



Deerfield Beach
Florida

Memorandum

TO: Burgess Hanson, City Manager
FROM: David Santucci, Assistant to the City Manager
DATE: August 23, 2016
RE: TECO Gas Franchise Agreement

The purpose of this memorandum is to request the City Commission's approval of the TECO Gas Franchise Agreement. TECO has previously held a franchise agreement with the City to operate gas lines throughout the City. The franchise agreement before you is for another thirty (30) year term, contains similar revenue terms as had previously, and modifies the previous terms and conditions to provide additional protections and limitations of liability for the City.

The attached agreement was negotiated extensively over a period of approximately six (6) months by the Office of the City Manager and the Office of the City Attorney.

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NATURAL GAS FRANCHISE AGREEMENT

ORDINANCE NO. _____

AN ORDINANCE REPEALING ORDINANCE NUMBER 1985/34 AND GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO CONSTRUCT, OPERATE AND MAINTAIN A GAS DISTRIBUTION SYSTEM WITHIN THE CITY AND TO USE THE PUBLIC RIGHTS OF WAY OF THE CITY OF DEERFIELD BEACH, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; AND PROVIDING AN EFFECTIVE DATE AND TERM OF THE FRANCHISE.

WHEREAS, the City Commission of the City of Deerfield Beach enacted ordinance Number 1985/34 granting a franchise to Peoples Gas System to construct, operate and maintain a gas utility system in the City for a period of thirty (30) years; and

WHEREAS, the City of Deerfield Beach desire to repeal Ordinance Number 1985/34 and Peoples Gas System and the City of Deerfield Beach desire to enter into a new franchise agreement for a period of thirty (30) years commencing from the date provided herein; and

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

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

SECTION 1: DEFINITIONS

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

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

delivery of Gas.

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

SECTION 2: GRANT

The City hereby repeals Ordinance Number 1985/34 and 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, and in accordance with generally recognized industry practices with respect to gas system facilities construction and maintenance, and with the orders, rules and regulations of the Florida Public Service Commission and any other regulatory body having jurisdiction over the Company.

SECTION 3: TERM

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

SECTION 4: ASSIGNMENT

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

SECTION 5: CITY COVENANT

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

SECTION 6: USE OF STREETS

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

This grant of authority is limited to Company and the provision of gas service. In the event Company desires to use its existing facilities, or construct new facilities, in order to provide other

services to existing or potential consumers or resellers, Company must obtain additional and separate permission from the City for such activities.

SECTION 7: MAINTENANCE

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

Company's gas system facilities shall be located or relocated and so constructed as to not unreasonably interfere with existing sewers, water pipes, electrical conduits, communications cables and other public utility service facilities.

The location or relocation of all gas system facilities shall be made after Company shall have received and paid for all applicable permits and approvals and permissions from City and such other governmental entities as may be necessary, and shall be subject to the approval of the City Engineer or such other representative of the City as may be designated by the City Manager, provided that the City shall not unreasonably interfere with the proper location or operation of Company's gas system facilities and services. In the event that Company is acting in its proprietary function as a retail provider of gas equipment, appliances, etc. Company shall obtain the appropriate building permits from the City's Building Division. Company shall cooperate with the City at all times by providing timely and complete construction documents, drawings and as-builds as may exist or be created from time to time.

The Company shall, within ten calendar (10) days after written notice from the City and at Company's own expense, commence to replace, repair and restore without delay any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil or dirt that may be damaged or

displaced by the Company in the conduct of its operations, and shall restore the same to a condition equivalent to the condition thereof immediately prior to the work and for changes made by the Company. Company shall diligently prosecute the work to completion and shall notify the City Engineer or other designated representative of the City, when repair, replacement or other work is being conducted and is completed.

Company shall take safety precautions to alert the public of such work, which may include, but is not limited to, barricades and signs. Upon failure of the Company or Company's contractor to: (a) place barricades or signs around the work area within twenty-four (24) hours; (b) take safety precautions to alert the public of such work within twenty-four (24) hours; or (c) repair, place and restore any sidewalk, street, alley, pavement, soil or dirt, etc., after twenty (20) days' notice in writing shall have been given to the Company by the City, or after ten (10) days' notice if the lack of repair or replacement, damage or displacement by Company results in a dangerous or hazardous condition as determined by the City Engineer or other representative of the City, the City may do either of the following at its discretion:

- A) Withhold the issuance of further permits to the Company or Company's contractor until the affected rights-of-way are repaired or restored in accordance with the City's standards; or
- B) The City may repair such portion of the sidewalk, street, or other rights-of-way that may have been disturbed or damaged by the Company or replace any excavation, and the cost to the City of same plus a sum equal to ten percent (10%) of said cost, to defray administrative and engineering costs, shall be reimbursed to the City by the Company. The gas system facilities of the Company shall not be set so as to obstruct or interfere with the public uses of said streets, roads, highways or alleys.

Should Company believe that it did not cause the damage or displacement to any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil or dirt, Company shall notify City in writing of such dispute within five (5) calendar days after the date of receipt of City's written notice. In such event, City shall promptly submit the dispute to a third party professional engineer selected by City for determination City and Company shall cooperate with the engineer and provide all information requested by the by the engineer. The engineer shall notify City and Company in writing of engineer's decision as to whether Company was responsible for the damage or displacement, and the determination of the engineer shall be final and binding upon the parties. The non- prevailing party to any such dispute shall be responsible for the payment of the engineer's fees and charges associated with its investigation, consideration and determination of the dispute, and should City have paid the engineer's fees and charges and is determined to be the prevailing party, Company shall promptly, but in no event later than thirty (30) days after receipt of an invoice from the City, reimburse City in full for all such fees and charges. Should engineer determine that Company caused the damage or displacement, Company shall commence the repair, replacement or restoration, as the case may be, within ten (10) calendar days from the date of the engineer's written determination, and diligently prosecute the work to completion. During the pendency of any dispute and after a determination thereof the Company and the City shall act in good faith to mitigate any potential damages.

SECTION 8: LAYING OF PIPE

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

SECTION 9: CONSTRUCTION WORK

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

said City unless it has received specific permission from the City or its duly authorized representative.

SECTION 10: FRANCHISE FEE

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

SECTION 11: IDENTIFICATION OF CITY RESIDENTS

The City shall provide 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 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. Where the City has added, annexed or consolidated a given adjoining area and not provided such information to the Company within the aforementioned thirty (30) days, Company shall be relieved of any obligation to pay the portion of franchise fees for the customers in the added, annexed or consolidated area for as long as Company has not been notified of such addition, annexation or consolidation.

SECTION 12: ACCOUNTS AND RECORDS

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

In the event that the audit of Grantee's books determines that Grantee made underpayment in any month, Grantee shall pay interest at the rate of twelve percent (12%) per annum on the amount underpaid or not paid calculated from the date the amount was due to the date it was finally paid.

SECTION 13: INSURANCE

During the term of this Franchise, the Company shall file with the City Clerk and shall keep in full force and effect at all times during the effective period hereof, insurance certificates evidencing a general liability insurance policy or policies or evidence of self-insurance within the corporate limits of the City, as they currently exist or may exist in the future. Each such policy shall be in the minimum sum of \$1,000,000.00 for injury or death to any one person, and in the minimum sum of \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one accident, and in the minimum sum of \$1,000,000.00 for damage to

property, resulting from any one accident, and each of the said minimum sums shall remain in full force and shall be undiminished during the effective period of this Ordinance. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance. Company shall notify the clerk of the City, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14: INDEMNIFICATION

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

this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

SECTION 15: TERMINATION BY CITY

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

SECTION 16: CHANGES IN PROVISIONS HEREOF

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

SECTION 17: SEVERABILITY; CHANGE IN LAW

- (A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.
- (B) Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the City or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 18: GOVERNING LAW

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

SECTION 19: PARITY

In the event the Grantee enters into a franchise agreement with another Florida governmental entity in Miami-Dade, Broward or Palm Beach County under which franchise fees are based upon a percentage of gross revenue that is higher than six percent (6%) of Gross Revenues from sales, transportation, distribution or delivery of natural gas to customers under such agreement, then the percentage basis of the franchise fee used in this Agreement shall be adjusted by Grantee to provide for a franchise fee that equals the value of franchise fees that would result in the event that the percentage used in such other franchise agreement were applied to the Gross Revenues, and such adjustment shall be effective as of the first day of the month following the commencement date of the franchise agreement with such other Florida governmental entity.

It is the intent and agreement of City and Grantee that Grantee shall not be required to pay City a franchise fee hereunder of a percentage greater than that paid to City by any other gas provider utilizing City's rights-of-way on such gas provider's revenues attributable to services that are the same or substantially the same as those performed by Grantee. It is further the intent and agreement of City and Grantee that Grantee should not be placed at a competitive disadvantage by the payments required hereunder in the event other gas companies provide services in competition with Grantee without utilizing City's rights-of-way as provided herein. The provisions of this section are further refined herein below, which shall be read in harmony herewith.

If City imposes a lesser fee, or no fee, or is permitted by law to impose a fee on another gas provider that is utilizing the rights-of-way and providing or seeking to provide services in competition with Grantee to customers within City's municipal boundaries and does not collect

such a fee or collects a fee less than that provided herein, Grantee's fee for such services shall be automatically reduced to the lesser fee charged the other gas provider (or to zero, if no fee is charged such other gas provider). Although the above-described reduction in franchise fees shall be automatic and self-executing, City and Grantee shall adjust the fee, if necessary, to assure that neither Grantee nor such other gas or electrical utility shall be placed at a competitive disadvantage, provided, however, that the fee paid by Grantee hereunder shall not exceed six percent (6%) unless the provisions of the first paragraph of this section are applicable.

Where City (1) is permitted by law to collect a fee from another gas provider that is not utilizing the rights-of-way but that is providing or seeking to provide services in competition with Grantee to customers within City's municipal boundaries, and (2) does not collect such a fee or collects a fee less than that provided herein from another gas provider for such services shall be automatically reduced to the lesser fee charged to the other gas provider (or to zero, if no such fee is charged such other gas utility provider).

SECTION 19: EFFECTIVE DATE

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

SECTION 20: NOTICES

Each party to this Franchise Agreement shall deliver all notices, requests, consents, claims, demands, waivers and other communications under the agreement (each, a "Notice") in writing and addressed to the other party at the following addresses:

- (a) if to the Company, to each of the following:
 - (i) Peoples Gas System, 702 N. Franklin Street, Tampa FL 33602, Attn: Director of Gas Operations and;
 - (ii) Peoples Gas System, 702 N. Franklin Street, Tampa FL 33602, Attn: Legal Department.
- (b) if to the City, to each of the following:
 - (i) City Manager, City of Deerfield Beach, 150 NE 2nd Avenue, Deerfield Beach, FL 33441 and;
 - (ii) Andrews S. Maurodis, City Attorney, City of Deerfield Beach, 710 E. Hillsboro Blvd., Suite 200, Deerfield Beach, FL 33441.

Each Party shall deliver all Notices by nationally recognized overnight courier (with all fees prepaid) or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice is effective only (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section.

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PASSED 1ST READING ON THIS _____ DAY OF, _____, 2016

PASSED 2ND READING ON THIS _____ DAY OF, _____, 2016.

_____, MAYOR

ATTEST: _____

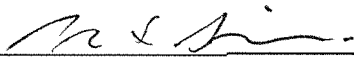
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

Accepted this day of , 2016

PEOPLES GAS SYSTEM, A DIVISION OF

TAMPA ELECTRIC COMPANY



By: Gordon L. Gillette

Title: President

ATTEST:



(Secretary)

(Corporate Seal)