SPECIAL MEETING
DESTIN CITY COUNCIL
SEPTEMBER 13, 2018
ANNEX COUNCIL CHAMBERS
5:30 PM

*****Core Value of the Month - Respect*****

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

1. NEW BUSINESS

A. Negotiations of Franchise Agreement with Gulf Power

2. OTHER BUSINESS

3. ADJOURNMENT

All items listed under Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and may be considered separately.

**To be placed on the Agenda under scheduled presentations, citizens must contact the City Manager or City Clerk's office one (1) week prior to the scheduled City Council Meeting by completing a Speakers Request Form and providing any accompanying documentation as requested in the form's instructions.

****** Any invocation that is offered before the official start of the City Council meeting shall be the voluntary offering of a private person, to and for the benefit of the City Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Council, or the City staff, and the City is not allowed by law to endorse the religious beliefs or views of this, or any other speaker. Persons in attendance at the City Council meeting are invited to stand during the opening invocation and Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered. A person may exit the City Council Chambers and return upon completion of the opening invocation if a person does not wish to participate in or witness the opening invocation.***

If a person decides to appeal any decision made by the Council with respect to any matter considered at this meeting, he/she may need a record of the proceedings, and for such purpose, he/she may need to ensure that verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. FS 286.0105.

Persons with disabilities who require assistance to participate in City meetings are requested to notify the City Clerk's Office at (850) 837-4242 in advance. Hearing Impaired: TTY: 711. Assistance also available through Human Resources, Title VI Coordinator, at (850) 837-4242.

Personas con discapacidades que necesitan asistencia o personas que necesiten ayuda con un idioma para participar en las reuniones de la ciudad, deberán notificar la oficina de la Secretaria Municipal al (850) 837-4242 antes de la reunión. Discapacidad auditiva: TTY: 711 (Solicitar Espanol CA). La ayuda tambien está disponible por Recursos Humanos, Coordinador del Título VI, al (850) 837-4242.

***Note*: Persons who wish to provide public comments on agenda items are requested to fill out a *blue speaker card* and submit it to the City Clerk at the start of the meeting.**

Persons who wish to provide public comments on any other matters not on the agenda are requested to fill out a yellow speaker card and submit it to the City Clerk at the start of the meeting.

All regularly scheduled city council meetings will be streamed live via the city's YouTube channel, www.youtube.com/CityofDestin. Past council meetings can also be viewed here.

Please visit our agenda center on the city website at www.cityofdestin.com/agendas

ORDINANCE No.__________

AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE GRANTING TO GULF POWER COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO MAINTAIN AND OPERATE WITHIN THE CITY OF DESTIN ELECTRICAL EQUIPMENT AND FACILITIES THAT ARE NECESSARY TO PROVIDE RETAIL ELECTRIC SERVICE TO CUSTOMERS LOCATED WITHIN THE CITY OF DESTIN, AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC DISTRIBUTION LINES IN THE STREETS AND RIGHTS-OF-WAY OF SAID CITY; AND PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT; PROVIDING FOR GRANT OF FRANCHISE PRIVILEGE, PROVIDING FOR RIGHT TO OPERATE; PROVIDING FOR TERM OF FRANCHISE; PROVIDING TO THE CITY OF DESTIN AN IRREVOCABLE OPTION TO PURCHASE GULF POWER'S FACILITIES LOCATED IN THE CITY; PROVIDING FOR FRANCHISE CONSIDERATION; PROVIDING FOR TRANSFERABILITY; PROVIDING FOR FORFEITURE OF FRANCHISE; PROVIDING FOR TERMINATION OF GRANT BY INSOLVENCY OR BANKRUPTCY; PROVIDING FOR SEVERABILITY; PROVIDING HOLD HARMLESS AGREEMENT; PROVIDING FOR RATES, RULES AND REGULATIONS; PROVIDING FOR REVIEW AND REVISION OF FRANCHISE PROVISIONS; PROVIDING FOR THE FURNISHING OF OTHER FRANCHISES ENTERED INTO BY GULF POWER COMPANY; PROVIDING FOR SUCCESSORS AND ASSIGNS TO BE BOUND; PROVIDING FOR PROPER OPERATION OF ALL FACILITIES; PROVIDING FOR PROMPT RESTORATION FOLLOWING INTERRUPTIONS OF SERVICE; PROVIDING FOR METERING OF SERVICE; PROVIDING FOR EXCAVATION, MAINTENANCE AND RESTORATION; PROVIDING FOR INDEMNIFICATION OF THE CITY AGAINST DAMAGES FOR INCORRECTLY COLLECTED FRANCHISE FEES OR OTHER ASSESSMENTS; PROVIDING FOR USE OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SURRENDER OF RIGHTS; PROVIDING FOR WRITTEN ACCEPTANCE BY GRANTEE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF DESTIN, FLORIDA:

SECTION 1. Grant of Franchise Privilege: In consideration of the mutual benefits that will accrue to the City of Destin, sometimes referred to as the Grantor herein, and the inhabitants thereof, on the one hand, and to Gulf Power Company, a corporation under the laws of the State of Florida, its successors and assigns, hereinafter sometimes referred to as the Grantee (or "Gulf"), on the other hand, the City of Destin hereby gives and grants to the Grantee the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said City of Destin's public streets and public rights-of-way a system of electric light and power facilities, including, without limitation, conduits, poles, wires, transformers, meters, 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 electricity-related services incidental thereto (which other electricity-related services are defined as Gulf's facility-to-facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the provision of electric service, and which do not include any services that are sold to others) to the Grantor and its successors and assigns, to the inhabitants thereof, and to persons beyond the corporate limits of the Grantor. This Ordinance and the mutual agreements created by this Ordinance and the Grantee's acceptance hereof are referred to herein as "the Franchise."

SECTION 2. Right to Operate: (a) The said Grantee, its successors and assigns, is hereby further given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said City of Destin a system of poles, towers, conduits, cables, conductors, transformers, meters, transforming stations, fittings, appliances and appurtenances necessary or desirable to the transmission, distribution or sale of electric energy for all purposes whatsoever, in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges, and public places in said City of Destin, as they now exist or as they may hereafter be laid out or extended within the present and future limits of said City, together with the further right, privilege and franchise to construct, erect, suspend, install, extend, renew, repair and maintain and operate a system of poles, towers, conduits, cables, wires, conductors, transformers, meters, transforming stations, generating stations, fittings and all appliances and appurtenances necessary or desirable to the generation and transmission within, unto, through, over and beyond said City of Destin and to the furnishing, supplying and distributing to said City and the inhabitants and corporations both within and beyond the limits thereof, of electric energy for lighting, heating, power and all other purposes for which electric energy may be used now or hereafter, and for the purpose of extending its lines and furnishing electric energy beyond the limits of said City. Grantor retains the rights to generate electric power for its own use and to purchase power for its own use from any lawful provider, but these rights do not include the Grantor's rights to generate or purchase power for sale to other entities, including individuals. Subject to the Grantor's Right to Purchase Gulf's electric facilities in the City pursuant to Section 3 hereof, the Grantee's rights to so maintain and operate its system pursuant to this Franchise shall include the right to conduct its business free of competition from the Grantor, until and unless the Grantor gives notice of its intent to exercise its Right to Purchase the Grantee's facilities. The electric system, facilities, and associated equipment and vehicles shall be located or relocated, erected or operated so as to not unreasonably interfere with vehicular and pedestrian traffic over, along and across said public rights-of-way, streets, alleys, bridges and public places and with reasonable egress and ingress to abutting and adjoining property.

(b) The Grantee's rights to operate its system are and shall remain subject to all applicable rules and regulations of the City of Destin, Okaloosa County, the State of Florida, and the United States, as such rules and regulations may be amended from time to time, and the rights granted hereunder do not and may not be construed as a waiver of any type whatsoever by the City of Destin of its rights to enforce its lawful rules and regulations, or of its rights to petition for, intervene in, or otherwise participate in any permitting proceedings for any of the Grantee's facilities located, or to be located, either in the City of Destin or in any other place where the installation could reasonably be expected to affect the City and its inhabitants.

SECTION 3. Term of Franchise; Right to Purchase:

(a) Subject to the Grantor's Right to Purchase the Grantee's electric facilities in the City pursuant to this Section 3 hereof (hereinafter the City's "Right to Purchase") the franchise granted by this ordinance shall exist and continue for a period of fifteen (15) years from the Effective Date of this Ordinance.

(b) As a condition precedent to the effectiveness of this Franchise, Grantor does hereby reserve and the Grantee hereby gives and grants to the said Grantor the right, at the expiration of five (5) years and at the expiration of fifteen (15) years from the Effective Date of this Ordinance, to purchase the electric plant and other property within the Grantor's corporate limits subject to this Franchise used under or in connection with the Franchise hereby granted at a value to be fixed in accordance with the provisions of Section 180.16, Florida Statutes (2017), as such provisions may be amended from time to time. Expressly excepted from this grant are power plants, transmission lines, and substation facilities which are owned by Grantee and connected with its general system of distribution and used for the purpose of serving communities or customers other than the Grantor herein. In determining the value of Grantee's facilities pursuant to Section 180.16, Florida Statutes, the arbitration panel shall ensure that such valuation includes compensation for: (i) the reproduction cost of the property sought to be acquired less depreciation; (ii) going concern value; (iii) value of stranded assets, if any; and (iv) damages to the remainder of Gulf Power's electrical system caused by the acquisition, if any. The Right to Purchase shall only be exercised by giving written notice to the Grantee not less than sixty (60) days prior to the expiration of five (5) years or fifteen (15) years from the Effective Date of this Ordinance. If the City exercises its Right to Purchase pursuant to this section, the City must own the assets purchased for a period of at least five (5) years before the City may sell such assets to any other lawful purchaser; provided, however, that nothing herein shall prevent or inhibit the City in any way from contracting with other parties to operate and manage the City's electric system, including, without limitation, the following: purchasing and contracting for wholesale power, transmission service, operation and maintenance services for all of the City's electric assets, billing and collection services, financial services, other customer services, all materials and supplies, and all other equipment, supplies, and services needed in connection with the operation of the City's electric system using the assets acquired pursuant to this section.

(c) The Franchise granted by this Ordinance is also subject to the terms and conditions of all applicable provisions of the codes, laws, rules and regulations of the Grantor, the State of Florida, and the United States Government.

SECTION 4. Franchise Consideration: As a further consideration for the granting of the rights, privileges and franchises hereby granted, the Grantee, its successors and assigns, shall pay to the City within thirty (30) days after the first day of each month a franchise fee of six percent (6%) of Grantee's revenue from the furnishing of electric service to customers served under its residential and commercial rate schedules within the corporate limits of the City collected during the preceding month. The City expressly covenants that it will dedicate any amounts received as franchise consideration that are over and above four (4) percent of Grantee's revenue from the furnishing of electric service to customers served under its residential and commercial rate schedules within the City to be used solely for the purpose of financing the conversion of existing overhead electric facilities to underground facilities; provided that a minimum of ten (10) percent of all such revenues dedicated to the conversion of facilities to underground facilities shall be set aside and used exclusively for landscaping of the underground conversion areas, where such landscaping shall specifically include planting, to the maximum extent possible, in the opinion of a certified arborist, native tree species including Southern magnolia and live oak trees. The percentage of such revenue to be collected by Grantee and paid to the City of Destin as a franchise fee may be changed by the City of Destin from time to time, by ordinance, at intervals of no less than every three (3) years, provided that the percentage shall in no event exceed that permitted by law. The Parties expressly agree that the above-stated franchise fee was freely bargained for and represents fair and just compensation relative to the fair rental value of the rights-of-way and the other consideration given by the City to Gulf pursuant to this Franchise. In recognition of the foregoing agreement, each Party, intending to be legally bound, agrees not to contest the amount of the franchise fee provided for herein.

SECTION 5. Transferability: The Grantee shall not sell or transfer any portion of its plant or system to another, nor transfer any rights under this Franchise to another without Grantor's prior approval. Before executing any agreement or other document by which the Grantee would attempt to sell or transfer any portion of its plant, system, or rights under this Franchise to any other entity, including any affiliate of the Grantee, the Grantee shall give at least one hundred eighty (180) days' written notice to the Grantor, and the Grantor's Right to Purchase set forth in Section 3 hereof shall vest immediately upon receipt of such notice; if the Grantor gives notice of its intent to exercise the Right to Purchase set forth in Section 3, then the Grantee agrees not to pursue any such sale or transfer until the conclusion of the arbitration proceedings and any other legal proceedings relating to Grantor's purchase of Grantee's facilities are finally concluded, and if the Grantor acquires the Grantee's facilities pursuant to its Right to Purchase, then the Grantee shall thereafter be forever estopped from pursuing any sale or transfer of the plant, facilities, or rights under this Franchise. Further, no such sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Grantor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise and agreeing to perform all the conditions thereof. Subject to the Grantor's Right to Purchase pursuant to Section 3 hereofthe Grantor will not unreasonably withhold its consent to the transfer of this Franchise. Notwithstanding the foregoing, and for the avoidance of doubt, the provisions of this Section 5 shall not apply to a transfer of Grantee's assets or Franchise rights which occur in connection with: (i) a merger; (ii) the sale of all, or substantially all, of Grantee's assets; or (iii) the acquisition of all, or substantially all, of Grantee's outstanding common equity interests.

SECTION 6. 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 has 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 judicial determination of any disputed issues to make restitution or make good the default or failure before forfeiture shall result (the "Cure Period"). The Grantor, at its discretion, may grant additional time to the Grantee for restitution and compliance as the necessities of the case may require. If any alleged breach or failure of the Grantee to comply with the provisions, terms, or requirements of this Ordinance and Franchise shall occur before the date upon which the Grantor's Right to Purchase Grantee's facilities vests hereunder, as provided in Section 3 of this Franchise, then the Grantee shall have the opportunities set forth above to cure such breach or failure. If Grantee has been adjudicated to have failed to comply with the Franchise and subsequently fails to accomplish such cure withinthe Cure Period, the Grantor's Right to Purchase shall thereupon immediately vest in Grantor. The Grantor's Right to Purchase the Grantee's facilities pursuant to Section 3 hereof shall not otherwise depend on any alleged breach or failure by Grantee: the Grantor mayexercise its Right to Purchase the Grantee's facilities in accordance with Section 3, regardless whether Grantee is in compliance with the provisions, terms, and requirements of this Franchise.

SECTION 7. Termination of Grant by Insolvency or Bankruptcy of Grantee: In the event of a final adjudication of bankruptcy of the Grantee, Grantor shall have full power and authority to terminate, revoke and cancel any and all rights granted to Grantee under the provisions of this Ordinance and Franchise, and the Grantor's Right to Purchase the Grantee's facilities pursuant to Section 3 hereof shall vest immediately upon the entry of such final adjudication.

SECTION 8. Severability: 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; except that the entire Ordinanceis invalidated if the portion declared invalid is, in the sole judgment of the Grantor, an essential part of this Ordinance.

SECTION 9. Hold Harmless: The Grantor shall in no way be liable or responsible for any accident or damage which may occur due to the construction, location, relocation, operation or maintenance by the Grantee of said poles, towers, conduits, wires, conductors, transformers, meters, and other appliances, equipment and vehicles subject to the terms and conditions of this Franchise. The Grantee hereby agrees to indemnify the Grantor and to hold it harmless against any and all liability, loss, cost, damage, or any expense connected therewith, including a reasonable attorney's fee incurred in the defense of any type of court action related hereto, which may accrue to the Grantor by reason of negligence, default, or other alleged misconduct of the Grantee, its employees, agents, contractors, or subcontractors, in the construction, location, relocation, operation, or maintenance of the facilities, vehicles or equipment of the electric system subject to this Franchise.

SECTION 10. Rates, Rules, and Regulations:

(a) All rates for electrical service and the rules and regulations governing the receipt of said service within the Grantor's corporate limits, established by the Grantee from time to time, shall be reasonable and shall be at all times subject to such public regulations as may be provided by law. The Grantee recognizes its obligation to provide electric energy and power service within the City on reasonable terms and conditions at fair, just, reasonable, and nondiscriminatory rates to all who request said service during the term of this Franchise and thereafter, as required by law or by a duly constituted public regulatory body.

(b) The Grantee agrees by its acceptance of this Franchise to file with the City Clerk or City Manager, by the thirtieth (30th) day following the Grantee's acceptance of this Franchise, a complete set of rules and regulations and a complete set of tariffs and rate schedules under which electric service is provided within the City, and to file in writing annually any revisions of rules, regulations and rates that have been adopted since the previous annual filing. Grantee shall also furnish the City Manager a copy of each of its annual reports to its stockholders.

(c) Grantor may, at its option and at its expense, and upon reasonable notice to Grantee, examine the records of operations and accounting files, books and records to the extent that such records relate directly to the calculation of the franchise fee payment to the Grantor, as provided herein and to proper performance of other terms of this Franchise. The examination of such books, accounts, records, or other materials necessary for determination of compliance with the terms, provisions and requirements of this Franchise shall be during regular hours of business of the Grantee and at the corporate offices of the Grantee.

(d) Should, during the term of this Franchise, the scheme of public regulation existing as of the date of this Franchise be changed substantially or such that the Grantee is no longer subject to regulation by the State of Florida or that the Grantor obtains the jurisdiction and authority to regulate the rules and rates of the Grantee, the Parties hereto agree to meet, within sixty (60) days following the change in regulation, in order to negotiate a mutually satisfactory arrangement relating to regulation of the rules and rates to be imposed on the customers located within the Franchise area; provided however, that the rules and rates in effect as of the date of change in the method of regulation shall, as a matter of contract between the Grantor and Grantee, remain in effect until such time as mutually satisfactory arrangements can be developed and agreed upon. The Parties further agree that, in the event of any such regulatory change, the Grantee's Right to Purchase shall vest as of the effective date of such regulatory change.

SECTION 11. Review and Revisions of Franchise Provisions: With the exception of the provisions of Section 3 concerning the term of this Franchise and providing for the Grantor's Right to Purchase the Grantee's facilities, and Section 4 concerning the franchise fee, the Grantor and Grantee may from time to time request that the Parties meet to review any or all of the other provisions of this Ordinance. The Parties shall thereafter meet as requested, and may, by mutual agreement with each Party's agreement being subject to its sole discretion, amend any such provision, or add any additional provisions that may be appropriate. No such revisions or amendments shall be effective until and unless set forth in an "Amended Franchise Agreement" or "Amended and Restated Franchise Agreement" that is approved, adopted, and accepted by the Parties pursuant to the same procedures by which this original Franchise was approved, adopted, and accepted.

SECTION 12. Other Franchises: Upon request, Grantee shall furnish City a copy of all other municipal franchises that it is or has been granted from time to time during the life of this Franchise.

SECTION 13. Assignment, Successors and Assigns: Except as otherwise provided in this Section 13, neither the Grantor nor the Grantee may assign or otherwise transfer any of its rights or obligations under this Franchise without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Any assignment or transfer in violation of this provision shall be null and void. Notwithstanding the foregoing, and for the avoidance of doubt, the foregoing restrictions on assignment shall not apply to an assignment or transfer of Grantee's or Grantor's Franchise rights or obligations which occur in connection with: (i) a merger; (ii) the sale of all, or substantially all, of Grantee's or Grantor's assets; or (iii) the acquisition of all, or substantially all, of Grantee's outstanding common equity interests. Whenever in this Ordinance either the City of Destin or the Grantee is named or referred to, it shall be deemed to include the respective successor, successors, or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successor, successors, or assigns of said Grantor or of the Grantee.

SECTION 14. Proper Operation: The poles, towers, conduits, cables, conductors, transformers, meters, transforming stations, generating stations (if any), battery installations or other energy storage facilities, fittings, appliances and appurtenances shall be constructed in accordance with good engineering practices and so as not to unreasonably interfere with the proper use of the streets, avenues, alleys, ways, bridges, sidewalks and other pedestrian walkways or paths, bicycle paths, or public places in the City and shall be maintained in reasonably good condition and repair. Failure to restore service within a reasonable time shall be material breach of this Franchise. Any substantial outage caused by the neglect or willful act of Grantee shall be a material breach of this Franchise. Any and all facilities of the Grantee shall further be installed, operated, and maintained in compliance with the most current edition of the National Electrical Safety Code and all applicable provisions of the Florida Administrative Code applicable to such facilities.

SECTION 15. Interruption of Service: In the event the supply of electric energy should be interrupted or fail by reason of accident or any cause beyond the control of the Grantee, the Grantee shall, at its own expense, restore the service within a reasonable time and such interruption shall not constitute a breach of this Franchise.

SECTION 16. Metering of Service: Subject to all applicable regulations set forth in the Florida Administrative Code, the Grantee shall install and maintain meters for measuring current and shall have free access to the premises of the consumer, from time to time, for the purpose of reading, repairing, testing and maintaining the meters and appurtenances. Subject to the Grantor's Right to Purchase the Grantee's facilities set forth in Section 3 hereof, such meters shall remain the property of the Grantee.

SECTION 17. Excavation, Maintenance and Restoration: Whenever the Grantee shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges, sidewalks and other pedestrian walkways and paths, bicycle paths, or public places of the City for the purpose of installing, maintaining, operating, or repairing any poles, towers, conduits, cables, or other facilities or appliances, the work shall be completed at Grantee's expense within a reasonable time and the Grantee shall upon the completion of such work restore such portion of the streets, avenues, alleys, ways, bridges, sidewalks and other pedestrian walkways and paths, bicycle paths, or other public places to as good condition as it was before the opening or alteration was so made and will promptly remove any debris.

SECTION 18. Surrender of Rights: 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 Destin or the State of Florida for any of the purposes stated in Section 1 and 2 of this Ordinance and now enjoyed by Grantee in the City of Destin, 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 19. Written Acceptance by Grantee: As a condition precedent to the taking effect of this grant, the Grantee shall have filed its written acceptance hereof with the City Clerk within thirty (30) days after this Ordinance shall take effect.

SECTION 20. Repealing Clause: All ordinances or parts of ordinances in conflict herewith are and the same are hereby repealed to the extent of such conflict.

SECTION 21. Indemnification Agreement for Assessment and Collection Issues:

Grantee shall be responsible for ensuring that it bills its customers the correct franchise fees, and other taxes or fees. Except where mischarges result from the Grantee's failure to provide updated information, including maps, regarding the location of the Grantor's city limits to the Grantor as provided hereinbelow, Grantee shall indemnify Grantor for any mischarges to Grantee's customers, and shall be responsible for defending the Grantor in any legal proceedings brought by the customers of the Grantee related to any mischarges. If Grantee mischarges its customers, and remits an excessive amount of franchise fees to Grantor, then Grantee must notify Grantor of the exact amount of the mischarges prior to the end of the fiscal year in which the mischarges occur, or Grantee waives any recourse against Grantor for any excessive payments. If Grantee pays excessive franchise fees to Grantor due to mischarges, then Grantee is solely responsible for refunding the excess amounts to Grantee's customers, and Grantor is not required to pay back the excess amounts to Grantee, unless Grantee notifies Grantor of the mischarges within the same fiscal year the mischarges are committed. Within thirty (30) days following the Grantee's acceptance of this Franchise, Grantor shall provide an updated map of the Grantor's city limits to Grantee. If the city limits of the Grantor are altered, via annexation or some other method, then Grantor shall provide an updated map to Grantee within thirty (30) days of said alteration of the city limits. In the event that the Grantor fails to timely deliver any map as required hereunder, the Grantee shall not be liable for any mistakes in billing or collection due to such failure, and the Grantor shall, upon written request of the Grantee, promptly furnish a current map.

SECTION 22. Use of Public Rights-of-Way: The rights and privileges granted to the Grantee hereby extend only to those public rights-of-way, including present and future roads, streets, alleys, bridges, easements, and other rights-of-way over which the Grantor has jurisdiction to approve such uses. The rights and privileges granted hereby do not extend to any other public places of any type whatsoever, including without limitation, public parks, public beaches, sidewalks, walkways, bicycle paths, pedestrian thoroughfares that are administered by the Grantor but not located in defined rights-of-way, docks, or any similar places.

SECTION 23. Notices: All notices permitted or required to be given under this Franchise shall be in writing and shall be deemed to be delivered upon receipt of such notice when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested. All notices will be sent to the other party at the address(es) shown below or to any other address(es) as a party may designate by ten (l0) days' prior written notice given in accordance with this provision.

To Grantor:	City of Destin Attn: City Manager 4200 Indian Bayou Trail Destin, Florida 32541
To Grantee:	Gulf Power Company Attn: Vice President, Customer Sales & Service One Energy Place Pensacola, Florida 32520-0100
With a copy to:	Gulf Power Company Vice President, General Counsel One Energy Place Pensacola, Florida 32520-0100

SECTION 24. Effective Date: This Ordinance shall be effective on the________ day of ____________________, 2018.

PASSED and ADOPTED by the City Council of the City of Destin, Florida on the _________day of _________________________, 2018.

CITY OF DESTIN, FLORIDA

BY: ____
[Insert Name and Title]

ATTEST:

____
[Insert Name]
City Clerk

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ACCEPTANCE OF FRANCHISE

KNOW ALL MEN BY THESE PRESENTS that Gulf Power Company, a Florida Corporation, hereby accepts the Franchise Agreement offered by the City of Destin pursuant to its Ordinance No. _______.

IN TESTIMONY WHEREOF, Gulf Power Company has caused its duly authorized officers to execute this instrument for it and as its act and deed on this ____ day of _______________, 2018.

GULF POWER COMPANY

By: ____
Vice President

ATTEST:

____
Its Secretary

ORDINANCE No.__________

AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE GRANTING TO GULF POWER COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO MAINTAIN AND OPERATE WITHIN THE CITY OF DESTIN ELECTRICAL EQUIPMENT AND FACILITIES THAT ARE NECESSARY TO PROVIDE RETAIL ELECTRIC SERVICE TO CUSTOMERS LOCATED WITHIN THE CITY OF DESTIN, AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC DISTRIBUTION LINES IN THE STREETS AND RIGHTS-OF-WAY OF SAID CITY; AND PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT; PROVIDING FOR GRANT OF FRANCHISE PRIVILEGE, PROVIDING FOR RIGHT TO OPERATE; PROVIDING FOR TERM OF FRANCHISE; PROVIDING TO THE CITY OF DESTIN AN IRREVOCABLE OPTION TO PURCHASE GULF POWER'S FACILITIES LOCATED IN THE CITY; PROVIDING FOR FRANCHISE CONSIDERATION; PROVIDING FOR TRANSFERABILITY; PROVIDING FOR FORFEITURE OF FRANCHISE; PROVIDING FOR TERMINATION OF GRANT BY INSOLVENCY OR BANKRUPTCY; PROVIDING FOR SEVERABILITY; PROVIDING HOLD HARMLESS AGREEMENT; PROVIDING FOR RATES, RULES AND REGULATIONS; PROVIDING FOR REVIEW AND REVISION OF FRANCHISE PROVISIONS; PROVIDING FOR THE FURNISHING OF OTHER FRANCHISES ENTERED INTO BY GULF POWER COMPANY; PROVIDING FOR SUCCESSORS AND ASSIGNS TO BE BOUND; PROVIDING FOR PROPER OPERATION OF ALL FACILITIES; PROVIDING FOR PROMPT RESTORATION FOLLOWING INTERRUPTIONS OF SERVICE; PROVIDING FOR METERING OF SERVICE; PROVIDING FOR EXCAVATION, MAINTENANCE AND RESTORATION; PROVIDING FOR INDEMNIFICATION OF THE CITY AGAINST DAMAGES FOR INCORRECTLY COLLECTED FRANCHISE FEES OR OTHER ASSESSMENTS; PROVIDING FOR USE OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SURRENDER OF RIGHTS; PROVIDING FOR WRITTEN ACCEPTANCE BY GRANTEE; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF DESTIN, FLORIDA:

SECTION 1. Grant of Franchise Privilege: In consideration of the mutual benefits that will accrue to the City of Destin, sometimes referred to as the Grantor herein, and the inhabitants thereof, on the one hand, and to Gulf Power Company, a corporation under the laws of the State of Florida, its successors and assigns, hereinafter sometimes referred to as the Grantee (or "Gulf"), on the other hand, the City of Destin hereby gives and grants to the Grantee the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said City of Destin's public streets and public rights-of-way a system of electric light and power facilities, including, without limitation, conduits, poles, wires, transformers, meters, 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 electricity-related services incidental thereto (which other electricity-related services are defined as Gulf's facility-to-facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the provision of electric service, and which do not include any services that are sold to others) to the Grantor and its successors and assigns, to the inhabitants thereof, and to persons beyond the corporate limits of the Grantor. This Ordinance and the mutual agreements created by this Ordinance and the Grantee's acceptance hereof are referred to herein as "the Franchise."

SECTION 2. Right to Operate: (a) The said Grantee, its successors and assigns, is hereby further given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said City of Destin a system of poles, towers, conduits, cables, conductors, transformers, meters, transforming stations, fittings, appliances and appurtenances necessary or desirable to the transmission, distribution or sale of electric energy for all purposes whatsoever, in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges, and public places in said City of Destin, as they now exist or as they may hereafter be laid out or extended within the present and future limits of said City, together with the further right, privilege and franchise to construct, erect, suspend, install, extend, renew, repair and maintain and operate a system of poles, towers, conduits, cables, wires, conductors, transformers, meters, transforming stations, generating stations, fittings and all appliances and appurtenances necessary or desirable to the generation and transmission within, unto, through, over and beyond said City of Destin and to the furnishing, supplying and distributing to said City and the inhabitants and corporations both within and beyond the limits thereof, of electric energy for lighting, heating, power and all other purposes for which electric energy may be used now or hereafter, and for the purpose of extending its lines and furnishing electric energy beyond the limits of said City. Grantor retains the rights to generate electric power for its own use and to purchase power for its own use from any lawful provider, but these rights do not include the Grantor's rights to generate or purchase power for sale to other entities, including individuals. Subject to the Grantor's Right to Purchase Gulf's electric facilities in the City pursuant to Section 3 hereof, ~~which Right to Purchase shall be superior to any and all rights of the Grantee hereunder,~~ the Grantee's rights to so maintain and operate its system pursuant to this Franchise shall include the right to conduct its business free of competition from the Grantor, until and unless the Grantor gives notice of its intent to exercise its ~~superior~~ Right to Purchase the Grantee's facilities. The electric system, facilities, and associated equipment and vehicles shall be located or relocated, erected or operated so as to not unreasonably interfere with vehicular and pedestrian traffic over, along and across said public rights-of-way, streets, alleys, bridges and public places and with reasonable egress and ingress to abutting and adjoining property.

(b) The Grantee's rights to operate its system are and shall remain subject to all applicable rules and regulations of the City of Destin, Okaloosa County, the State of Florida, and the United States, as such rules and regulations may be amended from time to time, and the rights granted hereunder do not and may not be construed as a waiver of any type whatsoever by the City of Destin of its rights to enforce its lawful rules and regulations, or of its rights to petition for, intervene in, or otherwise participate in any permitting proceedings for any of the Grantee's facilities located, or to be located, either in the City of Destin or in any other place where the installation could reasonably be expected to affect the City and its inhabitants.

SECTION 3. Term of Franchise; Right to Purchase:

(a) Subject to the Grantor's Right to Purchase the Grantee's electric facilities in the City pursuant to this Section 3 hereof (hereinafter the City's "Right to Purchase")~~, which Right to Purchase shall be superior to any and all rights of the Grantee hereunder,~~ the franchise granted by this ordinance shall exist and continue for a period of fifteen (15) years from the Effective Date of this Ordinance.

(b) As a condition precedent to the effectiveness of this Franchise, Grantor does hereby reserve and the Grantee hereby gives and grants to the said Grantor the right, ~~after~~ at the expiration of five~~two~~ (5~~2~~) years and at the expiration of fifteen (15) years from the ~~date of Grantee's acceptance of this Franchise~~Effective Date of this Ordinance, to purchase the electric plant and other property within the Grantor's corporate limits subject to this Franchise used under or in connection with the Franchise hereby granted ~~or such part of such property as the Grantor may desire to purchase,~~ at a value to be fixed in accordance with the provisions of Section 180.16, Florida Statutes (2017), as such provisions may be amended from time to time. Expressly excepted from this grant are power plants, transmission lines, and substation facilities which are owned by Grantee and connected with its general system of distribution and used for the purpose of serving communities or customers other than the Grantor herein. In determining the value of Grantee's facilities pursuant to Section 180.16, Florida Statutes, the arbitration panel shall ensure that such valuation includes compensation for: (i) the reproduction cost of the property sought to be acquired less depreciation; (ii) going concern value; (iii) value of stranded assets, if any; and (iv) damages to the remainder of Gulf Power's electrical system caused by the acquisition, if any. The Right to Purchase shall only be exercised by giving written notice to the Grantee not less than sixty (60) days prior to the expiration of five (5) years or fifteen (15) years from the Effective Date of this Ordinance.~~;~~ I~~provided, that i~~f the City exercises its Right to Purchase pursuant to this section, the City must own the assets purchased for a period of at least five (5) years before the City may sell such assets to any other lawful purchaser;~~,~~ ~~and~~ provided, however~~ further~~, that nothing herein shall prevent or inhibit the City in any way from contracting with other parties to operate and manage the City's electric system, including, without limitation, the following: purchasing and contracting for wholesale power, transmission service, operation and maintenance services for all of the City's electric assets, billing and collection services, financial services, other customer services, all materials and supplies, and all other equipment, supplies, and services needed in connection with the operation of the City's electric system using the assets acquired pursuant to this section.

(c~~b~~) The Franchise granted by this Ordinance is also subject to the terms and conditions of all applicable provisions of the codes, laws, rules and regulations of the Grantor, the State of Florida, and the United States Government.

SECTION 4. Franchise Consideration: As a further consideration for the granting of the rights, privileges and franchises hereby granted, the Grantee, its successors and assigns, shall pay to the City within thirty (30) days after the first day of each month a franchise fee of six percent (6%) of Grantee's revenue from the furnishing of electric service to customers served under its residential and commercial rate schedules within the corporate limits of the City collected during the preceding month. The City expressly covenants that it will dedicate any amounts received as franchise consideration that are over and above four (4) percent of Grantee's revenue from the furnishing of electric service to customers served under its residential and commercial rate schedules within the City to be used solely for the purpose of financing the conversion of existing overhead electric facilities to underground facilities; provided that a minimum of ten (10) percent of all such revenues dedicated to the conversion of facilities to underground facilities shall be set aside and used exclusively for landscaping of the underground conversion areas, where such landscaping shall specifically include planting, to the maximum extent possible, in the opinion of a certified arborist, native tree species including Southern magnolia and live oak trees. The percentage of such revenue to be collected by Grantee and paid to the City of Destin as a franchise fee may be changed by the City of Destin from time to time, by ordinance, at intervals of no less than every three (3) years, provided that the percentage shall in no event exceed that permitted by law. The Parties expressly agree that the above-stated franchise fee was freely bargained for and represents fair and just compensation relative to the fair rental value of the rights-of-way and the other consideration given by the City to Gulf pursuant to this Franchise. In recognition of the foregoing agreement, each Party, intending to be legally bound, agrees not to contest the amount of the franchise fee provided for herein.

SECTION 5. Transferability: The Grantee shall not sell or transfer any portion of its plant or system to another, nor transfer any rights under this Franchise to another without Grantor's prior approval. Before executing any agreement or other document by which the Grantee would attempt to sell or transfer any portion of its plant, system, or rights under this Franchise to any other entity, including any affiliate of the Grantee, the Grantee shall give at least one hundred eighty (180) days' written notice to the Grantor, and the Grantor's Right to Purchase set forth in Section 3 hereof shall vest immediately upon receipt of such notice; if the Grantor gives notice of its intent to exercise the Right to Purchase set forth in Section 3, then the Grantee agrees not to pursue any such sale or transfer until the conclusion of the arbitration proceedings and any other legal proceedings relating to Grantor's purchase of Grantee's facilities are finally concluded, and if the Grantor acquires the Grantee's facilities pursuant to its Right to Purchase, then the Grantee shall thereafter be forever estopped from pursuing any sale or transfer of the plant, facilities, or rights under this Franchise. Further, no such sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Grantor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise and agreeing to perform all the conditions thereof. Subject to the Grantor's Right to Purchase pursuant to Section 3 hereof~~, which is superior to any all rights of the Grantee hereunder,~~ the Grantor will not unreasonably withhold its consent to the transfer of this Franchise. Notwithstanding the foregoing, and for the avoidance of doubt, the provisions of this Section 5 shall not apply to a transfer of Grantee's assets or Franchise rights which occur in connection with: (i) a merger; (ii) the sale of all, or substantially all, of Grantee's assets; or (iii) the acquisition of all, or substantially all, of Grantee's outstanding common equity interests.

SECTION 6. 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 has 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 judicial determination of any disputed issues to make restitution or make good the default or failure before forfeiture shall result (the "Cure Period"). The Grantor, at its discretion, may grant additional time to the Grantee for restitution and compliance as the necessities of the case may require. If any alleged breach or failure of the Grantee to comply with the provisions, terms, or requirements of this Ordinance and Franchise shall occur before the date upon which the Grantor's Right to Purchase Grantee's facilities vests hereunder, as provided in Section 3 of this Franchise, then the Grantee shall have the opportunities set forth above to cure such breach or failure. If Grantee has been adjudicated to have failed to comply with the Franchise and subsequently fails to accomplish such cure within ~~a reasonable time~~the Cure Period, the Grantor's Right to Purchase shall thereupon immediately vest in Grantor. The Grantor's Right to Purchase the Grantee's facilities pursuant to Section 3 hereof shall not otherwise depend on any alleged breach or failure by Grantee: the Grantor may~~, at any time following the date that is two (2) years after the Grantee's acceptance of this Franchise,~~ exercise its Right to Purchase the Grantee's facilities ~~pursuant to~~in accordance with Section 3, regardless whether Grantee is in compliance with the provisions, terms, and requirements of this Franchise.

SECTION 7. Termination of Grant by Insolvency or Bankruptcy of Grantee: In the event of a final adjudication of bankruptcy of the Grantee, Grantor shall have full power and authority to terminate, revoke and cancel any and all rights granted to Grantee under the provisions of this Ordinance and Franchise, and the Grantor's Right to Purchase the Grantee's facilities pursuant to Section 3 hereof shall vest immediately upon the entry of such final adjudication.

SECTION 8. Severability: 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; except that the entire Ordinance~~, specifically excepting the Grantor's Right to Purchase pursuant to Section 3 hereof,~~ is invalidated if the portion declared invalid is, in the sole judgment of the Grantor, an essential part of this Ordinance.

SECTION 9. Hold Harmless: The Grantor shall in no way be liable or responsible for any accident or damage which may occur due to the construction, location, relocation, operation or maintenance by the Grantee of said poles, towers, conduits, wires, conductors, transformers, meters, and other appliances, equipment and vehicles subject to the terms and conditions of this Franchise. The Grantee hereby agrees to indemnify the Grantor and to hold it harmless against any and all liability, loss, cost, damage, or any expense connected therewith, including a reasonable attorney's fee incurred in the defense of any type of court action related hereto, which may accrue to the Grantor by reason of negligence, default, or other alleged misconduct of the Grantee, its employees, agents, contractors, or subcontractors, in the construction, location, relocation, operation, or maintenance of the facilities, vehicles or equipment of the electric system subject to this Franchise.

SECTION 10. Rates, Rules, and Regulations:

(a) All rates for electrical service and the rules and regulations governing the receipt of said service within the Grantor's corporate limits, established by the Grantee from time to time, shall be reasonable and shall be at all times subject to such public regulations as may be provided by law. The Grantee recognizes its obligation to provide electric energy and power service within the City on reasonable terms and conditions at fair, just, reasonable, and nondiscriminatory rates to all who request said service during the term of this Franchise and thereafter, as required by law or by a duly constituted public regulatory body.

(b) The Grantee agrees by its acceptance of this Franchise to file with the City Clerk or City Manager, by the thirtieth (30th) day following the Grantee's acceptance of this Franchise, a complete set of rules and regulations and a complete set of tariffs and rate schedules under which electric service is provided within the City, and to file in writing annually any revisions of rules, regulations and rates that have been adopted since the previous annual filing. Grantee shall also furnish the City Manager a copy of each of its annual reports to its stockholders.

(c) Grantor may, at its option and at its expense, and upon reasonable notice to Grantee, examine the records of operations and accounting files, books and records to the extent that such records relate directly to the calculation of the franchise fee payment to the Grantor, as provided herein and to proper performance of other terms of this Franchise. The examination of such books, accounts, records, or other materials necessary for determination of compliance with the terms, provisions and requirements of this Franchise shall be during regular hours of business of the Grantee and at the corporate offices of the Grantee.

(d) Should, during the term of this Franchise, the scheme of public regulation existing as of the date of this Franchise be changed substantially or such that the Grantee is no longer subject to regulation by the State of Florida or that the Grantor obtains the jurisdiction and authority to regulate the rules and rates of the Grantee, the Parties hereto agree to meet, within sixty (60) days following the change in regulation, in order to negotiate a mutually satisfactory arrangement relating to regulation of the rules and rates to be imposed on the customers located within the Franchise area; provided however, that the rules and rates in effect as of the date of change in the method of regulation shall, as a matter of contract between the Grantor and Grantee, remain in effect until such time as mutually satisfactory arrangements can be developed and agreed upon. The Parties further agree that, in the event of any such regulatory change, the Grantee's Right to Purchase shall vest as of the effective date of such regulatory change.

SECTION 11. Review and Revisions of Franchise Provisions: With the exception of the provisions of Section 3 concerning the term of this Franchise and providing for the Grantor's Right to Purchase the Grantee's facilities, and Section 4 concerning the franchise fee, the Grantor and Grantee may from time to time request that the Parties meet to review any or all of the other provisions of this Ordinance. The Parties shall thereafter meet as requested, and may, by mutual agreement with each Party's agreement being subject to its sole discretion, amend any such provision, or add any additional provisions that may be appropriate. No such revisions or amendments shall be effective until and unless set forth in an "Amended Franchise Agreement" or "Amended and Restated Franchise

Agreement" that is approved, adopted, and accepted by the Parties pursuant to the same procedures by which this original Franchise was approved, adopted, and accepted.

SECTION 12. Other Franchises: Upon request, Grantee shall furnish City a copy of all other municipal franchises that it is or has been granted from time to time during the life of this Franchise.

SECTION 13. Assignment, Successors and Assigns: Except as otherwise provided in this Section 13, neither the Grantor nor the Grantee may assign or otherwise transfer any of its rights or obligations under this Franchise without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Any assignment or transfer in violation of this provision shall be null and void. Notwithstanding the foregoing, and for the avoidance of doubt, the foregoing restrictions on assignment shall not apply to an assignment or transfer of Grantee's or Grantor's Franchise rights or obligations which occur in connection with: (i) a merger; (ii) the sale of all, or substantially all, of Grantee's or Grantor's assets; or (iii) the acquisition of all, or substantially all, of Grantee's outstanding common equity interests. Whenever in this Ordinance either the City of Destin or the Grantee is named or referred to, it shall be deemed to include the respective successor, successors, or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successor, successors, or assigns of said Grantor or of the Grantee.

SECTION 14. Proper Operation: The poles, towers, conduits, cables, conductors, transformers, meters, transforming stations, generating stations (if any), battery installations or other energy storage facilities, fittings, appliances and appurtenances shall be constructed in accordance with good engineering practices and so as not to unreasonably interfere with the proper use of the streets, avenues, alleys, ways, bridges, sidewalks and other pedestrian walkways or paths, bicycle paths, or public places in the City and shall be maintained in reasonably good condition and repair. Failure to restore service within a reasonable time shall be material breach of this Franchise. Any substantial outage caused by the neglect or willful act of Grantee shall be a material breach of this Franchise. Any and all facilities of the Grantee shall further be installed, operated, and maintained in compliance with the most current edition of the National Electrical Safety Code and all applicable provisions of the Florida Administrative Code applicable to such facilities.

SECTION 15. Interruption of Service: In the event the supply of electric energy should be interrupted or fail by reason of accident or any cause beyond the control of the Grantee, the Grantee shall, at its own expense, restore the service within a reasonable time and such interruption shall not constitute a breach of this Franchise.

SECTION 16. Metering of Service: Subject to all applicable regulations set forth in the Florida Administrative Code, the Grantee shall install and maintain meters for measuring current and shall have free access to the premises of the consumer, from time to time, for the purpose of reading, repairing, testing and maintaining the meters and appurtenances. Subject to the Grantor's Right to

Purchase the Grantee's facilities set forth in Section 3 hereof, such meters shall remain the property of the Grantee.

SECTION 17. Excavation, Maintenance and Restoration: Whenever the Grantee shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges, sidewalks and other pedestrian walkways and paths, bicycle paths, or public places of the City for the purpose of installing, maintaining, operating, or repairing any poles, towers, conduits, cables, or other facilities or appliances, the work shall be completed at Grantee's expense within a reasonable time and the Grantee shall upon the completion of such work restore such portion of the streets, avenues, alleys, ways, bridges, sidewalks and other pedestrian walkways and paths, bicycle paths, or other public places to as good condition as it was before the opening or alteration was so made and will promptly remove any debris.

SECTION 18. Surrender of Rights: 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 Destin or the State of Florida for any of the purposes stated in Section 1 and 2 of this Ordinance and now enjoyed by Grantee in the City of Destin, 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 19. Written Acceptance by Grantee: As a condition precedent to the taking effect of this grant, the Grantee shall have filed its written acceptance hereof with the City Clerk within thirty (30) days after this Ordinance shall take effect.

SECTION 20. Repealing Clause: All ordinances or parts of ordinances in conflict herewith are and the same are hereby repealed to the extent of such conflict.

SECTION 21. Indemnification Agreement for Assessment and Collection Issues:

Grantee shall be responsible for ensuring that it bills its customers the correct franchise fees, and other taxes or fees. Except where mischarges result from the Grantee's failure to provide updated information, including maps, regarding the location of the Grantor's city limits to the Grantor as provided hereinbelow, Grantee shall indemnify Grantor for any mischarges to Grantee's customers, and shall be responsible for defending the Grantor in any legal proceedings brought by the customers of the Grantee related to any mischarges. If Grantee mischarges its customers, and remits an excessive amount of franchise fees to Grantor, then Grantee must notify Grantor of the exact amount of the mischarges prior to the end of the fiscal year in which the mischarges occur, or Grantee waives any recourse against Grantor for any excessive payments. If Grantee pays excessive franchise fees to Grantor due to mischarges, then Grantee is solely responsible for refunding the excess amounts to Grantee's customers, and Grantor is not required to pay back the excess amounts to Grantee, unless Grantee notifies Grantor of the mischarges within the same fiscal year the mischarges are committed.

Within thirty (30) days following the Grantee's acceptance of this Franchise, Grantor shall provide an updated map of the Grantor's city limits to Grantee. If the city limits of the Grantor are altered, via annexation or some other method, then Grantor shall provide an updated map to Grantee within thirty (30) days of said alteration of the city limits. In the event that the Grantor fails to timely deliver any map as required hereunder, the Grantee shall not be liable for any mistakes in billing or collection due to such failure, and the Grantor shall, upon written request of the Grantee, promptly furnish a current map.

SECTION 22. Use of Public Rights-of-Way: The rights and privileges granted to the Grantee hereby extend only to those public rights-of-way, including present and future roads, streets, alleys, bridges, easements, and other rights-of-way over which the Grantor has jurisdiction to approve such uses. The rights and privileges granted hereby do not extend to any other public places of any type whatsoever, including without limitation, public parks, public beaches, sidewalks, walkways, bicycle paths, pedestrian thoroughfares that are administered by the Grantor but not located in defined rights-of-way, docks, or any similar places.

SECTION 23. Notices: All notices permitted or required to be given under this Franchise shall be in writing and shall be deemed to be delivered upon receipt of such notice when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested. All notices will be sent to the other party at the address(es) shown below or to any other address(es) as a party may designate by ten (l0) days' prior written notice given in accordance with this provision.

To Grantor:
City of Destin
Attn: City Manager
4200 Indian Bayou Trail
Destin, Florida 32541

To Grantee:
Gulf Power Company
Attn: Vice President, Customer Sales & Service
One Energy Place
Pensacola, Florida 32520-0100

With a copy to:
Gulf Power Company
Vice President, General Counsel
One Energy Place
Pensacola, Florida 32520-0100

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SECTION 24~~3~~. Effective Date: This Ordinance shall be effective on the________ day of ____________________, 2018.

PASSED and ADOPTED by the City Council of the City of Destin, Florida on the _________day of _________________________, 2018.

CITY OF DESTIN, FLORIDA

BY: ____
[Insert Name and Title]

ATTEST:

____
[Insert Name]
City Clerk

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ACCEPTANCE OF FRANCHISE

KNOW ALL MEN BY THESE PRESENTS that Gulf Power Company, a Florida Corporation, hereby accepts the Franchise Agreement offered by the City of Destin pursuant to its Ordinance No. _______.

IN TESTIMONY WHEREOF, Gulf Power Company has caused its duly authorized officers to execute this instrument for it and as its act and deed on this ____ day of _______________, 2018.

GULF POWER COMPANY

By: ______________________________________
Vice President

ATTEST:

____
Its Secretary

STEVEN R. GRIFFIN

DIRECT DIAL
(850) 202-2354

EMAIL ADDRESS
SRG@BEGGSLANE.COM

BEGGS & LANE RLLP

ATTORNEYS and COUNSELLORS at LAW
SINCE 1883

POST OFFICE BOX 12950
PENSACOLA, FLORIDA 32591-2950
TELEPHONE (850) 432-2451
FAX (850) 469-3331

E. DIXIE BEGGS
1908 – 2001

BERT H. LANE
1917 - 1981

September 11, 2018

VIA ELECTRONIC MAIL (schef@gbwlegal.com)
Robert Scheffel "Schef" Wright, Esq.
Gardner Bist Law Firm
1300 Thomaswood Drive
Tallahassee, FL 32308

Re: City of Destin's Counter-Proposal for Franchise Agreement

Dear Schef:

I am writing on behalf of Gulf Power Company in response to your letter dated September 6, 2018, and the accompanying counter-proposal from the City of Destin for a new Franchise Agreement. Gulf Power has reviewed the City's counter-proposal and has authorized me to deliver the attached proposal in response to the City's counter. I have included both a "clean" and "redlined" version of the proposal. Consistent with the City's counter-proposal, Gulf Power is proposing an agreement with a term of fifteen (15) years. As you will also see, Gulf Power has honored the City's expressed desire to retain its purchase right, which right may be exercised upon the fifth (5^{th}) and fifteenth (15^{th}) anniversaries of the Effective Date of the Franchise ordinance. As we have previously discussed, Gulf Power has also included additional language to clarify the scope of the purchase option (distribution assets only) and the methodology for valuing Gulf Power's assets in the event of an arbitration (akin to how Gulf Power's assets would be valued in an eminent domain proceeding pursuant to section 73.0715, Florida Statutes). These additions are merely intended to provide clarification and do not, in Gulf Power's view, enlarge or reduce the scope of the rights which the City possesses under its current purchase option. Lastly, Gulf Power has included minor clean-up edits along with clarifying language in the transfer and assignment provisions of the Agreement to account for the potential acquisition of Gulf Power by a third party.

In addition, and as an alternative to, the foregoing proposal, Gulf Power is also amenable to a two-year extension of the existing Franchise Agreement. As you are aware, in the event that the City finds either of the foregoing proposals acceptable, Gulf Power has certain obligations under the Stock Purchase Agreement between The Southern Company and NextEra Energy, Inc., that will necessitate sharing any final proposal with NextEra and obtaining NextEra's consent to the same prior to formal agreement. Thus, each proposal is conditioned expressly on Gulf Power obtaining such required consent.

Lastly, there was discussion during the most recent City Council meeting on September 5, 2018, surrounding exercise of the purchase option in the current Franchise. While exercising the purchase option is certainly one path that is available to the City, I believe that the City should be made aware of legal precedent in Florida standing for the proposition that once exercised, a purchase option becomes a bilateral contract that is binding and enforceable by both parties. I bring this to your attention simply to ensure that the City appreciates the fact that the mere act of exercising an option can invoke binding obligations for both parties. I am happy to discuss further and/or provide citations to relevant caselaw if you like.

Thank you for your continued attention to this matter. I look forward to further productive discussions.

Sincerely,

Steven R. Griffin

cc: Jeffrey L. Burns, City Attorney
Council Member Parker Destin

RESOLUTION 18-31

A RESOLUTION OF THE CITY OF DESTIN, FLORIDA, EXERCISING THE RIGHT, CONVEYED TO THE CITY IN THE CITY'S FRANCHISE AGREEMENT WITH GULF POWER COMPANY, TO PURCHASE CERTAIN ELECTRIC UTILITY PROPERTY

WHEREAS, the City of Destin, Florida ("City of Destin," "City," or "Grantor"), a political subdivision of the State of Florida and a municipal corporation located in Okaloosa County, Florida, is authorized by the laws of the State of Florida to enter into franchise agreements with providers of electric utility service, for the benefit of the City of Destin and its inhabitants; and

WHEREAS, Gulf Power Company ("Gulf Power" or 'Grantee") has provided retail electric service to the City of Destin and to residential and business customers in the City since the City was incorporated in 1984, and

WHEREAS, Gulf Power Company and the City of Destin are parties to that certain franchise agreement embodied in City of Destin Ordinance No. 048, enacted by the City on May 19, 1986, and accepted by Gulf Power through its written Acceptance of Franchise on May 30, 1986, as amended by City of Destin Ordinance No. 048.1, enacted on July 19, 1993, and as further amended by City of Destin Ordinance No. 02-01-CN, enacted on September 3, 2002, and accepted by Gulf Power on September 19, 2002; such Ordinances are hereinafter referred to collectively as the "Franchise Agreement"; and

WHEREAS, the Franchise Agreement refers to the City of Destin as "Grantor," and to Gulf Power Company as "Grantee"; and

WHEREAS, by Section 5 of the Franchise Agreement, Gulf Power conveyed to the City, and the City accepted, a right to purchase certain of Gulf Power's electric facilities and other property located within the City (the "Right to Purchase"), through mutually agreed-upon language that reads as follows:

> **SECTION 5. Term of Franchise – Right to Purchase.** The franchise granted by this Ordinance shall exist and continue for a period of thirty (30) years only, and as a condition precedent to the taking effect of this grant, Grantor does hereby reserve and the Grantee gives and grants to the said Grantor the right, after the expiration of ten (10) years, to purchase the electric plant and other property within the limits of this franchise necessarily used under or in connection with the franchise hereby granted or such part of such property as the Grantor may desire to purchase at a value to be fixed in accordance with the provisions of Section 180.16, Florida Statutes (1985), as it may be amended from time to time."; and

WHEREAS, the Franchise Agreement had an original term of thirty (30) years only, and

WHEREAS, all terms of and within the Franchise Agreement were extended for a period of two (2) years, via the Parties' execution of the Agreement to Extend Franchise Term on May 19, 2016, which extended the Franchise Agreement to May 19, 2018; and

WHEREAS, all terms of and within the Franchise Agreement were extended again, until September 21, 2018, via the Parties' execution of the Second Agreement to Extend Franchise Term on April 16, 2018; and

WHEREAS, the Franchise Agreement, and the Agreement to Extend Franchise Term, and the Second Agreement to Extend Franchise Term, are attached hereto as Exhibit "1"; and

WHEREAS, the Destin City Council, as the governing body of the City of Destin, has determined that a true and real need exists to exercise the Right to Purchase contained within the Franchise Agreement, in order to protect the health, safety, and welfare of the citizens of Destin; and

WHEREAS, the City of Destin, through exercising this Resolution, is expressly, and unconditionally exercising the Right to Purchase contained within the Franchise Agreement, and through said election, is electing to commence the process created via Section 180.16, Florida Statutes (1985), which shall result in the ultimate purchase of assets from Gulf Power, in accordance with state law, and

NOW, THEREFORE, BE IT RESOLVED, by the Destin City Council, that, by a majority vote of those present, elects to exercise the option found in Section 5 of the Franchise Agreement and that:

1. The City of Destin, by adopting this resolution, elects to exercise the Right to Purchase found within the Franchise Agreement currently governing the franchise with Gulf Power Company;

2. The exercise and execution of the Right to Purchase is in the best interest of the City of Destin and in the best interests of the health, safety, and welfare of the citizens of Destin;

3. The Destin City Council is vested with the authority to enact this Resolution, via state law, the city charter, and governing resolutions, and it is utilizing that authority to enact this Resolution;

4. This Resolution shall be effective immediately upon a motion and vote by the Destin City Council directing execution of this Resolution;

5. That the Destin City Council designates and confirms that either the Mayor or Mayor Pro-Tem (if the Mayor is unable to execute this Resolution immediately after its adoption), shall execute this Resolution which shall represent the formal memorialization of the City of Destin's express decision to exercise the Right to Purchase contained within the Franchise Agreement;

6. That the City Manager, City Clerk, City Franchise Counsel Robert Scheffel Wright, or City Attorney shall deliver an executed copy of this Resolution to Gulf Power Company within five (5) days following the execution of this Resolution; and

7. The City Attorney or City Franchise Counsel Robert Scheffel Wright shall provide a copy of this Resolution to the Florida Public Service Commission within five (5) days following the execution of this Resolution; and

8. The City Manager, with the assistance of City Franchise Counsel Robert Scheffel Wright, and the City Attorney, shall take whatever steps are necessary to commence the process for the City to purchase the electric plant and other property within the limits of this franchise necessarily used under or in connection with the franchise hereby granted or such part of such property as the Grantor may desire to purchase at a value to be fixed in accordance with the provisions of Section 180.16, Florida Statutes (1985), as it may be amended from time to time.

PASSED AND DULY ADOPTED THIS _____ DAY OF SEPTEMBER, 2018.

By:

Signature: ________________________________

Print Name: ________________________________

Mayor, or Mayor Pro-Tem

ATTEST:

____

Rey Bailey, City Clerk

LEGAL FORM APPROVED BY:

____

Jeff Burns, City Attorney

EXHIBIT 1 to RESOLUTION 18-31

SECOND AGREEMENT TO EXTEND FRANCHISE TERM

This **SECOND AGREEMENT TO EXTEND FRANCHISE TERM ("Agreement")** is hereby entered into this 16 th day of April, 2018 by and between the City of Destin, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "City," and Gulf Power Company, a public utility corporation, hereinafter referred to as the "Company," for the purposes set forth below. Each of the City and the Company may be referred to as a "Party" to this Agreement, and the City and the Company shall be referred to collectively as the "Parties."

WITNESSETH:

WHEREAS, the Company has provided retail electric service to the City and to residential and business customers in the City since the City was incorporated in 1984, and

WHEREAS, the Company and the City are parties to that certain franchise agreement embodied in City of Destin Ordinance No. 048, enacted by the City on May 19, 1986 and accepted by the Company by its written Acceptance of Franchise on May 30, 1986, hereinafter referred to as the "Franchise Agreement," and

WHEREAS, the Franchise Agreement had an original term of thirty (30) years only, and

WHEREAS, all terms within the Franchise Agreement were extended for a period of two (2) years, via the execution of the Agreement to Extend Franchise Term, which was executed on May 19, 2016, and which extended the termination of the Franchise Agreement to May 19, 2018, and

WHEREAS, the Company through their attorney have made an offer to the City to extend the Franchise Agreement through September 21, 2018, contingent on the City forbearing from any consideration of any resolution to execute the purchase option contained within the Franchise Agreement prior to May 19, 2018,and

WHEREAS, the City, due to notice requirements, and the limited number of City Council meetings that possibly can occur prior to May 19, 2018, must have an extension formalized timely, in order to provide the City with sufficient time to reconsider the purchase option resolution if the execution of this Agreement fails or stalls in such a way that may prejudice the rights of the City, and

WHEREAS, the Company and the City desire to again extend the term of said Franchise Agreement, and all terms within the Franchise Agreement, by an additional period of time, through and including September 21, 2018, such that there will be no lapse in the Franchise Agreement and such that the Franchise Agreement, including all terms, provisions, and covenants therein, shall continue in full force and effect in its present form through and including September 21, 2018, and

WHEREAS, the execution of this Agreement by the City was duly authorized by vote of the Destin City Council at its regular meeting on April 16, 2018, and

WHEREAS, the Company shall execute this Agreement, and return it to the City, on or before April 26, 2018.

NOW, THEREFORE, each of Gulf Power and the City, intending to be bound, and for the mutual benefits to be provided and realized by the extension of the Franchise Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, do hereby agree as follows:

<u>Section 1</u>. The terms of the Franchise Agreement, along with all other material provisions, shall be extended to have a termination date of September 21, 2018. Copies of the Agreement to Extend Franchise Term executed on May 19, 2016, with all attachments to said Agreement, including the Franchise Agreement, including City Ordinance No. 048 and City Ordinance No. 048.1 and City Ordinance No. 02-01-CN, the latter two ordinances being amendments to the original Ordinance No. 048, are attached hereto.

<u>Section 2</u>. The Parties agree that this extension shall be formalized in an appropriate ordinance of the City, amending the existing Franchise Agreement, to be adopted by the Destin City Council.

Section 3. The Parties collectively, and each Party individually, shall fully support, and shall not in any way oppose the adoption of the ordinance referenced in Section 2 of this Second Agreement to Extend Franchise Term.

Section 4. This Agreement shall be effective as of the date both the City and Company have duly executed the Agreement.

Section 5. This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

Section 6. This Agreement is contingent on (1) the Company fully executing the Agreement prior to April 26, 2018, and (2) it is contingent on the City Council forbearing from further consideration of any resolution to execute the purchase option within the Franchise Agreement prior to May 19, 2018. It is understood that the City, on April 27, 2018, shall place the resolution to exercise the Purchase Option on the Agenda for the May 7, 2018, City Council meeting, if the Company has not executed this Agreement on or before April 26, 2018. If the Company executes this Agreement on or after April 27, 2018, but prior to the City Council meeting commencing on May 7, 2018, then the resolution to exercise the Purchase Option shall be pulled from consideration at the May 7, 2018 meeting, and neither the Company's failure to execute this agreement on or before April 26, 2018, nor the City's placement of the resolution on the Agenda for the May 7, 2018 City Council meeting shall be considered a breach of this agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers, who by signing this, confirm that the governing board of the signing officer's entity has voted to enter into this Agreement, or that it is not necessary for the governing board of the entity to vote to enter into this Agreement, and that the officer executing the Agreement is vested with authority to enter into such Agreement:

ATTEST:

GULF POWER COMPANY

By: Wendell Smith

TITLE: Vice President

Witness

Witness

DATE: 4.17.18

Attest: Tracy G. Clark

Tracy G. Clark, Assistant Secretary

ATTEST: CITY OF DESTIN, FLORIDA

By: [signature]

TITLE: MAYOR OF DESTIN

Witness Jeff Burns

DATE: 4-16-18

Witness

CYRON MARLER

EXHIBIT "A" TO SECOND AGREEMENT TO EXTEND FRANCHISE TERM

AGREEMENT TO EXTEND FRANCHISE TERM

This AGREEMENT TO EXTEND FRANCHISE TERM ("Agreement") is hereby entered into this 19th day of May 2016 by and between the City of Destin, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "City," and Gulf Power Company, a public utility corporation, hereinafter referred to as the "Company," for the purposes set forth below. Each of the City and the Company may be referred to as a "Party" to this Agreement, and the City and the Company shall be referred to collectively as the "Parties."

WITNESSETH:

WHEREAS, the Company has provided retail electric service to the City and to residential and business customers in the City since the City was incorporated in 1984, and

WHEREAS, the Company and the City are parties to that certain franchise agreement embodied in City of Destin Ordinance No. 048, enacted by the City on May 19, 1986 and accepted by the Company by its written Acceptance of Franchise on May 30, 1986, hereinafter referred to as the "Franchise Agreement," and

WHEREAS, the Franchise Agreement has a term of thirty (30) years only, and

WHEREAS, the Company and the City desire to extend the term of said Franchise Agreement by two (2) years, such that there will be no lapse in the Franchise Agreement and such that the Franchise Agreement and the terms, provisions, and covenants therein shall continue in its present form for an additional two (2) years, and

WHEREAS, the execution of this Agreement by the City was duly authorized by vote of the Destin City Council at its regular meeting on May 16, 2016,

NOW, THEREFORE, each of Gulf Power and the City, intending to be bound, and for the mutual benefits to be provided and realized by the extension of the Franchise

Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, do hereby agree as follows

<u>Section 1</u>. The term of the Franchise Agreement shall be extended by two (2) years, so as to have a termination date of May 19, 2018. Copies of the Franchise Agreement, including City Ordinance No. 048 and City Ordinance No. 048.1 and City Ordinance No. 02-01-CN, the latter two ordinances being amendments to the original Ordinance No. 048, are attached hereto.

<u>Section 2</u>. The Parties agree that this extension shall be formalized in an appropriate ordinance of the City, amending the existing Franchise Agreement, to be adopted by the Destin City Council as soon as practicable, and that the Company shall as soon as practicable thereafter submit its written acceptance of the extended Franchise Agreement.

Section 3. The Parties collectively, and each Party individually, shall fully support the adoption of such ordinance amending Ordinance No. 048 (as previously amended), and neither Party shall in any way oppose the adoption of the ordinance amending Ordinance No. 048.

Section 4. This Agreement shall be effective as of May 19, 2016.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as follows:

ATTEST: GULF POWER COMPANY

By: [signature]

[signature] TITLE: Vice President-Customer Service & Sales

Susan D. Ritenour
Corporate Secretary

DATE: 5/19/16

ATTEST: CITY OF DESTIN, FLORIDA

By: [signature]
GREGORY A. KISELA

[signature] TITLE: City Manager
Witness as to City

[signature] DATE: 5/19/16
Witness as to City

ORDINANCE 048.1

AN ORDINANCE OF THE CITY OF DESTIN RELATING TO ELECTRIC UTILITY FRANCHISE; AMENDING THE FRANCHISE TO GULF POWER COMPANY; PROVIDING FOR AMENDMENT TO SECTION 6, FRANCHISE CONSIDERATION, INCREASING THE FRANCHISE FEE TO 4%; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA:

SECTION 1. AMENDING THE ELECTRICAL POWER FRANCHISE TO GULF POWER BY AMENDMENT OF SECTION 6, FRANCHISE CONSIDERATION, INCREASING THE FRANCHISE FEE TO 4%. Section 6 of Ordinance 048 is hereby amended to read:

SECTION 6. Franchise Consideration. As a further consideration for the granting of the rights, privileges and franchises hereby granted, the use of rights-of-way and to defray the cost of administering the provisions of this franchise, the Grantee, its successors and assigns, shall pay to the City of Destin within thirty (30) days after the first day of each month a franchise fee of ~~one (1)~~ four (4) percent of Grantee's revenue from the furnishing of electric service to customers served under all of its rate schedules within the corporate limits of the City of Destin collected during the preceding month. The percentage of such revenue is to be collected by Grantee and paid to the City of Destin as a franchise fee may be changed by the City of Destin from time to time, by Ordinance, at intervals of no less than three (3) years, provided that the percentage shall in no event exceed that permitted by law.

SECTION 2. Effective Date. This Ordinance shall take effect August 1, 1993.

Adopted: July 19, 1993

Dr Walter E Thomas

DR. WALTER E. THOMAS
MAYOR

Philip Cook

PHILIP COOK
CITY MANAGER

Carolyn Lee Garrett

CAROLYN LEE GARRETT
CITY CLERK

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney.

Jerome Miller

J. JEROME MILLER
CITY ATTORNEY

FIRST READING 7-6-93
SECOND READING 7-19-93

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

ORDINANCE NO. 048

AN ORDINANCE OF THE CITY OF DESTIN RELATING TO ELECTRIC UTILITY FRANCHISE; PROVIDING DEFINITIONS; PROVIDING FOR THE GRANTING OF FRANCHISE; PROVIDING FOR RIGHT TO OPERATE; PROVIDING FOR LIMITS OF FRANCHISE; PROVIDING FOR TERM OF FRANCHISE - RIGHT TO PURCHASE; PROVIDING FOR FRANCHISE CONSIDERATION; PROVIDING FOR TRANSFERABILITY; PROVIDING FOR FORFEITURE OF FRANCHISE; PROVIDING FOR TERMINATION OF GRANT BY INSOLVENCY OR BANKRUPTCY; PROVIDING HOLD HARMLESS AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REVIEW AND REVISION OF FRANCHISE PROVISIONS; PROVIDING FOR OTHER FRANCHISES; PROVIDING FOR SUCCESSORS AND ASSIGNS; PROVIDING RATES, RULES AND REGULATIONS; PROVIDING FOR PROPER OPERATION; PROVIDING FOR EXCAVATION, MAINTENANCE AND RESTORATION; PROVIDING FOR INTERRUPTION OF SERVICE; PROVIDING FOR METERING OF SERVICE; PROVIDING FOR MONITORING PERFORMANCE AND COMPLIANCE; PROVIDING FOR REPEALING CLAUSE; PROVIDING FOR SURRENDER OF RIGHTS; PROVIDING FOR WRITTEN ACCEPTANCE BY GRANTEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Destin finds it in the public interest to ensure that all areas within its limits are adequately provided with high-quality and reliable electric service; and

WHEREAS, the City of Destin finds it in the public interest to provide that any entity granted authority to use the public rights-of-way for the provision of electricity shall, in a spirit of mutual trust, from time to time, review and negotiate the rights and obligations of the provider of electricity within the boundaries of the City, because of the overriding public health, safety and welfare considerations associated with the provision of this service; and

WHEREAS, the City of Destin finds it in the public interest to retain control over the use of public rights-of-way by providers of electricity to ensure against interference with the public convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right-of-way space and to protect the public investment of right-of-way property; and

WHEREAS, the City of Destin finds that the granting of this franchise is the best means of assuring that the above-described interests of the City are promoted;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF DESTIN, FLORIDA:

SECTION 1. Definitions. For the purpose of this Ordinance, the following terms and words shall have the meaning given herein:

A. "Grantor" shall mean the City of Destin, Florida, its successors and assigns.

B. "Grantee" shall mean Gulf Power Company, its successors and assigns.

C. "Consumer" shall mean any person, firm, public or private corporation served by the Grantee.

SECTION 2. Grant of Franchise. In consideration of the benefits that will accrue to the Grantor and the inhabitants thereof, Grantee, a corporation under the laws of the State of Maine, its successors and assigns, is hereby given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct within the limits of the City of Destin, a plant or plants and system for the generation, transmission and distribution of electric energy for all purposes whatsoever.

SECTION 3. Right to Operate. The Grantee, its successors and assigns, is hereby further given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct within the limits of this franchise a power plant, a system of poles, towers, conduits, cables, conductors, transforming stations, fittings, appliances and appurtenances necessary or desirable to the generation, transmission, distribution or sale of electric energy for all purposes whatsoever. The easements herein granted apply in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges and public places as they now exist or as they may hereafter be laid out or extended within the limits of this franchise, including the further right, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain and operate a system of poles, towers, conduits, cables, wires, conductors, transforming stations, generating stations, fittings and all appliances and appurtenances necessary or desireable to the generation and transmission within, unto, through over and beyond the limits of this franchise and to the furnishing, supplying and distributing to said area and the inhabitants and electricity consumers both within and beyond the limits thereof, of electric energy for lighting, heating, power and all other purposes for which electric energy may be used now or hereafter, and the right to extend lines and furnish electric energy beyond the limits of said franchise. Grantor retains the right to purchase or generate electric power for its own purposes or resale, unless otherwise prohibited by law. The electric system, facilities and associated equipment and vehicles shall be located or relocated, erected or operated, so as to interfere as little as possible with vehicular and pedestrian traffic over, along and across said public rights-of-way, streets, alleys, bridges and public places and with reasonable egress and ingress to abutting and adjoining property. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, driveways and public places of the Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, provided all trimming is done consistent with applicable standards and at the expense of the Grantee.

SECTION 4. Limits of Franchise. This franchise covers the corporate limits of the City of Destin as shown on the attached map of said City. The map is included within this agreement by reference and as Attachment 1. Grantee agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area.

SECTION 5. Term of Franchise - Right to Purchase. The franchise granted by this Ordinance shall exist and continue for a period of thirty (30) years only, and as a condition precedent to the taking effect of this grant, Grantor does hereby reserve and the Grantee gives and grants to the said Grantor the right, after the expiration of ten (10) years, to purchase the electric plant and other property within the limits of this franchise necessarily used under or in connection with the franchise hereby granted or such part of such property as the Grantor may desire to purchase at a value to be fixed in accordance with the provisions of Section 180.16, Florida Statutes (1985), as it may be amended from time to time.

The franchise granted by this Ordinance is also subject to the terms and conditions of all applicable provisions of the codes, laws, rules and regulations of the Grantor, the State of Florida and the United States Government.

SECTION 6. Franchise Consideration. As a further consideration for the granting of the rights, privileges and franchises hereby granted, the use of rights-of-way and to defray the cost of administering the provisions of this franchise, the Grantee, its successors and assigns, shall pay to the City of Destin within thirty (30) days after the first day of each month a franchise fee of one (1) percent of Grantee's revenue from the furnishing of electric service to customers served under all of its rate schedules within the corporate limits of the City of Destin collected during the preceding month. The percentage of such revenue to be collected by Grantee and paid to the City of Destin as a franchise fee may be changed by the City of Destin from time to time, by Ordinance, at intervals of no less than three (3) years, provided that the percentage shall in no event exceed that permitted by law.

SECTION 7. Transferability. The Grantee shall not sell or transfer any portion of its plant or system to another, nor transfer any rights under this franchise to another, without Grantor's prior approval. No such sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Grantor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all the conditions thereof. The Grantor will not unreasonably withhold its consent to the transfer of this franchise.

SECTION 8. Forfeiture of this Franchise. Failure by the Grantee to comply, in any substantial respect, with any of the provisions, terms or requirements of this franchise shall result in a forfeiture. Said forfeiture shall be effective upon a finding by a court of competent jurisdiction that Grantee has substantially breached any of the provisions, terms or requirements of this franchise. 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 question 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 9. Termination of Grant by Insolvency or Bankruptcy of Grantee. In the event of a final adjudication of bankruptcy of the Grantee, the Grantor shall have full power and authority to terminate, revoke and cancel any and all rights granted under the provisions of this Ordinance.

SECTION 10. Hold Harmless. The Grantor shall in no way be liable or responsible for any accident or damage which may occur due to the construction, location, relocation, operation or maintenance by the Grantee of said poles, towers, conduits, wires, cables and other appliances, equipment and vehicles subject to the terms and conditions of this franchise. The Grantee hereby agrees to indemnify the Grantor and to hold it harmless against any and all liability, loss, cost, damage or any expense connected therewith, including a reasonable attorney's fee incurred in the defense of any type of court action related thereto, which may accrue to the Grantor by reason of negligence, default, other misconduct or strict liability of the Grantee in its construction, location, relocation, operation or maintenance of the facilities, vehicles or equipment of the electric system subject to this franchise.

SECTION 11. Severability. Should any section or provision of this Ordinance, or any portion thereof, 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; except that, the Grantor may elect to declare that the entire agreement is invalidated if the portion declared invalid is, in the judgment of the Grantor, an essential part of this Ordinance.

SECTION 12. Review and Revision of Franchise Provisions. Except for the provisions of Sections 4 and 5, either party may from time to time request a review of any or all other provisions of this franchise, and the parties by mutual agreement may revise or add any provision. During the one hundred twenty (120) days immediately preceding each fifth anniversary date of this Ordinance during the term that this franchise is in effect, the Grantor and Grantee shall confer about the need of such revisions.

SECTION 13. Other Franchises. Upon the request of the Grantor, Grantee shall furnish Grantor a copy of all other municipal and county franchises that it has granted from time to time during the term of this franchise.

SECTION 14. Successors and Assigns. Whenever in this Ordinance either the Grantor or the Grantee is named or referred to, it shall be deemed to include the respective successor, successors or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successor, successors or assigns of the Grantor or the Grantee.

SECTION 15. Rates, Rules and Regulations.

A. The Grantee shall provide electric energy and power service within the limits of this franchise on reasonable terms and conditions at just, reasonable and nondiscriminatory rates to all who request said service during the term of this franchise and thereafter, as required by law or by duly constituted public regulatory body.

B. The Grantee shall file with the Grantor a complete set of rules and regulations and a complete set of tariffs or rate schedules under which electric service is provided under this franchise. Grantee shall also furnish any revisions of rules, regulations and rates as they are adopted and seek Grantor's approval of the same where required, and Grantee shall furnish the Grantor a copy of its annual report to its stockholders as soon as it is produced.

C. Grantor may, at its option and at its expense, and upon reasonable notice to Grantee, at any time within ninety (90) days after each anniversary date of this franchise, examine the records of operations and accounting files, books and records as such records relate to the calculation of the franchise fee payments to the Grantor, as provided herein, and to proper performance of other terms of this franchise. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms, provisions and requirements of this franchise shall be during regular hours of business of the Grantee and at the corporate offices of the Grantee.

D. Should, during the term of this franchise, the scheme of public regulation existing as of the date of this franchise be changed substantially or such that the Grantee is no longer subject to regulation or that the Grantor obtains the jurisdiction and authority to regulate the rules and rates of the

Grantee, the parties hereto agree to meet, within sixty (60) days following the change in regulation, in order to negotiate a mutually satisfactory arrangement relating to regulation of the rules and rates to be imposed on the customers located within the franchise area; provided, however, that the rules and rates in effect as of the date of change in the method of regulation shall remain in effect until such time as a mutually satisfactory arrangement can be developed and agreed upon.

SECTION 16. Proper Operation. The poles, towers, conduits, cables, conductors, transforming stations, generating stations, fittings, appliances and appurtenances shall be constructed in accordance with good engineering practices and so as not to unreasonably interfere with the proper use and appearance of the streets, avenues, alleys, ways, bridges and public places in the franchise area and shall be maintained in reasonably good condition and repair.

SECTION 17. Excavation, Maintenance and Restoration. Whenever the Grantee shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges or public places within the franchise area for the purpose of installing, maintaining, operating or repairing any poles, towers, conduits, cables or other appliances, the work shall be completed at Grantee's expense within a reasonable time and the Grantee shall, upon the completion of such work, restore such portion of the streets, avenues, alleys, ways or other public places to as good or better condition as it was before the opening or alteration was so made and will promptly remove any debris. However, should the Grantee fail to commence restoration after seven (7) days' notice provided in writing by the Grantor to Grantee, the Grantor may repair such portion of the sidewalk or street or other public place that may have been disturbed by the Grantee, and the cost shall be charged to the Grantee.

No provision of this Ordinance shall be construed to prohibit Grantor from imposing permitting for excavation, maintenance and restoration projects by Grantee, and adequate security therefore, to assure appropriate planning, construction, completion and restoration of such projects.

SECTION 18. Interruption of Service. In the event the supply of electric energy should be interrupted or fail by reason of any cause beyond the control of the Grantee, the Grantee shall, at its own expense, restore the service within a reasonable time and such interruption shall not constitute a breach of this franchise nor shall the Grantee be liable for any loss or damages by reason of such interruption or failure. Failure to restore service within a reasonable time shall be a material breach of this franchise. Any substantial outage caused by the neglect or willful act of Grantee shall be a material breach of this franchise.

SECTION 19. Metering of Service. The Grantee shall install and maintain, free of charge, meters for measuring current, and shall have free access to the premises of the consumer, from time to time, for the purpose of reading, repairing, testing and maintaining the meters and appurtenances. Such meters shall remain the property of the Grantee.

SECTION 20. Monitoring Performance and Compliance. In order to fully implement the provisions of this franchise, a panel for the review of the quality of services provided for in this contract shall be created to consist of three (3) members, one (1) member representing the Grantor, one (1) member representing the Grantee and a third independent member chosen by the previously named two (2) members. It shall be the function of this committee to review and report and make recommendations to the Grantor regarding the quality of services provided for herein. For the purpose of this function, "service" shall be defined as the performance of the duties, tasks and obligations of the Grantee enumerated herein and the performance of such other duties, tasks and obligations as are generally and reasonably regarded as incident to the safe and satisfactory discharge of responsibilities in the electric utility industry.

SECTION 21. Repealing Clause. All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 22. Surrender of Rights. 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 Grantor for any of the purposes stated in Sections 2 and 3 of this Ordinance and now enjoyed by Grantee in the franchise area; 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 23. Written Acceptance by Grantee. The Grantee, its successors or assigns, shall within thirty (30) days after this Ordinance takes effect, file a written acceptance of the Ordinance with the Grantor.

SECTION 24. Effective Date. This franchise shall take effect immediately upon its final passage and adoption. The franchise herein created shall become effective when this Ordinance becomes law.

ADOPTED: MAY 19, 1986
Date

BY: William E. Phillips
William E. Phillips
City Council Chairman

ATTEST:

J. E. Dorman, Jr.
City Manager

Frances H. Beaird
Frances H. Beaird
City Clerk

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney.

J. Jerome Miller
J. Jerome Miller, City Attorney

First Reading	5-5-86	First Publication	5-7-86
Second Reading	5-19-86	Second Publication	5-10-86

ORDINANCE 02-01-CN

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA AMENDING ORDINANCE NO. 048, RELATING TO ELECTRIC UTILITY FRANCHISE; PROVIDING FOR AUTHORITY; AMENDING SECTION 6, FRANCHISE CONSIDERATION; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA:

Note: Underlined language is proposed new language. ~~Strike through language~~ is proposed to be deleted.

SECTION 1. AUTHORITY. The authority for the enactment of this ordinance is Article, I, Section 1.01(b) of the City Charter and Section 166.041, Florida Statutes.

SECTION 2. AMENDMENT OF SECTION 6, FRANCHISE CONSIDERATION. Section 6, Franchise consideration, is hereby amended as follows:

> Section 6. Franchise consideration. As a further consideration for the granting of the rights, privileges and franchises hereby granted, the use of rights-of-way and to defray the cost of administering the provisions of this franchise, including, but not limited to, the cost of a utility construction permit issued pursuant to Chapter 18, Article I, Section 18-2, Destin City Code, the Grantee [Gulf Power Company], its successors and assigns, shall pay to the City of Destin within thirty (30) days after the first day of each month a franchise fee of four (4) percent of Grantee's revenue from furnishing of electric service to customers served under all of its rate schedules within the corporate limits of the City of Destin collected during the preceding month. The percentage of such revenue to be collected by Grantee and paid to the City of Destin as a franchise fee may be changed by the City of Destin from time to time, by Ordinance, at intervals of no less than three (3) years, provided that the percentage shall in no event exceed that permitted by law.

SECTION 3. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption by the City Council of the City of Destin, Florida and signature of the Mayor and upon the filing of acceptance by Gulf Power Company within thirty (30) days with the City Clerk.

ADOPTED THIS 3RD DAY OF SEPTEMBER 2002.

BY: [signature]

Craig Barker, Mayor

ATTEST:

Dana L.S. Williams, City Clerk

The form and legal sufficiency of
The foregoing has been reviewed
and approved by the City's
Franchise Attorney.

Suzanne Brownless,
City Franchise Attorney

First Reading: 08/19/02
Second Reading: 9/3/02

ACCEPTANCE OF ORDINANCE 02-01-CN

Gulf Power Company, a Maine corporation, hereby accepts Ordinance 02-01-CN as an amendment to Ordinance 048, Gulf Power Company's franchise with the City of Destin, Florida, adopted on May 19, 1986.

In testimony whereof, Gulf Power Company has caused its duly authorized officers to execute this instrument on its behalf and as its act and deed on this 19th day of September 2002.

GULF POWER COMPANY

BY: ______________________

Title: VICE PRESIDENT

ATTEST:

Linda G. Malone

Title: Assistant Secretary and Assistant Treasurer

Lance Johnson

From: Jeff Burns <jlburns@asglegal.com>
Sent: Wednesday, September 12, 2018 8:49 AM
To: Rey Bailey
Cc: Lance Johnson
Subject: Re: Special Council Meeting Agenda

My phone can't log in, and I will be indisposed all day. As long as the resolution I sent last night is on there, then I approve.

On Sep 12, 2018, at 8:45 AM, Rey Bailey <rbailey@cityofdestin.com> wrote:

> Jeff:
>
> I'm sure you've received notification from CivicClerk already. I've initiated the agenda for tomorrow's special meeting and included required attachments. Just need your and Lance's approval and I can go ahead and publish to Council today. Thanks
>
> Rey
>
> Rey Bailey
> City Clerk
> City of Destin
> Phone: (850)837-4242
> Fax: (850) 837-3267
> E-Mail: rbailey@cityofdestin.com
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