**BEFORE THE CITY COMMISSION**
**CITY OF STUART, FLORIDA**

**ORDINANCE NUMBER 2441-2020**

**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 STUART, MARTIN COUNTY, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.**

WHEREAS, The City of Stuart originally entered into a franchise agreement with Peoples Gas System, a Division of Tampa Electric Company on May 11, 2000 for a period of 15 years, with an additional 5-year renewal granted in August, 2015. and

WHEREAS, Peoples Gas System, a Division of Tampa Electric Company and the City of Stuart desire to enter into a franchise agreement for a period of ten (10) years, subject to the renewal provision set forth herein, commencing from the date 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, a Division of Tampa Electric Company.

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

SECTION 1: DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the meaning 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 Stuart, Martin 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. "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. "Effective Date" shall mean the date this Franchise becomes effective as described in Section 22 below.
F. "Franchise" or "Franchise Agreement" shall mean this agreement as passed and adopted by the City and accepted by the Company as provided in Section 22 below.
G. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
H. "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, or distribution of Gas.
I. "Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity.
J. "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").

K. "Rights-of-way" means any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, sidewalk, public place, or other rights-of-way that are owned by the City.

SECTION 2: GRANT

The City hereby grants to the 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 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 3: TERM

Except as provided in Section 18, the 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 (2) two 10 year terms, unless one of the parties notifies the other, with no less than one hundred and eighty days (180) days' written notice, prior to the expiration of the then current term, that it does not want the Franchise to automatically renew. 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 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. 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 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. The Company shall notify the City Clerk of any lease, assignment or otherwise alienate and transfer of this Franchise in connection with the lease or sale of the Distribution System

SECTION 5: CITY COVENANT

As a further consideration for this Franchise Agreement, the City 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 City, as modified, during the term of this Franchise Agreement.

SECTION 6: USE OF STREETS

The Distribution System shall be located or relocated and so constructed as not to interfere with, including but not limited to, sanitary sewers, drainage systems, water pipes, electrical conduits, communication cables, or other public utility service facilities, existing at the of such location, relocation or construction. The Company's Distribution System facilities shall not obstruct or interfere with the public uses of streets, roads, highways, or alleys, or create any conditions which are or may become dangerous to the traveling public. Company shall attempt to minimize above grade facilities, and such facilities shall be installed near the outer boundaries of the Rights-of-way when appropriate. The location or relocation of all Distribution System facilities shall be made after Company has received all applicable permits, approval and permissions from the City and such other governmental entities as may be necessary and the locations or relocations shall be subject to the City's approval, In the event that Company is acting in its proprietary function as a retail provided of gas equipment or appliances, Company shall seek the appropriate permits from the City. Company

shall cooperate with the City at all times and shall use commercially reasonable efforts to provide timely and complete information regarding the location of its Distribution System facilities. Company and City shall cooperate and coordinate their efforts to make the most efficient and economical use of the Rights-of-way and the Distribution System facilities.

If any street, highway or avenue is to be paved by the City, the City's Public Works Department shall give written notice to the Company not less than one hundred and eighty (180) days prior to the commencement of paving. Provided the Company does not already have a main in the street, highway or avenue to provide natural gas service to the surrounding houses and other structures, Company shall attempt to communicate with surrounding houses and other structures to determine whether, in its sole discretion, construction of Distribution System facilities in the street, highway or avenue in question is economically feasible. Where such construction is determined to be economically feasible, the Company shall, at its sole discretion, construct such Distribution System facilities in the street, highway or avenue in question prior to paving by the City. However, in the event the Company believes that such construction may not be completed prior to City's planned paving schedule, the Parties will attempt to negotiate a revised paving schedule satisfactory to both Parties; provided, however, that if a delay in paving will cause additional expense to the City, or substantial inconvenience to the residents of the City, the City may proceed with its original paving schedule. The Company shall, at its own expense, replace, repair and restore in a timely manner any sidewalk, street, alley, pavement, water, sewer or other utility line appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature, that may be damaged or displaced by the Company in the conduct of its operations, and shall, at a minimum, restore all property to a condition equivalent to the condition immediately prior to the work and/or changes made by the Company. Company shall take safety precautions to alert the public of work, which may include, but is not limited to, the use

of barricades and signs. The Company shall move or remove any Distribution System facilities at no cost to the City, in the event of the widening, repair or reconstruction of any street, road, alley or other Rights-of-way by the City which creates a conflict with the Company's Distribution System facilities. The Company and the City shall not be liable for any cost or expense in connection with the location or relocation of its Distribution System facilities that are made pursuant to the request of any third party; provided further that such relocation requests shall not be honored until such third party has made arrangements to reimburse the Company and/or the City, as the case may be, in a manner satisfactory to such Party(ies).

SECTION 7: MAINTENANCE

All such components of the Distribution System of the Company 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 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.

SECTION 9: CONSTRUCTION WORK

Before the commencement of the construction of any Distribution System facilities, the Company shall provide a drawing to the City establishing the location, lines or any other information reasonably requested by the City in connection with the Distribution System facilities. The laying of such Facilities shall conform to the designated locations, lines or other conditions of the City. Underground Gas Distribution facilities that lie within ten (10) feet of an existing building must be identified prior to construction. Company agrees that the materials to be used in the construction,

operation and maintenance of the Distribution System facilities and the service to be rendered shall be consistent with the requirements of the Florida Public Service Commission having jurisdiction over the materials to be used in the construction, operation and maintenance of the Distribution System facilities and the service to be rendered. The Company shall, at all times, keep an accurate map showing the location of all Gas System Facilities laid and maintained by Company under this Franchise, which shall be accessible for inspection by City officials upon advance written notice during reasonable business hours at the Company's place of business.

SECTION 10: EMERGENCY RESPONSE PLAN AND TRAINING

The City acknowledges that, in the event of any emergency involving the Distribution System facilities, Company's actions in response to such emergencies are the sole jurisdiction of the Florida Public Service Commission (FPSC). The Company acknowledges that when responding to any emergency involving Distribution System facilities it is obligated to follow all applicable orders, rules and regulations on file with the Florida Public Service Commission and the most current version of Company's Emergency Response Plan. The City shall designate a responsible official within the City and the Company will grant access to its Emergency Response Portal by the City's Fire Chief to access and view the most current version of the Company's Emergency Response Plan.

The Company shall provide, at times mutually agreeable to the parties, at the Company's sole expense, training to the City's Fire Department every three (3) years regarding the response to emergency conditions that may involve Company's Distribution System facilities.

SECTION 11. ACCIDENTS OR DAMAGES. EMERGENCIES

The City shall not be liable or responsible in any manner whatsoever for any accident, personal injury, property damage or any claim or damage of any type whatsoever that may occur in the course of the construction, operation or maintenance of any of its Facilities by Company, its

employees, agents, contractors, or any third parties hired by Company to perform any aspect of Company's responsibilities under this Agreement, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, including the acts of the City's employees, agents, contractors, or any third parties hired by the City for the construction operation or maintenance of any of the Facilities. Nothing in this Agreement shall be construed to waive or extend the City's sovereign immunity as set forth in Section 768.28, Florida Statutes. The City acknowledges that, in the event of an emergency involving the Distribution System facilities, Company's obligations to notify various constituents of such circumstances are regulated by the FPSC.

SECTION 12. INDEMNIFICATION AND HOLD HARMLESS

Company shall indemnify, defend and hold harmless the City, its Mayor, Council members, officers, agents and employees from and against any and all claims, suits, actions, regulatory or administrative proceedings, appeals therefrom, including attorney's fees and costs, liabilities and expenses (reasonably incurred by the City) to the extent arising during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity (collectively "Claims") caused by or arising out of Company's negligence, intentional torts, strict liability, breach of applicable law or breach of this Agreement in connection with the construction, operation or maintenance of its Distribution System facilities within the City; provided, however, that neither the Company nor any of its employees, agents, contractor, licensees, or sub lessees shall be liable under this section for any claims, suits, actions, demands, regulatory or administrative proceedings, appeal therefrom, including attorney's fees and costs, liabilities and expenses, caused by or arising out of the negligence, strict liability, intentional torts, breach of applicable law or breach of this Agreement by the City, its Mayor, Council members, officers, agents, or employees. Nothing

in this Agreement shall be construed to waive or extend the City's sovereign immunity as set forth in Section 768.28, Florida Statutes. The provisions of this Section shall survive the termination of this Agreement, and consideration for the provisions of this section is hereby expressly acknowledged as to its receipt and sufficiency. Notwithstanding any provision herein to the contrary, the Company's liability under this Agreement shall be limited to the assets and business of Peoples Gas System, a division of Tampa Electric Company, as if the Company were incorporated separate and apart from Tampa Electric Company.

SECTION 13: FRANCHISE FEE

Subject to Section 14 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 apply 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, arising from the sale, transportation, or distribution 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.

SECTION 14: IDENTIFICATION OF CITY RESIDENTS

No less than ten (10) days prior to the Effective Date, the City shall deliver to the Company such information (including City limit streets and block numbers) as is needed by the Company to determine which of its customer are located within the City limits. The City Clerk shall provide a copy of any Ordinance via certified mail to Director, External Affairs, TECO Peoples Gas at 5101 NW 21st Avenue, Suite 460, Fort Lauderdale, Florida 33309 no less than thirty (30) days after the effectiveness of any change in said limits, whether by addition, annexation, or consolidation, or upon the Company's request.

SECTION 15: 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 City are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida. Upon request by the City, 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 City 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 16: INSURANCE

During the term of this Franchise, 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 issued by an insurance carrier licensed to do business in the state of Florida 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, and for 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 incident or accident, and for 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 Agreement. The coverage requirements set forth in this Section 13 may be satisfied, in whole or in part, with self-insurance.

Company shall notify the Clerk of the City in writing, promptly upon any material alteration, modification, or cancellation of such policy.

SECTION 17: TERMINATION BY CITY

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 City to declare a termination of this Franchise Agreement; provided, however, that before such action by the City shall become operative and effective, the Company shall have been served by the City with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the City 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 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 the Company shall not constitute grounds for termination.

SECTION 18: CHANGES IN PROVISIONS HEREOF

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

SECTION 19: 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 Franchise

Agreement adjudged to be invalid result 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 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 the Company or City may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

SECTION 20: GOVERNING LAW

This Franchise shall be governed by the laws of the State of Florida and applicable federal law.

SECTION 21: EFFECTIVE DATE

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

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

| | YES | NO | ABSENT | ABSTAIN |
|---|---|---|---|---|
| MICHAEL J. MEIER, MAYOR | | | | |
| EULA R. CLARKE, VICE MAYOR | | | | |
| BECKY BRUNER, COMMISSIONER | | | | |
| KELLI GLASS LEIGHTON, COMMISSIONER | | | | |
| MERRITT MATHESON, COMMISSIONER | | | | |

ADOPTED on first reading this _____day of _____

ATTEST:

_____
MARY R. KINDEL
CITY CLERK

_____
MICHAEL J. MEIER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL

PEOPLES GAS SYSTEM, A DIVISON OF
TAMPA ELECTRIC COMPANY

_____
By:

Title:_____

_____
By:

Title:_____