

ORDINANCE NO. 2006-027

AN ORDINANCE OF THE CITY OF COCONUT CREEK, 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 CITY OF COCONUT CREEK, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

WHEREAS, Peoples Gas System, a division of Tampa Electric Company, (hereinafter "Company") and the City of Coconut Creek desire to enter into a franchise agreement for a period of fifteen (15) years, renewable for an additional fifteen (15) years, to provide natural gas service to those customers within the City, and to allow the use of the City's rights-of-way, 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 franchise agreement with Company; and

WHEREAS, natural gas is a cleaner burning fuel than propane, gasoline, or coal, which is more environmentally preferable;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

SECTION 1: DEFINITIONS

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

- A. "Customer" shall mean any person, firm, public or private corporation, or governmental agency served by the Company within the corporate limits of the City.
- B. "City" shall mean the City of Coconut Creek, 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. "Gas" or "Natural Gas" shall mean natural gas and/or manufactured gas and/or a mixture of gases that 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") or any other fuel that is typically delivered by truck and stored in tanks.
- E. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale, transportation, distribution or delivery of Gas.
- F. "Facilities" or "equipment" shall mean pipe, pipe line, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas, located or to be located in, upon, along, across, or under the streets or within the public rights of way.
- G. "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.
- H. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- I. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and Customer pipe lines, together with all necessary and desirable appurtenances, that are situated within the corporate limits of the City and are reasonably necessary for the sale, transportation, distribution or delivery of Natural Gas for the public and private use of Customers.

SECTION 2: 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 of the public streets, alleys, highways, waterways, bridges, easements rights-of-way and other public places of the City, 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 within the City, 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 fifteen (15) years from the effective date of this ordinance, and may be renewed for an additional fifteen (15) years upon the same terms and conditions as contained herein upon application by the Company to the City. The City shall not unreasonably deny said renewal.

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 Commission 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 lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger and consolidation with, or transfer to, any other corporation engaged in similar business (including any affiliate or subsidiary of the Company), or 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 without the express consent of the City Commission of the City.

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 renewal 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 said streets, alleys, avenues, easements, and public rights of way, and said streets shall not be unnecessarily obstructed. Prior to disturbing or excavating the surface of any of the streets, sidewalks, alleys, or other public rights of way, the Company 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. The Company shall, with due diligence and dispatch, repair and/or restore such streets, sidewalks, appurtenances, easements or public rights of way in as good or better condition as before such excavation or disturbance was made, and in default thereof the City may make such repairs and charge the reasonable cost thereof to the Company and collect the same from it. In an emergency situation, the permit requirement will be temporarily suspended, to allow the Company to make the necessary emergency repairs, and the Company shall immediately notify the City's Police Department prior to commencing work. The Company shall submit the details of the emergency, including obtaining a post-event permit on the next business day from

the appropriate City Department. All repair and restoration shall be promptly completed so as to cause the least inconvenience to the public.

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, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish; provided, however, 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 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 City of Coconut Creek, the Florida Public Service Commission or other regulatory body having jurisdiction over the Company.

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 or other governmental body having jurisdiction in, across, along, or under any street, sidewalk, alley, public way, easement, place, or other public rights of way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, or other public

rights of way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure, it shall be deemed necessary by the City or other governmental body to alter, change, adapt, or conform any portion of the Distribution System of the Company hereto, such alterations, or changes, shall be made by the Company as ordered in writing by the City or other governing body, without claim for reimbursement. If the City shall require the Company to adapt or conform any portion of its Distribution System or in any way to alter, relocate or change its property to enable any other person or entity to use said street, sidewalk, alley, easement, highway or public rights-of-way of the City, as part of its permitting or approval process, the City shall require the person or entity desiring or occasioning such alteration, relocation or change to reimburse the Company for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of the Company's facilities. 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

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 which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the City and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale, transportation, distribution or delivery 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: **FRANCHISE PARITY**

If, during the term of this Franchise Agreement, the City, 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 City, for the purpose of supplying or delivering Natural Gas to customers located within the corporate limits of the City 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-therm basis. In the event that the City 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 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, and be open at all reasonable times for inspection by the duly authorized representatives of the City pursuant to an appropriate confidentiality agreement. Upon request by the City, or its designated representative, 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.

No less than thirty (30) days prior to the effective date of a change in the City limits, whether by addition, annexation, or consolidation, the City shall deliver to the Company written notice of such occurrence, and include in such notice a description of the affected territory.

SECTION 13: INSURANCE

During the term of this Franchise Agreement, 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.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to 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, caused by or arising out of and to the extent of the Company's negligent operation of the Distribution System, negligence, strict liability, intentional torts, criminal acts, or error, within the City, during the term of this Franchise Agreement 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, action 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, **except** that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, suits, actions, damages, expenditures, including attorney's fees, or causes of action arising out of injury, loss of life or damage to persons or property caused by or 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 Commission 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, to present a plan, satisfactory to the City, acting reasonably, 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, subject to the approval of the City Commission.

SECTION 17: GOVERNING LAW

This Franchise Agreement shall be governed by the laws of the State of Florida and applicable federal law. Any litigation occasioned by this Franchise Agreement shall be litigated in the State of Florida.

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: REPEALED ORDINANCES

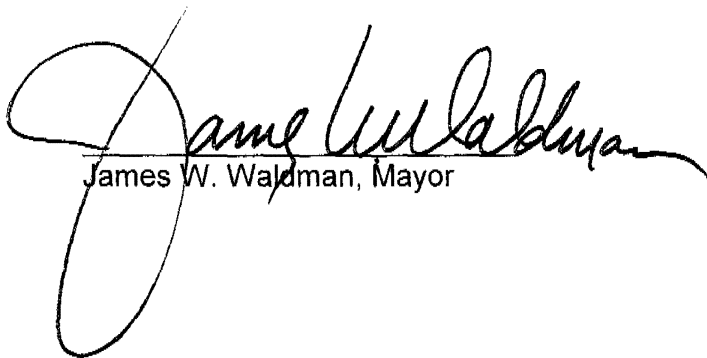
That all Ordinances or parts of Ordinances in conflict herewith are to the extent of said conflict, hereby repealed.

SECTION 19: EFFECTIVE DATE


This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing to the City Clerk in the form attached hereto and made a part hereof as Exhibit "A" within sixty (60) days of the City's passage and adoption hereof.

PASSED FIRST READING this 10th day of August, 2006.

PASSED SECOND READING this 24th day of August, 2006.


James W. Waldman, Mayor

Attest:


Barbara S. Price, MMC
City Clerk

	<u>1st</u>	<u>2nd</u>
Waldman	<u>Aye</u>	<u>Aye</u>
Tooley	<u>Aye</u>	<u>Aye</u>
Gerber	<u>Aye</u>	<u>Aye</u>
Sarbone	<u>Aye</u>	<u>Aye</u>
Freund	<u>Aye</u>	<u>Aye</u>

EXHIBIT "A"

City of Coconut Creek, Florida

2006

Peoples Gas System, a division of Tampa Electric Company, does hereby accept the natural gas franchise in the City of Coconut Creek, Florida, granted by Ordinance No. 2006-027, being:

AN ORDINANCE OF THE CITY OF COCONUT CREEK, 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 CITY OF COCONUT CREEK, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

which was adopted on August 24, 2006.

This instrument is filed with the City Clerk of the City of Coconut Creek, Florida in accordance with the provisions of Section 19 of said Ordinance.

Peoples Gas Company,
a division of Tampa Electric Company

By: William N. Cantrell

William N. Cantrell
Print Name & Title President

Attest:

Sandy Callahan
Secretary Sandy Callahan, Asst. Corp. Sec.

I HEREBY ACKNOWLEDGE receipt of the above Acceptance of Natural Gas Franchise Ordinance No. 2006-027 by Peoples Gas Company, a division of Tampa Electric Company, and certify that I have filed the same for record in the permanent files and records of the City of Coconut Creek, Florida, on this 16th day of October, 2006.

Barbara Price
Barbara Price, City Clerk