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In Reply Refer to:
Tampa
ab@macfar.com

July 31, 2019

VIA FEDEX

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Mirabito Gas v. Peoples Gas System
Docket No.: 20190000-OT

REDACTED

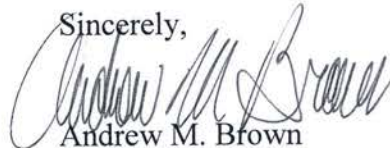
Dear Mr. Teitzman:

We enclose for filing with the Commission:

1. the original and seven (7) copies of Peoples Gas System's Notice of Intent to Request Confidential Treatment which was filed on July 26, 2019; and
2. a single unredacted copy of the portion, page 6 of the contract in which the sensitive information for which confidential treatment is sought has been highlighted.

In the original and all seven (7) "public" copies of the Notice of Intent to Request Confidential Treatment identified above, the sensitive information in Exhibit A, page 6 of the contract has been redacted.

Thank you for your usual assistance.

Sincerely,

Andrew M. Brown

AB/plb
Attachments

cc: Rachel Dziechciarz, Senior Attorney (via email: RDziehc@psc.state.fl.us)
Robert Scheffel Wright, Esq. (via email: schef@gbwlegal.com)
Keith Hetrick, General Counsel (via email: khetrick@psc.state.fl.us)
Kandi Floyd
Ansley Watson, Jr., Esq.

RECEIVED-FPSC
2019 AUG -1 AM 9:30
COMMISSION CLERK

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ECO _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Mirabito Gas v. Peoples Gas System) DOCKET NO. 20190000-OT
)
) SUBMITTED: July 26, 2019
)
)
)
)
)

**PEOPLES GAS SYSTEM'S
NOTICE OF INTENT TO REQUEST CONFIDENTIAL TREATMENT**

Pursuant to Sections 366.093 and 119.07, *Florida Statutes*, Peoples Gas System (“Peoples”) submits the following Request for Confidential Treatment of portions of the contract between Peoples and TECO Partners, Inc. (“TPI”) dated September 14, 2007 (the “Contract”).

1. Attached hereto as Exhibit A is a copy of the contract with portions redacted.
2. The material for which confidential classification is sought is intended to be and is treated as private by both Peoples and TPI and contains proprietary confidential business information under Section 366.093(3), *Florida Statutes*.
3. Peoples requests that the information for which it seeks confidential classification not be declassified until 18 months after the date of the Commission’s order granting this request (see Section 366.093(4), *Florida Statutes*). The time period requested is necessary to protect the competitive information (*i.e.*, the amounts being paid by Peoples to TPI for certain services under the Contract). The period of time requested will ultimately protect Peoples and its customers.

WHEREFORE, Peoples submits the foregoing as its request for confidential treatment of the information identified in Exhibit A to this request.

Respectfully submitted,



Andrew M. Brown
Phone: (813) 273-4209
E-mail: ab@macfar.com
Ansley Watson, Jr.
Phone: (813) 695-5900
E-mail: aw@macfar.com
Macfarlane Ferguson & McMullen
P. O. Box 1531
Tampa, FL 33601-1531
Attorneys for Peoples Gas System

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Notice of Intent to Request for Confidential Treatment, filed on behalf of Peoples Gas System, has been furnished electronically to the Rachel A. Dziechciarz Senior Attorney – Regulatory Analysis Section, (RDziechc@psc.state.fl.us), Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, Robert Scheffel Wright, Esq., (schef@gbwlegal.com), 1300 Thomaswood Drive, Tallahassee, FL 32308, and Keith Hetrick, General Counsel, (khetrick@psc.state.fl.us), Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399, this 26th day of July, 2019.



Andrew M. Brown

MARKETING SERVICES AGREEMENT

THIS AGREEMENT is entered into this 14th day of September, 2007 to be effective on the 1st day of January, 2008 ("Covered Period"), between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("Peoples") and TECO Partners, Inc., a Florida corporation ("Partners"). Peoples and Partners are sometimes referred to as Party or Parties as the context may require.

WITNESSETH THAT:

WHEREAS, Peoples is a public utility as that term is defined in §366.02, *Fla. Stats.*, and is engaged in the business of rendering natural gas utility service and associated services to residential, commercial and industrial customers located throughout the state of Florida and provides certain natural gas services ("Gas Services") in accordance with tariffs filed with and subject to the review and approval of the Florida Public Service Commission ("PSC") pursuant to Chap. 366, *Fla. Stats.* Peoples markets and delivers such Gas Services to customers located within and adjacent to its service area. In addition, Peoples markets and sells associated services to its existing and potential customers throughout its service area.

WHEREAS, Partners is engaged in the business of marketing various goods and services and has extensive experience in the marketing and sale of gas utility service and other services throughout the state of Florida.

WHEREAS, Peoples and Partners have determined that it is in their mutual interest to set forth the terms and conditions upon which Peoples will retain Partners to market and develop Gas Services and other programs to be provided to Peoples' customers.

NOW THEREFORE, the Parties agree as follows:

Article I Definitions

As used in this Agreement, the following words and phrases shall have the following meanings:

"Agreement" shall mean this Marketing Services Agreement, including the exhibits and any amendments attached hereto.

"Covered Period" shall mean the date on which this Agreement is entered into.

"Current Term" shall have the meaning given for such term in Article V (A) of this Agreement.

"Designated Representatives" a representative assigned by each party to act as a liaison for each Party, to receive notices, meet quarterly and to settle disputes concerning matters of interpretation of this Agreement.

"Developer Services" shall mean incentives offered to developers of residential, commercial, and industrial properties and facilitation of developer agreements for the expansion of and the extension of Peoples gas supply and distribution system.

"EAD" shall mean an existing network of natural gas appliance dealers, Energy Advantage Dealers.

"EAP" shall mean an existing network of natural gas appliance dealers, Energy Advantage Partner.

"EC Programs" shall mean Gas Services authorized and approved by the PSC made available to Peoples customers intended to conserve energy, to assist natural gas and other energy users in Florida to reduce the demand for electric energy and to use all forms of energy more efficiently and effectively.

"Gas Services" shall mean Peoples' sales or transportation of natural gas to its customers.

"Internal Rate of Return" shall mean the internal rate that investment capital projects return to Peoples.

"Investment Capital" shall mean an established budgeted amount for capital construction of new or expanded supply and distribution system services.

"Investment Expense" shall mean an established budgeted amount for customer inducements for the purpose of adding new natural gas customers.

"Marketing Services" shall mean the services performed by Partners for Peoples as outlined on Exhibit A attached hereto.

"New Signings" shall mean executed Gas Service Agreements (GSA), executed Builder or Developer Agreements or any other form of agreement as required by Peoples to establish natural gas service.

"Partners" shall mean TECO Partners, Inc.

"Peoples" shall mean Peoples Gas System, a division of Tampa Electric Company.

"PSC" shall mean the Florida Public Service Commission.

"Promotional Services" shall have the meaning given on Article II, Section 2.

"Renewal Term" shall mean an annual renewal term upon expiration of the current term of this Agreement.

"Sales Services" shall mean additional services to be provided by Partners, Partners as outlined on Exhibit B attached hereto.

"Service and Program Development" shall mean development of additional programs and services by Partners to be offered to Peoples' existing and potential customers.

"System" shall mean the Gas Supply and Distribution System of Peoples.

"Targeted Annual Amount" shall mean the annual amount Peoples shall pay to Partners.

"Tariff" shall mean Peoples' natural gas service tariff as filed with the PSC.

"Term" shall mean the amount of time this Agreement is in effect.

"Termination" shall mean the method in place to end this Agreement.

Article II **Marketing Services**

1. Utility Services. Peoples retains Partners and Partners agrees to market and sell to existing and potential customers of Peoples, utility services, including but not limited to the following:

A. Gas Services. Partners will market and sell, in the manner more fully described below, the Gas Services provided by Peoples. Peoples and Partners acknowledge and agree that the Gas Services to be marketed are those services currently provided by Peoples, and those that may hereafter be offered by Peoples and authorized by the PSC and thereafter set forth in Peoples' Tariff as approved by the PSC. Peoples expressly reserves the right to petition the PSC to revise, amend or delete the terms of its Tariff and to revise or otherwise delete any Gas Service and to otherwise change the terms and conditions of any Gas Service rendered to or on behalf of its customers. Partners acknowledges and agrees that the terms and conditions applicable to Gas Services are subject to the jurisdiction of the PSC and those terms and conditions may be changed, modified, amended or deleted by order of the PSC, whether on its initiative or at the request of Peoples. The terms, conditions, and limitations of Gas Services are set forth in Peoples Natural Gas Tariff, Volume 3, which is incorporated, as amended from time to time, into this Agreement as though fully set forth in its entirety.

B. Energy Conservation Program Services. In addition to Gas Services, Peoples is authorized and required by the PSC to make available to current and potential customers various services intended to conserve energy and to assist natural gas and other energy users in Florida to reduce the demand for electric energy and to otherwise use all forms of energy more efficiently and effectively. EC Programs are subject to the authority of the PSC and the terms, conditions and limitations associated with such EC Programs are approved by the PSC. Partners will market and promote to Peoples' current and potential customers such EC Programs in accordance with the terms and conditions as approved by the PSC.

C. Developer Services. Peoples offers to developers of residential, commercial, and industrial properties; certain incentives and enters into developer agreements to facilitate the expansion of Peoples' Gas Services and the extension of its gas supply and distribution system. Partners will market and promote the Developer Services to developers of residential, commercial, and industrial properties located within and adjacent to the gas supply and distribution system of Peoples. Peoples represents that it has entered into a number of agreements with developers for Developer Services under certain terms and conditions. Partners will manage and administer, at the direction and with the advice and consent of Peoples, all existing developer agreements. Partners will also market and promote additional developer agreements for Developer Services. However, it is expressly acknowledged and agreed that the determination of whether Peoples will provide Developer Services is dependent upon the economic feasibility of the particular development, as well as other criteria established by Peoples. Peoples reserves the

right, in the exercise of its sole discretion, to determine the terms and conditions under which it will enter into developer agreements.

D. Service and Program Development. In addition to marketing, promoting and selling Gas Services, EC Services and Developer Services, Partners will develop additional programs and services both independently and at the direction of Peoples to be offered to Peoples' existing and potential customers for the purpose of enhancing the growth of the System or to optimize the utilization of Peoples existing assets. Partners shall conduct such research, engage in such development and evaluation as Partners determines in the exercise of its judgment is prudent and necessary to investigate and develop such additional programs and services. Peoples and Partners expressly acknowledge and agree that Peoples reserves the right, in the exercise of its sole judgment and discretion, to determine whether such program or service shall be offered as a program authorized or sponsored by Peoples. Partners expressly acknowledges and agrees that it shall not engage in any direct marketing, promotion or sales activity of any kind for any new or different program, nor shall it change, modify, amend or delete any of the terms, conditions or limitations of any existing Gas Services, EC Services or other existing program of Peoples without receiving the express written consent and approval of Peoples. Any new program, product, or service approved for marketing, promotion or sale to the customers of Peoples shall be marketed, promoted, sold, or otherwise made available in accordance with the terms of this Agreement.

2. Promotional Services. Peoples and Partners acknowledge and agree that the marketing, promotion and sale of the services currently offered by Peoples involves a variety of marketing, sales, and promotional activities which, by their nature, cannot fully be described or set forth. Partners will fully market, promote and sell the services set forth above and conduct any and all activities reasonably necessary to promote, market and sell Gas Services, EC Services, Developer Services, and any newly developed programs or services to customers and potential customers. Partners shall provide all necessary marketing, sales, and promotional services, including, but not limited to the following:

A. Marketing Services. Partners will perform the following functions for Peoples for Gas Services, EC Services, and Developer Services:

1. Identify customers and potential market growth areas, within and beyond Peoples' current service areas for Gas Services, EC Services and Developer Services;
2. Develop and, with the prior approval of Peoples, conduct marketing programs targeted to prospective customers or potential market growth areas to develop interest in and sales of Gas Services, EC Services, and Developer Services, including the preparation of production of, and distribution of all marketing materials for such programs. Peoples and Partners acknowledge and agree that Peoples, in the exercise of its sole discretion, shall approve all marketing and promotional materials used by Partners in promoting Peoples' Services;
3. Maintain and oversee existing network of natural gas appliance dealers, including but not limited to, EADs and EAPs;
4. Identify, analyze and recommend new technologies, or new applications for existing technologies to be utilized and employed by Peoples' customers that promotes or expands the use of Gas Services; and

5. Examples of specific Marketing Services anticipated by the Parties are set forth on Exhibit A.

B. **Sales Services.** In addition to the promotional and marketing services to be provided by Partners, Partners shall also provide the following sales services:

1. Peoples shall prepare and submit residential feasibility models to Partners and Partners shall negotiate on behalf of Peoples (but Partners shall not have the authority to bind Peoples), agreements with developers to provide Developer Services. Peoples shall provide to Partners the form of the agreement(s) to be entered into with developers. Partners acknowledges and agrees that no changes shall be made to any developer agreement without the express consent and approval of Peoples. Partners shall recommend whether Peoples should continue to sponsor or participate in Developer Services activity. Partners shall continue such participation at the level indicated unless otherwise directed by Peoples.

2. Peoples shall prepare and submit a feasibility model to Partners and Partners shall execute on behalf of Peoples Gas Services Agreements, in the form and manner provided in Peoples' Tariff, with new customers that have one or more locations with each location meeting the requirements of the feasibility model.

3. Peoples shall prepare and submit feasibility models to Partners and Partners shall execute on behalf of Peoples Gas Services Agreements with existing customers, in the form and manner provided in Peoples' Tariff, to add new utilization locations, equipment, or main extensions that meet the requirements of the feasibility model.

4. Examples of specific sales services anticipated by the Parties are set forth on Exhibit A.

Article III **Compensation**

1. **Basis for Compensation.** Peoples and Partners acknowledge and agree that the primary purpose in establishing this Agreement is to increase the services provided by Peoples to its customers, existing and potential, and to increase utilization of its existing services in a cost-effective, economical, and efficient manner. Peoples has entered into this Agreement based upon certain assumptions concerning its business and financial activity and such assumptions form a part of this Agreement and form the basis upon which, in part, Partners is entitled to compensation under this Agreement. For the purposes of this Agreement, the following assumptions shall apply:

A. **Investment Capital.** For each year of this Agreement, Peoples has established a budgeted amount for capital construction of new or expanded supply and distribution system services. The amount of Investment Capital budgeted is established solely at the discretion of Peoples. At the beginning of each calendar year, Peoples shall advise Partners of the amount of Investment Capital available. It is anticipated that Partners shall focus its marketing and sales activities to provide new business meeting Peoples' investment criteria to permit the investment of the amount of Investment Capital allocated each year. Further, Peoples reserves the right during any year, to increase or reduce the amount of Investment Capital available to be committed under this Agreement. In the event that a significant amount of available capital

dollars is either reduced or increased, then the Parties shall meet to discuss what proportionate number of new customers added would be an appropriate target for that given year.

B. Investment Expense. For each year of this Agreement, Peoples has established a budgeted amount for customer inducements including but not limited to, conversion costs, propane contract buy-outs, and property owner consent fees for purposes of adding new natural gas customers when funds, in addition to the Investment Capital, are needed. The amount of Investment Expense budgeted is established solely at the discretion of Peoples. At the beginning of each calendar year, Peoples shall advise Partners of the amount of Investment Expense available. Further, Peoples reserves the right during any year, to increase or reduce the amount of Investment Expense available to be committed under this Agreement. In the event that a significant amount of available investment dollars is either reduced or increased, then the Parties shall meet to discuss what proportionate number of new customers added would be an appropriate target for that given year.

C. Anticipated Return. The Parties acknowledge and agree that the Investment Capital to be invested by Peoples is based on projects requiring a specified rate of return measured by various financial models. Peoples is not obligated under this Agreement to expend any Investment Capital. Projects can be approved at greater or less than the established rate at Peoples discretion and approval.

2. Compensation to be paid to Partners. During the first year of the Term of this Agreement, it is anticipated that Peoples shall pay Partners an Estimated Annual Amount of [REDACTED] comprised of a fixed amount to which Partners is entitled, and a variable amount. These amounts will be paid in monthly installments no later than twenty (20) days following receipt by Peoples of an invoice. Each successive year, during the Term or any Renewal Term of this Agreement, the Estimated Annual Amount shall be increased by multiplying the previous year's Consumer Price Index – All Urban Consumers (CPI-U) by [REDACTED]. The components of Partners' compensation are as follows:

A. Services. Notwithstanding any other provision of this Agreement, Peoples shall pay Partners a set amount of [REDACTED]. This payment is for services, including but not limited to those services set forth on Exhibit A attached hereto, provided to Peoples by Partners and shall be paid in monthly installments of [REDACTED].

B. New Signings. In addition to the Services amount, Peoples shall pay Partners an amount for New Signings added during each year of this Agreement. Between January 1 and December 31 of the first year of this Agreement, Partners shall add, at a minimum, [REDACTED] New Signings. For each year thereafter between January 1 and December 31, Partners shall add, at a minimum, [REDACTED] New Signings. Three focus areas of New Signings are: a. Residential developments (number of units); b. Miscellaneous residential additions and c. Commercial signings. Beginning January, 2008, Peoples shall pay Partners the amount of [REDACTED] annually in monthly increments of [REDACTED] for New Signings. At the end of the current year, a cumulative true up will be determined by calculating the percentage by which actual New Signings exceeds or falls short of targeted New Signings. The resulting percentage shall be divided by two and then multiplied by the annual amount paid for New Signings. The resulting dollar amount shall either be paid to Partners (in the case of an overage) or assessed as a penalty against Partners (in the case of a deficit). Partners' compensation plan to its sales staff shall be structured to provide incentives so that the sales staff

will continue to provide service to a customer through turn-on. Peoples may audit this portion of Partners compensation plan for assurance of customer service and shall have the right to require Partners to change its compensation plan if Peoples determines in its reasonable discretion that customer service by Partners' sales staff needs improvement.

C. Reimbursement. In addition to the compensation payable to Partners, Peoples shall reimburse Partners for certain expenses incurred by Partners, but only at Partners' actual cost, provided such costs were approved in writing by Peoples prior to being expended. The items for which Partners shall be entitled to reimbursement of its actual costs are set forth on Exhibit B.

D. Invoices. Partners shall invoice Peoples for the amounts due under this Agreement, and the amounts shall be due and payable to Partners within twenty (20) days following the date of Peoples receipt of such invoice. All invoices requesting cost reimbursement shall provide copies of all expense receipts for which reimbursement is sought.

Article IV **Partners' Billing through Peoples**

Peoples, in its sole discretion, may agree to include charges for products or services sold to a Customer by Partners on the Customer's monthly bill, and may discontinue doing so for any particular product or service upon sixty (60) days notice to Partners. Peoples shall rely on information provided by Partners as to the correct billing amount and Partners shall be responsible for resolving any Customer billing disputes related to Partner's products or services. Peoples shall have the authority and discretion to determine what portion of a bill a Customer has paid in the event of partial payment. Peoples shall forward all amounts collected to Partners or a third party designated by Partners, no more often than on a monthly basis. Peoples may negotiate compensation from Partners for its billing and collection services.

Article V **Partners' Use of Peoples' Facilities**

Simultaneous with the execution of this Agreement the Parties will enter into a facility services agreement.

Article VI **Term and Termination**

1. **Term.** This Agreement shall be effective and binding upon the Parties as of the Covered Period set forth above, and shall continue in full force and effect for a period of six (6) years, and then shall continue for year to year thereafter, unless otherwise terminated in accordance with this Article.
2. **Termination.** This Agreement may be terminated by either Party at the expiration of the Term or any Renewal Term by either Party provided that the Party seeking to terminate this Agreement provides not less than ninety (90) days advance written notice to the other Party prior to the expiration of the Term.
3. **Termination for Cause.**

A. Cause. If Peoples believes that Partners is failing to perform its obligations under this Agreement, Peoples can give Partners written notice detailing its failures. If Partners fails to remedy those failures in thirty (30) days, Peoples may terminate this Agreement without further liability to Partners.

B. PSC Cause. In the event that the PSC determines that a material portion of the expenses under this Agreement shall or will be disallowed for purposes of determining Peoples' regulatory rate of return, Peoples may immediately terminate this Agreement by giving written notice to Partners.

Article VII **Disputes**

It is understood between the Parties that this Agreement and the duties and responsibilities of the Parties under its terms may be subject to interpretation and application to situations and circumstances not considered or contemplated by the Parties at the inception of the Agreement. In the event that a dispute arises between the Parties concerning the interpretation of any term of this Agreement, or in the interpretation of any duty or obligation imposed upon either Party, then the Designated Representatives of the Parties shall meet to discuss the dispute and shall agree upon an interpretation that is consistent with the intent of the Parties. Either Party may request that a matter is reviewed in this manner and both Parties agree to resolve any disputes in a manner consistent with the intent of this Agreement and good business and regulatory practices.

Article VIII **Designated Representatives**

Each Party shall designate a representative as the principal liaison for the purpose of receiving notices under this Agreement and for all other purposes necessary to carrying out the terms of this Agreement. The Designated Representatives shall meet at least quarterly to discuss the performance of each Party under this Agreement, including, but not limited to, the following:

As to Peoples:

1. The timeliness of gas main, service installations and meter sets;
2. The timeliness or necessity of tariff revisions or modifications;
3. The necessity of including additional elements, including unbudgeted items requested by Peoples, under this Agreement; and
4. Anticipated customer service satisfaction levels.

As to Partners:

1. To assess the quality of all Partners' prepared communications;
2. To determine the timeliness of all Peoples' publications prepared by Partners;
3. To assess the ongoing value and necessity of community event and trade show participation;
4. To determine compliance with Tariff requirements, including EC Services;
5. To assess the effectiveness of Partners' Sales Services and Developer Services; and
6. To assess the overall representation of Peoples' interests and enhancement of its market recognition and exposure.

Article IX
Notices

Any and all notices provided for under this Agreement, or otherwise, shall be provided in writing to the Party to receive such notice. Notices may be provided by facsimile, mail or overnight express. If provided by facsimile, the notice shall be deemed received on the day it is sent, unless sent after 5:00 p.m. local time, in which case it shall be deemed sent the following business day; if by mail, three days following the date the notice was deposited in the U.S. mail in a properly addressed envelope with proper postage prepaid; if by overnight express, on the day following tender to the express carrier, or as otherwise provided in the express carrier's transit register or delivery instructions. For the purposes of this provision, a business day is any Monday, Tuesday, Wednesday, Thursday or Friday that is not a legal holiday recognized by either of the Parties to this Agreement.

Article X
Use of Service Mark

Peoples grants to Partners a limited license to use any servicemarks or trademarks of Peoples. The license shall be limited to the term of this Agreement and the use of the marks shall only be in connection with the products and services provided through this Agreement and further and uses must be in compliance with any guidelines developed by Peoples. Upon written request to Partners by Peoples, Partners will remove all marks from any specific medium requested by Peoples. Partners agrees that it does not acquire or has not acquired any ownership or additional rights in any marks of Peoples.

Article XI
Access to Information; Confidentiality

Peoples and Partners acknowledge and agree that the duties undertaken by Partners under this Agreement may require that Peoples provide to Partners certain information concerning its business operations, together with information concerning its customers, all of which is considered to be proprietary and confidential. Partners agrees to hold such information confidential and not to disclose confidential information to any third party without the written consent of Peoples, which may be withheld in Peoples sole discretion, or to use the confidential information for any purpose other than in connection with fulfilling its duties under this Agreement. In the event that Partners breaches this provision, such breach shall be considered to be a material breach of this Agreement. Further, Partners shall promptly notify Peoples of the breach and shall reimburse Peoples for Peoples it internal and external costs (including any fines) relating to the breach or the remediation thereof. For the purposes of this Agreement, Peoples agrees to provide sufficient information to Partners to permit Partners to fully carry out its duties and obligations under this Agreement.

Article XII
Indemnity

Partners shall indemnify and hold harmless Peoples, its affiliates and the respective shareholders, directors, partners, officers, employees and agents of Peoples and its affiliates, from and against any and all claims, actions, losses (whether joint or several), liabilities, damages, costs and expenses (including, without limitation, attorneys' fees and expenses) (collectively

"Damages"), brought or otherwise claimed by a third party and arising out of or relating to any breach, failure or violation by Partners of any of its respective representations, warranties, covenants and undertakings set forth in this Agreement and any and all Damages brought or otherwise claimed by a third party arising out of or relating to any negligent act or omission or from the willful misconduct of Partners or any of its officers, agents or employees in any manner related to the subject matter of this Agreement.

Article XIII **Proprietary Rights**

Ownership of Materials. Each Party will maintain sole ownership of all its materials and any intellectual property rights therein, including without limitation any materials purchased or licensed from a third party, and the other Party shall have no right, title, or interest therein. Notwithstanding the foregoing, either Party will have the right to use the other Party's materials only pursuant to the terms and conditions of this Agreement

To the extent that the Parties have developed any joint materials, the Parties agree that ownership of such joint materials and any intellectual property rights therein shall belong solely to Peoples, but that Peoples shall provide to Partners a perpetual, non-exclusive, worldwide, non-transferable, royalty-free license to reproduce and distribute such joint materials provided that such license to reproduce and distribute such joint materials (a) shall be limited to the transmission of advertisements or other marketing or promotional materials for Partners, and (b) shall not include the right to use the joint materials in a manner that is competitive with Peoples' business of providing Internet services and e-mail functionality.

Article XIV **General Provisions**

The following provisions of general application are incorporated in this Agreement:

1. **Relationship of the Parties.** The Parties intend only to create a contractual relationship. The Parties do not intend by this Agreement to create any partnership, joint venture, or the relationship of master/servant, employer/employee or other relationship from which any party is vicariously liable for the acts or omissions of the other. If, either by the terms of this Agreement, or by the acts of the Parties, any relationship is created that would give rise to vicarious liability, the Parties agree to indemnify the other Party from any and all liability arising solely by virtue of the unintended relationship created.
2. **Revisions To Tariff.** Peoples is a public utility and operates in accordance with its Tariff as filed with the PSC. Peoples expressly reserves the right to seek PSC approval in order to revise, modify, amend, or delete the terms of its Tariff.
3. **Entire Agreement; Amendments.** This Agreement, together with the Exhibits that are attached and incorporated, constitutes the entire agreement between the Parties for the Marketing and Sale of Peoples' services. Any other agreement or understanding, whether written or oral is merged into this Agreement. This Agreement and the Exhibits may be amended from time to time by the Parties, but only by an instrument in writing endorsed by the authorized representatives of the Parties. Amended Exhibits may be substituted for prior Exhibits without amending the Agreement.

4. **Severability.** The Parties acknowledge and agree that the terms of Agreement are severable. In the event that a court of competent jurisdiction determines that one or more of the material provisions of this Agreement are unenforceable for any reason, then the Parties shall determine a replacement provision or provisions that are enforceable and that are consistent with the meaning and intent of the Parties and which preserve the economic attributes of this Agreement. If the Parties cannot agree upon any such replacement provision or provisions, then either Party upon thirty (30) days' written notice may terminate this Agreement.

5. **Waiver.** Waiver by the parties of a breach, failure or violation of any provision of this Agreement may be made only in writing executed by the parties hereto and such waiver shall not constitute a waiver of any subsequent breach, failure or violation of the same or other provisions hereof.

6. **Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the internal Laws of the State of Florida applicable to contracts made and to be performed therein. Each party irrevocably consents to the jurisdiction of the courts of the State of Florida, County of Hillsborough and agrees that is the proper jurisdiction of any disputes under this Agreement.

THIS AGREEMENT IS ENTERED INTO AS OF THE DATE SET FORTH ABOVE BY THE AUTHORIZED REPRESENTATIVES OF THE PARTIES WHOSE SIGNATURES ARE SET FORTH BELOW.

PEOPLES GAS SYSTEM, a Division
of Tampa Electric Company

By: 
Name: Bruce Narzissenfeld
Title: Vice President Operations

TECO PARTNERS, INC.

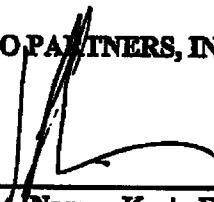
By: 
Name: Kevin Webber
Title: General Manager

Exhibit A

**To the Marketing Services Agreement
Between Peoples Gas System, a Division of Tampa Electric Company
and
TECO Partners, Inc.**

The following list describes the activities to be performed by Partners for Peoples. The list is not all-inclusive. Any activity that would normally be associated directly with the marketing and sales activities of Peoples, a regulated, natural gas utility, is to be provided by Partners unless specifically excluded. Partners is expected to provide, at a minimum, the same type and level of sales and marketing activity historically provided by Partners during the previous years.

- **Marketing Services**
 1. Conduct customer demographic research and analysis to help add new gas load;
 2. Conduct market research and analysis to help determine new program development;
 3. Conduct external customer opinion surveys;
 4. Help prepare and coordinate Customer Communications as often as needed;
 5. Help prepare and coordinate Employee Communications as often as needed;
 6. Develop programs to attract new residential and commercial customers on Peoples Gas system and track performance;
 7. Develop programs to retain existing residential and commercial customers on Peoples Gas system and track performance;
 8. Prepare competitive rate analyses (as requested by Peoples Gas)
 9. Identify, introduce and promote new natural gas-fired technologies such as:
 - a. Residential Desiccant
 - b. Commercial Desiccant
 - c. Fuel Cells
 - d. Microturbines
 - e. Engine-driven and absorption chillers
 - f. Natural Gas engine-driven generators
 - g. Gas-fired space conditioners
 - h. Tankless water heating
 - i. Renewables Energy Projects
 10. Play a lead role in the ongoing relationship with industrial customers, with a minimum of two (2) visits per year;
 11. Play a lead role in the ongoing relationship with key accounts and or multiple location customers;
 12. Create and maintain an industrial data base, which contains up to date critical customer contact information;
 13. Introduce and promote new & existing programs;
 14. Manage Bill Insert Program;
 15. Chambers of Commerce participation;
 16. Industry Associations;
 17. Economic Development Council participation; and
 18. Other Community Memberships

All reasonable third party costs associated with these activities will be borne by Peoples, except to the extent that the third party cost could have been avoided by Partners through Partners doing the task directly.

- **Sales Services**

1. Negotiate agreements with builders and developers. Any deviation from the standard builder agreement (provided by the utility) must be approved by Peoples before incorporation in negotiations with builder;

2. Sign standard service agreements with single-site customers;

3. Sign standard service agreements with existing customers to add or retain load, including main extensions;

4. Solicit large-volume industrial customers to Peoples' service area;

5. Retain large-volume industrial customers on Peoples' system;

6. Staff Home Shows, Builder Shows, etc.;

7. Supervise and manage the existing network of qualified, EADs, and EAPs to ensure sufficient dealers throughout service areas; and also;

8. Provide immediate and sufficient response to customer complaints or issues related to activities of EAD or EAP;

9. Provide sales and program training, support, and customer access to EAD and EAP network;

10. Continue and expand manufacturer alliances, installation alliances and financing alliances;

11. Continue to provide Business Profile Assessment;

12. Assist in the blending and extension of transportation agreements; and

13. Participate in System Capacity programs.

- **Other Services**

1. Manage specific internal initiatives and or campaigns as requested;

- a. Customer celebrations and milestones;

- b. Team member celebrations and milestones;

- c. Safety Awareness programs;

- d. Team member morale initiatives;

- e. Internal satisfaction surveys;

- f. Hurricane pre and post storm support;

- g. System outage support;

- h. Student of the business modules as requested; and

- i. Sports sponsorship and ticket distribution.

Exhibit B

To the Marketing Services Agreement Between Peoples Gas System, a Division of Tampa Electric Company and TECO Partners, Inc.

Partners shall perform certain activities for Peoples, and Peoples shall pay all third party costs directly. Partners shall perform the following, including, but not limited to the following (All activities set forth below shall be approved in writing in advance by Peoples and proper documentation of actual costs provided.):

List of Services

- **Peoples Gas Advertising**
 - **Distribution of promotional material**
 - **Advertisements on TV, Radio, Billboard and other media**
 - **Signage and other promotional material used to support trade shows, builder shows, community events, etc.**
 - **Labor and travel-related expenses will not be reimbursed by Peoples unless initiative is outside of the scope of this Agreement**
- **Peoples Gas Conservation Advertising**
 - **Distribution of promotional material**
 - **Advertisements on TV, Radio, Billboard and other media**
- **Competitive Edge**—All printing costs are to be borne by Peoples.
- **Conduct customer loss analysis;**
- **Conduct customer loss surveys;**
- **Organize and manage customer focus groups on behalf of Peoples.**
- **Organize and manage internal working committees designed to improve day to day business practices;**