

NATURAL GAS REDEFINED TERRITORY FINANCIAL AGREEMENT  
Asturia Subdivision – Pasco County

This Agreement is made and entered into as of February 18, 2016, by and between Peoples Gas System, a division of Tampa Electric Company (successor by merger to Peoples Gas System, Inc.), a Florida corporation (“PGS”), and the City of Clearwater, a Florida municipality (the “City”), d/b/a Clearwater Gas System (“CGS”). PGS and CGS are sometimes referred to hereinafter individually as a “Party”, or collectively as the “Parties”.

WHEREAS, the Parties have jointly agreed to redefine the easterly Pasco County natural gas service territorial boundaries as reflected in Exhibits “A” and “C”, attached hereto and incorporated herein (“Redefined Territory”), to allow CGS to serve all of the new Asturia Subdivision (“Asturia”); and

WHEREAS, CGS is willing to purchase the rights to serve those certain lots within Asturia (as more particularly described herein) and PGS is willing to transfer the right to serve said lots to CGS; and

WHEREAS, to that end, the Parties are actively seeking the approval by the Florida Public Service Commission (“FPSC”), which has jurisdiction over natural gas territories in Florida, of an amendment to the existing Territorial Agreement between the Parties to memorialize the Redefined Territory (the “FPSC Territory Amendment”); and

WHEREAS, PGS is constructing, at its expense, a pipeline to the south of Asturia in order to serve the area and provide CGS with gas

service at the natural gas interconnect along State Road 54 in Pasco County (the "Pasco Pipeline"), so that CGS may provide reliable service to the customers of Asturia, among others.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. The above recitals are true and correct and are incorporated herein as if restated in their entirety.
2. **Obligations of the Parties.**
  - a. CGS shall purchase the rights to provide natural gas service to three hundred eighty eight (388) lots on the eastern side of the Asturia Subdivision as reflected in Exhibit "C" in exchange for payment to PGS in the amount of One Thousand Seven Hundred and xx/100 Dollars (\$1,700.00) per lot, totaling the amount of Six Hundred Fifty-Nine Thousand Six Hundred and xx/100 Dollars (\$659,600.00) ("Lot Purchase Price").
  - b. CGS shall pay PGS the Lot Purchase Price in two installments as described below:
    - o The First Installment of Three Hundred Twenty-Nine Thousand Eight Hundred and xx/100 Dollars (\$329,800.00) will be invoiced by PGS to CGS at least thirty (30) calendar days prior to the payment due date, and shall be paid on or before March 1,

2016. If the FPSC Territory Amendment is not approved by the FPSC, PGS shall refund the full amount of the First Installment to GGS within fifteen (15) days following the date on which an order of the FPSC denying approval of the FPSC Territory Amendment becomes final.

- o The Second Installment of Three Hundred Twenty-Nine Thousand Eight Hundred and xx/100 Dollars (\$329,800.00) will be invoiced by PGS to CGS at least thirty (30) calendar days prior to the payment due date and shall be paid on or before November 1, 2016. Approval by the FPSC of the FPSC Territory Amendment shall be a condition precedent to CGS's payment of the Second Installment.
- c. CGS will permit and construct, at its expense, the interconnect along State Road 54 (the "Asturia Connection Point") where the CGS and PGS lines meet just south of Asturia, except that PGS will install its metering equipment for the flow to the east.
- d. Each Party will purchase any natural gas flow through the Asturia Connection Point into its respective territory at the Asturia Connection Point in accordance with that certain Amended and Restated Natural Gas Service Agreement (the "Interconnect Agreement"), entered into by the Parties as of even date herewith.
- e. PGS shall construct at its expense a pipeline (the "Pasco Pipeline")

approximately 1.5 miles in length along State Road 54 from just west of the Suncoast Expressway to connect to CGS's facilities at the Asturia Connection Point just south of Asturia, to provide interconnect service to CGS as needed from time to time. PGS may also receive gas from CGS into PGS territory as needed and agreed to by the Parties.

f. PGS and CGS shall cooperate and, perform all functions necessary, respectively, and execute any and all documents necessary to process and submit the FPSC Territory Amendment (and related documents) to the FPSC as expeditiously as possible.

3. Indemnification. The City shall at all times indemnify, defend and hold PGS harmless from or on account of claims, losses, injuries or damages, received or sustained by any person or persons during or on account of any negligent work or operations engaged in by City in connection with the services provided pursuant to this Agreement; or by or in consequence of any negligence, excluding the sole negligence of PGS, in connection with same; or by or on account of the use of any improper materials or by or on account of any negligent act or omission of City, its agents, servants, or contractors. City agrees to defend, indemnify and save harmless PGS against liability arising from or based upon any violation of any Federal, State, County or Municipal law, ordinance or regulation by City, its agents, servants, employees or contractors. This indemnification provision obligates the City to defend PGS from any liability claims and all suits and actions that may be brought against PGS resulting from

the sole negligence of City. City shall provide for PGS's defense with outside counsel reasonably acceptable to City by paying for all attorneys' fees, costs and trial expenses. City's obligation to defend PGS for the acts or omissions of City, its servants, employees or contractors shall be limited to the extent provided in § 768.28, Florida Statutes. Notwithstanding anything to the contrary contained herein, this indemnification provision shall not be construed as a waiver of any immunity from or limitation of liability to which City is entitled pursuant to §768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall it be interpreted as limiting or in any way affecting any defense City may have under§ 768.28, Florida Statutes and is not intended to and shall not be interpreted to alter the extent of City's waiver of sovereign immunity under § 768.28, Florida Statutes. The Parties to this Agreement specifically agree to be fully responsible for their own acts of negligence and for the acts of negligence of their respective agents when acting within the scope of their employment, and agree to be liable for any damages resulting from said negligence. Nothing herein shall be construed as consent by either Party to be sued by third parties in any manner arising out of this Agreement.

PGS shall at all times indemnify, defend and hold the City harmless from or on account of any claims, losses, injuries or damages, received or sustained by any person during or on account of any negligent work or operations engaged in by PGS in connection with the services provided pursuant to this Agreement; or by or in consequence of any negligence, excluding the sole negligence of City, in

connection with same; or by or on account of the use of any improper materials or by or on account of any negligent act or omission of PGS, its agents, servants, or contractors. PGS agrees to defend, indemnify and save harmless City against liability arising from or based upon any violation of Federal, State, County or Municipal law, ordinance or regulation by PGS, its agents, servants, employees or contractors. This indemnification provision obligates PGS to defend City from any and all liability claims and all suits and actions that may be brought against City resulting from the sole negligence of PGS. PGS shall provide for City's defense with outside counsel reasonably acceptable to PGS by paying for all attorneys' fees, costs and trial expenses.

4. Limitation of Liability.

A. No Consequential or Indirect Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

B. Maximum Liability. IN NO EVENT SHALL PGS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE LOT PURCHASE PRICE.

C. If Remedy Fails Essential Purpose. THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

D. Each Party acknowledges and agrees that the Parties entered into this Agreement in reliance upon the limitations of liability set forth in this Section, that the same reflect an allocation of risk between the Parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the Parties.

**Miscellaneous provisions.**

5. The Parties agree to comply with all applicable Federal, State, and local laws, regulations and ordinances with respect to each Party's obligations hereunder.
6. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, delivered by recognized overnight courier (such as Federal express) or received by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to Peoples: Peoples Gas System  
Attn: Vice-President, Operations  
702 North Franklin Street  
Tampa, FL 33602  
(813) 228-4298

with copy to: Peoples Gas System  
Attn: General Counsel  
702 North Franklin Street  
Tampa, FL 33602  
(813) 228-1328

If to Clearwater Gas: Clearwater Gas System  
Attn: Gas System Managing Director  
400 North Myrtle Avenue  
Clearwater, FL 33755  
(727) 562-4901

with copy to:           Office of City Attorney  
                                  Attn: City Attorney  
                                  P.O. Box 4748  
                                  Clearwater, FL 33758  
                                  (727) 562-4010

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given on the date of delivery, provided the return receipt is received.

7. Construction. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida. Each Party to this Agreement has participated fully in the negotiation and preparation hereof and, accordingly; this Agreement shall not be more strictly construed against either of the Parties hereto. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular and the use of any gender shall be held to include every other gender.
8. Captions. The captions of the various paragraphs of this Agreement are inserted for the purpose of convenient reference only and shall not affect the construction or interpretation to be given any of the provisions hereof or be deemed in any manner to define, limit, modify or prescribe the scope or intent of this Agreement or any provision hereof.
9. Severability. If any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed

with full force and effect.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.
11. Assignability. Any entity which shall merge or consolidate with either Party, or acquire by purchase substantially all of the assets of either Party, shall be subject to the obligations of its predecessor under this Agreement, and either Party may assign this Agreement to such successor-in-interest or Affiliate provided such assignee assumes in writing the obligations of its predecessor hereunder. Except as set forth in this paragraph, neither Party shall assign this Agreement, or its rights and obligations hereunder, without the prior written consent of the other Party, and no assignment or transfer of this Agreement shall relieve either Party of any obligations to the other Party incurred prior to such assignment or transfer. For purposes of this Agreement, the term "Affiliate" shall mean any entity that controls, is controlled by, or is under common control with, PGS.
12. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties and may not be changed, altered or modified except by and instrument in writing signed by the Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.


*[signature page follows]*

IN WITNESS WHEREOF, this agreement is executed as of this 18th day of February, 2016.

**PEOPLES GAS SYSTEM, a division  
of Tampa Electric Company**

By:   
Gordon L. Gillette  
President

**CLEARWATER GAS SYSTEM/  
CITY OF CLEARWATER, FLORIDA**

By:   
Charles S. Warrington, Jr.  
Managing Director  
Clearwater Gas System

\_\_\_\_\_  
George N. Cretekos  
Mayor

By: \_\_\_\_\_  
William B. Horne II  
City Manager

Approved as to form:

Attest:

\_\_\_\_\_  
Laura Mahony  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk