

**AMENDMENT NO. 1 TO THE NON-EXCLUSIVE FRANCHISE
AGREEMENT BETWEEN THE CITY OF COCONUT CREEK AND
PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY
TO PROVIDE GAS SERVICES AND TO USE PUBLIC RIGHTS-OF-WAY
OF THE CITY OF COCONUT CREEK**

This Amendment No. 1 to the Non-exclusive Franchise Agreement between the City of Coconut Creek and Peoples Gas System, a Division of Tampa Electric Company, to provide Gas Services to those customers within the City, and to allow the use of the City's rights-of-way dated October 16, 2006 ("Agreement") is made this _____ day of _____, 2021, by and between the City of Coconut Creek, Florida, (the "City"), and Peoples Gas System, a Division of Tampa Electric Company ("Company") both of whom agree as follows:

WITNESSETH:

WHEREAS, the parties desire to amend the Agreement between the City of Coconut Creek and Peoples Gas System, a Division of Tampa Electric Company, to renew the Agreement for an additional fifteen (15) years as contemplated in Section 3, "Term" of the Agreement; and

WHEREAS, the parties desire to update the Agreement to reflect recent changes to State law.

NOW, THEREFORE, based on the promises and covenants herein contained, the parties agree as follows:

1. The recitations referred to above are hereby incorporated herein.
2. The parties desire to amend SECTION 1, "DEFINITIONS," of the Agreement to add a new definition for Construction Bond and renumber the subsequent definitions as follows:

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. "Construction bond" as used herein is a bond, cash, certified funds, or irrevocable letter of credit posted to ensure proper and complete major construction and/or restoration of the rights-of-way.

~~D~~E. "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.

~~D~~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~~G. "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~~H. "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~~I. "FPSC" shall mean the Florida Public Service Commission or any successor agency.

4J. "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.

3. The parties desire to amend SECTION 8, "LAYING OF PIPE," of the Agreement as follows:

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.

A. When a right-of-way engineering permit is requested for purposes of installing, upgrading, or removing facilities, the posting of a construction bond for the work is required, unless an exception provided within the City's Code of Ordinances applies. Such construction bond will be in an amount equal to the anticipated cost of restoration or such other amount approved by the City Engineer, or designee.

B. Indemnification and liability.

1. By reason of the granting of a construction permit, the City does not assume any liability for:

a. Injuries to persons, damage to property, or loss of service claims; or

b. For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment or facilities by a permittee or its agents.

2. The City's right to indemnification under Section 14 of this Agreement shall not be affected by the issuance of permits and inspection of plans or work by the City. Nothing in this subsection

shall affect the City's rights, privileges and immunities under the doctrine of sovereign immunity and as set forth in Section 768.28, Florida Statutes.

4. The parties desire to amend SECTION 13, "INSURANCE," of the Agreement to repeal it in its entirety and replace it with a new SECTION 13, "INSURANCE REQUIREMENTS," as follows:

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 13: INSURANCE REQUIREMENTS

The Company shall self-insure and/or secure and maintain, at its own expense, and keep in effect during the full term of this Agreement, a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

A. Workers' Compensation Insurance

The Statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including, where applicable, the United

States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employers' Liability Insurance shall be provided with a minimum of two hundred thousand and xx/100 dollars (\$200,000.00) per accident.

B. Comprehensive General Liability

Commercial General Liability insurance with limits not less than \$1,000,000.00 per occurrence for Bodily Injury and Property Damage. Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

1. Premised and Operations.
2. Independent Contractors.
3. Product and Completed Operations Liability.
4. Broad Form Property Damage.
5. Broad Form Contractual Coverage applicable to the Agreement and specifically insuring the indemnification and hold harmless agreement contained in this Agreement.

C. Commercial Automobile Liability

For all owned, non-owned and hired automobiles and other vehicles used by the Company in the performance of the obligations of this Agreement with the following minimum limits of liability: \$1,000,000.00 Combined Single Limit, per occurrence, Bodily Injury & Property Damage

D. General

Company shall provide thirty (30) days prior written notice of cancellation, non-renewal or material reduction in coverage or limits as required above to:

City of Coconut Creek
Procurement Division
Attn: Risk Manager
4800 West Copans Road
Coconut Creek, Florida 33063

E. General Liability policies shall be included to provide the following:

1. Name as additional insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members for liability arising from this Agreement.
2. That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

F. Certificates of Insurance, in form and evidencing all required insurance and endorsements, shall be submitted by Company with this executed Agreement. The issuing agency shall include full name, address and telephone number in each insurance certificate issued.

G. Insurance Company

All insurance policies herein required of the Company shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida, thereof that are duly licensed as agents in said state.

5. The parties desire to amend SECTION 17, "GOVERNING LAW," of the Agreement as follows:

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 exclusively in Broward County, the State of Florida.

6. The parties desire to amend SECTION 19, "REPEALED ORDINANCES," and SECTION 19, "EFFECTIVE DATE," of the Agreement in order to renumber them as follows:

SECTION 19: REPEALED ORDINANCES

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

SECTION 1920: 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.

7. The parties desire to amend the Agreement by creating a new SECTION 22 entitled, "NOTICE," as follows:

Section 22: NOTICE

Whenever either party desires to give legal notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified for giving notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving notice, to wit:

CITY: Karen M. Brooks, City Manager
City of Coconut Creek
4800 West Copand Road
Coconut Creek, FL 33063

COPY TO: Terrill C. Pyburn, City Attorney
City of Coconut Creek
4800 West Copand Road
Coconut Creek, FL 33063

COMPANY: Peoples Gas System, a Division of Tampa Electric Company
702 N. Franklin Street
Tampa, FL 33062
Attn: President

COPY TO: Tampa Electric Company
702 N. Franklin Street
Tampa, FL 33062
Attn: Associate General Counsel

8. All other terms and conditions of the Agreement not in conflict with this Amendment No. 1 shall remain in full force and effect and are incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 the day and year first above written.

CITY OF COCONUT CREEK, FLORIDA

By: _____
Karen M. Brooks, City Manager

Date: _____

Approved as to Legal Form & Sufficiency:

ATTEST:

By: _____

By: _____
Terrill C. Pyburn, City Attorney

Date: _____

Date: _____

WITNESSES:

Witness 1:

**PEOPLES GAS SYSTEM, A DIVISION OF
TAMPA ELECTRIC COMPANY**

By: _____

[Witness print/type name]

[Print Name]

Witness 2:

Date:_____

[Witness print/type name]

STATE OF FLORIDA)
:
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2021 by _____, on behalf of Peoples Gas System, a Division of Tampa Electric Company, a Florida corporation, , who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2021.

Notary Public, State of Florida (Signature of
Notary Taking Acknowledgment)

(NOTARY SEAL)

Name of Notary Typed, Printed or Stamped

WITNESSES:

Witness 1:

[Witness print/type name]

Witness 2:

[Witness print/type name]

**PEOPLES GAS SYSTEM, A DIVISION OF
TAMPA ELECTRIC COMPANY (2nd signature)**

By: _____

[Print Name]

Date: _____

STATE OF FLORIDA)
:
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2021 by _____, on behalf of Peoples Gas System, a Division of Tampa Electric Company, a Florida corporation, who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2021.

Notary Public, State of Florida (Signature of
Notary Taking Acknowledgment)

(NOTARY SEAL)

Name of Notary Typed, Printed or Stamped