

**ORDINANCE NO. 1516**

**AN ORDINANCE GRANTING TO GULF POWER COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO PANAMA CITY BEACH, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of Panama City Beach, Florida recognizes that Panama City 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 Panama City Beach does not desire to undertake to provide such services; and

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

**WHEREAS**, Gulf Power and Panama City Beach are parties to an existing franchise agreement, the terms of which are set forth in Panama City Beach Ordinance No. 714 granting to Gulf Power, its successors and assigns, an electric franchise ("Current Franchise Agreement"); and

**WHEREAS**, Gulf Power and Panama City Beach desire to enter into a new agreement (New Franchise Agreement) providing for the payment of fees to Panama City Beach in exchange for the nonexclusive right and privilege of supplying electricity and other

services within Panama City Beach free of competition from Panama City Beach, pursuant to certain terms and conditions, and

**WHEREAS**, the City Council of Panama City Beach deems it to be in the best interest of Panama City Beach and its citizens to enter into the New Franchise Agreement;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF PANAMA CITY BEACH, FLORIDA:**

Section 1. There is hereby granted to Gulf Power 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 Panama City 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.

- a) Grantee's Facilities shall be so located, relocated, installed, constructed and so erected as to not unreasonably interfere with the convenient, safe, continuous use or the maintenance, improvement, extension or expansion of any public "road" as defined under the Florida Transportation Code, nor unreasonably interfere with traffic over the Public Rights-Of-Way, nor unreasonably interfere with reasonable egress from and ingress to abutting property.
- b) To minimize conflicts with the standards set forth in subsection (a) above, the location, relocation, installation, construction, or erection 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 shall be (i) for a valid municipal purpose; (ii) shall not prohibit the exercise of Grantee's rights to use said public rights-of-way for reasons other than conflict with the standards set forth above; (iii) shall not unreasonably interfere with Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers while not conflicting with the standards set forth above; or (iv) shall not require the relocation of any of Grantee's Facilities installed before or after the effective date hereof in public right-of-way unless or until the facilities unreasonably interfere with the convenient, safe, or continuous use,

or the maintenance, improvement, extension, or expansion, of such public "road".

- c) Such rules and regulations shall recognize that Grantee's above-grade Facilities installed after the effective date hereof should, unless otherwise permitted, be installed near the outer boundaries of the public right-of-way to the extent possible and such installation shall be consistent with the Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.
- d) When any portion of a public right-of-way is excavated, damaged, or impaired by Grantee or any of its agents, contractors or subcontractors because of the installation, inspection, or repair of any of its facilities, the portion so excavated, damaged or impaired shall, within a reasonable time and as early as practicable after such excavation be restored to its original condition before such damage by the Grantee at its expense.
- e) The Grantor shall not be liable to Grantee for any cost or expense incurred in connection with any relocation of Grantee's facilities required under this Section, except, however, Grantee shall be entitled to reimbursement of its costs and expenses from others as 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. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 60 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 30 days prior to each such payment will equal five percent (5%) of the Grantee's billed revenues, less actual write-offs, exclusively from the sale of electrical energy to customers served under Grantee's residential, commercial and industrial rate schedules (as such customers and rate schedules are defined by Gulf Power's Tariff for Retail Electric Service) within the incorporated areas of the Grantor for the monthly billing period ending 30 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed six (6%) percent of such revenues for any monthly billing period of the Grantee. The Grantor understands and agrees that such revenues as described in this paragraph are limited to the precise revenues described therein.

The Grantor shall, as provided herein, have the right to change the percentage remitted to any rate between 0.5 percent and 6.0 percent. The Grantor shall not exercise such right more than once in any calendar year. If the Grantor changes the rate, the Grantor shall give Grantee at least 60 days' advance written notice prior to the effective date of the new rate, which date shall always be on the first day of Grantee's "billing cycle", and Grantee shall have 60 days after such effective date to begin remitting the fee provided for herein to the Grantor.

Section 6. If during the term of this New Franchise Agreement, Grantee enters into a franchise agreement with any other municipality located within Gulf Power's service territory, each such municipality or county referred to herein as an "Other Governmental Entity," the terms of which provide for the payment of franchise fees by Grantee at a rate greater than six (6.0%) percent of Grantee's residential, commercial and industrial revenues (as such customers are defined by Grantee's tariff), under the same terms and conditions as specified in Section 6 hereof, Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 6 hereof shall be no greater than that percentage which Grantee has agreed to use as a basis for the calculation of payments to any such Other Governmental Entity, provided, however, that if the franchise with such Other Governmental Entity contains additional benefits given to Grantee in exchange for the increased franchise rate, which such additional benefits are not contained in this New Franchise Agreement, such new franchise agreement shall include those additional or reasonably equivalent benefits to Grantee. Subject to all limitations, terms and conditions

specified in the preceding sentence, the Grantor shall have the sole discretion to determine the percentage to be used in calculating monthly payments, and Grantee shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement.

Section 7. 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 8. 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 9. 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 10. Failure on the part of the Grantor to comply in any 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 as set forth in Section 2; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this Franchise; or (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute a breach of this franchise and entitle the Grantee to withhold such portion of the payments provided for in Section 5 hereof as a court of competent jurisdiction has upon action instituted by Grantee, determined to be equitable, just, and reasonable, considering the totality of the circumstances, until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination (after the expiration or exhaustion of all rights of appeal) in this matter. The Grantee recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantor's delegated sovereign right of condemnation and that the Grantor, in its sole discretion, may exercise such right as provided by law, provided that the Grantor shall not exercise such right so as to violate the Grantor's covenant, set forth in Section 7 hereof, not to compete against the Grantee in the distribution and/or sale of electricity to ultimate consumers.

Section 11. Failure on the part of the Grantee to comply in any material respect with any of the provision of this franchise shall be grounds for forfeiture and termination of this Franchise, but no such forfeiture and termination shall take effect if the reasonableness or propriety thereof is reasonably and timely 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 material 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 or termination 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 12. 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 directly 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. 714.

Section 13. 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 14. 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 15. Ordinance No. 714, passed and adopted February 22, 2001 and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

Section 16. 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 12th day of March, 2020.

PASSED AND ADOPTED on second reading this 9<sup>th</sup> day of April, 2020.

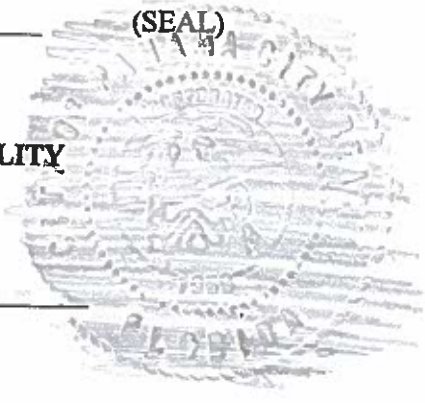
PANAMA CITY BEACH, FLORIDA

By:   
MAYOR MIKE THOMAS

ATTEST:

By: *[Signature]*  
*Interim* Clerk of Panama City Beach, Florida

(SEAL)



**APPROVED AS TO FORM AND LEGALITY**

*[Signature]*  
Attorney, Panama City Beach, Florida