ORDINANCE NO. 95-11

AN ORDINANCE OF THE CITY OF HALLANDALE, FLORIDA, GRANTING TO PEOPLES GAS SYSTEM, INC., A NON-EXCLUSIVE GAS FRANCHISE FOR A PERIOD OF FIFTEEN YEARS, AND IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO

WHEREAS, Peoples Gas System, Inc., has requested of the City of Hallandale, Florida, a non-exclusive franchise to operate and maintain a gas system within the City; and

WHEREAS, the City Commission desires to grant a non-exclusive franchise to Peoples Gas System, Inc., subject to all of the terms, conditions, limitations and requirements of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HALLANDALE, FLORIDA:

SECTION 1. DEFINITIONS.

For the purpose of the Ordinance, the following terms and words shall have the meaning given herein.

A. "Grantee" shall mean Peoples Gas System, Inc., referred to herein as "the Company".

B. "Grantor" shall mean the City of Hallandale, Florida, herein referred to as "the City".

C. "Consumer" shall mean any person, firm, or public or private corporation served by the Grantee.

D. "Streets" shall mean the public streets, lanes, alleys, courts, bridges, or other public places in the Grantor's corporate limits as they now exist, or as they may be established at any time during the term of this franchise.

E. "Facilities or Equipment" shall mean pipe, pipe lines, tube, main, service, markers, vent, vault, manhole, meter, regulator, valve, conduit, appliance, structure and appurtenances used or useful in the distribution of gas, located or to be located in, upon, along, across, under or over the street.

F. "Gas" shall mean natural gas which is distributed in pipes. It shall not mean bottled gas or any other fuel.

SECTION 2. GRANT OF AUTHORITY.

There is hereby granted to the Grantee the right and privilege to erect, construct, operate and maintain a gas plant and gas system in the City; to establish and maintain gas mains, service pipes and any other appurtenances necessary for the sale and distribution of gas in and along the public rights-of-way of the City, including all streets, easements, alleys, avenues, parks, and all other public places.

SECTION 3. LIMITS OF THE FRANCHISE.

This franchise covers all of the corporate limits of the City of Hallandale, Florida, and any areas subsequently added or annexed thereto during the term of this franchise.

SECTION 4. FRANCHISE DURATION.

This franchise is granted for a period of fifteen (15) years from March 17, 1995.

SECTION 5. FRANCHISE CONSIDERATION.

The Grantee shall pay to the City monthly, a sum equivalent to six (6) percent of its gross revenues derived from the sale of natural gas to residential and commercial customers within the City (except sales of interruptible gas for industrial use as defined in the applicable tariff then used by the Grantee).

Such Franchise Fee shall be due and payable by Grantee on a monthly basis within thirty (30) days after the last day of each month.

If in the future, during the term of this agreement, the Grantee makes or agrees to make a franchise payment to another local governmental authority within the Company's operating area, that is equivalent to more than six (6) percent of Gross Revenues, as defined hereinabove, the Grantor reserves the right to amend this Ordinance to require the Grantee to collect and pay the Grantor such a percentage equal to the percentage paid to such local governmental authority. The Grantee agrees to furnish to the City within sixty (60) days from the effective date of any such franchise or agreement, a copy of such franchise or agreement.

Said consideration shall be shown as a separate, additional charge on utility bills. Revenues from gas sales to the City or to other governmental agencies shall be exempt. Nothing herein shall be construed to be a limitation on the assessment and collection of all other valid taxes, licenses and other impositions by the Grantor on and from the

Grantee in excess of the applicable percentage or revenue to be paid.

SECTION 6. RESTRICTION AGAINST ASSIGNMENT.

The Grantee shall not lease, assign or otherwise alienate this franchise or any renewal of this franchise, except with the consent of the City Commission expressed by Ordinance, and evidenced by a written assignment and consent to same, recorded in the public records of Broward County, Florida. The consent of the City Commission shall not be unreasonably withheld, provided that the prospective transferee is capable of performing all obligations of this franchise, and that such transferee agrees with the City, in writing, to comply with all provisions of this Franchise.

SECTION 7. FORFEITURE AND REVOCATION OF GRANT.

Violation by the Grantee of any of the covenants, terms and conditions herein, or default by the Grantee in observing or carrying into effect any of said covenants, terms, and conditions shall authorize and empower the Grantor to declare a forfeiture of and to revoke and cancel all rights granted hereunder, provided, however, that before such action by the Grantor shall become operative and effective, the Grantee shall have been served by the Grantor with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Grantor with respect thereto, and Grantee shall have a period of sixty (60) days after the service of such notice within which to rectify such violation or default; and provided

further that any violation or default resulting from a strike, lockout, an act of God, or any other cause beyond the control of the Grantee shall not constitute grounds for revoking or cancelling any rights hereunder. In the event that the Grantee, upon receipt of such written notice from the Grantor, does not desist from such violation within the 60-day period, then the Grantee shall be deemed to have forfeited all grants, privileges, rights and immunities given by this franchise.

SECTION 8. CHANGES IN PROVISIONS HEREOF.

Minor changes in the terms and conditions hereof may be made by written agreement between the Grantor and the Grantee, provided, however, that this section shall not be construed as conferring authority to make any changes in or modifications of the provisions of this Ordinance which would be repugnant to or inconsistent with basic factors or principles underlying the terms and conditions hereof.

SECTION 9. USE OF STREETS.

Grantee is hereby authorized to use streets within the City to erect, install, construct, repair, replace, reconstruct and maintain Grantee's facilities as may be necessary and pertinent to its operations authorized under the franchise, subject to the conditions set forth below.

(a) Grantee shall be responsible for securing any permits, licenses or agreements that may be necessary to the Grantee or required by any private property owners, public utilities or governmental agencies.

(b) Grantee's facilities shall be installed or relocated, whichever is applicable, as to cause a minimum of interference with the rights and reasonable convenience of property owners adjoining any of the said streets. Grantee's facilities shall be installed or relocated, whichever is applicable, from time to time, so as to interfere as little as possible with traffic over the streets, waterways, bridges and public places of the City, and to allow a reasonable egress from and ingress to abutting property. Prior to the complete blocking of any street or public place, Grantee shall consult with the City Engineer and City Chief of Police, or their successors, and other proper City officials toward the end of the least possible traffic interference.

(c) Grantee's facilities shall be installed or relocated, whichever is applicable, in locations in the right-of-way so as to cause a minimum of interference with the utilization of the right-of-way by the City. The City retains the right, on a case by case basis, to prohibit the installation or relocation, whichever is applicable, of Grantee's facilities in a particular location of a City street, in the event the City in its sole and reasonable discretion determines that such facilities will interfere with the use of the City street by the City.

(d) Grantee shall place its facilities underground whenever reasonably possible.

(e) Grantee's facilities shall be constructed, installed, repaired, replaced and relocated by the Grantee

with the approval by permit of the proper City officials; and the Grantee shall at its own expense replace without undue delay any sidewalks, pavement, subgrade, soil, grass or landscaping that may be displaced by the Grantee and restore same to as good condition as same existed prior to such construction, installation, repair or replacement of Grantee's facilities.

Upon failure of the Grantee to do so within ten (10) days after receipt by Grantee of written notice from the City Engineer or his successor, the City may repair and replace such portion of the sidewalk or street or other place that may have been disturbed by said Grantee, and the cost of the same including administrative and engineering costs shall be paid by the Grantee. The proper City officials may allow the Grantee a reasonable extension of the foregoing time period for good cause shown.

In addition, in the event the City incurs any damage or expense, as a result of any activity by the Grantee, or its nonfeasance, misfeasance or malfeasance, including interruption or relocation costs, Grantee shall immediately reimburse the City upon demand.

Notwithstanding any provisions herein to the contrary, in the event the City Engineer or his successor, other proper City officials or Grantee construes a repair or replacement to be an emergency, Grantee shall make such repairs and replacements as soon as practical, or the City may do so.

(f) Grantee shall endeavor to coordinate all construction, installation or repairs of Grantee's facilities with all governmental entities having jurisdiction over Grantee, and utilities which provide services in the vicinity of such activities of Grantee, in order to minimize any adverse effects, disruption or disturbance.

(g) All street cuts made by Grantee under this franchise shall be maintained by Grantee in accordance with the standards determined and required by the City Engineer or his successor as such standards are applied to all other franchises of the City.

(h) Except as otherwise required by Section 337.043, Florida Statutes, whenever the City shall determine through its City Commission that the public interest requires facilities of the Grantee to be reconstructed, relocated, altered or discontinued at Grantee's expense, it shall be the obligation of Grantee within thirty (30) days after receipt of written notice of such requirement from the City Engineer, or within such other longer time period which is acceptable to City, to comply with such City determination.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

The Grantee hereby agrees to abide by all the rules and regulations and ordinances which the Grantor has enacted or might enact in the future, and further agrees to abide by any established policy which the Grantor or its duly authorized representative has established or will establish

provided, however, it is not intended that the Grantor have the right to unilaterally modify the terms and conditions of this Franchise other than as herein provided and as is required by the execution of the Grantor's police powers. It is also expressly recognized that the authority of the Grantor is subject to preemption by the State of Florida Public Service Commission and by the United States Government.

SECTION 11. INDEMNIFICATION.

The parties hereto specifically agree and understand that the award of this Franchise to Grantee and all terms, promises, covenants, conditions and obligations contained in this Franchise are sufficient consideration for the indemnification provisions contained herein, in accordance with Section 725.06, Florida Statutes.

For and in consideration of the sum of ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and in consideration of the award of this Franchise to Grantee, Grantee shall indemnify City as follows:

The Grantee shall indemnify, hold harmless and defend the City, its officers, agents and employees against, and assume all liability for, any and all claims, suits actions, damages, liabilities, expenditures, or causes of action of any kind arising from this Franchise and/or arising from the construction, operation and maintenance of a gas utility system and related facilities and/or the use of the public streets for the purposes authorized herein and

resulting or occurring from any negligence, act, omission or error of the Grantee, its agents or employees or arising from the failure of the Grantee, its agents or employees to comply with each and every covenant of the Franchise or with any other ordinance or law regulating the use of the streets of the City resulting in or relating to, bodily injury, loss of life or limb or damage to property sustained by any person, firm, corporation or other business entity. Grantee shall save the City, its officers, agents and employees harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities incurred in and about any such claim, investigation or defense thereof, which may be entered, incurred or assessed as a result of the foregoing. Grantee shall defend, at its sole cost and expense, any legal action, claim or proceeding instituted by any person against the City, its officers, agents or employees as a result of any claim, suit or cause of action occurring from this franchise, for injuries to body, life, limb, or property as set forth above.

SECTION 12. INSURANCE.

(a) At all times during the term of the Franchise, Grantee shall obtain and pay all premiums for a general comprehensive public liability insurance policy indemnifying, defending and saving harmless the City, its officer, boards, commissions, agents or employees, from any and all claims by any person with regard to all damages provided in the above section, with the combined single limit

coverage of three million dollars ($3,000,000.00) per occurrence.

(b) The insurance policy obtained by the Grantee in compliance with this section shall be issued by a company or companies acceptable to the City and a current certificate or certificates of insurance, along with written evidence of payment of all required premiums, shall be filed and maintained with the City during the term of this Franchise. Said policies shall name the City as an additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof. It is understood and agreed that the continuance of operations by the Grantee without required insurance will be considered a material breach of this Franchise agreement by virtue of which the City may terminate the same upon thirty (30) days' written notice to the Grantee.

(c) The insurance requirements of the Grantee hereunder shall not be affected by any insurance which the City may carry in its own name.

SECTION 13. JURISDICTION.

A. Local Jurisdiction. The Grantee is subject to the Rules and Regulations of the Florida Public Service Commission. In the event that the Florida Public Service Commission (FPSC), or other State regulatory authority, should be deprived of the authority to make Rules and Regulations governing the Grantee, then the Grantor shall

have the right to fix reasonable and compensatory rates to be paid for gas by the consumers, and provide for the extension, repair, and maintenance of mains, service lines, and the connection with the pipes of the consumers, and the installing and testing of meters, and to regulate the quality and pressure of gas, and to provide such other and further regulations as shall be reasonably necessary and proper to insure adequate service to consumers and to protect their interests. However, until such deprivation of authority occurs, the Grantor shall not, make or attempt to enforce any rule, ordinance or restriction which conflicts with the Rules and Regulations of the FPSC or the currently effective tariff of the Grantee.

B. Change of Government. Any change of the form of government of the Grantor as authorized by the constitution and laws of the State of Florida shall not affect the validity of this Franchise. Any successor government to the Grantor shall, without the consent of the Grantee, succeed to all right and obligations of the Grantor provided in this Franchise.

SECTION 14. ACCOUNTS AND RECORDS.

The Grantor shall have access at all reasonable hours to all of the Grantee's engineering, accounting, customer and service records relating to the property and the operations of the Grantee within the territorial limits of the Grantor.

Such records shall be kept and maintained in accordance with generally accepted accounting principles. All of the said records shall, upon written request of the Grantor, be open for examination by the Grantor, and such records shall be retained by the Grantee for a minimum of three (3) years.

SECTION 15. CONSTRUCTION WORK.

The Grantor reserves the right to lay and permit to be laid electric conduits, water, gas and other pipelines or cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the Grantor or other governmental entity having jurisdiction across, along or under any street, alley, public way, easement, or other public ground.

Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, or other public ways or in the location or manner of construction of any Grantor-owned water pipes, electric conduits, sewers, or other underground structure, it shall be deemed necessary by the Grantor to alter, change, adapt, or conform the mains, service pipe, or other appurtenances of the Grantee, such alterations or changes shall be made by the Grantee as ordered in writing by the Grantor without claim for reimbursement against the Grantor. If the Grantor shall require the Grantee to adapt or conform its mains, service pipe, or other appurtenances,

or in any way to alter, relocate, or change its property to enable any other person or corporation to use said street, alleys, easements, or public places, the Grantee shall be reimbursed by the person or corporation desiring or occasioning such change for any loss, cost, or expense caused by or arising out of such change, alteration, or relocation of the Grantee's property.

SECTION 16. PROHIBITION OF DISCRIMINATORY PRACTICES.

The Grantee, shall not as to rates, charges, services, facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person nor subject any person to any undue prejudice or disadvantage, provided that nothing in this Franchise shall be deemed to prohibit to establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

SECTION 17. SEVERABILITY.

If any section, part of such 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.

PASSED AND ADOPTED on 1st reading February 7, 1995..

PASSED AND ADOPTED on 2nd reading March 7, 1995.

EFFECTIVE DATE March 17, 1995.

MAYOR-COMMISSIONER

ATTEST:

CITY CLERK

	Vote AYE / NAY
E. Steinberg	✓ :
G. Stein	✓ :
H. Cohen	✓ :
A. Lanner	✓ :
A. Rosenberg	✓ :

AB-Absent

* - Abstain-Conflict of Interest forms to be filed.