

RESOLUTION NO. 2023- 3239

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A NATURAL GAS FRANCHISE AGREEMENT WITH PEOPLES GAS SYSTEM, INC.; AUTHORIZING PEOPLES GAS TO USE THE PUBLIC RIGHTS-OF-WAY THE TOWN, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SUCH FRANCHISE MAY BE EXERCISED; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside ("Town") has a non-exclusive franchise agreement with Peoples Gas Systems, Inc. ("Peoples Gas") for the provision of natural gas in Town through a distribution system, which has since expired; and

WHEREAS, the Town wishes to approve a new franchise agreement with Peoples Gas which grants the non-exclusive right, privilege and franchise to lay, erect, install, construction, operate, repair and maintain gas distribution systems within the Town limits and public rights-of-way to serve customers within the Town; and

WHEREAS, the proposed Franchise Agreement attached hereto as Attachment "A" ("Franchise Agreement") provides for a 15-year term with one (1) renewal term upon mutual agreement of the parties, and establishes terms and conditions for the use of public rights-of-way and streets, maintenance procedures, construction procedures, franchise fees, insurance requirements, record keeping, hold harmless and termination procedures; and

WHEREAS, the Town desires to enter into the Franchise Agreement with Peoples Gas, in substantially the form attached hereto as Attachment "A", subject to final approval by the Town Manager and Town Attorney as to form and legal sufficiency; and

WHEREAS, the Town Commission finds that the Franchise Agreement and this Resolution are in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Franchise Agreement. The Town Commission hereby approves the Franchise Agreement with Peoples Gas, in substantially the form attached hereto as Exhibit "A", subject to the final approval by the Town Manager and Town Attorney as to form and legal sufficiency.

Section 3. Authorization. The Town Manager is authorized to execute the Franchise Agreement, in substantially the form attached hereto as Attachment "A", subject to the final approval by the Town Manager and Town Attorney as to form and legal sufficiency.

Section 4. Implementation. The Town Manager and Town Officials are hereby authorized to take any and all actions which are necessary to implement the Franchise Agreement and the purposes of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 12th day of December, 2023.

Motion By: Commissioner Landsman
Second By: Vice Mayor Rose

FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



Shlomo Danzinger, Mayor

ATTEST:



Sandra McCready, MMC
Town Clerk



APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

NATURAL GAS FRANCHISE AGREEMENT
BETWEEN
THE TOWN OF SURFSIDE
AND
PEOPLES GAS SYSTEM, INC.

This Agreement is made and entered into this ___ day of _____, 2023, by and between the **PEOPLES GAS SYSTEM, INC.**, a Florida corporation ("Company") and the **TOWN OF SURFSIDE**, a Florida municipal corporation ("Town").

SECTION 1. DEFINITIONS.

For the purposes of this Franchise Agreement, the following terms shall have the meanings given herein.

- A. "Customer" shall mean any Person served by the Company within the corporate limits of the Town, including residential, commercial and industrial customers within the Town.
- B. "Company" shall mean Peoples Gas System, Inc., a Florida corporation, its permitted successors and assigns.
- C. "Distribution System" shall mean all existing, and hereinafter existing, and any and all transmission pipelines, main pipelines 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.
- D. "Effective Date" shall mean the date this Franchise becomes effective as described in Section 20 below.
- E. "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.

- F. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- G. "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 and delivery of Gas.
- H. "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 premises. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").
- I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
- J. "Right-of-way" means any street, road, lane, highway, avenue, boulevard, alley, easement, public place, or other right-of-way that is owned by the Town or has been dedicated to the Town.
- K. "Town" shall mean the Town of Surfside, Miami Dade County, Florida, its successors and assigns.

SECTION 2: GRANT.

The Town hereby grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, install, construct, operate, repair 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 earlier terminated as provided in Section 15, the Franchise hereby granted shall be for a period of fifteen (15) years, followed by one (1) consecutive

extension period of fifteen (15) years, upon mutual consent of the parties prior to the expiration of the then current term. If either party elects not to renew the Franchise, then the Franchise shall expire upon the conclusion of the then current term.

SECTION 4. ASSIGNMENT.

A. The Franchise hereby granted, and any portion of the Distribution System, shall not be sold, leased, transferred, assigned or otherwise alienated or disposed of except with the prior written consent of the Town Commission, 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, upon advanced written notice to the Town, the Company may, without the prior consent of the Town, sell, lease, transfer, assign or otherwise alienate 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 RIGHT-OF-WAY/STREETS.

The Distribution System shall be erected, placed, laid, installed, constructed, repaired and maintained in such manner as will be, consistent with necessity, with the least interference with other public and utility 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.

Construction plans shall be submitted by the Company to the Town and a Right-of-Way Permit shall be obtained from the Public Works Department Director, and for the connection of gas main lines to service laterals a Right-of-Way Permit prior to the Company causing any opening or alteration to be made in any of the Rights-of-Way within the Town for the purpose of laying, construction, installing, maintaining, repairing or operating any fittings, appliances and appurtenances or other components of the Distribution System. 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 Franchise Agreement, the Town shall charge a flat fee of Eighty Dollars (\$80.00) per permit to the Company for the issuance of each permit.

The Company's work under this Franchise shall be done in accordance with applicable laws. The Company shall replace or properly re-lay and repair any sidewalk, street, lawn, landscaping or swale that may be disrupted or displaced by reason of such work within 60 days of completion of the work, including asphalt restoration. Whenever the Company shall cause any opening or alteration to be made in any of the Rights-of-way or public places within the Town for the purpose of laying, installing, constructing,

maintaining, repairing or operating any equipment or component of the Distribution System, such work shall be completed at the Company's expense within 60 days and the Company shall upon the completion of such work restore such portion of the Right-of-way or other public places to as good or better condition as it was immediately prior to the work. Upon the Company's failure to begin such repair or restoration within ten (10) days of its receipt of written notice from the Town, to restore such Right-of-way, then the Town may undertake such repair or restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to the Company.

Nothing in this Franchise Agreement shall be construed as surrender by the Town of its right or power to pass ordinances regulating the use of its Rights-of way or streets in accordance with Town's police powers or property rights; provided, however, 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; COMPLIANCE WITH LAWS

All such components of the Distribution System and the meters 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, regulations and laws of the Florida Public Service Commission and any other legislative body having jurisdiction.

SECTION 8. LAYING OF PIPE.

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

SECTION 9. CONSTRUCTION WORK.

The Town reserves the right to permit to be laid, installed, constructed, maintained, repaired and operated any and all underground facilities, including electric conduits, water and gas pipes and lines, cables, communication, sewers, and stormwater systems, 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, stormwater, or other underground facilities or structures 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 reasonable 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 use reasonable care during the alteration or relocation of a portion of its Distribution System so as to not interfere with, change, or injure any water pipes, stormwater, drains, or

sewers of the Town unless it has received specific permission from the Town or its duly authorized representative.

SECTION 10. FRANCHISE FEE; PAYMENTS.

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, distribution, transportation or delivery of Natural Gas to Customers within the corporate limits of the Town (however, if Company shall later receive a payment from a customer on an uncollectable account, Company shall pay such 6% sum as outlined above). 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.

In the event the Company enters into a franchise agreement with another Florida municipality or government that contains substantially similar terms and conditions as this Franchise and that provides for a franchise fee in excess of 6% rate that results in a rate higher than that provided hereunder, then the Town may, at its option, demand that the franchise fee rate payable hereunder be adjusted so as to be consistent with the franchise fee rate extended to such Florida municipality or government entity; such increase in the franchise fee rate shall apply prospectively beginning with the next monthly franchise fee payment following Company's receipt of a written notice from the Town exercising its right to increase the franchise fee rate as provided herein.

It is the intent and agreement of Town and Company that Company shall not be required to pay Town a franchise fee rate hereunder of a percentage greater than that paid to Town by any other gas provider utilizing Town'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 Company. If Town imposes a lesser rate, 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 Company to customers within Town's municipal boundaries and does not collect such a fee or collects a lesser rate than that provided herein, then the Company may, at its option, demand that the franchise fee rate payable hereunder be adjusted so as to be consistent with the lesser rate (or no fee) charged to such other gas provider. It is further the intent and agreement of Town and Company that Company should not be placed at a competitive disadvantage by the payments required hereunder in the event other gas companies provide services in competition with Company without utilizing Town's rights-of-way as provided herein.

SECTION 11: IDENTIFICATION OF TOWN RESIDENTS

Upon the written request of the Company, the Town will use reasonable efforts to 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 will use reasonable efforts to provide such information within 30 days of the Effective Date of this Franchise, and within 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 for such customers to the extent the Town has failed to provide information in accordance with this Section 11.

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

During the term of this Franchise, and any renewals, the Company shall file with the Town Clerk and shall keep in full force and effect at all times during the effective period, insurance certificates evidencing the following insurance and/or self-insurance policies:

A. General Liability:

Insurance or evidence of self-insurance within the corporate limits of the Town, as they currently exist or may exist in the future, the terms and conditions of which shall provide the Town the minimum sum of \$5,000,000.00 for injury or death to all persons,

and \$5,000,000.00 with respect to property damage, and shall include the Town as an additional insured as to the Company's construction, operation, repair and maintenance of a Natural Gas Distribution System within the corporate limits of the Town, as they currently exist or may exist in the future. Coverage limits of 10,000,000.00 per occurrence shall remain in full force and shall be undiminished during the effective period of this Agreement.

B. Automobile Liability:

Insurance and/or self-insurance with a combined single limit of \$5,000,000.00 per occurrence for any one accident or loss. The required limits may be satisfied by a combination of self-insurance, primary insurance, and/or excess or umbrella insurance. The Town shall be included as an additional insured on such automobile policies.

C. Workers' Compensation:

Worker's compensation as required by Florida law, and Employers' Liability with minimum limits of \$1,000,000 per occurrence. Insurance and/or self-insurance Statutory Limits Part A \$1,000,000.00 Employers' Liability Limit Part B.

D. Company shall notify the Town Clerk in writing, promptly upon any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 14: INDEMNIFICATION; HOLD HARMLESS.

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 installation, construction, operation, repair and maintenance 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 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 or 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. Nothing in this Franchise Agreement shall be construed to affect in any way the Town's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes.

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 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 Town with respect thereto, and the Company shall have had

a period of sixty (60) days after service by certified U.S. mail of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, then sixty (60) days to present a plan reasonably satisfactory to the Town to effect such cure within a reasonable amount of time; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the reasonable control of the Company shall not constitute grounds for termination for the duration of such event.

In the event of a final adjudication of bankruptcy of the Company, the Town shall have full power and authority to terminate, revoke, and cancel any and all rights granted under the provisions of this Franchise.

Notwithstanding the foregoing, failure by the Company to comply in any substantial respect with any of the provisions, terms, or requirements of this Franchise shall result in a termination of this Franchise. Said termination shall be effective upon a finding by a court of competent jurisdiction that Company has substantially breached any of the provisions, terms or requirements of this Franchise. Both the Town and the Company reserve the right of appeal of such court findings. If it is the non-prevailing party, the Company shall have six months after the final determination of the question of breach to make restitution or cure the default or failure before termination shall result. The Town, at its discretion by and through its Town administration, may grant additional time to the Company for restitution and compliance as deemed appropriate by the Town.

SECTION 16: CHANGES IN PROVISIONS HEREOF.

Changes in the terms and conditions hereof may only 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 Franchise Agreement 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. Company and Town consent and agree that Miami-Dade County, Florida, shall be the proper and convenient venue for any legal proceeding relating to this Franchise Agreement.

SECTION 19. **SEVERABILITY.** If any section, sentence, clause or phrase of this Franchise Agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Franchise Agreement.

SECTION 20. **EFFECTIVE DATE.**
This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing to the Town within sixty (60) days of the Town's adoption of a resolution approving this Franchise Agreement.

SECTION 21. **NOTICES/AUTHORIZED REPRESENTATIVES.**
Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have hereto executed this Franchise Agreement as of the Effective Date.

PEOPLES GAS SYSTEM, INC., A Florida corporation

By: _____

Name: _____

Title: _____

Addresses for Notice:

TECO Peoples Gas
5101 NW 21st Avenue, Suite 460
Ft Lauderdale, FL 33309
Attention: Regional Manager

With a Copy to:

TECO Peoples Gas
702 N. Franklin St.
Tampa, Florida 33602
Attention: Legal Department

IN WITNESS WHEREOF, the Parties have hereto executed this Franchise Agreement as of the Effective Date.

TOWN OF SURFSIDE, FLORIDA

By: _____
Hector Gomez, Town Manager

ATTEST:

Sandra McCready, Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

Addresses for Notice:

Town of Surfside
Attn: Town Manager
9293 Harding Avenue
Surfside, FL 33154
305-861-4863 (telephone)
hgomez@townofsurfsidefl.gov (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman,
P.L.
Attn: Lillian Arango, Esq.
Town of Surfside Attorney
2800 Ponce de Leon Blvd., Suite 1200
Coral Gables, FL 33134
larango@wsh-law.com (email)