

ORDINANCE 2012 - 07

AN ORDINANCE 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 BELLEVIEW, MARION COUNTY, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE; AND REPEALING PRIOR ORDINANCE.

WHEREAS, Peoples Gas System (hereinafter referred to as "Peoples Gas") is providing natural gas to residents of the City of Belleview, Florida (hereinafter referred to as the "City"); and

WHEREAS, Peoples Gas is providing natural gas to residents of Marion County, whose property may be annexed into the corporate limits of the City; and

WHEREAS, Peoples Gas and the City have agreed for Peoples Gas to continue to utilize the City's rights of way to provide natural gas to such persons and their property; and

WHEREAS, Peoples Gas has agreed to pay fees as provided herein; and

WHEREAS, the City Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with Peoples Gas System; and

WHEREAS, the City of Belleview desires to grant a nonexclusive franchise to Peoples Gas to provide natural gas to residents of the City and their property for a period of ten (10) years commencing from the date provided herein, and renewable for two (2) like terms of ten (10) years, as provided hereinafter.

NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF BELLEVIEW, FLORIDA, THAT:

SECTION 1. Findings.

The City deems it necessary, desirable and in the interest of its citizens to grant a nonexclusive franchise (sometimes referred to herein as the "Franchise") granting Peoples Gas permission to occupy the Rights-of-Way in the City of Belleview, Florida, for the purpose of providing natural gas services.

SECTION 2. SHORT TITLE.

This Ordinance shall be known as and may be cited as the “Peoples Gas Franchise.”

SECTION 3. DEFINITIONS.

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely permissive.

- A. *Annexation* - the incorporation of real property to the area within the boundaries of the City, thereby making the real property in every way a part of the City.
- B. *Customer* - any Person, as defined in sub-paragraph “K” herein, served by Peoples Gas within the corporate limits of the City.
- C. *City* - the City of Belleview, Marion County, Florida, its successor and assigns.
- D. *Contraction* - the reversion of real property within the City’s municipal boundaries to an unincorporated status (sometimes referred to as “de-annexation”).
- E. *Distribution System* - 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.
- F. *Effective Date* - the date this Franchise becomes Effective as described in Section 21 below.
- G. *FPSC* - the Florida Public Service Commission or any successor agency.
- H. *Facilities* - pipes and such other appurtenances as may be reasonably necessary for the construction, maintenance and operation of a natural gas transmission and distribution system.
- I. *Franchise or Franchise Agreement* - this agreement, as passed and adopted by the City and accepted by Peoples Gas, as provided in Section 19 below.
- J. *Franchise Area* - that area for which Company provides natural gas service within the corporate City limits of the City.

K. *Gross Revenues* - all revenues (as defined by the Florida Public Service Commission) received by Peoples Gas from any Customer from the sale of natural gas.

L. *Person* - any individual, firm, partnership, estate, corporation, company association, governmental entity, or entity of any kind.

M. *Natural Gas or Gas* - 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 premise. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas").

N. *Right-of-way* - all of the public streets, alleys, highways, waterways, bridges, sidewalks and parks, and any other public ways or places owned by the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

SECTION 4: GRANT:

The City hereby grants to Peoples Gas 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 the City, or in such territory as may be hereafter added or annexed to, or consolidated with, the City, a Distribution System subject to the terms and conditions herein contained.

SECTION 5: TERM

The nonexclusive franchise hereby granted shall be for a period of ten (10) years from the effective date of this ordinance; provided, however, that the Franchise will automatically renew for a maximum of two (2) successive ten (10) year terms, unless one of the parties notifies the other, by written notice, given at least sixty (60) days before the expiration of the then-current ten (10) year term, that it does not desire the Franchise to automatically renew. Should either party give said sixty (60) day written notice that it does not desire to renew the Franchise, then the Franchise shall expire upon the conclusion of the then-current ten (10) year term. If not terminated sooner as provided hereinabove, this Franchise shall expire thirty (30) years from the effective date of this agreement.

SECTION 6: FRANCHISE FEE

A. *Payment of fees.* 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, Peoples Gas, its successors or assigns, shall pay to the City, or its successors, a sum of money equal to six percent (6%) of Peoples Gas' 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.

B. *City customers.* The parties hereto acknowledge that the City has delivered to Peoples Gas such information (including City limit streets and block numbers) as is needed by Peoples Gas to determine which of its customer are located within the City limits. Further, the City will furnish an annual report to Peoples Gas, in a format acceptable to Peoples Gas, setting forth any changes to the address listing provided the previous year.

C. *Annexation or Contraction.* The City and Peoples Gas agree that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If the City approves any Franchise Area expansion or reduction by annexation or contraction, the City will provide written notice to Peoples Gas, at the address provided below, within sixty (60) days of such approval and this Franchise shall automatically extend to include any such annexed areas.

D. *Updated lists.* Within sixty (60) days of any such annexation, contraction or platting process, City shall provide to Peoples Gas an updated list containing the new or removed street names, known street name aliases, street addresses, and zip codes associated with each street name. All notices of annexation or contraction and address listings shall be addressed to the Annexation Coordinator as follows with the address subject to change:

Peoples Gas
316 SW 33rd Ave.
Ocala, Florida 34474
Attention: Division Manager

E. *Revised payments.* Peoples Gas must revise its payments due to any expansion or reduction by annexation within a reasonable time after Peoples Gas has received such notice and updated list from City, but no later than sixty (60) days after receipt of notice and the list. The City understands and affirmatively acknowledges that Peoples Gas will exclusively rely upon the City to provide timely and accurate information to Peoples Gas regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude Peoples Gas ability to revise any payments due to the City that are impacted by such annexations or contractions. Further, the City acknowledges that if such information is not timely furnished to Peoples Gas as required herein, any related obligation to collect payments from those customers shall be suspended during the period of delay.

F. *Non-Exclusive Use.* The Peoples Gas right to use and occupy Rights-of-Way for the purposes herein set forth shall be non-exclusive as to entities not engaged in the provision of natural gas and service, and the City reserves the right to grant to others the right to utilize the Rights-of-Way, to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Peoples Gas herein, all in accordance with applicable statutory and regulatory requirements.

G. *Competitors.* The parties acknowledge that certain areas in the surrounding unincorporated area of Marion County may be served by another natural gas distribution company and that such areas may be annexed into the corporate limits of the City. Nothing in this agreement was intended nor shall be construed to interfere with or disallow providing such gas service by such company or companies.

SECTION 7: RECORDS AND REPORTS.

- A. *Accounting.* Peoples Gas shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Peoples Gas.
- B. *Reports.* Peoples Gas will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the City from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6(B).
- C. *Availability of Records and Reports.* Peoples Gas shall supply information that the City or its representatives may from time to time reasonably request relative to the calculation of franchise fees. Such records shall, on written request of the City, be open for examination and audit by the City and the City's representatives at Peoples Gas headquarters in Tampa, Florida, during ordinary business hours and such records shall be retained by Peoples Gas for a period of three (3) fiscal years, provided the applicable audits have been released and resolved.
- D. *Audit.* The City may require, upon prior written notice and during Peoples Gas normal business hours, an audit of Peoples Gas books related to this Ordinance at minimum once every five (5) years, and then only for the preceding three years. Peoples Gas will reimburse the City's audit costs if the audit identifies errors in Peoples Gas Franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of franchise fees has occurred due Peoples Gas error,

interest will be calculated for each month of the underpayment period at a rate of 10% per annum. Both the underpayment and interest shall be paid within ninety (90) days from receipt of notice of the underpayment.

SECTION 8: USE OF STREETS

A. *Nonexclusive grant of authority.* This grant of authority is limited to Peoples Gas placing its Facilities within the Rights-of-Way for its natural gas services. Accordingly, the City hereby grants to Peoples Gas, its successors and assigns the non-exclusive right, authority, and franchise to lay, construct, maintain, repair and operate its Facilities in, under and upon the present and future Rights of Way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, provided that all portions of the same shall conform to accepted industry standards and applicable governmental codes.

B. *Distribution system.* The Distribution System shall be placed, constructed or laid in such manner as will, consistent with necessity, least interfere with other public uses of the Rights-of-way, and said Rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, Peoples Gas 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. The City shall issue, or if applicable deny, permits within ten (10) business days of application by Peoples Gas. In consideration of the franchise fees contemplated in this agreement, the City shall not charge Peoples Gas any fees for the issuance of such permits. Peoples Gas shall, with due diligence and dispatch, place such Rights-of-way in as good a condition as before such excavation or disturbance was made; provided, however, that should Peoples Gas fail, within ten (10) days of its receipt of written notice from the City, to restore such Rights-of-way, then the City may undertake such restoration (other than any restoration work on the Distribution System) and charge the reasonable cost thereof to Peoples Gas; which charge shall be paid within thirty (30) days of the City's invoice being placed in the US Mail addressed to Peoples Gas, as hereinafter provided.

C. *Abide by rules and regulations.* To the extent consistent with Florida law, Peoples Gas hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, in the exercise of its police power, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish, in the exercise of its police power; provided, however, that the City shall not pass any ordinance or regulation that results in a material change in the rights or obligations of Peoples Gas under the Franchise Agreement.

SECTION 9: MAINTENANCE

All such components of the Distribution System of Peoples Gas 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 Florida Public Service Commission.

SECTION 10: 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 11: 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 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, or other underground structure located within the Rights-of-way, it shall be deemed necessary by the City to remove, relocate or disconnect any portion of the Distribution System of Peoples Gas hereto for such public purpose, such removal, relocation or disconnection shall be made by Peoples Gas as ordered in writing by the City without claim for reimbursement. If the City shall require Peoples Gas 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 City, as part of its permitting or approval process, the City shall require the Person desiring or occasioning such removal, relocation, disconnection or alteration to reimburse Peoples Gas 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. Peoples Gas 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 12: ASSIGNMENT

- A. *No Assignment.* 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, 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. *Exception.* Notwithstanding the foregoing, the Company may, without the consent of the City, lease, assign or otherwise alienate and transfer 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 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 13: INSURANCE

During the term of this Franchise, Peoples Gas 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 provide coverage in at least the following minimum amount:

- (i) \$1,000,000 for bodily injury or death to a person;
- (ii) \$5,000,000 for bodily injury or death resulting from any one accident.
- (iii) \$1,000,000 for property damage resulting from any one accident.
- (iv) \$1,000,000 for all other types of liability 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. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance. 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 Peoples Gas by this Franchise Agreement, Peoples Gas 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 Peoples Gas' negligent operation of the Distribution System within the City 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 City 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 Peoples Gas 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, 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, Peoples Gas' 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. NOTICES.

All notices by either City or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and City and Company observed holidays excepted. All notices shall be addressed as follows:

To City:

City Clerk/Administrator
5343 S. E. Abshier Blvd
Bellevue, FL 34420
Phone: (352) 245-7021
Facsimile No.: (352) 245-6532

To Peoples Gas:

Peoples Gas
316 SW 33rd Ave.
Ocala, FL 34474
Phone:
Facsimile No.:

SECTION 16: CITY COVENANT

As a further consideration for this Franchise Agreement, the City covenants and agrees that it will not, during the term of this non-exclusive Franchise or any extension thereof, engage in the business of distributing or selling Natural Gas within the corporate limits of the City, as modified.

SECTION 17. SEVERABILITY.

Should any section or provision of this Franchise Ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid.

SECTION 18. MERGER.

This Franchise Ordinance embodies the full, complete and entire understanding of the parties, as set forth in their non-exclusive franchise agreement, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this Franchise. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft

agreements, inducements, or other understanding of any kind or nature not set forth or provided in their written non-exclusive franchise agreement and reiterated herein.

SECTION 19. NON-WAIVER PROVISION.

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

SECTION 20. HEADINGS.

Headings used herein are for convenience only and shall not be construed to limit or alter the content or meaning of any terms or provisions hereof.

SECTION 21. REPEALER AND SUPERSEDING PROVISION.

This Ordinance shall supersede, as to the rights, privileges and obligations between City and Company, all Ordinances and parts of Ordinances in conflict with the terms of this Ordinance. Ordinance No. 2001-08 and any amendments thereto, are hereby deemed null and void and will be repealed upon the effective date of the this Ordinance, and none of the provisions of such repealed Ordinance No. 2001-08 and any amendments thereto shall have any further force and effect.

SECTION 22. GOVERNING LAW AND VENUE.

A. *Law of Florida.* This Franchise Ordinance shall be construed and interpreted according to the laws of the State of Florida.

B. *Venue.* In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Marion County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Ocala Division.

SECTION 23: EFFECTIVE DATE

This Franchise shall become effective upon its acceptance by Peoples Gas, which acceptance must be evidenced in writing within sixty (60) days of the City's passage and adoption hereof.

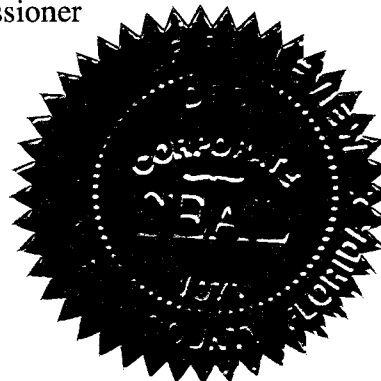
CERTIFICATE OF ADOPTION AND APPROVAL

The above and foregoing Ordinance was duly read and adopted upon First Reading by a 5 - 0 vote of the City Commission of the City of Belleview, Florida, at a Regular Meeting held on July 10, 2012. Said Ordinance was duly read, passed and adopted upon Final Reading by a 4 - 0 vote of the City Commission of the City of Belleview, Florida, at a Public Hearing held on July 24, 2012.

Christine K. Dobkowski
CHRISTINE K. DOBKOWSKI
Mayor/Commissioner

ATTEST:

Sandi McKamey
SANDI MCKAMEY, MMC, CPM
City Clerk/Administrator



APPROVED AS TO FORM AND LEGALITY:

Frederick E. Landt, III
FREDERICK E. LANDT, III, Esq.
City Attorney

CERTIFICATE OF ADVERTISING

I HEREBY CERTIFY that foregoing Ordinance was advertised for a Public Hearing in the July 12, 2012 edition of the *Voice of South Marion* in accordance with Florida Statutes.

Margaret DeGennaro
Margaret DeGennaro, MMC, CPS
Deputy City Clerk

Ordinance 2012-07, Peoples Gas System Natural Gas Franchise Agreement
accepted this 13th day of September, 2012 by Peoples Gas System:

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

[Signature]

By: ~~President~~ Gordon L. Gall. Jr.

Title: President

**SIGNED, SEALED, AND DELIVERED
IN OUR PRESENCE AS WITNESSES:**
Witnesses as to Peoples Gas System

x Trace D. Welch
Witnesses' Printed Name

Trace D. Welch
Witnesses' Address

702 N FRANKLIN ST, Tampa, FL 33602
Witnesses' Address

x Marlene King
Witnesses' Printed Name

Marlene King
Witnesses' Address

702 N. FRANKLIN ST, TAMPA, FL 33602
Witnesses' Address