SINGLE SOURCE AWARD **BID # SS-0283-18**

Subject: Natural Gas

Department: Procurement Division

Description of Purchase:
Recommend approval to ratify award from October 1, 2017 through date of award.

Recommend approval of Single Source Award for natural gas to Tampa Electric Company (TECO) as the acting broker ensuring the best rates for the City of Jacksonville and to Florida Natural Gas, a division of Southstar Energy Services as the supplier of natural gas. The period of service will be from date of award through September 30, 2018, with three (3) one (1) year renewal options. Total requested expenditure for TECO not-to-exceed $120,000.00 and $325,000.00 requested for Florida Natural Gas, with a total award expenditure not-to-exceed $445,000.00

Funding for this award to be encumbered by various agency accounts to be executed purchase order(s).

Single Source Award To: Tampa Electric Company (TECO) & Florida Natural Gas, a division of Southstar Energy Services

Price Justification: See Attached

Total Award: $445,000.00 **Requisition #** N/A

Attachments: Single Source Form; Franchise Agreement

Certification as to Single Source: Greg Pease, Chief of the Procurement Division

THE ABOVE PURCHASE IS RECOMMENDED FOR AWARD IN ACCORDANCE WITH CHAPTER 126.206.

ANALYST: Chelsey Fleming

Gregory Pease, Chief
Procurement Division

APPROVAL OF GENERAL GOVERNMENT AWARDS COMMITTEE

"ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS"

CHAIRMAN ***DATE***

ACTION OF AWARDING AUTHORITY

DATE: _____

APPROVED _____ **DISAPPROVED** _____

OTHER _____

SIGNATURE OF AUTHENTICATION _____

FORM GB-114, Revised 12/2007

SINGLE SOURCE REQUEST

Pursuant to the City of Jacksonville Procurement Code § 126.206 & § 126.312, when requesting a purchase from a vendor subject to the referenced sections, please complete this form to justify your request and submit to Procurement with applicable attachments.

REQUESTING AGENCY (DEPT./DIVISION): FINANCE AND ADMINISTRATION - PROCUREMENT

FUNDING SOURCE: VARIOUS INDEXES BASED ON USAGE

BRIEF DESCRIPTION OF GOODS/SERVICES:

PURCHASE AND TRANSPORTATION OF NATURAL GAS FOR VARIOUS AGENCIES

AMOUNT OF PROJECT (attach quote): $445,000.00

PROVIDE A SUMMARY OF THE SCOPE OF GOODS/SERVICES TO BE PROVIDED; IDENTIFY EACH ITEM, COMPONENT OR SERVICE BEING PROCURED (ATTACH QUOTE/PROPOSAL):

DISBURSEMENTS OF NATURAL GAS THROUGH PIPES AND MEASURED BY METER AT THE CUSTOMER'S LOCATION.

PROVIDE A DETAILED JUSTIFICATION AS TO WHY THE REQUESTED GOODS/SERVICES CAN ONLY BE EFFICIENTLY AND EFFECTIVELY PROCURED THROUGH THE RECOMMENDED SINGLE SOURCE PROVIDER:

TECO PARTNERS, INC. HAS THE NON-EXCLUSIVE RIGHT TO USE THE CITY RIGHT-OF-WAYS THROUGH 03/31/2024, HOWEVER THEY WILL ALSO ACT AS A BROKER FOR OBTAINING THE BEST PRICE ON A MONTHLY BASIS USING THE AGGREGATE USAGE OF EACH CITY FACILITY. THE SUPPLY OF NATURAL GAS WILL BE PROVIDED AND INVOICED BY FLORIDA NATURAL GAS, A DIVISION OF SOUTHSTAR ENERGY SERVICES, LLC., AS A THIRD PARTY PARTNERSHIP THAT MAY BE SUBJECT TO CHANGE AS AMENDMENTS ARE RECEIVED BY TECO PARTNERS, INC.

ASSERT THAT YOU HAVE RESEARCHED THE AVAILABILITY OF THE REQUESTED GOODS/SERVICES FROM OTHER SOURCES IN APPLICABLE MARKETS AND HAVE DISCUSSED AND EVALUATED THE SAME WITH COJ'S PROCUREMENT AND EBO DIVISIONS:

CITY AGENCIES ARE UTILIZING THE TECO SERVICE AGREEMENTS (NCTS) TO UTILIZE THE PRICING STRUCTURE BASED ON USAGE.

Submitted by: Dan Pearson (Name) Manager of Purchasing Svcs, Asst. (Title)

Date: 9/27/2017

Requesting Agency's Director's Signature:

Franchise Agreement

This Franchise Agreement (the "Agreement") is made and entered into on April 1, 2014 (**"Effective Date"**), by and between the **CITY OF JACKSONVILLE**, a Municipal Corporation and political subdivision of the State of Florida in Duval County, Florida hereinafter referred to as the **"CITY"**, whose mailing address is 117 W. Duval Street, Jacksonville, FL 32202 and **Peoples Gas System, a Division of Tampa Electric Company**, hereinafter referred to as the **"Company"**, whose mailing address is 4040 Philips Highway, Jacksonville, Florida 32207.

WITNESSETH:

WHEREAS, Peoples Gas System, a division of Tampa Electric Company (the "Company"), and the City of Jacksonville, Florida (the "City") entered into a franchise agreement for 30 years pursuant to Ordinance 73-332-444 and extended the term thereof for ten years through September 30, 2013, pursuant to Ordinance 2003-1103-E, and extended the term thereof for six months pursuant to Ordinance 2013-532-E. Now the Company and the City desire to enter into a franchise agreement for a period of ten (10) additional years commencing April 1, 2014 (the "Agreement"); and

WHEREAS, the Council of the City finds that it is in the public interest of its citizens to enter into a new franchise agreement with the Company; and

WHEREAS, Chapter 711 of the Ordinance Code of the City of Jacksonville (the "Ordinance Code") sets forth standard terms to be utilized in franchise agreements not individually approved by the Council of the City; but the City is permitted to enter into franchise agreements with terms differing from the standard terms set forth in the Ordinance Code, when such agreements, like this Agreement, have been approved by the Council of the City; now therefore

NOW, THEREFORE, based upon the facts recited above, and in consideration of the mutual covenants contained herein, the CITY and COMPANY agree as follows:

SECTION 1: DEFINITIONS.

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

A. "Customer" shall mean any person, firm, public or private corporation, or governmental agency served by the Company within the corporate limits of the City.

B. "City" shall mean the City of Jacksonville, Duval 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. "Gas" or "Natural 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") or any other fuel that is typically delivered by truck and stored in tanks.

E. "Gross Revenues" shall mean all revenues (as that term may be interpreted or defined from time to time by the Florida Public Service Commission) received by the Company from any Customer from the sale or delivery of Gas, including transportation, transmission, or distribution of Gas, within the corporate limits of the City, including the "customer charge" as defined in the Company's tariff on file with the Florida Public Service Commission.

F. "Facilities" or "equipment" shall mean pipe, pipe line, tube, main, service, trap, vent, vault, 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, or under the streets or within the public rights of way.

G. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the City and accepted by the Company, as provided in **Section 18** below.

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

successor agency.

I. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and Customer pipe lines, together with all necessary and desirable appurtenances, that are situated within the corporate limits of the City and are reasonably necessary for the sale, transportation, distribution or delivery of Natural Gas for the public and private use of Customers.

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 of the public streets, alleys, highways, waterways, bridges, easements, rights-of-ways and other public places of the City, 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 beginning April 1, 2014 and ending March 31, 2024.

SECTION 4: ASSIGNMENT.

A. The Franchise Agreement hereby granted shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the Council of the City, which consent shall not be withheld unreasonably. 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 lease, assign or otherwise alienate and transfer this Franchise Agreement in connection with the lease or sale of the Distribution System or upon its merger and consolidation with, or transfer to, any other corporation engaged in similar business (including any affiliate or subsidiary of the Company), or pledge or mortgage 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 without the express consent of the City Council of the City.

SECTION 5: 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 said streets, alleys, avenues, easements, and public rights of way, and said streets 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 streets, alleys, or other public 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. The Company shall, with due diligence and dispatch, place such streets, easements or public rights of way in as good condition and repair as before such excavation or disturbance was made, and in default thereof the City may make such repairs and charge the reasonable cost thereof to the Company and collect the same from it.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the City has passed or might pass in the future, and further agrees to abide by any established policy which the City or its duly authorized representative has passed, established, or will establish; provided, however, the City shall not pass any ordinance or regulation the primary purpose or effect of which is to breach this Agreement, render it ineffective, increase the Company's responsibilities or obligations, or limit the City's obligations hereunder.

SECTION 6: 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 or other regulatory body having jurisdiction over the Company.

SECTION 7: 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 8: 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 or other governmental body having jurisdiction in, across, along, or under any street, alley, public way, easement, place, or other public rights of way. 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 rights of way, 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 City or other governmental body to alter, change, adapt, or conform any portion of the Distribution System of the Company hereto, such alterations, or changes, shall be made by the Company as ordered in writing by the City or other governing body, without claim for reimbursement. If the City shall require the Company to adapt or conform any portion of its Distribution System or in any way to alter, relocate or change its property to enable any other person or entity to use said street, alley, easement, highway or public rights-of-way of the City, as part of its permitting or approval process, the City shall require the person or entity desiring or occasioning such alteration, relocation or change to reimburse the Company for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of the Company's facilities. 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 9: FRANCHISE FEE.

Within thirty (30) days after the close of the first full month following the effective date of this Franchise Agreement, and each subsequent month 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 which is equal to five percent (5%) of the Company's Gross Revenues, less any adjustments for uncollectable franchise fees. The franchise fee payment shall be deemed paid

on time if post-marked within thirty (30) days of the close of the preceding month.

SECTION 10: FRANCHISE PARITY.

If, during the term of this Franchise Agreement, the City, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters (including, without limitation, JEA) ("Alternate Gas Providers"), the right, privilege or franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public rights of way of the City, for the purpose of supplying or delivering Natural Gas to customers located within the corporate limits of the City or receiving such gas from a person other than the Company within such corporate limits, and imposes a franchise compensation obligation or an equivalent on such Alternate Gas Provider for any customer or class of customers that is less than or greater than that imposed with respect to the same Customer or class of Customers under this Franchise Agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of customers shall be reduced or increased as applicable under this Franchise Agreement so that the franchise compensation paid hereunder for such Customer class is equals the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance applicable to it, when compared on a dollars-per-therm basis; provided, however, that if the fee due under Section 9 is reduced pursuant to the foregoing clause, and the fee due the Alternate Gas Provider is subsequently raised, then the fee due under Section 9 shall, upon six (6) months notice to Company, be raised an equivalent extent, using the same manner of calculation used to reduce the fee; provided, further, that in no event shall the fee as raised exceed the fee that was due under Section 9 before the reduction. In the event that the City determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Company's obligation to pay a franchise fee under this Franchise Agreement with respect to revenues derived from the provision of service by the Company to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

SECTION 11: ACCOUNTS AND RECORDS.

The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate books, 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 books, accounts and records shall be maintained within the State of Florida, and be open at all reasonable times for inspection by the duly authorized representatives of the City pursuant to an appropriate confidentiality agreement. Upon request by the City, or its designated representative, 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.

No less than thirty (30) days prior to the effective date of a change in the City limits, whether by addition, annexation, or consolidation, the City shall deliver to the Company written notice of such occurrence, and include in such notice a description of the affected territory.

SECTION 12: INSURANCE.

During the term of this Franchise Agreement, the Company shall file with the City Risk Management Division 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 Agreement.

Every such insurance policy shall contain a provision whereby every company executing the same shall obligate itself to notify the City's Risk Management Division, in writing, at least

thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective.

SECTION 13: INDEMNIFICATION.

The Company shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its facilities in City rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by Chapter 711 of the City's Ordinance Code, provided, however, that the Company's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the City. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The City agrees to notify the Company, in writing, within a reasonable time of the City's receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Section shall be construed or interpreted: (a) as denying to either party any remedy or defense available to such party under the laws of the state; (b) as consent by the City to be sued; or (c) as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement.

SECTION 14: 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 Commission 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, to present a plan, satisfactory to the City, acting reasonably, 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 15: CHANGES IN PROVISIONS HEREOF.

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

SECTION 16: SEVERABILITY; CHANGE IN LAW.

(A) If any section, part of a section, paragraph, sentence, or clause of this Franchise 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 effectively eliminates a municipality's ability to exact franchise fees from a utility or 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 17: GOVERNING LAW; WAIVER.

This Franchise Agreement shall be governed by the laws of the State of Florida and applicable federal law. It is the parties' intent that this Franchise Agreement supercede, and otherwise be excepted from, Chapter 711 of the Ordinance Code, and the City hereby waives the application of Chapter 711 to the Company and its use of the City rights-of-way. Without

limiting the foregoing, the parties specifically agree that the City shall have no right under Section 711.321 of the Ordinance Code or otherwise (except as set forth in Section 10 above) to increase the Franchise Fee due hereunder.

SECTION 18: EFFECTIVE DATE.

This Franchise Agreement shall become effective as of April 1, 2014, upon execution hereof by the City and the Company.

ATTEST:

By: _____
James R. McCain, Jr.
Corporation Secretary

FORM APPROVED:
Office of General Counsel

By: _____

CITY OF JACKSONVILLE, a Florida municipal corporation

By: _____
Alvin Brown, Mayor

Peoples Gas System, a division of Tampa Electric Company

By: _____
Name: Gordon L. Gillette
Title: President

Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04

G:\SHARED\MLahmeur\Exhibits\Crescimbeni - Peoples Gas (no.2)\Peoples Gas Franchise Agreement 11-04-13.doc