

ORDINANCE NO. 91- 84

CITY OF POMPANO BEACH  
Broward County, Florida

AN ORDINANCE GRANTING A FRANCHISE TO PEOPLES GAS SYSTEM, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN GAS SERVICE IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR THE CITY OF POMPANO BEACH REGULATIONS AND USE OF THE GAS SYSTEM; PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS; AND THE MONETARY CONSIDERATION TO BE PAID THEREFORE BY THE COMPANY TO THE CITY AND THE METHOD OF PAYMENT, PROVIDING AN OPTION TO RENEW; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Grantor deems it necessary, desirable and in the interest of the health, safety and welfare of its citizens to establish by ordinance a franchise for the provision of gas service in the corporate limits of the City of Pompano Beach; and

WHEREAS, the Grantee has indicated to Grantor that it is willing to undertake the installation of operation of such facilities under a franchise from Grantor;

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA, AS FOLLOWS:

SECTION 1: Short Title. This ordinance shall be known and may be cited as the "Peoples Gas System, Inc. Franchise Ordinance".

SECTION 2: Definitions. For purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used 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 directory.

A. "Grantor" shall mean the City of Pompano Beach.

B. "Grantee" shall mean the Peoples Gas System, Inc., its successors and assigns.

C. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

D. "Streets" shall mean the public streets, lanes, alleys, courts, bridges (excluding the area above the deck level of said 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 line, tube, main, service, trap, vent, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas, located or to be located in, upon, along, across, under or over the streets.

F. "Gas" shall mean natural gas and/or commingled gas and/or manufactured gas which is distributed in pipes. It shall not mean bottle gas or any other fuel.

G. "Franchise Area" is the corporate limits of the City of Pompano Beach as it now exists or as may be amended.

SECTION 3: Grant of Authority. There is hereby granted by Grantor, to Grantee, the right and privilege to construct, erect, operate, own and maintain, in, upon, along, across, above, over and under the streets, alleys, public right-of-ways and other public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, natural gas facilities, including the laying of gas mains, supply lines, regulator stations and other fixtures necessary or proper for the maintenance and operation of a natural gas system together with the right to establish, construct, operate and maintain gas works, buildings, tanks, holdings and machinery, provided, however, that it is done in compliance with all City regulations.

A. Annexation or Contraction. Grantee agrees that the franchise area is subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific geographical area, and that this franchise is awarded subject to the provisions of general or special laws of Florida now existing or hereinafter enacted. The Grantor shall notify the Grantee of any annexation or contraction

or municipal boundaries in a timely manner.

B. Non-exclusive Grant. The right to use and occupy said streets, alleys, public rights-of-way and other public places for the purposes herein set forth shall not be exclusive, and the Grantor reserves the right to grant a similar use of said streets, alleys, public rights-of-way and other public places, to any persons at any time during the period of this franchise.

SECTION 4: Term of Franchise. The franchise and rights herein granted shall take effect and be in force from and after the final passage here, as required by law and upon the filing of an acceptance by Grantee of all the terms thereof with the Grantor and shall continue in force and effect for a term of ten (10) years after the effective date of this franchise. Upon completion of the ten year franchise period, the Grantor has the option to renew the franchise for two (2) additional ten year periods upon acceptance of all the terms thereof by the Grantee. The franchise and renewal options shall not extend beyond a term of thirty (30) years. If acceptance of this franchise is not filed within sixty (60) days after Grantor presents it to the Grantee, the provisions of this franchise shall be null and void.

SECTION 5: Payment to Grantor. The Grantee shall pay to the Grantor for the privilege of operating a natural gas system under this franchise a sum equivalent to six (6%) percent of the annual gross Franchise Revenue Base received by the Grantee in

connection with the operation of its natural gas system within the limits of this franchise. If the Grantee, after the date of the acceptance of this Ordinance, agrees to pay any municipality or county in the State of Florida a greater percentage of the gross receipts, the Grantee shall immediately notify the Grantor to require the Grantee to pay the Grantor such a percentage equal to the percentage paid to such other municipality or county. Such increase shall become effective upon the passage of an ordinance amending such fee. Payment shall be made to the Grantor for each of the years that this Ordinance is in effect and shall be based on the receipts of the Grantee for the preceding fiscal year. For the purposes of this payment, such fiscal year shall be coextensive with the fiscal year of the Grantor and payment for part of the fiscal year at the beginning and end of the term shall be prorated. Payment shall be made within three (3) months after the end of such fiscal year. Any portion of the annual franchise fee not paid within three (3) months after the payment is due shall be charged interest from the due date until paid at the interest rate of one and one-half (1.5%) percent per month.

The Grantee will file with the Grantor contemporaneously with each payment a statement of its gross revenues for the period on which such payment is based, sworn to by an authorized official of the Grantee, in such reasonable form and detail as the Grantor's auditor may from time to time prescribe and sufficient to show the source and method of computation of said gross revenues. The acceptance of any statement or payment shall not estop the Grantor

from asserting that the amount paid is not the amount due or from recovering any deficit by any lawful proceeding.

All accounts and records of the Grantee necessary to determine the correctness of any statement may be inspected by the Grantor or its duly authorized representatives during normal business hours, and the Grantee will promptly and without delay furnish the Grantor and its said representatives with any and all such information that the Grantor or its said representatives may from time to time request or require.

→ The Franchise Revenue Base shall be a sum equal to six (6%) percent of gross revenues exclusive of any other tax, which Grantee derives from the sale of gas within the corporate limits of the City. Computation is based upon the basis of the gross income charged for sales of natural gas during the last preceding fiscal year of the Grantor. There shall be credited against such sum due to the Grantor from the Grantee the amount of all taxes, licenses, fees and other imposition (except ad valorem taxes, amounts for assessments for special assessments for special benefits such as sidewalks, street pavings and similar improvements, and occupation license fees and all other permits and fees required by ordinance) levied or imposed by the Grantor upon the Grantee's property, business or operations and paid during the preceding fiscal year as defined herein. Payment shall be made to the Grantor for each of the years that this ordinance is in effect and shall be based on the receipts of the Grantee for the preceding fiscal year.

SECTION 6: Approval of Transfer. The Grantee shall not sell or transfer any portion of its plant or system to another, nor transfer any rights under this franchise to another without Grantor's prior approval. No such sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Grantor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof. The Grantor will not unreasonably withhold its consent to the transfer of this franchise. Provided, however, that any sale, assignment, or transfer decreed by a court of competent jurisdiction in any receivership or bankruptcy proceedings shall not be governed by the provisions of this Section.

SECTION 7: Forfeiture. Any violation by the Grantee, its vendee, lessee or successor of the provisions of this franchise or any material portions thereof, shall be cause for forfeiture of this franchise and all rights hereunder to the Grantor after written notice to the Grantee and continuation of such violation, failure or default without agreement of Grantor for a period of ninety (90) days thereafter. In the event that the Grantee, upon receipt of said written notice from the Grantor, does not desist from such violation within the ninety (90) day period, then the Grantee shall be deemed to have forfeited all grants, privileges, rights, licenses, and immunities given by this franchise, but no such termination shall take effect if the reasonableness or propriety thereof is protested by Grantee until a court of

competent jurisdiction (with right of appeal in either party) shall have found that Grantee has failed to comply in a material respect with any of the provisions of this franchise.

SECTION 8: Termination of Grant by Insolvency or Bankruptcy of Grantor. In the event of a final adjudication of bankruptcy of the Grantee, the Grantor shall have full power and authority to terminate, revoke and cancel any and all rights granted under the provisions of this ordinance.

SECTION 9: Renegotiation. Either party may, by giving written notice to the other party at least ninety (90) days prior to the fifth and tenth anniversary of the effective date hereof, renegotiate the terms of this agreement. If the franchise is renewed after the initial ten (10) year period, optional anniversaries for renewal periods will be included in the renewal agreement. If new terms cannot thereafter be agreed upon, either party may terminate this agreement upon an additional ninety (90) days' notice.

SECTION 10: Grantor Rights in Franchise.

A. Grantor Rules. The right is hereby reserved to the Grantor to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise,



shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of Florida and the lawful regulations of any state agency possessing the power to regulate the activities of the Grantee.

B.     Inspection.     The Grantor shall have the right to make such inspections for all construction and installation work as it shall find necessary to insure compliance with applicable ordinances. Grantee shall obtain all necessary permits and pay all required fees prior to commencing construction or installation work in the right-of-way.

C.     Procedure after Termination or Revocation.  
Upon the revocation of this franchise by the Grantor, or at the end of this franchise, the Grantor shall have the right to determine whether the Grantee shall continue to operate and maintain its plant and distribution system pending the decision of the Grantor as to the future maintenance and operation of the plant and distribution system. Either party may, by giving written notice to the other party at least ninety (90) days prior to the fifth and tenth anniversary of the effective date hereof, renegotiate the terms of this agreement. If new terms cannot thereafter be agreed upon, either party may terminate this agreement upon an additional ninety (90) days' notice.

SECTION 11: Conditions on Street Occupancy.

A.     Use.     All mains, service pipes, manholes and

other gas fixtures and equipment erected by the Grantee within the limits of the franchise shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

B.     Restoration.     In case of any disturbance of pavement, sidewalk, driveway or other surfacing or damages to Grantor's structures and facilities caused by the Grantee's operations and activities, the Grantee shall, at its own cost and expense and in a manner approved by the Grantor, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good or better condition as before said work was commenced, and warrants and guarantees any such restoration for the period of one year.     However, should the Grantee fail to commence restoration after seven (7) days' notice, in writing, to said Grantee by the Grantor, the Grantor may make such repair and restoration and the cost of the same shall be paid by the Grantee.

C.     Relocation.     If at any time during the period of this franchise the Grantor shall lawfully elect to alter, or change the grade of, any street, sidewalk, driveway, alley or other public way, or alter or move any structure or facility of the Grantor, the Grantee, upon reasonable notice by the Grantor, shall remove, relay, and relocate its mains, service pipes, manholes and other gas fixtures and equipment at its own expense.     If the City

shall require the Grantee to adapt or conform its pipe lines, pipes, structures, apparatus, appurtenances or other appliances, or in any way to alter, relocate or to change its property to enable any other person or corporation, except the City, to use said street, alley, easement, highway or public place, 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 Grantee's property, provided, however, the City shall have no obligation of any kind or nature relating to the Grantee's right to reimbursement or a third party's obligation to pay.

D.     Placement of Fixtures.     The Grantee shall not place mains, service pipes or other fixtures where the same will interfere with any electric light, water hydrant, water main, or sewage line and all such mains, service pipes or other fixtures placed in any street shall be placed in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.

SECTION 12: Compliance with Applicable Laws and Ordinances.

A.     The Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the Grantor, and to such reasonable regulation as the Grantor shall hereafter by resolution or ordinance provide.

B. The rights and privileges granted to the Grantee by this ordinance shall at all times be subordinate and inferior to the rights of the public in and to the ordinary use of the Grantor's streets and rights-of-way and nothing in this ordinance shall be construed as a surrender by the Grantor of its right and power to use and regulate the use of its streets and rights-of-way.

C. The franchise and rights herein granted are subject to the provisions of the existing laws of the State of Florida and those hereinafter enacted pertaining to the granting of franchises and to the existing ordinances and provisions of the Charter of the Grantor and those hereinafter enacted pertaining to the granting of franchises.

D. This ordinance shall not affect or invalidate any valid franchise right of the Grantee or the Grantee under and by virtue of any valid franchise previously granted to the Grantee or its predecessors unless said rights are withdrawn herein by express terms or by direct and irreconcilable conflict.

SECTION 13: Grantee Liability -- Indemnification. It is expressly understood and agreed by and between the Grantee and the Grantor that the Grantee shall indemnify and save the Grantor, its officers, agents and employees harmless from any and all losses (which shall include the payment of any and all attorney fees) sustained by the Grantor on account of any suit, judgment,

execution, claim or demand of whatever kind or nature, resulting from the negligence, default or misconduct or allegations of such on the part of the Grantee in construction, operation or maintenance of its facilities in the area of this franchise, or any other activities of any kind whatsoever, of the Grantee pursuant to the franchise agreement.

SECTION 14: Severability. If any section, part of section, subsection, paragraph, sentence, clause, phrase or word is held by any court to be void or invalid or unconstitutional, it shall not affect the validity of the remaining portion of this ordinance which shall remain in full force and effect; provided, however, that if Grantor finds that the invalidated provision is essential to the franchise, said Grantor may declare the franchise to be terminated.

SECTION 15: Publication Costs. The Grantee shall assume the cost of publication of this ordinance as such publication is required by law. A bill for publication costs shall be presented to the Grantee by the Grantor upon the Grantee's filling of acceptance and shall be paid at that time.

SECTION 16: Records and Reports. The Grantor shall have access at all reasonable hours to all of the Grantee's plans, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Grantee within the territorial limits of Grantor

and to all other records required to be kept hereunder. The Grantor shall have the right to obtain a magnetic tape of either the revenue billing to generate collections, a magnetic tape of actual collections or both to test reported collections. All magnetic tapes should be produced by the Grantee at the Grantor's expense. The following records and reports shall be filed with the Grantor and in the local office of the Grantee:

A. Grantee Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by it for the conduct of its business.

B. Gross Revenue. An annual summary report showing gross revenues received by the Grantee from its operations under this franchise during the preceding year and such other information as the Grantor shall request with respect to properties and expenses related to the Grantee's service within the limits of this franchise.

C. Accounting. The Grantee shall furnish a monthly report and breakdown of the elements that make up the Franchise Revenue Base upon which each franchise payment hereunder is made. A footnote of any annexation or contraction in geographic areas shall be made in the first monthly report as of the date of notification of the change by the City.

D. Availability of Records. Such records as are

required under herein shall be kept and maintained in accordance with generally accepted accounting principles. All of the said records shall, on written request of the Grantor, be open for examination and audit by the Grantor's Internal and External Auditors and their staff during ordinary business hours, and such records shall be retained by the Grantee for a minimum of three (3) years.

SECTION 17: Service Standards. The Grantee shall maintain and operate its plant and system and render efficient service in accordance with the rules and regulations of the Florida Public Service Commission of the State of Florida, or by other agencies of the state lawfully empowered to regulate the activities of the Grantee.

A. Notice of Interruption for Repairs. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the Grantee shall do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

SECTION 18: Extension Policy. The gas main and service extension policy shall be the same as the natural gas tariff filed and approved by the Florida Public Service Commission, State of Florida.

SECTION 19: Laying of Pipe. All main pipelines shall be laid at least two feet and all lateral pipelines not less than eighteen inches below the established grade of said streets, avenues, alleys, easements, and other public ways and places as such grades now exist or may hereafter be established, unless otherwise specifically authorized by the Grantor.

All construction made under the provisions of this ordinance shall be of first class material, and all piping in the system shall be protected externally from corrosion by approved methods and materials, and all gas mains, service pipes, and generating plants, and/or storage tanks, shall have an adequate capacity to supply the full requirements of gas, for service to the Grantor and its inhabitants, of the proper pressure and quality required by this ordinance. The Grantee shall file with Grantor, for its approval, plans and specifications for the location or relocation of all facilities or equipment.

SECTION 20: Construction Work. 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, place, or other public ground. In permitting such work to be done the Grantor shall not be liable to the Grantee herein for any damages so occasioned, nor shall the Grantor in doing such work be liable



to the Grantee for any damages not willfully and unnecessarily occasioned. Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of widening, grading, paving, or otherwise improving present or future streets, alleys, or other public ways and places, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other underground structure, it shall be deemed necessary by the Grantor or other governmental entity having jurisdiction to alter, change, adapt, or conform the mains, pipelines, service pipe, or other apparatus or appurtenance of the Grantee hereto, such alterations, or changes, shall be made by the Grantee as ordered in writing by the Grantor or other governmental entity having jurisdiction without claim for reimbursement or compensation for damages against the Grantor. If the Grantor shall require the Grantee to adapt or conform its pipelines, pipes, structures, or apparatus, appurtenances, or other appliances, or in any way to alter, relocate, or change its property to enable any other person or corporation, except the Grantor, the State of Florida, or any other governmental entity of the state, to use said street, alley, easement, highway, or public place, 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, alterations, or relocation of Grantee's property. The Grantee further agrees that it shall not interfere with, change, or injure any water pipes, drains, or sewers unless it has received specific permission from the Grantor.

SECTION 21: Preferential or Discriminatory Practices Prohibited. The Grantee shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

SECTION 22: Complaints. Grantee shall keep a record of all complaints in compliance with Florida statutes and the rules and regulations of the Florida Public Service Commission of the State of Florida and make copies of such complaints available to the City for inspection during normal business hours.

SECTION 23: Grantee Rules. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers, provided that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of Florida, and shall be subject to approval by the Grantor, the Public Service Commission of the State of Florida, or other agency of the state lawfully empowered to regulate the activities of the Grantor.

SECTION 24: That Ordinance No. 67-40 is hereby repealed.

PASSED FIRST READING this 3rd day of September,  
1991.

PASSED SECOND READING this 17th day of September,  
1991.

*Nathan N. Braverman*

NATHAN N. BRAVERMAN

MAYOR

ATTEST:

*Vernadette Fuller*

VERNADETTE FULLER  
CITY CLERK

SVD:amd

ORD-2 91-223  
7/15/91

CITY OF POMPANO BEACH  
BROWARD COUNTY, FLORIDA  
I HEREBY CERTIFY that the foregoing is a  
true and correct copy of  
Ordinance No. 91-84  
as filed in my office. *City Clerk's Office*  
WITNESS my hand and Official Seal in the City  
OF POMPANO BEACH, FLORIDA this 23rd day  
of September A.D. 19 91  
*Mary Chambers*  
City Clerk