

TOWN OF GOLDEN BEACH, FLORIDA

ORDINANCE NO. 558.14

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

WHEREAS, Company and Town, pursuant to Ordinance No. 457.2000, were parties to that certain Franchise Agreement effective August 15th, 2000 (the "2000 Franchise Agreement");

WHEREAS, the 2000 Franchise Agreement was for a term of ten (10) years and has since expired;

WHEREAS, Company and Town desire to enter into a new franchise agreement for a period of thirty (30) years commencing from the date provided herein and providing for the payment of fees to Town in exchange for the nonexclusive right and privilege of supplying natural gas and other services pursuant to certain terms and conditions;

WHEREAS, this Ordinance shall repeal and replace Ordinance No. 457.2000; and

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

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

SECTION 1: **RECITALS ADOPTED.** That the above stated recitals are hereby adopted and confirmed.

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 Town.
- B. "Town" shall mean the Town of Golden Beach, Miami-Dade 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 Permitted 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 20 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 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" of "Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases which is distributed in pipes and measured by meter on the Customer's premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- K. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place or other right-of-way that is owned by the Town.

SECTION 3: **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 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 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), provided that the tenant, assignee, or successor ("the Permitted Assign"), is assuming the terms and conditions of the Franchise Agreement with the Town. The Company may pledge or mortgage such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company.

SECTION 6: **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 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 Town authority. The Company acknowledges

that the Town has spent significant funds in recent years on improving the Rights-of-way, inclusive of lighting and landscape, and as such, the Company shall, to the extent commercially practicable, endeavor to restore such improvements replacing or utilizing, to the extent reasonably practicable and commercially feasible, the same or substantially similar materials as previously existed prior to the Company's actions when they are excavated or disturbed as part of the work undertaken in connection with the supply of natural gas. The Town shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. In consideration of the franchise fees contemplated in this agreement, the Town shall not charge the Company any fees for the issuance of such permits. The Company shall, as provided herein and to the extent commercially practicable, 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 8: **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 9: **LAYING OF PIPE.** All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in Town permits.

SECTION 10: **CONSTRUCTION WORK.** The Town reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the Town in, across, along, or under any Right-of-way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any Right-of-way, or by reason of the widening, grading, paving, or otherwise improving present or future Rights-of-way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the Town to remove, relocate or disconnect any portion of the Distribution System of the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the Town without claim for reimbursement. If the Town shall require the

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

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 permitted assigns, shall pay to the Town, or its successors, a sum of money equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale of Natural Gas to Customers within the corporate limits of the Town. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

SECTION 12: **PARITY.** In the event the Company enters into a franchise agreement with another Florida governmental entity in Miami-Dade or Broward Counties, under which franchise fees are based upon a percentage of gross revenue

that is higher than six percent (6%) of Franchisee's sales of natural gas to customers under such franchise, then the percentage basis of the Franchise Fee used in this Franchise shall be adjusted 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 from sales of natural gas to customers in the Town and such adjustment shall be effective as of the first day of the month following the commencement date of the franchise for such other Florida governmental entity.

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

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

SECTION 13: **IDENTIFICATION OF TOWN RESIDENTS.**

The Company has sufficient information (including Town limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the Town limits as of the Effective Date. No less than thirty (30) days prior to the effectiveness of any change in the Town's limits, the Town shall deliver to the Company written notice thereof, and include in such notice a description of the affected limits thereof, whether by addition, annexation or consolidation. The Company shall be relieved of any obligation to pay franchise fees to the extent the Town has failed to provide information as set forth in the foregoing sentence.

SECTION 14: **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 and be open at all reasonable times and upon reasonable notice for

inspection by the duly authorized representative of the Town. Upon request by the Town, or its designated representative, 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 15: **INSURANCE.** During the term of this Franchise, the Company shall self-insure and/or maintain in effect the insurance coverage described below:

- a. General liability insurance with limits of not less than \$10,000,000 each occurrence and including coverage for (1) premises and/or operations; (2) independent contractors and products and/or completed operations; (3) broad form property damage, personal injury and a contractual liability endorsement, including any hold harmless and/or indemnification agreement.
- b. Worker's compensation insurance for all required employees for statutory limits as required by applicable State and Federal laws, which policies must include employer's liability with minimum limits of \$500,000 per accident.
- c. Automobile liability insurance including coverage for all owned, hired, leased and non-owned automobiles with limits of liability not less than \$1,000,000 per occurrence, combined single limit for bodily injury liability and property damage liability.

Company shall provide the Town with a certificate of self-insurance coverage or certificates of insurance for all required policies or coverages. The certificates of insurance shall not only name the types of policies provided, but also shall refer specifically to this Franchise Agreement and shall state that such insurance is as required by this Franchise Agreement. The Town reserves the right to require the Company to provide a certified copy of such policies, upon written request by the Town. Renewal certificates of insurance shall be furnished prior to the date of their policy expiration. Company shall provide for 30 days' written notice to Town prior to the cancellation or material change of any insurance referred to therein.

The Town shall be named as an additional insured in all of the foregoing policies (except for any workers' compensation policy) with respect to liability arising out of this Franchise Agreement. Company's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Company's insurance. Company's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

The Company's self-insured retentions and deductibles will be based on prudent risk management principles. The Company shall be responsible for the payment of any deductible in the event of any claim arising from the Company's negligence.

If insurance policy(ies) are on an occurrence basis, the insurance must be maintained for four years after the completion of all services required under this Agreement. If insurance policy(ies) are on a claims-made basis, the retroactive date on said policy(ies) must be no later than the inception of services under this contract and the insurance policy must respond to claims reported within four years after the completion of all services required under the Agreement.

SECTION 16: **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 any and all claims, demands, suits, actions, damages, expenses, 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, attorneys' fees, expenses and liabilities incurred by the Town (inclusive of any incurred before, or at, trial or at any appellate level) in connection with any such claim, demand, suit or cause of action, damage, expense, including the investigation thereof, and the defense of any action or proceeding brought thereon and/or any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; provided, however, that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions,

losses, damages, or expenses, including attorney's fees, arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the Town, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if Peoples were incorporated separate and apart from Tampa Electric Company.

SECTION 17: **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 of 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 Company with respect thereto, and the Company shall, except in emergency situations, 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 diligently commences to execute, and to the extent commercially practicable continues to execute on said plan; 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 18: **CHANGES IN PROVISIONS HEREOF.** Changes in the terms and conditions hereof may be made by written agreement between the Town and the Company.

SECTION 19: **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 20: **GOVERNING LAW.** This Franchise shall be governed by the laws of the State of Florida and applicable federal law. Any litigation between the

Parties arising from this Agreement shall only be in Miami-Dade County, Florida and the Parties agree to venue in Miami-Dade County, Florida.

SECTION 21: **REPEAL.** Ordinance No. 457.2000, passed and adopted and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed as superceded, except that any franchise fees which are due and owing shall remain in effect until paid, and any obligation of Grantee to defend, indemnify and hold harmless Grantor for damages or injuries sustained by others shall continue as to any damage or injury which has occurred prior to the effective date of this Franchise Agreement which shall apply only to the extent such claims are not barred by any other statute of limitations.

SECTION 22: **EFFECTIVE DATE.** As a condition precedent to the taking effect of this ordinance, the Company shall file its acceptance hereof with the Town's Clerk within 60 days of adoption of this ordinance. The effective date of this ordinance shall be the date upon which the Company files such acceptance.

The Motion to adopt the foregoing Ordinance was offered by Vice Mayor Lusskin, seconded by Councilmember Bernstein, and on roll call the following vote ensued:

Mayor Glenn Singer	<u>Aye</u>
Vice-Mayor Judy Lusskin	<u>Aye</u>
Councilmember Kenneth Bernstein	<u>Aye</u>
Councilmember Bernard Einstein	<u>Aye</u>
Councilmember Amy Isackson-Rojas	<u>Aye</u>

PASSED AND ADOPTED on first reading this 18th day of February, 2014.

The Motion to adopt the foregoing Ordinance was offered by Councilmember Lusskin, seconded by Councilmember Bernstein, and on roll the following vote ensued:


Mayor Glenn Singer	<u>Aye</u>
Vice-Mayor Bernard Einstein	<u>Absent</u>
Councilmember Kenneth Bernstein	<u>Aye</u>
Councilmember Judy Lusskin	<u>Aye</u>
Councilmember Amy Isackson-Rojas	<u>Aye</u>

PASSED AND ADOPTED on second reading this 18th day of March, 2014.

TOWN OF GOLDEN BEACH, FLORIDA


By: 
MAYOR GLENN SINGER

ATTEST:



LISSETTE PEREZ
TOWN CLERK

(SEAL)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


STEPHEN J. HELFMAN
TOWN ATTORNEY, TOWN OF GOLDEN BEACH, FLORIDA
Accepted this _____ day of _____, 2014

PEOPLES GAS SYSTEM, A DIVISION OF
TAMPA ELECTRIC COMPANY


By: Garden L. Gillette
Title: President