

**AN ORDINANCE OF THE CITY OF MARY ESTHER
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 MARY
ESTHER, FLORIDA, AND PROVIDING FOR
SEVERABILITY, REPEALING CLAUSE, AND AN
EFFECTIVE DATE.**

WHEREAS, the Council of the City of Mary Esther (the "City") recognizes that the City of Mary Esther and its citizens need and desire the 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 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, FPL and the City desire to enter into a franchise agreement providing for the payment of fees to the City in exchange for the nonexclusive right and privilege of supplying electricity and other services within the City free of competition from the City, pursuant to certain terms and conditions;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
CITY OF MARY ESTHER, FLORIDA:**

Section 1. **Grant of Franchise:** 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 Mary Esther, 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 (herein 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. **Grantee Installation and Location of Facilities:** 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 Florida law.

Section 3. Indemnification and Hold Harmless: 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 defend 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. **Grantee Rates, Rules, and Regulations:** 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 Florida law.

Section 5. **Franchise Fee:** 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 no later than the 30th day of each month 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 three percent (3%) 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 three percent (3%) 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. 2011-08, 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.

The percentage of the Grantee's billed revenues to be paid to the Grantor as a franchise fee pursuant to this Section 5 may be changed by the Grantor from time to time by ordinance, at intervals of no less than twelve (12) months, provided that such percentage shall in no event exceed that permitted by Florida law. Any such change shall be effective as to the Grantee's monthly billing periods commencing on or after the ninetieth (90th) day following the Grantee's receipt of written notice from the Grantor of the adoption of such ordinance, or such earlier date as the Grantee may agree to in writing, and from and after such effective date the references in this Section 5 to three percent (3%) shall be deemed to refer to the percentage so established. Nothing contained herein shall be construed to limit the right of the Grantee to recover the franchise fee from its customers within the incorporated areas of the Grantor in accordance with its tariff approved by the

Florida Public Service Commission.

Section 6. Grantor Representations and Limitations: 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 Florida 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. **Grantee Right to Terminate due to Grantor Offering**

Another Person More Favorable Terms: 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. Grantee Right to Terminate for Competitive Disadvantage:

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. Breach by Grantee: 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. Breach by Grantor: Failure on the part of the Grantor to comply in substantial respect with any of the provisions of ~~this ordinance~~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. Examination of Grantee Records: 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.

Section 12. Severability: ~~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.~~ Should any section or provision of this Ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder,

as a whole or any part hereof, other than the part declared to be invalid.

Section 13. **Definition of "Person":** 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. **Repeal of Conflicting Ordinances:** Ordinance No. 2011-08, passed and adopted January 9, 2012, and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict ~~herewith~~with this Ordinance, are hereby repealed to the extent of the conflict with this Ordinance.

Section 15. **Forfeiture of This Franchise:** Failure by the Grantee to comply in any substantial respect with any of the provisions, terms, or requirements of this Ordinance, shall be grounds for forfeiture of this franchise, but no such forfeiture shall take effect if the reasonableness and propriety thereof is timely protested and satisfactorily addressed or until a court of competent jurisdiction shall have found that the Grantee failed to comply in a substantial respect with any of the provisions, terms or requirements of this Ordinance. Both the Grantor and Grantee reserve the right of appeal of such court findings. The Grantee shall have six (6) months after the final determination of the questions to make restitution or make good the default or failure before forfeiture shall result. The Grantor, at its discretion, may grant additional time to the grantee for restitution and compliance as the necessities of the case may require.

Section 16. **Review and Revision of Franchise Provisions:** With the exception of the term of this franchise, the Grantor and Grantee may from time to

time at the request of either party review any or all of the other provisions of this Ordinance and by mutual agreement revise any such provision, or add any additional provisions that may be appropriate. During the one hundred twenty (120) days immediately preceding each third anniversary date of this Ordinance during the term that this franchise is in effect, representatives of the Grantor and Grantee may meet at the written request of the grantor to decide whether any such revisions or additions are necessary.

Section 175. **Acceptance By Grantee, Effective Date, and Surrender of Rights:** As a condition precedent to the taking effect of ~~this ordinance~~this Ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of ~~this ordinance~~this Ordinance. The effective date of ~~this ordinance~~this Ordinance shall be the date upon which the Grantee files such acceptance. As a further consideration for the granting of the rights, privileges and franchises granted hereby, the Grantee surrenders all rights, privileges and franchises heretofore granted by the City of Mary Esther or the State of Florida for any of the purposes stated in this Ordinance and now enjoyed by the Grantee in the City of Mary Esther; provided, however, that such surrender shall not be effective unless and until this Ordinance shall be finally adopted and in effect and the rights, privileges and franchises granted hereby shall be validly in force and effect.

Section 18. **Applicable Law:** The laws of the State of Florida, without reference to conflicts of law principles, shall apply to this Ordinance.

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PASSED on first reading this _____ day of _____, 2026.

PASSED AND ADOPTED on second reading this _____ day of _____, 2026.

CITY OF MARY ESTHER, FLORIDA

By: _____

ATTEST:

By: _____
Clerk, City of Mary Esther, Florida

(SEAL)

APPROVED AS TO FORM AND LEGALITY

City of Mary Esther, Attorney