

1 The Transportation, Energy and Utilities Committee offers the
2 following Substitute to File No. 2024-436:

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4 Introduced by Council Member Salem:

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7 **ORDINANCE 2024-436**

8 AN ORDINANCE GRANTING TO PEOPLES GAS SYSTEM,
9 INC. ("PEOPLES GAS"), ITS SUCCESSORS AND
10 ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE
11 AGREEMENT FOR USE OF THE RIGHTS-OF-WAY OF THE
12 CITY OF JACKSONVILLE, FLORIDA; APPROVING, AND
13 AUTHORIZING THE MAYOR AND CORPORATION SECRETARY
14 TO EXECUTE AND DELIVER, THAT CERTAIN NATURAL GAS
15 FRANCHISE AGREEMENT BETWEEN THE CITY OF
16 JACKSONVILLE AND PEOPLES GAS TO PROVIDE THE
17 TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE
18 MAY BE EXERCISED; WAIVING CERTAIN PROVISIONS OF
19 SUBSECTION 711.306(B) (FRANCHISE AGREEMENT
20 TERM, CONDITIONS AND FORM), SUBSECTIONS
21 711.321(A) AND (E) (AMOUNT AND PAYMENT OF FEES),
22 SECTION 711.327 (TERMINATION), SUBSECTIONS
23 711.331(A) AND (D) (AUTHORITY FOR USE OF CITY
24 RIGHTS-OF-WAY/PERMITS), SUBSECTIONS 711.332(H)
25 AND (K) (CONDITIONS ON PUBLIC WAY OCCUPANCY),
26 SECTION 711.335 (RELOCATION), AND SUBSECTIONS
27 711.337(B) AND (C) (REMOVAL), PART 3 (UTILITY
28 FRANCHISE AGREEMENT), CHAPTER 711 (CITY RIGHTS-
29 OF-WAY), *ORDINANCE CODE*; WAIVING THE CONFLICTING
30 PROVISIONS OF CHAPTER 711 (CITY RIGHTS-OF-WAY),
31 *ORDINANCE CODE*; PROVIDING FOR CITY OVERSIGHT BY

1 THE FINANCE DEPARTMENT; DIRECTING THE
2 LEGISLATIVE SERVICES DIVISION TO FORWARD THIS
3 ORDINANCE, ONCE ENACTED, TO THE DEVELOPMENT
4 SERVICES DIVISION OF THE PLANNING AND
5 DEVELOPMENT DEPARTMENT; PROVIDING AN EFFECTIVE
6 DATE.

7
8 **WHEREAS**, the City is authorized to award a franchise agreement
9 when there is a request for significant use of the City's rights-of-
10 way for operation of a utility pursuant to Chapter 711, *Ordinance*
11 *Code*; and

12 **WHEREAS**, Peoples Gas System, Inc. ("Peoples Gas" or "Company")
13 was initially granted a franchise to use the City's rights of way by
14 Ordinance 2003-1103-E, and said franchise was subsequently extended
15 by Ordinances 2013-532-E and 2013-725-E with an expiration date of
16 March 31, 2024; and

17 **WHEREAS**, Peoples Gas desires to continue using the City's
18 rights-of-way for operation and maintenance of a subsurface natural
19 gas distribution system; and

20 **WHEREAS**, the current franchise agreement between the City and
21 Peoples Gas was administratively extended by an additional six months
22 through September 30, 2024 to allow time for a new franchise agreement
23 to be prepared; and

24 **WHEREAS**, it is anticipated that Peoples Gas will continue to
25 invest in the natural gas distribution system located within the
26 City's rights-of-way, and therefore the utility has requested a new
27 franchise be granted for a 30 year term; and

28 **WHEREAS**, pursuant to Chapter 711, *Ordinance Code*, franchise
29 agreements providing for a term in excess of two years require Council
30 approval; and

31 **WHEREAS**, the Council hereby grants a non-exclusive franchise

1 to Peoples Gas for the continued operation of a natural gas
2 distribution system in the City's rights-of-way as further described
3 herein; now therefore

4 **BE IT ORDAINED** by the Council of the City of Jacksonville:

5 **Section 1. Grant of Non-Exclusive Franchise.** The City
6 hereby grants to Peoples Gas ("Peoples Gas" or "Company") a non-
7 exclusive right, privilege and franchise to lay, erect, construct,
8 operate and maintain a natural gas distribution system within the
9 City rights-of-way in accordance with the terms, conditions and
10 authorizations outlined in the Natural Gas Franchise Agreement
11 Between City of Jacksonville and Peoples Gas System, Inc. (the
12 "Franchise Agreement") in substantially the form attached hereto as
13 **Second Revised Exhibit 1** and incorporated herein by this reference.

14 **Section 2. Approval and Authorization.** There is hereby
15 approved, and the Mayor and Corporation Secretary are hereby
16 authorized to execute and deliver, the Franchise Agreement which
17 authorizes Peoples Gas to locate and operate its natural gas system
18 within the City's rights-of-way to service individual customers
19 subject to the terms and conditions outlined in the Franchise
20 Agreement. In exchange for the use of the City's rights-of-way,
21 Peoples Gas shall pay a franchise fee in an amount equal to six
22 percent (6%) of the company's gross revenue, less any adjustments for
23 uncollectable accounts, from the sale of natural gas to customers
24 within the corporate limits of the City.

25 **Section 3. Waiving the Conflicting Provisions of Subsection**
26 **711.306(b) (Franchise agreement term, conditions and form), Ordinance**
27 **Code.** The conflicting provisions of Subsection 711.306(b) (Franchise
28 agreement term, conditions and form), Part 3 (Utility Franchise
29 Agreement), Chapter 711 (City Rights-of-way), *Ordinance Code*, are
30 hereby waived as to the requirement for Company to reimburse the City
31 for delay costs resulting from the person's failure to relocate their

1 facilities within the time frame provided therein or in the project
2 relocation schedule.

3 **Section 4. Waiving the Conflicting Provisions of**
4 **Subsections 711.321(a) and (e) (Amount and payment of fees), Ordinance**
5 **Code.** The conflicting provisions of Subsections 711.321(a) and (e)
6 (Amount and payment of fees), Part 3 (Utility Franchise Agreement),
7 Chapter 711 (City Rights-of-Way) regarding the requirement that
8 Company (on an annual basis) provide the Director with a revenue
9 letter audited by Company's independent certified public accountants
10 verifying revenues generated in the Jacksonville franchise area, the
11 City's authority to unilaterally amend the Code to increase or
12 decrease the franchise fee, the timing and collection of franchise
13 fees, and Company's responsibility to pay the costs of certain audits
14 performed by the City are hereby waived as they conflict with the
15 terms of the Franchise Agreement authorized hereby.

16 **Section 5. Waiving Certain Provisions of Section 711.327**
17 **(Termination), Ordinance Code.** The provisions of Section 711.327
18 (Termination), Part 3 (Utility Franchise Agreement), Chapter 711
19 (City Rights-of-Way), *Ordinance Code*, regarding notice upon violation
20 of material provisions of the Franchise Agreement and abandonment of
21 the system by Company and transfer of abandoned property to the City
22 without payment or compensation upon termination of the Franchise
23 Agreement are hereby waived as those provisions are not contained in
24 the Franchise Agreement.

25 **Section 6. Waiving Certain Provisions of Subsections**
26 **711.331 (a) and (d) (Authority for use of City rights-of-way/permits),**
27 **Ordinance Code.** The provisions of Subsections 711.331 (a) and (d)
28 (Authority for use of City rights-of-way/permits), Part 3 (Utility
29 Franchise Agreement), Chapter 711 (City Rights-of-Way), *Ordinance*
30 *Code*, regarding Company's obligation to file with its permit
31 applications to the City bonds in the amount of 110% of the estimated

1 cost of the improvement in the rights-of-way to protect the City and
2 Company's obligation to use "its best efforts to individually notify
3 all adjacent property owners affected by the proposed construction
4 prior to the commencement of that work" are hereby waived.
5 Specifically, the requirement to obtain and maintain the 110% bond
6 is waived as that provision is not in the Franchise Agreement. In
7 addition, this waiver is necessary as it pertains to notice
8 requirements as the specific terms for notice are set forth in the
9 Franchise Agreement.

10 **Section 7. Waiving Certain Provisions of Subsections**
11 **711.332(h) and (k) (Conditions on public way occupancy), Ordinance**
12 **Code.** The provisions of Subsections 711.332(h) and (k) (Conditions
13 on public way occupancy), Part 3 (Utility Franchise Agreement),
14 Chapter 711 (City Rights-of-Way), *Ordinance Code*, regarding the
15 City's right to make repairs to protect the public health, safety and
16 welfare, with the total cost of same being charged to Company, and
17 the City's right to remove or damage any part of Company's facilities
18 in the event of fire or other disaster without liability to Company
19 are hereby waived as those provisions are not contained in the
20 Franchise Agreement.

21 **Section 8. Waiving the Conflicting Provisions of Section**
22 **711.335 (Relocation), Ordinance Code.** The conflicting provisions of
23 Section 711.335 (Relocation), Part 3 (Utility Franchise Agreement),
24 Chapter 711 (City Rights-of-Way), *Ordinance Code*, are hereby waived
25 as to the requirement for Company to reimburse the City for delay
26 costs resulting from Company's failure to relocate their facilities
27 within the time frame provided therein or in the project relocation
28 schedule as that provision is not contained in the Franchise
29 Agreement.

30 **Section 9. Waiving Certain Provisions of Subsections**
31 **711.337(b) and (c) (Removal), Ordinance Code.** The conflicting

1 provisions of Subsections 711.337(b) and (c) (Removal), Part 3
2 (Utility Franchise Agreement), Chapter 711 (City Rights-of-Way),
3 *Ordinance Code*, regarding removal of all above-ground elements of the
4 system or abandonment and transfer of the system in its entirety to
5 the City without payment or compensation upon expiration or
6 termination of the Franchise Agreement are hereby waived as those
7 provisions are not contained in the Franchise Agreement.

8 **Section 10. Waiving Conflicting Provisions of Chapter 711,**
9 **(City Rights-of-Way), *Ordinance Code*, Not Otherwise Specifically**
10 **Waived Herein.** The conflicting provisions of Chapter 711 (City
11 Rights-of-Way), *Ordinance Code*, are hereby waived to the extent the
12 Franchise Agreement, in substantially the form attached hereto and
13 approved by Council, authorizes or allows any action or inaction by
14 Peoples Gas that is in conflict with, or deviates from, the
15 requirements of Chapter 711, *Ordinance Code*.

16 **Section 11. Oversight.** The Finance Department shall oversee
17 the Franchise Agreement described herein.

18 **Section 12. Directive to Legislative Services Division.** The
19 Chief of Legislative Services is hereby directed to provide a copy
20 of this legislation, once enacted, to the Development Services
21 Division of the Planning and Development Department.

22 **Section 13. Effective Date.** This Ordinance shall become
23 effective upon signature by the Mayor or upon becoming effective
24 without the Mayor's signature.

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26 Form Approved:

27
28 /s/ Mary E. Staffopoulos

29 Office of General Counsel

30 Legislation Prepared By: Mary E. Staffopoulos

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