

**NATURAL GAS FRANCHISE AGREEMENT
BETWEEN
CITY OF JACKSONVILLE
AND
PEOPLES GAS SYSTEM, INC.**

THIS FRANCHISE AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2024 (the “Effective Date”), by and between the **CITY OF JACKSONVILLE**, a consolidated municipal corporation and political subdivision existing under the Constitution and laws of the State of Florida (the “City”), with an address at 117 West Duval Street, Jacksonville, Florida 32202, and **PEOPLES GAS SYSTEM, INC.**, a Florida profit corporation with an address at 702 N. Franklin St., Tampa, Florida 33602 (the “Company”).

WHEREAS, Company and City desire to enter into a franchise agreement for a period of thirty (30) years commencing from the date provided herein; and

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

NOW THEREFORE, in consideration of the Agreement and the mutual covenants contained herein and of other good and valuable consideration acknowledged by the parties to be sufficient, City and Company agree as follows:

1. The above-stated recitals are accurate, true, and correct and are incorporated herein and made a part hereof by this reference.

Section 1: Definitions

For the purposes of this 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 City.
- B. “City” shall mean the City of Jacksonville, Duval County, Florida, its successors and assigns.
- C. “Company” shall mean Peoples Gas System, Inc., a Florida profit 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. “FPSC” shall mean the Florida Public Service Commission or any successor agency.
 - F. “Gross Revenues” shall mean all revenues (as defined by the Florida Public Service Commission) received by Company from any Customer from the sale or delivery of Gas.
 - G. “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”).
 - H. “Person” shall mean any individual, firm, partnership, estate, corporation, company, or other entity, including, but not limited to, any government entity.
 - I. “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 City.

Section 2: Grant

City hereby grants to 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 City or in such territory as may be hereafter added or annexed to, or consolidated with, 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 ten (10) years from the Effective Date of this Agreement; provided, however, that the franchise will renew for two (2) successive ten (10) year terms upon review and approval by the City Council not less than 180 days prior to the expiration of the then current term. If either party elects not to renew the franchise, with or without cause, then the franchise shall expire upon the conclusion of the then-current term.

Section 4: Assignment

A. The franchise hereby granted by this Agreement shall not be leased, assigned, or otherwise alienated or disposed of except with the prior express written consent of City, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee's assuming the terms of this Agreement.

B. Notwithstanding the foregoing, the Company may, without the consent of the City, lease, assign, or otherwise alienate and transfer the 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 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 further consideration for this Agreement, City covenants and agrees that it will not, during the term of this Agreement or any extension thereof, engage in the business of distributing Natural Gas within the corporate limits of the City, as modified, during the term of this 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 Right-of-way shall not be unnecessarily obstructed. Except in an emergency situation, before 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. City shall issue or, if applicable, deny permits within ten (10) business days of application by Company. In consideration of the franchise fees contemplated in this Agreement, City shall not charge Company any fees for the issuance of such permits. Company shall, with due diligence and dispatch, place such Right-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should Company fail within ten (10) days of its receipt of written notice from City to restore such Right-of-way, then City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to Company.

To the extent consistent with Florida law, Company hereby agrees to abide by all the rules, regulations, and ordinances which City has passed or might pass in the future in the exercise of its

police power; provided, however, with the exception of changes to the City's Ordinance Code related to permitting requirements or procedures, the City shall not pass any ordinance or regulation pertaining to this Agreement that results in a material change to the rights or obligations of Company under this Agreement.

Company shall use commercially reasonable efforts to coordinate with the City on matters impacting Company's facilities and Company's use of Rights-of-way, including but not limited to City projects, third-party projects, facility abandonment, and emergency response.

Section 7: Maintenance

All such components of Company's Distribution System located within 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.

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, laws, and specifications contained in City permits.

Section 9: Construction Work

City reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, and sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by City in, across, along, or under any Right-of-way. Whenever by reason of: establishing a grade; changes in the grade of any Right-of-way; the widening, grading, paving, or otherwise improving present or future Rights-of-way, 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 City to remove, relocate, or disconnect any portion of Company's Distribution System for such public purposes, such removal, relocation, or disconnection shall be made by Company as ordered in writing by City without claim for reimbursement. If City requires 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 City as part of its permitting or approval process, City shall require the Person desiring or occasioning such removal, relocation, disconnection, or alteration to reimburse 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. 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 City's 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 Agreement and each month thereafter during the term of this Agreement, Company and 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. That portion of any payment remaining unpaid when due shall draw interest from the due date, and until payment, at the rate of 18% per annum.

Section 11: Franchise Parity

If during the term of this Agreement, City, by franchise agreement or ordinance, allows other gas providers, gas consumers, or gas transporters (including, without limitation, JEA) (collectively the "Alternate Gas Providers"), the right, privilege, or franchise to construct, maintain, operate, or use gas facilities in, under, upon, over, or across City's present or future streets, alleys, bridges, easements, or other public rights of way for the purpose of supplying or delivering Natural Gas to customers located within the corporate limits of City or receiving such gas from a person other than 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 or greater than that imposed with respect to the same Customer or class of Customers under this 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 or increased as applicable under this Agreement so that the franchise compensation paid hereunder for such Customer class equals the franchise compensation payable by such Alternate Gas Provider under this Agreement or an ordinance applicable to it when compared on a dollars-per-term basis; provided, however, that if the fee due under Section 10 is reduced pursuant to the foregoing clause and the fee due the Alternate Gas Provider is subsequently raised, then the fee due under Section 10 shall, upon six (6) months' notice to Company, be raised an equivalent extent using the same

manner of calculation used to reduce the fee; provided, further, that in no event shall the fee as raised exceed the fee that was due under Section 10 before the reduction. In the event that City determines not to impose any franchise compensation by agreement, ordinance, or otherwise on any such Alternate Gas Provider, Company's obligation to pay a franchise fee under this Agreement with respect to revenues derived from the provision of service by Company to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

In the event Company enters into a franchise agreement with another Florida municipality or government entity located in Nassau, Duval, Baker, Clay, or St. Johns County that contains substantially similar terms and conditions as this franchise and that provides for a franchise fee rate in excess of that provided for in this Agreement, Company shall notify City and then the City Council may, at its option, demand that the franchise fee payable hereunder be adjusted so as to be consistent with the franchise fee rate extended to such municipality or government entity, such increase in the franchise fee rate shall apply prospectively beginning 12 months from the date of notification by Company to the City pursuant to this paragraph and Company's receipt of a written notice from the City exercising its right to increase the franchise fee as provided herein.

Section 12: Accounts and Records

Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. 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 City, including the Council Auditor's Office, or its designated representative, and in the sole case of the designated representative, execution of a confidentiality agreement reasonably satisfactory to Company, Company shall make available said records within thirty (30) days to City for the determination of the accuracy of the Gross Revenues upon which Company's franchise fee is based. 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 the audit of Company's books determines Company made underpayment during the term of this Agreement, Company shall pay interest at the rate of 10% per annum on the amount underpaid or not paid calculated from the date the amount was due to the date it was

finally paid. The reasonable cost of the audit, not to exceed \$20,000, will be borne by the Company if, as a result of the audit, the parties mutually agree, or a court of competent jurisdiction rules, that the Company has underpaid the franchise fees owed in an amount equal to or exceeding five percent (5%) of the franchise fees actually paid for the specific period in question.

Section 13: Insurance

During the term of this Agreement, Company shall file with City's Division of Risk Management 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 provide for the minimum sum of: \$1,000,000.00 for injury or death to any one person; \$5,000,000.00 for injury or death to all persons where there is more than one person involved in any one incident or accident; and, \$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 Agreement. The coverage requirements set forth in this Section 13 may be satisfied in whole or in part with self-insurance.

Company shall notify Risk Management in writing promptly upon any material alteration, modification, or cancellation of such policy is to become effective.

Section 14: Indemnification:

In consideration of the permissions granted to Company by this Agreement, 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 Company's negligent operation of the Distribution System within the City during the term of this 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 City in connection with any such claim, suit, or cause of action, including the investigation thereof, 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 Company nor any of its employees, agents, contractors, 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 negligence, strict liability, intentional torts, criminal acts,

or errors of the City, its officers, agents, and employees. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

Section 15: Termination By City

Violation by Company of any of the covenants, terms, and conditions hereof or default by Company in observing or carrying into effect any of said covenants, terms, and conditions shall authorize and empower City to declare a termination of this Agreement; provided, however, that before such action by City shall become operative and effective, Company shall have been served by City with a written notice setting forth all matters pertinent to such violation or default and describing the action of City with respect thereto, and 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 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 Company shall not constitute grounds for termination.

Section 16: Changes in Provisions Hereof

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

Section 17: Severability; Change in Law

(A) If any section, part of a section, paragraph, sentence, or clause of this 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 Agreement adjudged to be invalid result in significant adverse consequences to a party, then that party may terminate this 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, 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 Company or City may terminate this Agreement by providing ninety (90) days' written notice to the other party.

Section 18: Governing Law/Venue

The rights, obligations, and remedies of the parties as specified under this Agreement shall be interpreted and governed in all aspects by the laws of the State of Florida. It is the parties' intent that this Agreement supersede, and otherwise be excepted from, Chapter 711 of the Ordinance Code, and the City hereby waives the application of Chapter 711 to the Company and its use of the City rights-of-way. Without limiting the foregoing, the parties specifically agree that the City shall have no right under Section 711.321 of the Ordinance Code or otherwise (except as set forth in Section 11 above) to increase the franchise fee due hereunder. Should any provision of this Agreement be determined by the courts to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired. Venue for litigation of this Agreement shall be in courts of competent jurisdiction located in Jacksonville, Duval County, Florida.

[Remainder of page left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

James R. McCain, Jr.
Title: Corporation Secretary

Donna Deegan
Title: Mayor

PEOPLES GAS SYSTEM , INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Form Approved:

Office of General Counsel

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