


**MEMORANDUM**

**TO:** Mayor O'Brien  
Vice Mayor George  
Commissioner Snodgrass  
Commissioner England  
Commissioner Kostka

**FROM:** Max Royle, City Manager 

**DATE:** July 12, 2017

**SUBJECT:** Electric Franchise Agreement with Florida Power and Light: Discussion of Ordinance to Renew

**INTRODUCTION**

The City's current 30-year franchise agreement with FPL will expire on April 4, 2018.

You last discussed renewing the agreement at your February 6, 2017, meeting. One of your key requests to FPL was that the new agreement include a "most favored nation" clause. The revised agreement has that clause.

The agreement was to have been brought back to you at your May meeting. However, because of the length of your recent meetings, presentation of the renewal has been delayed. Now that you've decided to have two meetings a month, if you run out of time to discuss the renewal at your August 7<sup>th</sup> meeting, you can discuss it at your continuation meeting on August 8<sup>th</sup>.

**ATTACHMENTS**

Attached for your review is the following information:

- a. Pages 1-4, that part of your February 6, 2017, meeting when you last discussed renewing the franchise agreement.
- b. Page 5, a comparison of key provisions of the existing franchise agreements between FPL and 13 small northeast and north Florida cities.
- c. Page 5A, a May, 2017, comparison of residential electric rates compiled by the Florida Municipal Electric Association, a trade association for Florida's 34 community-owned and locally managed public power organizations.
- d. Pages 6-17, the proposed ordinance to renew our City's franchise agreement with FPL.

### POINTS TO CONSIDER

First, please note on page 5 that the franchise agreements of only two of the 13 cities listed have a “most favored nation” clause. Those cities are Callahan and Hilliard, both in Nassau County. The clause is Section 5(b) on pages 10-11 of the proposed ordinance.

Second, Section 12 of the proposed ordinance (page 15) concerns the undergrounding of utilities, which you discussed at your February 6<sup>th</sup> meeting.

Third, again page 5, please note that our City is the only one of the 13 listed that has provisions in its franchise agreement that concern electricity generation (Section 13, pages 15-16 of the proposed ordinance).

### ACTION REQUESTED

It's that you discuss the proposed renewal agreement (the attached ordinance).

We suggest that you consider amending the “most favored nation” clause to include more counties. Callahan’s franchise agreement states that that city may enter into a new franchise agreement with FPL if the company agrees to pay a franchise fee greater than 6% to any other municipality in Nassau, Baker, St. Johns, Bradford, Clay, or Putnam County. Hilliard’s “most favored nation” clause lists the same counties. The “most favored nation” clause in the proposed agreement for our City lists only St. Johns and Flagler County. We suggest you add these counties to the list: Putnam, Clay, Baker, Nassau, and Bradford.

If the terms of the franchise agreement meet with your approval, then we ask that you pass the ordinance on first reading. The ordinance’s number will be:

17-02

MINUTES FOR CITY COMMISSION MEETING

FEBRUARY 6, 2017

G. Proposal by Florida Power and Light to Renew Franchise Agreement for Electric Service

Mayor O'Brien introduced Item VI.G. and requested a representative from the Florida Power and Light to come to the podium.

Jim Bush, Local Manager for Florida Power and Light (FPL), 303 Hastings Road, St. Augustine, FL, thanked the Commission for allowing him to speak. He acknowledged City Manager Royle and the staff for their professionalism during the many meetings that have been held. He explained that a franchise agreement is an agreement that FPL has with many municipalities. He explained that franchise agreements are not service contracts. He commented that FPL is regulated by the State of Florida Public Service Commission, which provides regulations regarding rates and tariffs on underground utilities or street lights. He remarked that FPL's 90-year relationship with their customers were very important to FPL. He gave a history of what FPL has done in the last 10 years. He then introduced Patrick Brien, FPL Attorney.

At Mayor O'Brien's request, Jim Bush read portions of his memo to the Commission.

Mayor O'Brien advised that undergrounding electric and street lights are not part of the franchise agreement.

Mr. Bush advised that the State of Florida Public Service Commission regulates underground electric and street lights.

Mayor O'Brien asked if it was correct that only FPL or the City of St. Augustine Beach could supply the residents and businesses with power.

Mr. Bush advised that that was correct. He explained that the State of Florida Public Service Commission regulates the territories and that has been designated to FPL.

Mayor O'Brien asked if the only power company for St. Augustine Beach could be FPL or the City of St. Augustine Beach, not any other company.

Mr. Bush advised yes.

Commissioner Snodgrass asked what provisions, if any, do other municipalities have that the City of St. Augustine Beach does not have in their franchise agreements.

Patrick Brien advised that FPL has 180 franchise agreements presently, which are mostly uniformed. He advised that FPL can negotiate to some degree, but wants the franchise agreements consistent. He advised no municipality in St. Johns County has their rate higher than six percent and some are lower.

Discussion ensued regarding when a franchise agreement could be reopened; having a Favoured Nation clause in the agreement in order to negotiate the rate; what other terms and conditions are not in the City of St. Augustine Beach's standard franchise agreement, but are in other municipalities' agreements; how to negotiate terms for underground utilities; how has FPL given support to other municipalities who have underground utilities; the State of Florida Public Service Commission governs underground utilities and street poles and sets tariffs for utilities; informing the City of other capital initiatives FPL would accomplish; FPL notifying the City on any projects that would be taking place; FPL reports on the amount of time that the average customer is without power for the year and FPL customers were 30 minutes less time out of service than other utility companies; to prevent outages FPL will do vegetation management, animal guards on the poles, etc.; during the course of the year; FPL does vegetation management continuously; City staff having a good working relationship with FPL and FPL being very responsive to their requests; and Hurricane Matthew was the largest pre-deployment of utility resources in history.

Commissioner England asked if this agreement would cover the City if they reconfigured the streets for formal bicycle lanes and whether that could be added to the agreement.

Mr. Brien advised that it could be added to the agreement and could be discussed with the City's staff.

Commissioner England asked if the franchise fees were paid based on billings for the previous 60 days minus any write off fees.

Mr. Brien explained that the City is paid every 30 days, but there is a lag because FPL gives customers 20 days to pay their bill. He explained that FPL calculates six percent of the revenues. He commented that FPL does not deduct the write offs from the franchise fee until they know what is collected from the customers. He explained that if the customer does not pay their bill, the City would not receive the franchise fee until the payment was collected. He advised that FPL does not write off that determination until 90 days; however, the City would receive the franchise fee if the payment was ever collected in the future.

Vice Mayor George asked to clarify the language on both of those points. She asked Mr. Brien what the length of time left on the franchise agreements for the City and St. Johns County.

Mr. Brien advised that he would have to confirm that and get back to staff on St. Johns County's franchise agreement. He advised that the City of St. Augustine was renewed in 2009 for 30 years.

Vice Mayor George asked if any other power companies petition to get the ability to offer services in different areas.

Mr. Brien advised that some states in 1990 -2000's, went to retail competition and deregulation. He commented that back during those times there were efforts to deregulate in the State of Florida, but their efforts failed in a large part because of Enron imploding. He explained that if the City did the franchise agreement for 30 years with FPL and municipalities do not have to stay with FPL if the State of Florida changes their regulations and allows for retail competition.

Discussion ensued regarding how the competitive retail franchise agreements would be negotiated and whether FPL would remove or negotiate the costs of their poles if another power company would come into the City.

Mr. Bush advised that even if the State of Florida deregulates for retail competition, the City would still need a distribution system, which would most likely be FPL. He explained that the power regeneration and the transmission would be deregulated.

Vice Mayor George asked if the City would be liable for FPL's infrastructure.

Mr. Brien advised no.

Commissioner Kostka asked if the 30-year term was standard.

Mr. Brien advised that that was FPL's requirement.

Commissioner Kostka asked if chemicals are being used for vegetative management.

Mr. Bush advised that he would check on chemicals, but he didn't think FPL uses chemical treatments. He explained that primarily trimming is FPL's vegetation management.

Vice Mayor George thanked Mr. Bush for attending the Tree Board meetings.

Mr. Bush advised that FPL will be more proactive in letting the City know what their projects are in the future.

Mayor O'Brien opened the Public Comment section. The following addressed the Commission: Robert Kahler, 29 Sunfish Drive, St. Augustine Beach, FL; Ed Slavin, P.O. Box 3084, St. Augustine, FL; Pat Gill, 218 B Street, St. Augustine Beach, FL; Tom Reynolds, 880 A1A Beach Blvd., St. Augustine Beach, FL; Dr. Michel Pawlowski, 216 10<sup>th</sup> Street, St. Augustine Beach, FL; and Ann Palmquist, 213 10<sup>th</sup> Street, St. Augustine Beach, FL.

Mayor O'Brien closed the Public Comment section and asked for any further Commission discussion.

Mayor O'Brien advised that the Commission needs to review this further and request the other franchise agreements.

Commissioner Snodgrass asked if any franchise agreement with FPL had an indeterminate timeframe that is based on performance of the utility.

Mr. Brien advised that there were no contracts like that. He explained that there was one franchise agreement that was for 20 years with a 10-year option at a reduced franchise rate of three percent. He commented that that agreement is coming up for renewal and that municipality asked for a 30-year agreement at a higher rate.

Commissioner Snodgrass asked what conditions would make the agreement be automatically reopened.

Mr. Brien advised other than the Favoured Nations clause, nothing.

Commissioner Snodgrass asked City Attorney Wilson what other questions should the Commission be asking.

City Attorney Wilson advised that franchise agreements are usually uniformed. He explained that when franchise agreements were done in the 1900's, it was rental for the City's rights-of-ways.

Commissioner England advised that the franchise agreement stops the City from setting up their own electric, which she feels is the key to this issue.

Discussion ensued regarding whether the City would ever provide electricity to the residents; Winter Park residents bought back their electric company because they built the plant originally; waiting 60 days before bringing this back to the Commission; the franchise fees going into the General Fund with no restrictions on what the revenues could be used for; yearly franchise fees are approximately ten percent of the budget; whether to have staff negotiate the franchise agreement before the Commission receives it back; power surge protection for residents cannot be a part of the franchise agreement; allowing the Public Works Department the tree trimming materials for the City residents; FPL notifies residents when they will trim trees on the rights-of-way, but for large scale projects, they will notify the City; whether the franchise fees should be included in the City's audit; and citizens information for an audit would have to be confidential.

Commission agreed to have City Attorney Wilson review and draft the franchise agreement with the inclusion of the Favoured Nations clause. City Attorney Wilson should compare other municipalities franchise agreements and then come back to the Commission no later than May.

COMPARISON OF CITY'S PROPOSED FRANCHISE AGREEMENT WITH AGREEMENTS FOR 13 OTHER FLORIDA CITIES

CITY	POPULATION	TERM OF FRANCHISE AGREEMENT	DATE FRANCHISE ORDINANCE ADOPTED	FRANCHISE FEE	"MOST FAVORED NATION" CLAUSE	ELECTRICITY GENERATION PROVISION
Bunnell	2,875	30 yrs.	6/28/2010	5.9%	No	No
Callahan	1,185	30 yrs.	3/15/2010	6.0%	Yes	No
Crescent City	1,540	30 yrs.	3/10/2011	5.9%	No	No
Flagler Beach	4,563	30 yrs.	9/24/2009	5.9%	No	No
Hilliard	3,032	30 yrs.	11/6/2008	5.9%	Yes	No
Holly Hill	11,712	30 yrs.	9/12/2011	5.9%	No	No
Interlachen	1,337	30 yrs.	2/14/2012	5.9%	No	No
Marineland	6	30 yrs.	4/19/2001	6.0%	No	No
Palatka	10,418	30 yrs.	3/23/2006	5.9%	No	No
Penney Farms	746	30 yrs.	9/20/2011	5.9%	No	No
Pomona Park	873	30 yrs.	6/14/2005	5.9%	No	No
St. Augustine	13,590	30 yrs.	2/23/2009	5.9%	No	No
Welaka	712	30 yrs.	3/8/2005	5.9%	No	No
St. Augustine Beach	6,555	30 yrs. (proposed)		6.0%	Yes	Yes

COMPARISON OF RESIDENTIAL ELECTRIC RATES COMPILED BY FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC. - TALLAHASSEE, FLORIDA

CITY	Customer Charge	1,000 KWH			1,200 KWH			2,500 KWH			Total with franchise or transfer fee payment	Additional Tax
		Base Rate (Includes Customer Charge)	Fuel or Cost Adjustment	Total	Base Rate (Includes Customer Charge)	Fuel or Cost Adjustment	Total	Base Rate (Includes Customer Charge)	Fuel or Cost Adjustment	Total		
ALACHUA	9.14	102.40	11.00	113.40	123.12	13.20	136.32	257.80	27.50	285.30	10%	
BARTOW	8.00	54.70	75.50	130.20	64.04	90.60	154.64	124.75	188.75	313.50	10%	
BLOUNTSTOWN	3.50	118.85	0.00	118.85	142.62	0.00	142.62	297.13	0.00	297.13	5%	
BUSHNELL	7.40	98.05	27.00	125.05	116.18	27.60	143.78	234.03	67.50	301.53	10%	
CHATTAHOOCHEE	6.50	90.10	24.00	114.10	100.32	28.80	129.12	209.00	60.00	269.00	NONE	
CLEWISTON	6.50	93.20	13.71	106.91	110.54	16.45	126.99	223.50	34.28	257.78	10%	
FORT MEADE	12.96	89.56	36.00	125.56	104.88	43.20	148.08	204.46	90.00	294.46	10%	
FORT PIERCE	6.01	116.84	0.00	116.84	140.56	0.00	140.56	294.80	0.00	294.80	10%	
GAINESVILLE	14.25	60.40	70.00	130.40	73.20	84.00	157.20	156.40	175.00	331.40	10%	
GREEN COVE SPRINGS	12.00	95.00	29.00	124.00	112.40	34.80	147.20	225.50	72.50	298.00	NONE	
HAVANA	6.00	89.50	41.42	130.92	106.20	49.70	155.90	214.75	103.55	318.30	NONE	
HOMESTEAD	5.60	77.60	36.63	114.23	92.00	43.96	135.96	185.60	91.58	277.18	10%	
JACKSONVILLE	5.50	76.00	32.50	108.50	90.10	39.00	129.10	181.75	81.25	263.00	10%	
JACKSONVILLE BEACH	4.50	83.07	33.84	116.91	98.78	40.61	139.39	200.93	84.60	285.53	10%	
KEY WEST	15.03	137.03	-10.03	127.00	161.43	-12.04	149.39	320.03	-25.08	294.96	NONE	
KISSIMMEE	10.17	133.27	-35.10	98.17	173.07	-42.12	130.95	349.55	-87.75	261.80	8%	
LAKE WORTH	10.53	75.73	39.00	114.73	93.53	46.80	140.33	209.23	97.50	306.73	10%	
LAKELAND	9.50	63.02	37.75	100.77	74.85	45.30	120.15	157.33	94.38	251.71	10%	
LEESBURG	12.30	105.09	10.00	115.09	128.04	12.00	140.04	277.25	25.00	302.25	10%	
MOORE HAVEN	8.50	83.30	19.50	102.80	98.26	23.40	121.66	195.50	48.75	244.25	10%	
MOUNT DORA	8.95	49.24	62.83	112.07	57.30	75.40	132.69	109.67	157.08	266.75	10%	
NEW SMYRNA BEACH	5.65	82.10	22.68	104.78	97.39	27.22	124.61	196.77	56.70	253.47	9.25%	
NEWBERRY	7.50	107.50	20.00	127.50	127.50	24.00	151.50	257.50	50.00	307.50	10%	
Ocala	9.33	93.64	18.96	112.60	110.50	22.75	133.25	220.11	47.40	267.51	10%	
ORLANDO	8.00	72.18	33.82	106.00	87.02	42.58	129.60	183.45	99.55	283.00	10%	
QUINCY	6.00	98.41	12.90	111.31	116.89	15.48	132.37	237.03	32.25	269.28	10%	
ST. CLOUD	8.32	75.07	35.17	110.24	90.50	44.28	134.78	190.80	103.53	294.32	8%	
STARKE	N/A	75.95	45.55	121.50	96.00	54.66	150.66	230.02	113.88	343.90	10%	
TALLAHASSEE	7.41	75.98	32.90	108.88	89.69	39.48	129.17	178.84	82.25	261.09	10%	
VERO BEACH	8.33	54.43	61.65	116.08	68.89	73.98	142.87	162.89	154.13	317.02	10%	
WAUCHULA	11.50	89.90	13.00	102.90	107.58	15.60	123.18	222.50	32.50	255.00	10%	
WILLISTON	8.00	89.84	24.40	114.24	106.21	29.28	135.49	212.60	61.00	273.60	5%	
WINTER PARK	9.55	75.80	26.74	102.54	91.43	34.09	125.52	193.03	81.86	274.89	APPL	
FL POWER & LIGHT *	7.87	75.07	24.91	99.98	90.51	31.89	122.40	190.88	77.28	268.16	APPL	
GULF POWER *	18.60	96.51	31.63	128.14	112.09	37.96	150.05	213.38	79.08	292.46	TAXES	
DUKE ENERGY*	8.76	80.54	33.77	114.31	97.73	42.52	140.25	209.45	99.43	308.88	ADD	
TAMPA ELECTRIC**	16.62	68.62	26.42	102.06	81.24	33.70	130.77	163.24	81.05	261.85	FEES	
FLORIDA PUBLIC UTILITIES-NE*	14.00	33.60	100.55	134.15	40.02	123.16	163.18	270.13	270.13	351.88	TAXES	
FLORIDA PUBLIC UTILITIES-NW*	14.00	33.60	100.55	134.15	40.02	123.16	163.18	270.13	270.13	351.88	TAXES	

\*Rates for municipal utilities INCLUDE: payment-in-lieu of tax to the city's general fund. Rates for investor-owned utilities DO NOT INCLUDE: franchise fee payments, which average 6% across Florida. G = Generating utility. \*\*Total includes conservation, capacity, environmental and refund credit (if applicable) \*\*\*Total include 6% franchise fee for IOUs. For municipal utilities, total include actual transfer payment.



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF ST. AUGUSTINE BEACH, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission of the City of St. Augustine Beach, Florida recognizes that the City of St. Augustine Beach and its citizens need and desire the continued benefits of electric service; and

**WHEREAS**, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the City of St. Augustine Beach does not desire to undertake to provide such services; and

**WHEREAS**, Florida Power & Light Company (FPL) is a public utility which has the demonstrated ability to supply such services; and

**WHEREAS**, there is currently in effect a franchise agreement between the City of St. Augustine Beach and FPL, the terms of which are set forth in City of St. Augustine Beach Ordinance No. 174, passed and adopted April 4, 1988, and FPL's written acceptance thereof dated April 28, 1998 granting to FPL, its successors and assigns, a thirty (30) year electric franchise ("Current Franchise Agreement"); and

**WHEREAS**, FPL and the City of St. Augustine Beach desire to enter into a new agreement (New Franchise Agreement) providing for the payment of fees to the City of St. Augustine Beach in exchange for the nonexclusive right and privilege of supplying electricity

and other services within the City of St. Augustine Beach free of competition from the City of St. Augustine Beach, pursuant to certain terms and conditions, and

**WHEREAS**, the City Commission of the City of St. Augustine Beach deems it to be in the best interest of the City of St. Augustine Beach and its citizens to enter into the New Franchise Agreement prior to expiration of the Current Franchise Agreement;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA:**

Section 1. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the (City of St. Augustine Beach, Florida, and its successors (hereinafter called the "Grantor")), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called "facilities"), for the purpose of supplying electricity and other services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable

egress from and ingress to abutting property. To avoid conflicts with traffic, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

Section 3. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 4. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 5-5(a). As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal 6.0 percent of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed 6.0 percent of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited, as in the existing franchise Ordinance No. 174, to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

Section 5(b). If during the term of this franchise the Grantee enters into a franchise agreement with any other municipality located in St. Johns County or Flagler County, Florida, the terms of which provide for the payment of franchise fees by the Grantee at a rate greater than 6.0% of the Grantee's residential, commercial and industrial revenues (as such customers are defined by FPL's tariff) under the same terms and conditions as specified in Section 5 hereof, then the Grantee, upon written request of the Grantor, shall enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 5, utilizing the same terms and conditions as set forth in Section 5 hereof, shall be that greater rate provided for such other St. Johns County or Flagler County municipality; provided, however, that if the franchise with such other St. Johns County or Flagler County municipality contains additional benefits given to Grantee in exchange for the increased franchise rate, which such additional benefits are not contained

in this franchise, such new franchise agreement shall include those additional benefits to the Grantee.

Section 6. As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies), and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter

have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

Section 7. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice.

Section 8. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 9. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a



substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

Section 10. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 5 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

Section 11. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by

name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the Current Franchise Agreement embodied in Ordinance No. 174.

Section 12. Grantee understands and acknowledges that Grantor's policies strongly favor undergrounding of utilities and improvements of safety and aesthetics. Grantee has filed undergrounding tariffs with the Florida Public Service Commission. Requests made by Grantor for undergrounding shall be implemented by Grantee in accordance with the applicable tariffs in effect on the date of Grantor's request.

Section 13(a). Grantor may, if permitted by law, (i) generate electric capacity and/or energy at any facility owned by the Grantor for storage or utilization at that facility or other Grantor facilities, operations or equipment; (ii) use renewable energy sources to generate electric capacity and/or energy for use in demonstration projects or at Grantor's facilities, operations or its equipment; and (iii) sell electric capacity and/or energy to Grantee or other wholesale purchaser in compliance with applicable rules and regulations controlling such transactions.

Section 13(b). Nothing herein shall prohibit or limit a customer of FPL, including the City, if permitted by law or regulation, from installing a renewable generation system to generate electric energy for use at the customer's or the City's premises respectively.

Furthermore, nothing herein shall prohibit or limit a person, including the City, if permitted by law or regulation, from selling renewable energy or capacity to FPL.

Section 14. The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

Section 13-15. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 14-16. Ordinance No. 174, passed and adopted April 4, 1988 and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Section 15-17. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2015-2017.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2015-2017.

CITY OF ST. AUGUSTINE BEACH, FLORIDA

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk of the City of St. Augustine Beach, Florida

(SEAL)

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
City Attorney, of the City of St. Augustine Beach, Florida