

ORDINANCE NO. 2016-02

AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF VENICE, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA, as follows:

SECTION 1. The Whereas clauses above are ratified and confirmed as true and correct.

SECTION 2. Definitions. For the purposes of this Ordinance, the following terms shall have the meaning given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Venice, Sarasota County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and service lines, together with all tubes, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, structures and other appurtenances, as are used or useful in the sale, distribution, transportation or delivery of Natural Gas and as are situated within the corporate limits of the City.
- E. "Effective Date" shall mean the date this Franchise becomes effective as described in Section 20 below.

F. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 20 below.

G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.

H. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale of Gas.

I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity or municipally-owned utility.

J. "Natural Gas" or "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").

K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the City.

SECTION 3. Grant. The City hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all Rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 4. Term. Except as provided in Section 16, the Franchise hereby granted shall be for a period of thirty (30) years from the effective date of this ordinance.

SECTION 5. Assignment.

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

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

such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 6. City covenant. As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified, during the term of this Franchise Agreement.

SECTION 7. Use of streets. The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the Rights-of-way, it shall make application for a permit to the appropriate City authority. The City shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this agreement, the City shall not charge the Company any fees for the issuance of such permits. The Company shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should the Company fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

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

SECTION 8. Maintenance. All such components of the Distribution System of the Company located within the City shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission.

SECTION 9. Laying of pipes. All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in City permits.

SECTION 10. Construction work. The City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the City in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by

reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the City without claim for reimbursement. If the City shall require the Company to remove, relocate or disconnect any portion of its Distribution System or in any way to alter the placement or location of the Distribution System, to enable any other Person to use said Rights-of-way of the City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse the Company for any loss, cost or expense caused by or arising out of such removal, relocation, disconnection or alteration of any portion of the Distribution System. The Company further agrees that it will not intentionally change or injure any of the City's infrastructure, including, but not limited to, the City's potable water, reclaimed water, or sanitary sewer distribution systems, stormwater management system, signage, landscaping, sidewalk and roadways, unless the Company has received specific prior permission in writing from the City or its duly authorized representative. In the event that any of the City's infrastructure is changed or injured by the Company or a sub-contractor of the Company without authorization to do so from the City, the Company shall, with due diligence and dispatch, place such infrastructure in as good a condition as before such change or injury was made. Should the Company fail to restore or repair any such infrastructure within ten (10) days for its receipt of written notice from the City to do so, then the City may undertake such repairs and the Company shall reimburse the City for any loss, cost, or expense caused by or arising out of such repairs or restoration to the City's infrastructure.

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

SECTION 12. Identification of city residents. No less than thirty (30) days prior to the Effective Date, the City shall deliver to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customers are located within the City limits. The City shall also provide such information no less than thirty (30) days prior to the effectiveness of any change in said limits, whether

by addition, annexation or consolidation, or upon the Company's request. The Company shall be relieved of any obligation to pay franchise fees to the extent the City has failed to provide information in accordance with this Section 12.

SECTION 13. Accounts and records. The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the City are consistently declared separately from all other revenues, and such records shall be maintained within the state of Florida. Upon request by the City, or its designated representative, and execution of a confidentiality agreement reasonably satisfactory to the Company, the Company shall make available said records within thirty (30) days to the City for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

SECTION 14. Insurance.

A. During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies covering Company's activities within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$2,000,000 for injury or death to any one person, and in the minimum sum of \$5,000,000 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$2,000,000 for damage to property, resulting from any one accident, and include coverage for comprehensive, premises operations, explosion and collapse hazard, underground hazard, products completed operations hazard, contractual insurance, broad form property damage, and personal injury. The Company shall produce insurance certificates evidencing automobile liability coverage for owned, non-owned or rented vehicles, in the minimum sum of \$2,000,000 single limit liability for bodily injury or death, and \$2,000,000 for property damage; and evidencing workers' compensation in the minimum amount required by Florida statute. Company shall obtain a waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by the policies described above. The minimum sums for all of the above coverages shall remain in full force and shall be undiminished during the Term of this Franchise. The coverage requirements set forth in this Section 14 may be satisfied, in whole or in part, with self-insurance. The City shall be named as an additional insured on the foregoing policies (except for workers' compensation) for liability arising out of this Franchise. To offset the effects of inflation, the City may, at the five year anniversary of the Effective Date, request in writing that the Company adjust the coverage limitations contained in this Section 14 to reflect amounts typically provided in franchises by similarly situated natural gas utilities,

but not to exceed the percentage increase in the Consumer Price Index over the same period.

B. The Company may meet the policy requirements of this Section 14, in whole or in part, with self-insurance.

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

SECTION 15. Indemnification. In consideration of the permissions granted to the Company by this Franchise Agreement, the Company hereby agrees to indemnify and hold harmless the City, its officers, agents and employees from and against claims, suits, actions, and causes of action, to the extent caused by the Company's negligent operation of the Distribution System within the City during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; provided, however, that neither the Company nor any of its employees, agents, contractors, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the City, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

SECTION 16. Termination by city. Violation by the Company of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms and conditions, shall authorize and empower the City to declare a termination of this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City with respect thereto, and the Company shall have had a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the City, to effect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 17. Changes in provisions hereof. Changes in the terms and conditions hereof may be made by written agreement between the City and the Company.

SECTION 18. Severability; Change in law.

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

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

SECTION 19. Governing law. This Franchise shall be governed by the laws of the state of Florida and applicable federal law.

SECTION 20. Effective date. This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 23RD DAY OF FEBRUARY, 2016.

First Reading: February 9, 2016
Final Reading: February 23, 2016
Adoption: February 23, 2016

John W. Holic, Mayor

ATTEST:

Lori Stelzer, MMC, City Clerk

I, LORI STELZER, MMC, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of an Ordinance duly adopted by the Venice City Council, at a meeting thereof duly convened and held on the 23rd day of February 2016, a quorum being present.

WITNESS my hand and the official seal of said City this 23rd day of February, 2016.

Lori Stelzer, MMC, City Clerk

APPROVED AS TO FORM:

City Attorney

CERTIFICATE OF ACCEPTANCE

Grantee, Peoples Gas System, a division of Tampa Electric Company, accepts and agrees to be bound by all terms and conditions of this Franchise Agreement/Ordinance, this _____ day of _____, 2016.

By:_____

WITNESSES:
