ORDINANCE NO. 2014-371

AN ORDINANCE OF THE CITY OF PARKER, FLORIDA, 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 PARKER, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING A SEVERABILITY CLAUSE; REPEALING ORDINANCE NOS. 99-250 AND 2014-368 AND ALL CODES, ORDINANCES AND RESOLUTIONS TO THE EXTENT OF ANY CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARKER AS FOLLOWS:

Section 1. Definitions.

For the purposes of this Ordinance, the following terms shall have the meaning given herein.

"Customer" shall mean any Person served by the Company within the corporate limits of the City.

"City" shall mean the City of Parker, Bay County, Florida, its successor and assigns.

"Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.

"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.

"Effective Date" shall mean the date this Franchise becomes Effective as described in Section 21 below.

"Franchise", "Franchise Agreement" or "Agreement" shall mean this Ordinance constituting an agreement, as passed and adopted by the City and accepted by the Company, as provided in Section 21 below.

"FPSC" shall mean the Florida Public Service Commission or any successor agency.

"Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale, delivery or transportation of Gas.

"Person" shall mean any individual, firm, partnership, estate, corporation, company or other entity, including, but not limited to, any government entity or municipally-owned utility.

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

"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 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 15, 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 up to two (2) successive ten (10) year terms until such time as one of the parties notifies the other, with no less than one hundred and eighty (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.

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 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 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 City authority. The City 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 Agreement, the City shall not charge the Company any fees for the issuance of such permits. The Company 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 the Company 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 the Company.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations, codes 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 the Company under the Franchise Agreement.

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.

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 the Company hereto for such public purpose, such removal, relocation or disconnection shall be made by the Company as ordered in writing by the City without claim for reimbursement. If the City 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 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 the 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. The 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 the City or its 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 Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, 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, delivery or transportation 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 11. Identification of City Residents.

No less than thirty (30) 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 shall also provide such information no less than 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 to the extent the City 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 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 13. 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 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 be in the minimum sum of $1,000,000.00 for injury or death to any one person, and in 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 accident, and in 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 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 the Company by this Franchise Agreement, the 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 the Company's 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 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, 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, 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 Peoples were incorporated separate and apart from Tampa Electric Company.

Section 15. 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 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 of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, 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 16. Changes in Provisions Hereof.

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

Section 17. Severability; Changes in Law.

(A) If any section, part of a section, paragraph, sentence, or clause of this Ordinance 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 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 18. Governing Law.

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

Section 19. Condition Precedent - Written Acceptance by Company.

As a condition precedent to the effectiveness of this Ordinance, within forty-five (45) days after adoption, the Company shall file its acceptance hereof with the City Clerk.

Section 20. Repeal of Conflicting Codes, Ordinances and Resolutions.

Ordinance Nos. 99-250 and 2014-368 and all codes, ordinances and resolutions or parts of codes, ordinances and resolutions or portions thereof of the City of Parker, in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 21. Effective Date.

This Ordinance shall take effect immediately upon passage; provided the Company shall have complied with Section 19 hereof, the Company's acceptance of said Franchise being a condition precedent to the effectiveness of the provisions of this Ordinance.

PASSED, APPROVED AND ADOPTED at a meeting of the City Council of the City of Parker, Florida on the 7th day of October, 2014.

CITY OF PARKER

Richard Musgrave, Mayor

ATTEST:

Nancy Rowell, City Clerk

Examined and approved by me, this 7th day of October, 2014.

Richard Musgrave, Mayor

ACCEPTANCE OF FRANCHISE

KNOW ALL MEN BY THESE PRESENTS that Peoples Gas System, a division of Tampa Electric Company, hereby accepts the Franchise Agreement offered by the City of Parker pursuant to the foregoing Ordinance.

IN WITNESS WHEREOF, Peoples Gas Systems, a division of Tampa Electric Company, has caused its duly authorized officers to execute this instrument for it and as its act and deed on this 31 day of October, 2014.

PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY

By: _____
President
Printed Name: Gordon L. Gillette

ATTEST:

By: _____
Printed Name: Javier Cuebas
Title: Corporate Counsel