

M E M O R A N D U M

Date: April 4, 2016

TO: Dave Bullock, Town Manager
FROM: Sue Smith, Finance Director
SUBJECT: Ordinance 2016-14, Peoples Gas System, A Division of Tampa Electric Company, Gas Franchise Agreement

The Town has received a request for renewal of a nonexclusive franchise agreement for use with the Town's rights of way to extend natural gas lines within the Town to serve residential and commercial customers.

In December 1985 the Town granted Southern Gas Company a thirty (30) year Franchise (Ordinance 85-17, attached) to provide exclusive gas service to the Town's residents. The rights were then obtained by Peoples Gas System from Southern Gas Company. In June 1997, Peoples Gas System (holding the gas franchise rights) and Tampa Electric Company (TECO) merged and obtained the franchise rights of the agreement. This Franchise Agreement expired on December 2, 2015.

For the past months, the Town Manager, assisted by the Town Attorney, have been discussing and negotiating with Peoples Gas System, a division of Tampa Electric Company, representatives to develop a new Franchise Agreement.

The proposed franchise agreement ordinance is for a term of 30 years and will allow TECO to install and or maintain the natural gas distribution system in exchange for a franchise fee equal to 6% of gross revenue from the sale of natural gas to customers within the Town limits. The Town's FY2015 revenue was \$35,761 with a 4% franchise fee rate. We expect the revenue to increase \$17,000 with a 6% rate.

The agreement allows for protection of the public right of way and all Town assets contained within, by requiring TECO to obtain construction permits and to restore the area to as good or better condition than before construction. Additional protection is provided through insurance and indemnification sections of the agreement.

Salient items of the proposed Franchise Agreement are:

- Term: Thirty (30) Years
- Franchise Fee: 6.0% (currently 4.0%)
- Estimated increase of \$17,000 in revenue per fiscal year
- Limits Peoples Gas System to provide only free of competition, retail gas service
- Limits Peoples Gas System to locate services only on public right of ways.
- Provides indemnification to the Town for Peoples Gas System's negligence or fault in FPL's construction or maintenance activities in the Town's public right of ways and reasonable attorney's fees in defending any such claims.

Proposed Ordinance 2016-14 was placed on the March 23, 2016 Regular Workshop Meeting for Town Commission consideration and forwarded to the April 4, 2016 Regular Meeting for first reading.

ORDINANCE NO. 2016-14

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

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

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

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

SECTION 1. DEFINITIONS

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

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

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

SECTION 2. GRANT

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

SECTION 3. TERM

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

SECTION 4. ASSIGNMENT

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

SECTION 5. TOWN COVENANT

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

SECTION 6. USE OF STREETS

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

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

SECTION 7. MAINTENANCE

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

SECTION 8. LAYING OF PIPE

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

SECTION 9. CONSTRUCTION WORK

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

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

SECTION 10. FRANCHISE FEE

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

SECTION 11. IDENTIFICATION OF TOWN RESIDENTS

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

SECTION 12. ACCOUNTS AND RECORDS

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

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

SECTION 13. INSURANCE

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

SECTION 14. INDEMNIFICATION

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

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

SECTION 15. TERMINATION BY TOWN

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

SECTION 16. CHANGES IN PROVISIONS HEREOF

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

SECTION 17. SEVERABILITY; CHANGE IN LAW

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

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

SECTION 18. GOVERNING LAW

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

SECTION 19. EFFECTIVE DATE

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

Passed on the first reading the _____ day of _____ 2016.

Adopted on the second reading and public hearing the ____ day of _____, 2016.

Jack G. Duncan, Mayor

ATTEST:

Trish Granger, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Maggie Mooney-Portale, Town Attorney

Accepted this _____ day of _____, 2016

PEOPLES GAS SYSTEM, A DIVISION OF
TAMPA ELECTRIC COMPANY

By: _____
Title: _____



November 16, 2015

Mr. David R. Bullock
Town Manager
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

Dear Mr. Bullock,

Attached is an official filing of a request from Peoples Gas System to the Town of Longboat Key, Florida for the renewal of a nonexclusive franchise agreement for the use of the Town's rights of way to extend natural gas lines within the Town to serve residential, commercial, and industrial customers.

The agreement that I am providing is Peoples Gas System's updated "standard agreement" that we use throughout the company's service areas within the state of Florida, and that contains provisions that we feel should be acceptable to the Town.

The current Ordinance No. 85-17, is an agreement with a term of 30 years that will expire on December 2, 2015. Of course, as I am sure you would expect, there have been a number of changes over that time period that in our view warrants the Town and PGS using the updated agreement that I have provided that will allow us to continue the outstanding working relationships that the Town and PGS have had and continue to have over all of those years.

I hope that this new agreement will meet with your approval; however, if there are questions or concerns, please do not hesitate to contact me at the following:

Leroy Sullivan, Jr.
Regional Manager
TECO Peoples Gas
1400 Channelside Drive
Tampa, FL 33605
Office: 813-275-3722
Cell: 813-299-1890
Fax: 813-275-3802
Email: lsullivan@tecoenergy.com

Respectfully,

A handwritten signature in black ink, appearing to read "Leroy Sullivan, Jr.", written over a horizontal line.

Leroy Sullivan, Jr.

Cc: Sue Smith



End of Agenda Item