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September 17, 2018

BY HAND DELIVERY & UNITED STATES MAIL

Carlotta S. Stauffer, Director and Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
2018 SEP 24 AM 8:16
COMMISSION
CLERK

Re: City of Destin Resolution No. 18-31, Exercising the Right to
Purchase Certain Electric Property of Gulf Power Company Pursuant
to Franchise Agreement

Dear Ms. Stauffer:

For the Commission's information and your files, I am herewith transmitting a copy of City of Destin Resolution No. 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. This Resolution was passed and duly adopted by the Destin City Council at a special Council meeting on September 13, 2018.

If you have any questions or need any further information regarding the Resolution, please call or email me.

Cordially yours,


Robert Scheffel Wright

Enclosure

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

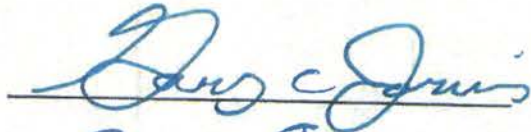
7. The City Attorney or City Franchise Counsel Robert Scheffel Wright shall provide a copy of this Resolution to the Florida Public Service Commission within five (5) days following the execution of this Resolution; and

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.

2018. PASSED AND DULY ADOPTED THIS 13 DAY OF SEPTEMBER,

By:

Signature:



Print Name:

GARY JARVIS

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:

Section 1. 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.

Section 2. 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

Anna Stojan
Witness

By:

Wendell Smith

TITLE:

Vice President

Baker
Witness

DATE:


4.17.18

Attest:

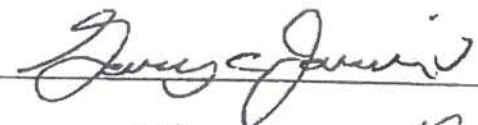
Tracy G. Clark
Tracy G. Clark, Assistant Secretary

ATTEST:

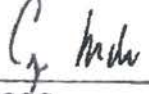
CITY OF DESTIN, FLORIDA



Witness J. C. Burns

By: 

TITLE: Mayor of Destin



Witness
CYRA M. M.

DATE: 4-16-18

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

Section 1. 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.

Section 2. 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: 

TITLE: Vice President-Customer service & Sales


Susan P. Ritenour
Corporate Secretary

DATE: 5/19/16

ATTEST:

CITY OF DESTIN, FLORIDA

By: 

GREGORY A. KISCIA

TITLE: CITY MANAGER


Witness as to City

DATE: 5/19/16


Witness as to City

ORDINANCE NO. 040

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 desirable 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 160.16, 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
City Council Chairman

ATTEST:

J. E. Dorman, Jr.
J. E. Dorman, Jr.
City Manager

Frances H. Sealford
Frances H. Sealford
City Clerk

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

Jerome Miller
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 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) percent~~ **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
JEROME MILLER
CITY ATTORNEY

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

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

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.

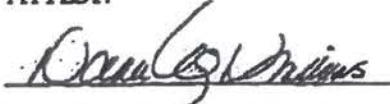
ADOPTED THIS 3RD DAY OF SEPTEMBER 2002.

BY:



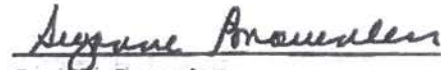
Craig Barker, Mayor

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

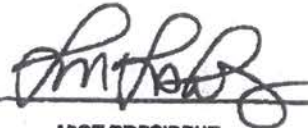
ACCEPTANCE OF ORDINANCE 02-01-CN

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:



Title: Assistant Secretary and Assistant Treasurer