written notice under these provisions; provided, however, any dispatching notice of the quantities of gas to be delivered and purchased hereunder shall be given by telephone; and provided further that any billing statement provided for in this Agreement shall be deemed received when delivered by hand or deposited in the U. S. mail, postage prepaid to the aforesaid address.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, and attested by their respective duly authorized officers and have caused their respective

corporate seals to be hereunto affixed as of the date first above written.

ATTEST:

PEOPLES GAS SYSTEM, INC.

BY: *Dwight B. Spitzer*  
Its: Vice President-Marketing

BY: *John A. Brennan, Jr.*  
Its: President

ATTEST:

BY:

ATTEST:

BY:

**GAS PURCHASE AGREEMENT (A)**

THIS AGREEMENT, made and entered into as of the first day of April, 1995 by and between [REDACTED]

(hereinafter referred to as "Buyer") and

[REDACTED] (hereinafter referred to as "Seller").

**WITNESSETH:**

WHEREAS, Buyer desires to purchase supplies of natural gas for resale to Peoples Gas System, Inc.; and

WHEREAS, Seller has supplies of gas available for sale and delivery to Buyer; and

WHEREAS, Buyer has obtained transportation services from Southern Natural Gas Company ("Southern") for the transportation of the gas to be sold and purchased hereunder; and

WHEREAS, Buyer and Seller desire to enter into an agreement providing for the sale and purchase of gas on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, Buyer and Seller hereby agree as follows:

**ARTICLE I  
(Recitals)**

1.1 The above recitals are true and correct, and are adopted herein as if restated in their entirety.

**ARTICLE II  
(Definitions)**

2.1 Unless the context requires another meaning, the following terms shall have the meanings hereinbelow set forth under this Agreement:

- a. "Btu" - A British thermal unit measured at an absolute pressure of 14.73 psia at 60F. on a dry basis.



- b. "business day" - A day commencing on Monday through Friday of any week of the year, excluding holidays recognized by either party or either party's transporter.
- c. "cubic foot" - The amount of gas necessary to fill a cubic foot of space when the gas is at a temperature of 60F. and a pressure of 14.73 pounds per square inch absolute.
- d. "day" - A period commencing at 7:00 a.m. Central Time and extending until 7:00 a.m. Central Time on the following day or any other twenty-four hour period mutually agreeable to the parties. The date of a day shall be that of its beginning.
- e. "FERC Gas Tariff" - A compilation by an interstate pipeline company of all its effective rate schedules, forms of service agreement and general terms and conditions as required by the Federal Energy Regulatory Commission ("FERC") pursuant to Part 154 of FERC's Rules and Regulations promulgated pursuant to the Natural Gas Act.
- f. "gas" - Natural gas consisting primarily of methane and conforming to the quality specifications as provided for in this Agreement.
- g. "MMBtu" - One million (1,000,000) British thermal units.
- h. "month" - A period of time commencing at 7:00 a.m. on the first day of a calendar month and ending at 7:00 a.m. on the first day of the next calendar month.

**ARTICLE III**  
**(Quantity and Nominations)**

---

3.1 Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and deliver, and Buyer agrees to purchase and receive [REDACTED] MMBtu per day (the "Maximum Daily Quantity" or "MDQ").

3.2 Not less than 8:00 a.m. Central Time two business days prior to the day on which Southern requires nominations for the first day of the month, Buyer shall nominate to Seller the quantity of gas it requires during each day of such month (the "Initial Daily Nominated Quantity" or "Initial DNQ"); provided, however, that Buyer may, upon notice of not less than one (1) business day, reduce the Initial DNQ for any day during any month (the "DNQ"). If during any month Buyer nominates [REDACTED]



[REDACTED] Buyer shall nominate to Southern the daily quantity to be transported during the month. Seller shall advise Buyer of any variations in production during the month so that Buyer may adjust its transportation nomination as necessary. All such nominations may be in writing or by telephone confirmed in writing within twenty-four (24) hours.

3.3 Seller and Buyer agree to deliver and receive gas at an approximately constant rate of flow. It is the intent of the parties hereto that the actual quantity delivered and received each day shall equal the DNQ. Buyer and Seller recognize, however, the inherent inaccuracies in the measurement and allocation of gas. Such inaccuracies may at times occur through no fault of Buyer or Seller, and may result in failure to deliver or receive the DNQ. Buyer and Seller agree that to the extent they learn of such inaccuracies after the period of deliveries, any under or over balance will be corrected as soon as practicable.

3.4 In the event Seller delivers, during any month of the term hereof, a quantity which is more than or less than Buyer's nomination, and such overdelivery or underdelivery is not cashed out pursuant to the terms of Buyer's transporter's tariff and the provisions of Article XI or Buyer made whole by Article XVII hereof, Buyer may, in its sole discretion, elect to purchase, and Seller shall sell, an amount of gas equal to the difference between the quantity of gas nominated for such month and the quantity delivered during such month at the lesser of (i) the price payable during the month in which the over- or under- delivery occurred, or (ii) the price payable during the first month in which Buyer's transporter permits correction of such overdelivery or underdelivery; provided however, that Buyer may, but shall not, in any event, be required to purchase any quantity of gas delivered in excess of its nominations for said month.

#### ARTICLE IV (Point(s) of Delivery)

4.1 The point(s) of delivery for the sale and purchase of gas under this Agreement shall be at the point(s) set forth and described on Exhibit A. As between the parties hereto, Seller shall be in exclusive control and possession of the gas until the gas has been made available at each point of delivery and when the gas is in the custody of Seller or the operator of a processing plant for processing or other purposes, and Buyer shall be in exclusive control and possession of the gas after it has been made available at each point of delivery. The party deemed to be in exclusive control and possession of the gas shall be responsible for any and all losses, damages, injuries, claims and liabilities arising from or while the gas is deemed to be in its control and possession. The exact point at which delivery shall be deemed to be made and title shall be deemed to have passed shall be at the inlet flange or weld of Buyer's (or its designee's) facilities at each point of delivery.

ARTICLE V  
(Price)

5.1 Definitions:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.4 The price for gas delivered hereunder is inclusive of all production, severance, ad valorem, or similar taxes levied on the production or transportation of the gas prior to its delivery

[REDACTED]

to or for the account of Buyer at the point(s) of delivery, and all such taxes shall be borne and paid exclusively by Seller; provided, however, that if Buyer is required by law to remit such taxes to the collecting authority, Buyer shall do so and deduct the taxes so paid on Seller's behalf from payments otherwise due to Seller hereunder. The price does not include any Federal, Indian, State or local sales, use, consumption, Btu-based, carbon-based or other taxes, or similar taxes of whatever designation which may now or hereafter be imposed on the transfer of the title or possession of the gas to or for the account of Buyer, or on Buyer's subsequent use of disposition thereof. Any such taxes shall be paid by Buyer directly to the taxing authority unless Seller is required by law to collect and remit such taxes, in which case Buyer shall reimburse Seller for all amounts so paid. If Buyer claims exemption from any such taxes, Buyer shall provide Seller a tax exemption certificate or other appropriate documentation thereof.

5.5 In the event during the term of this Agreement a federal energy tax and/or Btu tax is proposed to be applicable to gas sold and purchased hereunder, on or before thirty (30) days prior to the effective date of such proposed federal tax, either party may, in its sole discretion, request the renegotiation of any price(s) payable hereunder and/or an amendment of the above Section 5.4. The parties shall promptly, acting reasonably and in good faith, enter into negotiations to determine a new price(s) and/or the party to be responsible for such tax. If the parties are unable to reach an agreement on such price(s) or tax responsibility, either party may initiate arbitration for resolution of the issue pursuant to Article XV below.

#### ARTICLE VI (Term)

6.1 This Agreement shall become effective on the date hereinabove first written, and subject to the provisions of this Agreement, shall remain in full force and effect for a primary term of three (3) years.

6.2 Any termination of this Agreement as provided herein shall not relieve Buyer's obligation to pay for gas purchased hereunder prior to the effective date of such termination or either party's obligation to pay any other amounts due hereunder.

---

#### ARTICLE VII (Measurement)

7.1 The gas sold hereunder shall be measured in accordance with commonly used and accepted industry standards and procedures through the measurement facilities of Southern.

**ARTICLE VIII  
(Quality)**

8.1 All gas delivered by Seller shall be merchantable and shall upon delivery conform to the quality specifications and heating value specified in Southern's FERC Gas Tariff. The specifications and heating value of the gas shall be determined by a standard method in use in the natural gas pipeline industry. Buyer shall have the right to refuse to accept at a point of delivery any gas which fails to conform to the quality specifications and heating value set forth above.

**ARTICLE IX  
(Pressure)**

9.1 Seller shall deliver gas hereunder at the pressures required by Southern.

**ARTICLE X  
(Processing)**

10.1 Seller shall have the right at its sole cost and expense to process or to permit processing of the gas hereunder for the extraction of liquefiable hydrocarbons and any other gas constituents prior to delivery or after delivery, on terms and conditions mutually agreeable to the parties or Seller and Buyer's transporter, provided that notwithstanding the fact that the quantity of gas delivered at the applicable delivery point shall be reduced by the plant volume reduction and fuel and losses associated with the processing of the gas stream, Seller shall deliver sufficient quantities of gas at the delivery point so that Buyer shall receive at the tailgate of the processing plant the quantity of gas Buyer nominated and Seller confirmed for delivery, and that the gas after processing shall conform to the quality specifications and heating value requirements of this Agreement and that Seller shall bear any costs associated with the transportation of the liquefiable hydrocarbons to the point of processing.

**ARTICLE XI     ---  
(Transportation)**

11.1 Seller shall make arrangements for all transportation services (and shall bear all costs and expenses thereof) required to effect the delivery of gas at the point(s) of delivery hereunder. Buyer shall make arrangements for all transportation services (and shall bear all costs and expenses thereof) required to effect the receipt and measurement of all gas purchased hereunder. The parties shall cooperate to ensure that nominations are timely made to the respective party's transporter and that actual deliveries and receipts comply with such transporters' FERC Gas Tariffs and other operational procedures, if any.

11.2 Each party shall promptly notify the other party of any notice received from its transporter that indicates the existence of any imbalance or other circumstances which may give

rise to a penalty in connection with gas deliveries hereunder. The parties agree to cooperate in taking such action as may be necessary to ensure that penalties are avoided or minimized as much as possible.

11.3 Buyer shall be liable for and remit payment to Seller within ten (10) days of presentation of invoice, for any scheduling, imbalance, limitation or other transportation related penalties, cashout costs, fees, forfeitures or charges calculated by Seller (in the same manner as Seller's transporter pursuant to its FERC Gas Tariff) and attributable to Buyer's actions or omissions to act, including Buyer's failure to accept and receive the quantities of gas nominated by Buyer and delivered by Seller hereunder.

Seller shall be liable for and remit payment to Buyer within ten (10) days of presentation of invoice, for any scheduling, imbalance, limitation or other transportation related penalties, cashout costs, fees, forfeitures or charges calculated by Buyer (in the same manner as Buyer's transporter pursuant to its FERC Gas Tariff) and attributable to Seller's actions or omissions to act, including Seller's failure to deliver the quantities of gas nominated by Buyer and confirmed by Seller hereunder.

#### ARTICLE XII (Liability)

12.1 As between the parties hereto, Buyer and Seller shall be responsible for the installation, operation and maintenance of their respective facilities, and each party agrees to indemnify and hold harmless the other party from and against any and all claims, demands, actions, suits, costs, damages, expenses, compensation, or liabilities of every kind or character, at law or in equity, for or on account of damage or destruction of property or injury or death of persons, resulting from or arising out of, or in connection with the installation, operation, or maintenance of said facilities and equipment.

12.2 Notwithstanding anything to the contrary contained herein, in no event shall either party be liable or otherwise responsible to the other party for any consequential, incidental or punitive damages, or for lost profits, arising out of or relating to any action in contract or in tort, at law or in equity, based upon transactions pursuant to this Agreement, or the performance or breach thereof, or associated activities of either party.

#### ARTICLE XIII (Warranty of Title and Indemnification)

13.1 Seller warrants the title to all gas delivered hereunder and warrants that it has authority to enter into this Agreement on behalf of itself and other interest owners, if any, and that it has the right to commit the sale of gas as contemplated hereunder and to sell such gas in interstate commerce. Seller further represents and warrants that it will pay and satisfy, or make provision for the payment and satisfaction of, any and all claims of every nature whatsoever in,

to or in respect of the title of gas delivered hereunder or in, to, or in respect of the proceeds of sale; and Seller hereby agrees to defend at its cost, and when notified by Buyer to indemnify Buyer against, all suits, judgments, claims, demands, causes of action, costs, damages, interest and expenses (including, but not limited to attorney's fees) arising out of or in any way connected with any claims to the gas delivered hereunder or to the proceeds of sale.

13.2 Seller shall pay or cause to be paid any and all payments to or for the benefit of owners having or claiming any interest in the gas delivered hereunder or the proceeds of sale (including but not limited to owners of royalty or subsequently created interests). In no event shall Buyer be required to pay to any other party other than Seller any proceeds due Seller under this Agreement.

13.3 Seller agrees to defend at its cost and when notified by Buyer to indemnify Buyer from all suits, judgments, claims, demands, causes of action, costs, damages, interest expense (including but not limited to interest on suspended or unpaid proceeds) and other expenses (including but not limited to attorney's fees) arising out of or in any way connected with any claim relating to the payment of royalty, or to severance taxes or other taxes due or levied on the production of gas prior to the delivery point.

#### ARTICLE XIV (Force Majeure)

14.1 In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, it is agreed that the obligations of such party, so far as they are affected by such force majeure, shall be suspended during the continuation of any inability so caused but for no longer period; and such cause shall as far as possible be remedied with all reasonable dispatch, provided, however, that no party hereto shall be required against its will to adjust any labor dispute. It is agreed that such party shall give notice and full particulars of such force majeure event in writing, telecopied to the other party as soon as reasonably possible after the occurrence of such event.

14.2 The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes or storms which in Seller's judgment require the precaution or shut-down or evacuation of production facilities, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such terms shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way grants, permits, permissions, licenses, materials or supplies

which are required to enable such party to fulfill its obligations hereunder. The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty. Notwithstanding anything to the contrary contained herein, force majeure shall also include interruption or cessation of deliveries of gas by third parties to Seller resulting solely from equipment failure or mechanical difficulties.

14.3 Notwithstanding the above Section 14.2, the term "force majeure" specifically excludes the failure of specific individual wells or appurtenant facilities in the absence of a force majeure event which affects a majority of other wells in the same geographic area.

14.4 The parties acknowledge and agree that Seller may make sales of gas to other Buyers under other firm contracts and that those other contracts may provide for deliveries of gas from the same geographic areas as in this Agreement. The parties further recognize that a force majeure occurrence affecting Seller's ability to deliver gas on or from such area could result in Seller's having less gas available from the area than Seller is contractually obligated to deliver under all of those contracts. If a force majeure occurrence results in Seller's total supply of available gas on or from such area being less than the sum of Seller's total firm sales obligations on or from that area, even if such available supply is sufficient to fulfill Seller's obligations under one or more of such contracts, then such force majeure occurrence shall be deemed to have rendered Seller unable to fulfill its obligations under each one of such contracts, including this Agreement, and Seller shall be entitled to the protection afforded by Section 14.1 so long as Seller endeavors in good faith to allocate its available supply in accordance with Section 14.5, giving due regard to the nature of the force majeure occurrence, any restrictions imposed by transporters, and the time required for Seller to make alternate arrangements.

14.5 The parties recognize and agree that there are no specific reserves or wells dedicated to this Agreement, and that designation of a point or points of delivery hereunder does not mean that any gas flowing to any such point or points of delivery is dedicated specifically to this Agreement or to any other contract before actually being delivered to a buyer. If a force majeure occurrence affects Seller's ability to deliver gas on or from one or more geographic areas associated with this Agreement, unless prevented by the force majeure from doing so, Seller shall take the following actions, in the order listed, to the extent reasonably necessary to maintain or restore its deliveries to Buyer and Seller's other firm sales customers, which, for all purposes of this Section 14.5 shall be deemed to include any of Seller's own corporate facilities receiving gas on or from the affected geographic areas under a written memorandum of understanding:

14.5.1 Curtailing or interrupting some or all of Seller's interruptible sales on or from the affected area.

14.5.2 Delivering all or part of the gas to be delivered hereunder at any mutually agreeable alternate point(s) of delivery on or from the affected area (excluding any storage

facilities owned or held by Seller) where Seller has gas which can be delivered to Buyer without violating other contractual obligations of Seller.

If in response to a force majeure occurrence, Seller takes the above actions and still is unable to meet all of its firm sales obligations on or from the affected area(s), then Seller shall curtail ratably its firm sales customers (including Buyer) receiving gas on or from the affected area(s) based on each customer's nominated quantities from the affected area(s). If, at the inception of any force majeure occurrence, Seller is delivering gas from a single source to more than one pipeline, Seller shall curtail deliveries from that source to each such area on a pro rata basis, based on the relative quantities nominated by Seller's firm customers on each of the affected areas. Nothing contained in this Article 14 shall require Seller to interrupt or curtail any deliveries on or from other areas or other pipeline systems not affected by the force majeure in order to maintain or restore deliveries to Buyer hereunder.

14.6 If Seller has gas which Seller can deliver from other pipeline systems during a force majeure occurrence without violating other contractual obligations of Seller, the parties may mutually agree to terms and conditions under which such available gas may be delivered to Buyer. Seller's agreement to any such special arrangements shall not be deemed a waiver of Seller's protection under Section 14.1, nor shall Seller be obligated thereby to continue such special arrangements once commenced or to make similar arrangements during any subsequent force majeure occurrence, it being understood that any such special arrangements shall be viewed as a voluntary accommodation which shall not expand Seller's existing obligations or reduce Seller's existing protection afforded by this Article 14.

#### ARTICLE XV (Arbitration)

15.1 Upon failure to agree upon designation of tax responsibility pursuant to Section 5.5, or in the event of a dispute between the parties regarding the terms and conditions of this Agreement, each party shall have the right to initiate Arbitration by giving written Notice of Arbitration to the other. On or before fifteen (15) days after such Notice of Arbitration initiating arbitration, each party shall submit to the other its proposed redetermined price mechanism or substitute index, accompanied by any supporting documentation, which shall be limited to thirty (30) typewritten pages.

15.2 On or before the fifth (5th) day after each party offers its proposal under Section 15.1 above, such party must name its choice of an arbitrator. Within ten days thereafter, the two arbitrators so chosen shall name a third arbitrator. If any of the three arbitrators has not been named within the appointed time, then either Seller or Buyer may apply to the American Arbitration Association for appointment of the arbitrator(s) necessary to complete the panel within ten days. All arbitrators shall be individuals (1) who are not and never have been officers, directors or employees of Seller, Buyer and/or any affiliates of Seller or Buyer, and (2) who are not officers, directors or employees of any supplier or purchaser of Seller or Buyer, and who are qualified by education, knowledge and experience to determine the matters submitted to them.



Seller and Buyer shall each pay the compensation and expenses of the arbitrators named by or for it, and both shall share equally the compensation and expenses of the third arbitrator. Within forty-five (45) days following the date that a three person panel is established, the three arbitrators shall evaluate the proposals of Buyer and Seller and determine the most reasonable resolution to the issue(s) before them. The arbitrators shall be empowered to convene a hearing not to exceed three (3) days in length at which the arbitrators shall be permitted to question Buyer and Seller regarding their respective proposals or, in lieu of such hearing, to submit written questions to Buyer and Seller. The decision of the arbitrators with regard to resolution of the issues shall be based upon natural gas market considerations, including without limitation, the prevailing market price of gas at the time a price redetermination is requested and the general availability of natural gas, the terms of sale such as length of service and quantity, and the types of price mechanisms used by gas users to determine the market price of gas.

The decision of the arbitration panel, or a majority thereof shall be final and binding on the parties as to the matters submitted for arbitration and the price mechanism or substitute index selected by the arbitrators shall become effective on the first day of the month following the month during which the arbitration decision is given.

#### ARTICLE XVI (Billing and Payment)

16.1 Not later than the 15th day of each calendar month Seller shall provide an invoice setting forth the quantities of gas delivered during the preceding calendar month. If actual quantities at the point of measurement are not available by the day on which Seller prepares its invoice, Seller may furnish invoices based on the quantities nominated to the transporter by Buyer and confirmed by Seller. Within ten (10) days following receipt of Seller's invoice, Buyer shall make payment electronically with immediately available funds of all amounts due thereunder; provided, however, that in the event, the quantity delivered exceeds the quantity nominated, the price paid shall be the Contract Price for the quantity nominated and the cashout price per Section 11.3 for the difference between the nominated quantity and the delivered quantity.

16.2 In the event an error is discovered in the amount billed in any invoice rendered hereunder, such error shall be adjusted within thirty (30) days after notice of the discovery of the error. In the event a dispute arises as to the amount payable in any invoice rendered hereunder; Buyer shall nevertheless pay when due the amount not in dispute under such invoice, and shall provide written notice to Seller within five (5) business days after the undisputed portion is paid, indicating the disputed amount and the reason for such dispute. Such payment shall not be deemed to be a waiver of the right by Buyer to recoup any overpayment, nor shall acceptance of any payment be deemed to be a waiver by Seller of any underpayment. Further, Buyer may, upon notice that a dispute exists with regard to ownership of the gas offered for purchase hereunder, in its sole discretion, suspend payment without accrual of interest until such time as said dispute is resolved.

16.3 In the event Buyer fails to forward the entire amount due to Seller when same is due, interest on the unpaid portion of the undisputed amount shall accrue at the rate per annum equal to the Chase Manhattan Bank prime rate as posted from time to time, from the date the original unpaid amount was due until the same is paid. However, the rate of interest shall not exceed the maximum non-usurious rate allowed by any applicable law. Additionally, if Buyer fails to pay timely any undisputed portion of any invoice, Seller shall have the right to suspend further deliveries of gas giving notice to Buyer of such intention.

16.4 Each party shall have the right at reasonable hours to examine the charts, if any, measurement data, books and records of the other party to the extent necessary to verify the accuracy of any statements, charge or computation hereunder. If such examination reveals an error or inaccuracy, the necessary adjustment shall be promptly made; provided, however that all such statements, charges and computations shall be deemed correct unless objected to within two (2) years after the date of such statements, charges, and computations.

16.5 Notwithstanding anything to the contrary contained herein, the parties to this Agreement recognize that there may be mutual obligations between the parties arising from this Agreement and from independent agreements that the parties may enter into from time to time. In addition to the rights of recoupment and setoff (offset) existing at law and equity, the parties hereto expressly agree and provide that the rights of recoupment and setoff (offset) are, by the terms of this Agreement, available to each party hereto.

ARTICLE XVII  
(Remedies)

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE XVIII**  
**(Financial Responsibility)**

18.1 Should the creditworthiness or financial responsibility of either party become unsatisfactory to the other party at any time during which this Agreement is in effect, satisfactory security may be required before further deliveries are made. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment or performance of any obligation to the other party under this Agreement; (iii) file petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); (v) be unable to pay its debts as they fall due; or (vi) fail to give adequate security for or assurance of its ability to perform its further obligations under this Agreement within forty-eight (48) hours of a reasonable request by the other party, then the other party shall, upon written notice, have the right to withhold or suspend deliveries or receipts or terminate this Agreement upon three (3) days from the date of such notice, or the beginning of the next month, whichever is earlier, in addition to any and all other remedies available hereunder or pursuant to law.

**ARTICLE XIX**  
**(Miscellaneous)**

19.1 This Agreement shall be subject to all present and future applicable laws, rules, orders and regulations of any federal, state, or local governmental authority having jurisdiction over the parties, their facilities, or the transactions contemplated. If at any time, any such governmental authority shall take any action as to any party whereby the delivery, receipt, or use of gas, as contemplated under this Agreement, shall be subjected to terms, conditions or restraints that in the sole judgment of the party affected are unduly burdensome or unacceptable, such party, upon written notice to the other party, may cancel and terminate this Agreement effective one day prior to the effective date of such governmental action or, alternatively, may suggest amended terms and conditions under which it would be willing to perform under this Agreement.

19.2 No waiver by either party of any default of the other party under this Agreement shall operate as a waiver of any future default, whether of like or different character or nature.

19.3 The headings throughout this Agreement are inserted for reference purposes only and shall not be construed or considered in interpreting the terms and provisions of any Article.

19.4 THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA (INCLUDING, WITHOUT LIMITATION, THE ALABAMA UNIFORM COMMERCIAL CODE), EXCLUDING CONFLICTS OF LAW PRINCIPLES WHICH WOULD REFER TO THE LAWS OF ANOTHER JURISDICTION.

19.5 Any notice, request, demand or statement provided for in this Agreement shall be in writing and deemed given when delivered by hand, telecopy, overnight courier or deposited in the U.S. mail postage prepaid directed to the following post office address:

**Seller:**

**Correspondence and Notices:**

[REDACTED]

**Payment:**

[REDACTED]

**After Hours Emergency Telephone Number:**

[REDACTED]

**Statements:**

[REDACTED]

[REDACTED]

**Buyer:**

**Billing:**

[REDACTED]

**Notices:**

**(Mail)**

[REDACTED]

**(Physical Delivery)**

[REDACTED]

or at such other address as either party may, from time to time, designate; provided, however, any nomination or other dispatching notice of the quantities of gas to be delivered and purchased hereunder may be given by telephone if confirmed in writing within twenty four (24) hours.

19.6 The terms and conditions of this Agreement shall remain confidential and neither party shall disclose such terms and conditions to any third party absent the express written permission of the other party except where necessary to comply with regulatory reporting requirements.

---

19.7 This Agreement constitutes the entire agreement between Buyer and Seller with respect to the sale, delivery, and purchase of natural gas provided for herein, and supersedes all prior negotiations, representations, understandings, or agreements, whether oral or written, and no modification, alteration, amendment, construction, or interpretation of this Agreement shall be binding upon either party unless reduced to writing and executed by each party.

19.8 This Agreement shall not be construed to create any third party beneficiary relationship in favor of anyone not a party to this Agreement. In addition, the Parties waive and disclaim any third party beneficiary status as to any of the contracts of the other party.

[REDACTED]

19.9 This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective representatives, successors, and assigns; provided, however, that this Agreement may not be assigned in whole or in part, or subjected to an indirect transfer or transfer by operation of law, by either party without the prior written consent of the other party, which shall not be unreasonably withheld.

19.10 No director, employee, or agent of either party shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this contract. Any mutually agreeable representative(s) authorized by either party may audit the applicable records of the other party solely for the purpose of determining whether there has been compliance with this Section 19.10.

19.11 All computations related to prices and indices performed under this Agreement shall be rounded to four significant decimal places (\$0.0000).

19.12 Exhibit A attached hereto constitutes part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate originals as of the date hereinabove first written.

Buyer:

[Redacted signature]

Witnesses:

[Redacted signature]

\_\_\_\_\_

By:

[Redacted signature]

\_\_\_\_\_

Its:

[Redacted signature]

[Redacted signature]

Witnesses:

JV TRADING INC.

[Redacted signature]

[Redacted signature]

[Redacted signature]

[Redacted signature]

Seller:

Witnesses:

[Redacted signature]

\_\_\_\_\_

By:

[Redacted signature]

\_\_\_\_\_

Its:

\_\_\_\_\_

---

[Redacted signature]

**EXHIBIT A**  
**to the**  
**GAS PURCHASE AGREEMENT**

**between**

[REDACTED]

**and**

[REDACTED]

**dated**

**APRIL 1, 1995**

Primary Source and Point of Delivery

Source:

[REDACTED]

Point of Delivery:

The interconnection between the facilities of Seller and Southern Natural Gas Company located at [REDACTED]

[REDACTED]

Secondary Source(s) and Point(s) of Delivery

Such other sources and points of delivery into Southern's mainline system as the parties may mutually agree, including, but not limited to [REDACTED]

[REDACTED]



**GAS PURCHASE AGREEMENT (B)**

THIS AGREEMENT, made and entered into as of the first day of April, 1995 by and between [REDACTED] (hereinafter referred to as "Buyer") and [REDACTED] (hereinafter referred to as "Seller").

**WITNESSETH:**

WHEREAS, Buyer desires to purchase supplies of natural gas for resale to Peoples Gas System, Inc.; and

WHEREAS, Seller has supplies of gas available for sale and delivery to Buyer; and

WHEREAS, Buyer has obtained transportation services from Southern Natural Gas Company ("Southern") for the transportation of the gas to be sold and purchased hereunder; and

WHEREAS, Buyer and Seller desire to enter into an agreement providing for the sale and purchase of gas on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, Buyer and Seller hereby agree as follows:

**ARTICLE I  
(Recitals)**

1.1 The above recitals are true and correct, and are adopted herein as if restated in their entirety.

**ARTICLE II  
(Definitions)** ---

2.1 Unless the context requires another meaning, the following terms shall have the meanings hereinbelow set forth under this Agreement:

- a. "Btu" - A British thermal unit measured at an absolute pressure of 14.73 psia at 60F. on a dry basis.
- b. "business day" - A day commencing on Monday through Friday of any week of the year, excluding holidays recognized by either party's transporters.

- c. "cubic foot" - The amount of gas necessary to fill a cubic foot of space when the gas is at a temperature of 60F. and a pressure of 14.73 pounds per square inch absolute.
- d. "day" - A period commencing at 7:00 a.m. Central Time and extending until 7:00 a.m. Central Time on the following day or any other twenty-four hour period mutually agreeable to the parties. The date of a day shall be that of its beginning.
- e. "FERC Gas Tariff" - A compilation by an interstate pipeline company of all its effective rate schedules and forms of service agreement as required by the Federal Energy Regulatory Commission ("FERC") pursuant to Part 154 of FERC's Rules and Regulations promulgated pursuant to the Natural Gas Act.
- f. "gas" - Natural gas consisting primarily of methane and conforming to the quality specifications as provided for in this Agreement.
- g. "MMBtu" - One million (1,000,000) British thermal units.
- h. "month" - A period of time commencing at 7:00 a.m. on the first day of a calendar month and ending at 7:00 a.m. on the first day of the next calendar month.

### ARTICLE III (Quantity and Nominations)

3.1 Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and deliver, and Buyer agrees to purchase and receive [REDACTED] MMBtu per day (the "Maximum Daily Quantity" or "MDQ").

3.2 Not less than two business days prior to the day on which Southern requires nominations for the first day of the month, Buyer shall nominate to Seller the quantity of gas it requires during each day of such month to be transported during the month (the "Daily Nominated Quantity" or "DNQ"); provided, however, Buyer may, upon notice of not less than one (1) business day, reduce the DNQ for any day during any month, not to exceed ten (10) days in any calendar year. Thereafter Buyer shall nominate to Southern the daily quantity to be transported during the month. Seller shall advise Buyer of any variations in production during the month so that Buyer may adjust its transportation nomination as necessary. All such nominations may be in writing or by telephone confirmed in writing within twenty-four (24) hours. [REDACTED]

3.3 Seller and Buyer agree to deliver and receive gas at an approximately constant rate of flow. It is the intent of the parties hereto that the actual quantity delivered and received each day shall equal the DNQ. Buyer and Seller recognize, however, the inherent inaccuracies in the measurement and allocation of gas. Such inaccuracies may at times occur through no fault of Buyer or Seller, and may result in failure to deliver or receive the DNQ. Buyer and Seller agree that to the [REDACTED]

extent they learn of such inaccuracies after the period of deliveries, any under or over balance will be corrected as soon as practicable.

3.4 In the event Seller delivers, during any month of the term hereof, a quantity which is more than or less than Buyer's nomination, and such overdelivery or underdelivery is not cashed out pursuant to the terms of Buyer's transporter's tariff and the provisions of Article XI, or Buyer made whole by Article XVII hereof, Buyer may, in its sole discretion, elect to purchase, and Seller shall sell, an amount of gas equal to the difference between the quantity of gas nominated for such month and the quantity delivered during such month at the lesser of (i) the price payable during the month in which the over- or under- delivery occurred, or (ii) the price payable during the first month in which Buyer's transporter permits correction of such overdelivery or underdelivery; provided however, that Buyer may, but shall not, in any event, be required to purchase any quantity of gas delivered in excess of its nominations for said month.

#### ARTICLE IV (Point(s) of Delivery)

4.1 The point(s) of delivery for the sale and purchase of gas under this Agreement shall be at the point(s) set forth and described on Exhibit A. As between the parties hereto, Seller shall be in exclusive control and possession of the gas until the gas has been made available at each point of delivery and when the gas is in the custody of Seller or the operator of a processing plant for processing or other purposes, and Buyer shall be in exclusive control and possession of the gas after it has been made available at each point of delivery. The party deemed to be in exclusive control and possession of the gas shall be responsible for any and all losses, damages, injuries, claims and liabilities arising from or while the gas is deemed to be in its control and possession. The exact point at which delivery shall be deemed to be made and title shall be deemed to have passed shall be at the inlet flange or weld of Buyer's (or its designee's) facilities at each point of delivery.

#### ARTICLE V (Price)

5.1

[REDACTED]

5.2

[REDACTED]

5.3 All prices provided for under this agreement shall be the total amount payable by Buyer and shall specifically be inclusive of any and all taxes, allowances, royalties and reimbursements. Seller shall pay or cause to be paid any royalty payments, severance or other taxes due or levied on the production, processing and/or transportation of the gas prior to the delivery point.

[REDACTED]

In the event state law requires Buyer hereunder to remit such taxes to the state, Buyer shall remit any such taxes due or assessed to the appropriate taxing authority. Buyer shall be authorized to deduct the amount of all such remittances from the proceeds due to Seller. Seller shall promptly reimburse Buyer for any such taxes remitted by Buyer but not so deducted.

5.4 In the event during the term of this Agreement a federal energy tax and/or Btu tax is proposed to be applicable to gas sold and purchased hereunder, on or before thirty (30) days prior to the effective date of such proposed federal tax, either party may, in its sole discretion, request the renegotiation of any price(s) payable hereunder and/or an amendment of the above Section 5.3. The parties shall promptly, acting reasonably and in good faith, enter into negotiations to determine a new price(s) and/or the party to be responsible for such tax. If the parties are unable to reach an agreement on such price(s) or tax responsibility, either party may initiate arbitration for resolution of the issue pursuant to Article XV below.

#### ARTICLE VI (Term)

6.1 This Agreement shall become effective on the date hereinabove first written, and subject to the provisions of this Agreement, shall remain in full force and effect for a primary term of three (3) years.

6.2 Any termination of this Agreement as provided herein shall not relieve Buyer's obligation to pay for gas purchased hereunder prior to the effective date of such termination or either party's obligation to pay any other amounts due hereunder.

#### ARTICLE VII (Measurement)

7.1 The gas sold hereunder shall be measured in accordance with commonly used and accepted industry standards and procedures through the measurement facilities of Southern.

#### ARTICLE VIII (Quality)

8.1 All gas delivered by Seller shall be merchantable and shall upon delivery conform to the quality specifications and heating value specified in Southern's FERC Gas Tariff. The specifications and heating value of the gas shall be determined by a standard method in use in the natural gas pipeline industry. Buyer shall have the right to refuse to accept at a point of delivery any gas which fails to conform to the quality specifications and heating value set forth above.

#### ARTICLE IX (Pressure)

9.1 Seller shall deliver gas hereunder at the pressures required by Southern.

**ARTICLE X  
(Processing)**

10.1 Seller shall have the right at its sole cost and expense to process or to permit processing of the gas hereunder for the extraction of liquefiable hydrocarbons and any other gas constituents prior to delivery or after delivery, on terms and conditions mutually agreeable to the parties or Seller and Buyer's transporter, provided that notwithstanding the fact that the quantity of gas delivered at the applicable delivery point shall be reduced by the plant volume reduction and fuel and losses associated with the processing of the gas stream, Seller shall deliver sufficient quantities of gas at the delivery point so that Buyer shall receive at the tailgate of the processing plant, the quantity of gas Buyer nominated and Seller confirmed for delivery, and that the gas after processing shall conform to the quality specifications and heating value requirements of this Agreement and that Seller shall bear any costs associated with the transportation of the liquefiable hydrocarbons to the point of processing.

**ARTICLE XI  
(Transportation)**

11.1 Seller shall make arrangements for all transportation services (and shall bear all costs and expenses thereof) required to effect the delivery of gas at the point(s) of delivery hereunder. Buyer shall make arrangements for all transportation services (and shall bear all costs and expenses thereof) required to effect the receipt and measurement of all gas purchased hereunder. The parties shall cooperate to ensure that nominations are timely made to the respective party's transporter and that actual deliveries and receipts comply with such transporters' FERC Gas Tariffs and other operational procedures, if any.

11.2 Each party shall immediately notify the other party of any notice received from its transporter that indicates the existence of any imbalance or other circumstances which may give rise to a penalty in connection with gas deliveries hereunder. The parties agree to cooperate in taking such action as may be necessary to ensure that penalties are avoided or minimized as much as possible.

11.3 Buyer shall be liable for and remit payment to Seller within ten (10) days of presentation of invoice, for any scheduling, imbalance, limitation or other transportation related penalties, cashout costs, fees, forfeitures or charges imposed by Seller's transporter pursuant to its FERC Gas Tariff as a result of Buyer's actions or omissions to act, including Buyer's failure to accept and receive the quantities of gas nominated by Buyer and delivered by Seller hereunder.

Seller shall be liable for and remit payment to Buyer within ten (10) days of presentation of invoice, for any scheduling, imbalance, limitation or other transportation related penalties, cashout costs, fees, forfeitures or charges calculated by Buyer (in the same manner as Buyer's transporter pursuant to its FERC Gas Tariff) and attributable to Seller's actions or omissions to act, including Seller's failure to deliver the quantities of gas nominated by Buyer hereunder.



**ARTICLE XII**  
**(Liability)**

12.1 As between the parties hereto, Buyer and Seller shall be responsible for the installation, operation and maintenance of their respective facilities, and each party agrees to indemnify and hold harmless the other party from and against any and all claims, demands, actions, suits, costs, damages, expenses, compensation, or liabilities of every kind or character, at law or in equity, for or on account of damage or destruction of property or injury or death of persons, resulting from or arising out of, or in connection with the installation, operation, or maintenance of said facilities and equipment.

12.2 Notwithstanding anything to the contrary contained herein, in no event shall either party be liable or otherwise responsible to the other party for any consequential, incidental or punitive damages, or for lost profits, arising out of or relating to any action in contract or in tort, at law or in equity, based upon transactions pursuant to this Agreement, or the performance or breach thereof, or associated activities of either party.

**ARTICLE XIII**  
**(Warranty of Title and Indemnification)**

13.1 Seller warrants the title to all gas delivered hereunder and warrants that it has authority to enter into this Agreement on behalf of itself and other interest owners, if any, and that it has the right to commit the sale of gas as contemplated hereunder and to sell such gas in interstate commerce. Seller further represents and warrants that it will pay and satisfy, or make provision for the payment and satisfaction of, any and all claims of every nature whatsoever in, to or in respect of the title of gas delivered hereunder or in, to, or in respect of the proceeds of sale; and Seller hereby agrees to defend at its cost, and when notified by Buyer to indemnify Buyer against, all suits, judgments, claims, demands, causes of action, costs, damages, interest and expenses (including, but not limited to attorney's fees) arising out of or in any way connected with any claims to the gas delivered hereunder or to the proceeds of sale.

13.2 Seller shall pay or cause to be paid any and all payments to or for the benefit of owners having or claiming any interest in the gas delivered hereunder or the proceeds of sale (including but not limited to owners of royalty or subsequently created interests). In no event shall Buyer be required to pay to any other party other than Seller any proceeds due Seller under this Agreement.

13.3 Seller agrees to defend at its cost and when notified by Buyer to indemnify Buyer from all suits, judgments, claims, demands, causes of action, costs, damages, interest expense (including but not limited to interest on suspended or unpaid proceeds) and other expenses (including but not limited to attorney's fees) arising out of or in any way connected with any claim relating to the payment of royalty, or to severance taxes or other taxes due or levied on the production of gas prior to the delivery point.

**ARTICLE XIV**  
**(Force Majeure)**

14.1 In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, it is agreed that the obligations of such party, so far as they are affected by such force majeure, shall be suspended during the continuation of any inability so caused but for no longer period; and such cause shall as far as possible be remedied with all reasonable dispatch, provided, however, that no party hereto shall be required against its will to adjust any labor dispute. It is agreed that such party shall give notice and full particulars of such force majeure event in writing, telecopied to the other party as soon as reasonably possible after the occurrence of such event.

14.2 The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such terms shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way grants, permits, permissions, licenses, materials or supplies which are required to enable such party to fulfill its obligations hereunder. Notwithstanding anything to the contrary contained herein, force majeure shall also include interruption or cessation of deliveries of gas by third parties to Seller resulting solely from equipment failure or mechanical difficulties.

14.3 Notwithstanding the above Section 14.2, the term "force majeure" specifically excludes the failure of specific individual wells or appurtenant facilities in the absence of a force majeure event which affects a majority of other wells in the same geographic area.

**ARTICLE XV**  
**(Arbitration)**

---

15.1 Upon failure to agree upon designation of tax responsibility pursuant to Section 5.4, or in the event of a dispute between the parties regarding the terms and conditions of this Agreement, each party shall have the right to initiate Arbitration by giving written Notice of Arbitration to the other. On or before fifteen (15) days after such Notice of Arbitration initiating arbitration, each party shall submit to the other its proposed redetermined price mechanism or substitute index, accompanied by any supporting documentation, which shall be limited to thirty (30) typewritten pages.

15.2 On or before the fifth (5th) day after each party offers its proposal under Section 15.1 above, such party must name its choice of an arbitrator. Within ten days thereafter, the two arbitrators so chosen shall name a third arbitrator. If any of the three arbitrators has not been named within the appointed time, then either Seller or Buyer may apply to the American Arbitration Association for appointment of the arbitrator(s) necessary to complete the panel within ten days. All

arbitrators shall be individuals (1) who are not and never have been officers, directors or employees of Seller, Buyer and/or any affiliates of Seller or Buyer, and (2) who are not officers, directors or employees of any supplier or purchaser of Seller or Buyer, and who are qualified by education, knowledge and experience to determine the matters submitted to them. Seller and Buyer shall each pay the compensation and expenses of the arbitrators named by or for it, and both shall share equally the compensation and expenses of the third arbitrator. Within forty-five (45) days following the date that a three person panel is established, the three arbitrators shall evaluate the proposals of Buyer and Seller and select the most reasonable proposal to be effective for the remaining term hereof; provided, however, that such proposal must be either the proposal presented by Buyer or the proposal presented by Seller. The arbitrators shall be empowered to convene a hearing not to exceed three (3) days in length at which the arbitrators shall be permitted to question Buyer and Seller regarding their respective proposals or, in lieu of such hearing, to submit written questions to Buyer and Seller. The decision of the arbitrators with regard to selection of a proposal shall be based upon natural gas market considerations, including without limitation, the prevailing market price of gas at the time a price redetermination is requested and the general availability of natural gas, the terms of sale such as length of service and quantity, and the types of price mechanisms used by gas users to determine the market price of gas.

The decision of the arbitration panel, or a majority thereof shall be final and binding on the parties as to the matters submitted for arbitration and the price mechanism or substitute index selected by the arbitrators shall become effective on the first day of the month following the month during which the arbitration decision is given.

#### ARTICLE XVI (Billing and Payment)

16.1 At the close of each month, Seller shall obtain from the party who owns and/or operates the measurement facilities necessary information concerning the aggregate quantities delivered at each point of delivery and that portion of the quantities allocable to Buyer based on the nominations by Buyer, or deliveries if less than the nominations, for gas at such point. Seller shall furnish Buyer a copy of such information on or before the sixth (6th) business day of each month. On or before the tenth (10th) business day of each month, Seller shall furnish to Buyer a statement (in a form acceptable to Buyer and Seller) setting forth the quantities of gas delivered to Buyer at each point of delivery under this agreement during the preceding month. Buyer shall be entitled to rely on Seller's statements and payment based on such statements shall constitute a complete defense with respect to any claim by Seller with respect to payments for the quantities delivered to Buyer. On or before the twenty-fifth (25th) day of each calendar month or within ten (10) days after receipt by Buyer of a statement from Seller, whichever is the later, Buyer shall make payment of the amount due for gas delivered during the preceding calendar month; provided, however, that in the event the total quantity delivered for a month exceeds the total quantity nominated for the month, the price paid shall be the Contract Price for the quantity nominated and the cashout price per Section 11.3 for the difference between the nominated quantity and the delivered quantity.

16.2 Should either party fail to pay an amount when due, interest thereon shall accrue at an annual rate of interest equal to the lesser of (i) one percent (1%) above the prime interest rate set by the Chase Manhattan Bank (NA), or (ii) the maximum rate allowed by the applicable law, from the



date when due until paid. The provisions herein for accrual of interest, however, shall not apply if such party's failure to pay is the result of a bona fide dispute, provided that such party has, within the period provided for payment, notified the other party of the existence of and basis for such dispute and has paid all amounts under the Agreement not in dispute. Further, Buyer may, upon notice that a dispute exists with regard to ownership of the gas offered for purchase hereunder, in its sole discretion, suspend payment without accrual of interest until such time as said dispute is resolved.

16.3 Each party shall have the right at reasonable hours to examine the charts, if any, measurement data, books and records of the other party to the extent necessary to verify the accuracy of any statements, charge or computation hereunder. If such examination reveals an error or inaccuracy, the necessary adjustment shall be promptly made; provided, however that all such statements, charges and computations shall be deemed correct unless objected to within two (2) years after the date of such statements, charges, and computations.

16.4 Notwithstanding anything to the contrary contained herein, the parties to this Agreement recognize that there may be mutual obligations between the parties arising from this Agreement and from independent agreements that the parties may enter into from time to time. In addition to the rights of recoupment and setoff (offset) existing at law and equity, the parties hereto expressly agree and provide that the rights of recoupment and setoff (offset) are, by the terms of this Agreement, available to each party hereto.

ARTICLE XVII  
( Remedies)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE XVIII**  
**(Financial Responsibility)**

18.1 Should the creditworthiness or financial responsibility of either party become unsatisfactory to the other party at any time during which this Agreement is in effect, satisfactory security may be required before further deliveries are made. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment or performance of any obligation to the other party under this Agreement; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); (v) be unable to pay its debts as they fall due; or (vi) fail to give adequate security for or assurance of its ability to perform its further obligations under this Agreement within seventy-two (72) hours of a reasonable request by the other party, then the other party shall, upon written notice, have the right to withhold or suspend deliveries or receipts or terminate this Agreement upon three (3) days from the date of such notice, or the beginning of the next month, whichever is earlier, in addition to any and all other remedies available hereunder or pursuant to law.

---

[REDACTED]

**ARTICLE XIX**  
**(Miscellaneous)**

19.1 This Agreement shall be subject to all present and future applicable laws, rules, orders and regulations of any federal, state, or local governmental authority having jurisdiction over the parties, their facilities, or the transactions contemplated. If at any time, any such governmental authority shall take any action as to any party whereby the delivery, receipt, or use of gas, as contemplated under this Agreement, shall be subjected to terms, conditions or restraints that in the sole judgment of the party affected are unduly burdensome or unacceptable, such party, upon written notice to the other party, may cancel and terminate this Agreement effective one day prior to the effective date of such governmental action or, alternatively, may suggest amended terms and conditions under which it would be willing to perform under this Agreement.

19.2 No waiver by either party of any default of the other party under this Agreement shall operate as a waiver of any future default, whether of like or different character or nature.

19.3 The headings throughout this Agreement are inserted for reference purposes only and shall not be construed or considered in interpreting the terms and provisions of any Article.

19.4 **THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA (INCLUDING, WITHOUT LIMITATION, THE ALABAMA UNIFORM COMMERCIAL CODE), EXCLUDING CONFLICTS OF LAW PRINCIPLES WHICH WOULD REFER TO THE LAWS OF ANOTHER JURISDICTION.**

19.5 Any notice, request, demand or statement provided for in this Agreement shall be in writing and deemed given when delivered by hand, telecopy, overnight courier or deposited in the U.S. mail postage prepaid directed to the following post office address:

**Seller:**

**Notices and Payment:**

[REDACTED]

**Buyer:**

**Billing:**

[REDACTED]

[REDACTED]

**Notices:**

**(Mail)**

[REDACTED]

**(Physical Delivery)**

[REDACTED]

or at such other address as either party may, from time to time, designate; provided, however, any nomination or other dispatching notice of the quantities of gas to be delivered and purchased hereunder may be given in writing or by telephone if confirmed in writing within twenty four (24) hours.

19.6 The terms and conditions of this Agreement shall remain confidential and neither party shall disclose such terms and conditions to any third party absent the express written permission of the other party except where necessary to comply with regulatory reporting requirements.

19.7 This Agreement constitutes the entire agreement between Buyer and Seller with respect to the sale, delivery, and purchase of natural gas provided for herein, and supersedes all prior negotiations, representations, understandings, or agreements, whether oral or written, and no modification, alteration, amendment, construction, or interpretation of this Agreement shall be binding upon either party unless reduced to writing and executed by each party.

19.8 This Agreement shall not be construed to create any third party beneficiary relationship in favor of anyone not a party to this Agreement. In addition, the Parties waive and disclaim any third party beneficiary status as to any of the contracts of the other party.

19.9 This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective representatives, successors, and assigns; provided, however, that this Agreement may not be assigned in whole or in part, or subjected to an indirect transfer or transfer by operation of law, by either party without the prior written consent of the other party, which shall not be unreasonably withheld.

19.10 All computations related to prices and indices performed under this Agreement shall be rounded to four significant decimal places (\$0.0000).

19.11 Exhibit A attached hereto constitutes part of this Agreement.

[REDACTED]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate originals as of the date hereinabove first written.

Buyer:

[Redacted signature]

Witnesses:

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

[Redacted signature]

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

Its: \_\_\_\_\_

[Redacted signature]

[Redacted signature]

Witnesses:

[Redacted signature]  
\_\_\_\_\_

[Redacted signature]  
\_\_\_\_\_

Seller:

[Redacted signature]

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

Its: \_\_\_\_\_

[Redacted signature]  
\_\_\_\_\_

---

[Redacted signature]

**EXHIBIT A**  
**to the**  
**GAS PURCHASE AGREEMENT**

**between**

[REDACTED]

**and**

[REDACTED]

**dated**

**APRIL 1, 1995**

Point of Delivery:

[REDACTED]

---

[REDACTED]

**GAS PURCHASE AGREEMENT ©**

THIS AGREEMENT, made and entered into as of the first day of April, 1995 by and between [REDACTED] (hereinafter referred to as "Buyer") and [REDACTED] (hereinafter referred to as "Seller").

**WITNESSETH:**

WHEREAS, Buyer desires to purchase supplies of natural gas for resale to Peoples Gas System, Inc.; and

WHEREAS, Seller has supplies of gas available for sale and delivery to Buyer; and

WHEREAS, Buyer has obtained transportation services from Southern Natural Gas Company ("Southern") for the transportation of the gas to be sold and purchased hereunder; and

WHEREAS, Buyer and Seller desire to enter into an agreement providing for the sale and purchase of gas on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, Buyer and Seller hereby agree as follows:

**ARTICLE I  
(Recitals)**

1.1 The above recitals are true and correct, and are adopted herein as if restated in their entirety.

---

**ARTICLE II  
(Definitions)**

2.1 Unless the context requires another meaning, the following terms shall have the meanings hereinbelow set forth under this Agreement:

- a. "Btu" - A British thermal unit measured at an absolute pressure of 14.73 psia at 60F. on a dry basis.

[REDACTED]

- b. "business day" - A day commencing on Monday through Friday of any week of the year, excluding holidays recognized by either party's transporters.
- c. "cubic foot" - The amount of gas necessary to fill a cubic foot of space when the gas is at a temperature of 60F. and a pressure of 14.73 pounds per square inch absolute.
- d. "day" - A period commencing at 7:00 a.m. Central Time and extending until 7:00 a.m. Central Time on the following day or any other twenty-four hour period mutually agreeable to the parties. The date of a day shall be that of its beginning.
- e. "FERC Gas Tariff" - A compilation by an interstate pipeline company of all its effective rate schedules and forms of service agreement as required by the Federal Energy Regulatory Commission ("FERC") pursuant to Part 154 of FERC's Rules and Regulations promulgated pursuant to the Natural Gas Act.
- f. "gas" - Natural gas consisting primarily of methane and conforming to the quality specifications as provided for in this Agreement.
- g. "MMBtu" - One million (1,000,000) British thermal units.
- h. "month" - A period of time commencing at 7:00 a.m. on the first day of a calendar month and ending at 7:00 a.m. on the first day of the next calendar month.

**ARTICLE III**  
**(Quantity and Nominations)**

3.1 Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and deliver, and Buyer agrees to purchase and receive [REDACTED] MMBtu per day (the "Maximum Daily Quantity" or "MDQ").

3.2 Not less than two business days prior to the day on which Southern requires nominations for the first day of the month, Buyer shall nominate to Seller the quantity of gas it requires during each day of such month to be transported during the month (the "Daily Nominated Quantity" or "DNQ"); provided, however, Buyer may, upon notice of not less than one (1) business day, reduce the DNQ for any day during any month, not to exceed ten (10) days in any calendar year; provided further however, that Buyer must provide Seller with notice not less than two business days prior to the beginning of a month during which such a reduction may occur. Such notice shall include the day(s) of the month on which such a reduction may occur as well as the amount of the reduction. Thereafter Buyer shall nominate to Southern the daily quantity to be transported during the month. Seller shall advise Buyer of any variations in [REDACTED]



production during the month so that Buyer may adjust its transportation nomination as necessary. All such nominations may be in writing or by telephone confirmed in writing within twenty-four (24) hours.

3.3 Seller and Buyer agree to deliver and receive gas at an approximately constant rate of flow. It is the intent of the parties hereto that the actual quantity delivered and received each day shall equal the DNQ. Buyer and Seller recognize, however, the inherent inaccuracies in the measurement and allocation of gas. Such inaccuracies may at times occur through no fault of Buyer or Seller, and may result in failure to deliver or receive the DNQ. Buyer and Seller agree that to the extent they learn of such inaccuracies after the period of deliveries, any under or over balance will be corrected as soon as practicable.

3.4 In the event Seller delivers, during any month of the term hereof, a quantity which is more than or less than Buyer's nomination, and such overdelivery or underdelivery is not cashed out pursuant to the terms of Buyer's transporter's tariff and the provisions of Article XI, or Buyer made whole by Article XVII hereof, Buyer may, in its sole discretion, elect to purchase, and Seller shall sell, an amount of gas equal to the difference between the quantity of gas nominated for such month and the quantity delivered during such month at the lesser of (i) the price payable during the month in which the over- or under- delivery occurred, or (ii) the price payable during the first month in which Buyer's transporter permits correction of such overdelivery or underdelivery; provided however, that Buyer may, but shall not, in any event, be required to purchase any quantity of gas delivered in excess of its nominations for said month.

#### ARTICLE IV (Point(s) of Delivery)

4.1 The point(s) of delivery for the sale and purchase of gas under this Agreement shall be at the point(s) set forth and described on Exhibit A. As between the parties hereto, Seller shall be in exclusive control and possession of the gas until the gas has been made available at each point of delivery and when the gas is in the custody of Seller or the operator of a processing plant for processing or other purposes, and Buyer shall be in exclusive control and possession of the gas after it has been made available at each point of delivery. The party deemed to be in exclusive control and possession of the gas shall be responsible for any and all losses, damages, injuries, claims and liabilities arising from or while the gas is deemed to be in its control and possession. The exact point at which delivery shall be deemed to be made and title shall be deemed to have passed shall be at the inlet flange or weld of Buyer's (or its designee's) facilities at each point of delivery.

ARTICLE V  
(Price)

5.1

5.2

5.3 All prices provided for under this agreement shall be the total amount payable by Buyer and shall specifically be inclusive of any and all taxes, allowances, royalties and reimbursements. Seller shall pay or cause to be paid any royalty payments, severance or other taxes due or levied on the production, processing and/or transportation of the gas prior to the delivery point. In the event state law requires Buyer hereunder to remit such taxes to the state, Buyer shall remit any such taxes due or assessed to the appropriate taxing authority. Buyer shall be authorized to deduct the amount of all such remittances from the proceeds due to Seller. Seller shall promptly reimburse Buyer for any such taxes remitted by Buyer but not so deducted.

5.4 In the event during the term of this Agreement a federal energy tax and/or Btu tax is proposed to be applicable to gas sold and purchased hereunder, on or before thirty (30) days prior to the effective date of such proposed federal tax, either party may, in its sole discretion, request the renegotiation of any price(s) payable hereunder and/or an amendment of the above Section 5.3. The parties shall promptly, acting reasonably and in good faith, enter into negotiations to determine a new price(s) and/or the party to be responsible for such tax. If the parties are unable to reach an agreement on such price(s) or tax responsibility, either party may initiate arbitration for resolution of the issue pursuant to Article XV below.

ARTICLE VI  
(Term)

6.1 This Agreement shall become effective on the date hereinabove first written, and subject to the provisions of this Agreement, shall remain in full force and effect for a primary term of three (3) years.

6.2 Any termination of this Agreement as provided herein shall not relieve Buyer's obligation to pay for gas purchased hereunder prior to the effective date of such termination or either party's obligation to pay any other amounts due hereunder.

**ARTICLE VII  
(Measurement)**

7.1 The gas sold hereunder shall be measured in accordance with commonly used and accepted industry standards and procedures through the measurement facilities of Southern.

**ARTICLE VIII  
(Quality)**

8.1 All gas delivered by Seller shall be merchantable and shall upon delivery conform to the quality specifications and heating value specified in Southern's FERC Gas Tariff. The specifications and heating value of the gas shall be determined by a standard method in use in the natural gas pipeline industry. Buyer shall have the right to refuse to accept at a point of delivery any gas which fails to conform to the quality specifications and heating value set forth above.

**ARTICLE IX  
(Pressure)**

9.1 Seller shall deliver gas hereunder at the pressures required by Southern.

**ARTICLE X  
(Processing)**

10.1 Seller shall have the right at its sole cost and expense to process or to permit processing of the gas hereunder for the extraction of liquefiable hydrocarbons and any other gas constituents prior to delivery or after delivery, on terms and conditions mutually agreeable to the parties or Seller and Buyer's transporter, provided that notwithstanding the fact that the quantity of gas delivered at the applicable delivery point shall be reduced by the plant volume reduction and fuel and losses associated with the processing of the gas stream, Seller shall deliver sufficient quantities of gas at the delivery point so that Buyer shall receive at the tailgate of the processing plant, the quantity of gas Buyer nominated and Seller confirmed for delivery, and that the gas after processing shall conform to the quality specifications and heating value requirements of this Agreement and that Seller shall bear any costs associated with the transportation of the liquefiable hydrocarbons to the point of processing.

**ARTICLE XI  
(Transportation)**

11.1 Seller shall make arrangements for all transportation services (and shall bear all costs and expenses thereof) required to effect the delivery of gas at the point(s) of delivery hereunder. Buyer shall make arrangements for all transportation services (and shall bear all costs and expenses thereof) required to effect the receipt and measurement of all gas purchased hereunder. The parties shall cooperate to ensure that nominations are timely made to the respective party's transporter and that actual deliveries and receipts comply with such transporters' FERC Gas Tariffs and other operational procedures, if any.

11.2 Each party shall immediately notify the other party of any notice received from its transporter that indicates the existence of any imbalance or other circumstances which may give rise to a penalty in connection with gas deliveries hereunder. The parties agree to cooperate in taking such action as may be necessary to ensure that penalties are avoided or minimized as much as possible.

11.3 Buyer shall be liable for and remit payment to Seller within ten (10) days of presentation of invoice, for any scheduling, imbalance, limitation or other transportation related penalties, cashout costs, fees, forfeitures or charges imposed by Seller's transporter pursuant to its FERC Gas Tariff as a result of Buyer's actions or omissions to act, including Buyer's failure to accept and receive the quantities of gas nominated by Buyer and delivered by Seller hereunder.

Seller shall be liable for and remit payment to Buyer within ten (10) days of presentation of invoice, for any scheduling, imbalance, limitation or other transportation related penalties, cashout costs, fees, forfeitures or charges calculated by Buyer (in the same manner as Buyer's transporter pursuant to its FERC Gas Tariff) and attributable to Seller's actions or omissions to act, including Seller's failure to deliver the quantities of gas nominated by Buyer hereunder.

## ARTICLE XII (Liability)

12.1 As between the parties hereto, Buyer and Seller shall be responsible for the installation, operation and maintenance of their respective facilities, and each party agrees to indemnify and hold harmless the other party from and against any and all claims, demands, actions, suits, costs, damages, expenses, compensation, or liabilities of every kind or character, at law or in equity, for or on account of damage or destruction of property or injury or death of persons, resulting from or arising out of, or in connection with the installation, operation, or maintenance of said facilities and equipment.

12.2 Notwithstanding anything to the contrary contained herein, in no event shall either party be liable or otherwise responsible to the other party for any consequential, incidental or punitive damages, or for lost profits, arising out of or relating to any action in contract or in tort, at law or in equity, based upon transactions pursuant to this Agreement, or the performance or breach thereof, or associated activities of either party.

**ARTICLE XIII**  
**(Warranty of Title and Indemnification)**

13.1 Seller warrants the title to all gas delivered hereunder and warrants that it has authority to enter into this Agreement on behalf of itself and other interest owners, if any, and that it has the right to commit the sale of gas as contemplated hereunder and to sell such gas in interstate commerce. Seller further represents and warrants that it will pay and satisfy, or make provision for the payment and satisfaction of, any and all claims of every nature whatsoever in, to or in respect of the title of gas delivered hereunder or in, to, or in respect of the proceeds of sale; and Seller hereby agrees to defend at its cost, and when notified by Buyer to indemnify Buyer against, all suits, judgments, claims, demands, causes of action, costs, damages, interest and expenses (including, but not limited to attorney's fees) arising out of or in any way connected with any claims to the gas delivered hereunder or to the proceeds of sale.

13.2 Seller shall pay or cause to be paid any and all payments to or for the benefit of owners having or claiming any interest in the gas delivered hereunder or the proceeds of sale (including but not limited to owners of royalty or subsequently created interests). In no event shall Buyer be required to pay to any other party other than Seller any proceeds due Seller under this Agreement.

13.3 Seller agrees to defend at its cost and when notified by Buyer to indemnify Buyer from all suits, judgments, claims, demands, causes of action, costs, damages, interest expense (including but not limited to interest on suspended or unpaid proceeds) and other expenses (including but not limited to attorney's fees) arising out of or in any way connected with any claim relating to the payment of royalty, or to severance taxes or other taxes due or levied on the production of gas prior to the delivery point.

**ARTICLE XIV**  
**(Force Majeure)**

14.1 In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, it is agreed that the obligations of such party, so far as they are affected by such force majeure, shall be suspended during the continuation of any inability so caused but for no longer period; and such cause shall as far as possible be remedied with all reasonable dispatch, provided, however, that no party hereto shall be required against its will to adjust any labor dispute. It is agreed that such party shall give notice and full particulars of such force majeure event in writing, telecopied to the other party as soon as reasonably possible after the occurrence of such event.

14.2 The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for maintenance of or making repairs or alterations to machinery or

lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such terms shall likewise include the inability of either party to acquire, or delays on the part of such party in acquiring at reasonable cost and by the exercise of reasonable diligence, servitudes, rights of way grants, permits, permissions, licenses, materials or supplies which are required to enable such party to fulfill its obligations hereunder. Notwithstanding anything to the contrary contained herein, force majeure shall also include interruption or cessation of deliveries of gas by third parties to Seller resulting solely from equipment failure or mechanical difficulties.

14.3 Notwithstanding the above Section 14.2, the term "force majeure" specifically excludes the failure of specific individual wells or appurtenant facilities in the absence of a force majeure event which affects a majority of other wells in the same geographic area.

#### ARTICLE XV (Arbitration)

15.1 Upon failure to agree upon designation of tax responsibility pursuant to Section 5.4, or in the event of a dispute between the parties regarding the terms and conditions of this Agreement, each party shall have the right to initiate Arbitration by giving written Notice of Arbitration to the other. On or before fifteen (15) days after such Notice of Arbitration initiating arbitration, each party shall submit to the other its proposed redetermined price mechanism or substitute index, accompanied by any supporting documentation, which shall be limited to thirty (30) typewritten pages.

15.2 On or before the fifth (5th) day after each party offers its proposal under Section 15.1 above, such party must name its choice of an arbitrator. Within ten days thereafter, the two arbitrators so chosen shall name a third arbitrator. If any of the three arbitrators has not been named within the appointed time, then either Seller or Buyer may apply to the American Arbitration Association for appointment of the arbitrator(s) necessary to complete the panel within ten days. All arbitrators shall be individuals (1) who are not and never have been officers, directors or employees of Seller, Buyer and/or any affiliates of Seller or Buyer, and (2) who are not officers, directors or employees of any supplier or purchaser of Seller or Buyer, and who are qualified by education, knowledge and experience to determine the matters submitted to them. Seller and Buyer shall each pay the compensation and expenses of the arbitrators named by or for it, and both shall share equally the compensation and expenses of the third arbitrator. Within forty-five (45) days following the date that a three person panel is established, the three arbitrators shall evaluate the proposals of Buyer and Seller and select the most reasonable proposal to be effective for the remaining term hereof; provided, however, that such proposal must be either the proposal presented by Buyer or the proposal presented by Seller. The arbitrators shall be empowered to convene a hearing not to exceed three (3) days in length at which the arbitrators shall be permitted to question Buyer and Seller regarding their respective proposals or, in lieu of such hearing, to submit written questions to Buyer and Seller. The decision of the arbitrators with regard to selection of a proposal shall be based upon natural gas market considerations, including without limitation, the prevailing market price of gas at the time

a price redetermination is requested and the general availability of natural gas, the terms of sale such as length of service and quantity, and the types of price mechanisms used by gas users to determine the market price of gas.

The decision of the arbitration panel, or a majority thereof shall be final and binding on the parties as to the matters submitted for arbitration and the price mechanism or substitute index selected by the arbitrators shall become effective on the first day of the month following the month during which the arbitration decision is given.

#### ARTICLE XVI (Billing and Payment)

16.1 At the close of each month, Seller shall obtain from the party who owns and/or operates the measurement facilities necessary information concerning the aggregate quantities delivered at each point of delivery and that portion of the quantities allocable to Buyer based on the nominations by Buyer, or deliveries if less than the nominations, for gas at such point. Seller shall furnish Buyer a copy of such information on or before the sixth (6th) business day of each month. On or before the tenth (10th) business day of each month, Seller shall furnish to Buyer a statement (in a form acceptable to Buyer and Seller) setting forth the quantities of gas delivered to Buyer at each point of delivery under this agreement during the preceding month. Buyer shall be entitled to rely on Seller's statements and payment based on such statements shall constitute a complete defense with respect to any claim by Seller with respect to payments for the quantities delivered to Buyer. On or before the twenty-fifth (25th) day of each calendar month or within ten (10) days after receipt by Buyer of a statement from Seller, whichever is the later, Buyer shall make payment of the amount due for gas delivered during the preceding calendar month; provided, however, that in the event the total quantity delivered for a month exceeds the total quantity nominated for the month, the price paid shall be the Contract Price for the quantity nominated and the cashout price per Section 11.3 for the difference between the nominated quantity and the delivered quantity.

16.2 Should either party fail to pay an amount when due, interest thereon shall accrue at an annual rate of interest equal to the lesser of (i) one percent (1%) above the prime interest rate set by the Chase Manhattan Bank (NA), or (ii) the maximum rate allowed by the applicable law, from the date when due until paid. The provisions herein for accrual of interest, however, shall not apply if such party's failure to pay is the result of a bona fide dispute, provided that such party has, within the period provided for payment, notified the other party of the existence of and basis for such dispute and has paid all amounts under the Agreement not in dispute. Further, Buyer may, upon notice that a dispute exists with regard to ownership of the gas offered for purchase hereunder, in its sole discretion, suspend payment without accrual of interest until such time as said dispute is resolved.

16.3 Each party shall have the right at reasonable hours to examine the charts, if any, measurement data, books and records of the other party to the extent necessary to verify the accuracy of any statements, charge or computation hereunder. If such examination reveals an error or inaccuracy, the necessary adjustment shall be promptly made; provided, however that all

such statements, charges and computations shall be deemed correct unless objected to within two (2) years after the date of such statements, charges, and computations.

16.4 Notwithstanding anything to the contrary contained herein, the parties to this Agreement recognize that there may be mutual obligations between the parties arising from this Agreement and from independent agreements that the parties may enter into from time to time. In addition to the rights of recoupment and setoff (offset) existing at law and equity, the parties hereto expressly agree and provide that the rights of recoupment and setoff (offset) are, by the terms of this Agreement, available to each party hereto.

ARTICLE XVII  
( Remedies)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





**ARTICLE XVIII**  
**(Financial Responsibility)**

18.1 Should the creditworthiness or financial responsibility of either party become unsatisfactory to the other party at any time during which this Agreement is in effect, satisfactory security may be required before further deliveries are made. In the event either party shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment or performance of any obligation to the other party under this Agreement; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); (v) be unable to pay its debts as they fall due; or (vi) fail to give adequate security for or assurance of its ability to perform its further obligations under this Agreement within seventy-two (72) hours of a reasonable request by the other party, then the other party shall, upon written notice, have the right to withhold or suspend deliveries or receipts or terminate this Agreement upon three (3) days from the date of such notice, or the beginning of the next month, whichever is earlier, in addition to any and all other remedies available hereunder or pursuant to law.

**ARTICLE XIX**  
**(Miscellaneous)**

19.1 This Agreement shall be subject to all present and future applicable laws, rules, orders and regulations of any federal, state, or local governmental authority having jurisdiction over the parties, their facilities, or the transactions contemplated. If at any time, any such governmental authority shall take any action as to any party whereby the delivery, receipt, or use of gas, as contemplated under this Agreement, shall be subjected to terms, conditions or restraints that in the sole judgment of the party affected are unduly burdensome or unacceptable, such party, upon written notice to the other party, may cancel and terminate this Agreement effective one day prior to the effective date of such governmental action or, alternatively, may suggest amended terms and conditions under which it would be willing to perform under this Agreement.

19.2 No waiver by either party of any default of the other party under this Agreement shall operate as a waiver of any future default, whether of like or different character or nature.

19.3 The headings throughout this Agreement are inserted for reference purposes only and shall not be construed or considered in interpreting the terms and provisions of any Article.



19.4 THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA (INCLUDING, WITHOUT LIMITATION, THE ALABAMA UNIFORM COMMERCIAL CODE), EXCLUDING CONFLICTS OF LAW PRINCIPLES WHICH WOULD REFER TO THE LAWS OF ANOTHER JURISDICTION.

19.5 Any notice, request, demand or statement provided for in this Agreement shall be in writing and deemed given when delivered by hand, telecopy, overnight courier or deposited in the U.S. mail postage prepaid directed to the following post office address:

**Seller:**

**Notices:**

[REDACTED]

**Payment:**

[REDACTED]

**Buyer:**

**Billing:**

[REDACTED]

**Notices:**

**(Mail)**

[REDACTED]

[REDACTED]

(Physical Delivery)



or at such other address as either party may, from time to time, designate; provided, however, any nomination or other dispatching notice of the quantities of gas to be delivered and purchased hereunder may be given in writing or by telephone if confirmed in writing within twenty four (24) hours.

19.6 The terms and conditions of this Agreement shall remain confidential and neither party shall disclose such terms and conditions to any third party absent the express written permission of the other party except where necessary to comply with regulatory reporting requirements.

19.7 This Agreement constitutes the entire agreement between Buyer and Seller with respect to the sale, delivery, and purchase of natural gas provided for herein, and supersedes all prior negotiations, representations, understandings, or agreements, whether oral or written, and no modification, alteration, amendment, construction, or interpretation of this Agreement shall be binding upon either party unless reduced to writing and executed by each party.

19.8 This Agreement shall not be construed to create any third party beneficiary relationship in favor of anyone not a party to this Agreement. In addition, the Parties waive and disclaim any third party beneficiary status as to any of the contracts of the other party.

19.9 This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective representatives, successors, and assigns; provided, however, that this Agreement may not be assigned in whole or in part, or subjected to an indirect transfer or transfer by operation of law, by either party without the prior written consent of the other party, which shall not be unreasonably withheld.

19.10 All computations related to prices and indices performed under this Agreement shall be rounded to four significant decimal places (\$0.0000).

19.11 Exhibit A attached hereto constitutes part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate originals as of the date hereinabove first written.

Buyer:

[Redacted signature]

Witnesses:

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

[Redacted signature]

By: [Redacted signature]

Its: [Redacted signature]

[Redacted signature]

Witnesses:

[Redacted signature]  
[Redacted signature]

[Redacted signature]  
[Redacted signature]

Seller:

Witnesses:

[Redacted signature]  
\_\_\_\_\_

[Redacted signature]  
By: [Redacted signature]  
Its: [Redacted signature]

---

[Redacted signature]

**EXHIBIT A**  
**to the**  
**GAS PURCHASE AGREEMENT**  
**between**

[REDACTED]

**and**

[REDACTED]

**dated**

**APRIL 1, 1995**

Point of Delivery:

[REDACTED]

---

[REDACTED]

DOCUMENT NO. 14

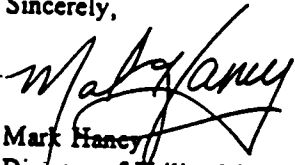


November 21, 1997

Confidential

PEOPLES GAS  
P.O. BOX 2562  
TAMPA, FL 33601-2562  
813 273 0074

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Hancy". The signature is stylized with a large, sweeping initial "M" and a cursive "Hancy".

Mark Hancy  
Director of Utility Marketing

August 1, 1997

**TERM SHEET** (A)

**SHIPPER:**

**CURRENT SERVICE:**

**PROPOSED SERVICE:**

**CURRENT APPLICABLE RATE:**

**PROPOSED RATE:**

**GAS SUPPLY:**

**INTERSTATE CAPACITY:**

**TOTAL DELIVERED RATE:**

**BALANCING:**

**COMMENCEMENT DATE:**

**TERMINATION DATE:**

**TELEMETRY, ETC.:**

**SPECIAL CONDITION:**

**FPSC FILING:**

*The foregoing term sheet was prepared based on Peoples' recollection of our discussions and subsequent telephone conversations. If it does not accurately reflect \_\_\_\_\_, understanding of the proposed arrangements, please contact Wraye Grimard.*





August 11, 1997

**TERM SHEET** ©

**SHIPPER:**

**CURRENT SERVICE:**

**PROPOSED SERVICE:**

**CURRENT APPLICABLE RATE:**

**PROPOSED RATE:**

**GAS SUPPLY:**

**INTERSTATE CAPACITY:**

**BALANCING:**

**COMMENCEMENT DATE:**

**TERMINATION DATE:**

**TELEMETRY, ETC.:**

**SPECIAL CONDITION:**

**CONFIDENTIALITY:**

**FPSC FILING:**

*The foregoing term sheet was prepared based on Peoples' recollection of our discussions and ~~subsequent telephone conversations~~. If it does not accurately reflect ~~Peoples'~~ understanding of the proposed arrangements, please contact Wraye Grimard.*

September 25, 1997

**TERM SHEET** (D)

**SHIPPER:**

**CURRENT SERVICE:**

**PROPOSED SERVICE:**

**CURRENT APPLICABLE RATE:**

**PROPOSED RATE:**

**GAS SUPPLY:**

**INTERSTATE CAPACITY:**

**TOTAL DELIVERED RATE:**

**BALANCING:**

**COMMENCEMENT DATE:**

**TERMINATION DATE:**

**TELEMETRY, ETC.:**

**SPECIAL CONDITION:**

**FPSC FILING:**

*The foregoing term sheet was prepared based on Peoples' recollection of our discussions and subsequent telephone conversations. If it does not accurately reflect ~~Peoples'~~ understanding of the proposed arrangements, please ~~contact~~ contact Wraye Grimard.*