

ORDINANCE NO. 2024-24

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5 AN ORDINANCE OF WELLINGTON, FLORIDA’S COUNCIL
6 GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS
7 SUCCESSORS AND ASSIGNS, AN ELECTRIC
8 FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS
9 RELATING THERETO; PROVIDING FOR MONTHLY
10 PAYMENTS TO THE VILLAGE OF WELLINGTON;
11 PROVIDING FOR CONFLICT; PROVIDING FOR
12 SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.
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14

15 **WHEREAS**, the Village Council of the Village of Wellington, Florida recognizes that
16 the Village of Wellington and its citizens need and desire the continued benefits of electric
17 service; and
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19 **WHEREAS**, the provision of such service requires substantial investments of capital
20 and other resources in order to construct, maintain and operate facilities essential to the
21 provision of such service in addition to costly administrative functions, and the Village of
22 Wellington does not desire to undertake to provide such services; and
23

24 **WHEREAS**, Florida Power & Light Company (FPL) is a public utility which has the
25 demonstrated ability to supply such services; and
26

27 **WHEREAS**, there is currently in effect a franchise agreement between the Village
28 of Wellington and FPL, the terms of which are set forth in Village of Wellington Ordinance
29 No. 96-17, passed and adopted June 25, 1996, and FPL’s written acceptance thereof
30 dated June 25, 1996 granting to FPL, its successors and assigns, a thirty (30) year electric
31 franchise (“Current Franchise Agreement”); and
32

33 **WHEREAS**, pursuant to Village of Wellington Ordinance No. 97-07, passed and
34 adopted April 29, 1997, the Village of Wellington exercised its option to adjust the
35 amount to be paid by FPL pursuant to the Current Franchise Agreement; and
36

37 **WHEREAS**, FPL and the Village of Wellington desire to enter into a new agreement
38 (“New Franchise Agreement”) providing for the payment of fees to the Village of
39 Wellington in exchange for the nonexclusive right and privilege of supplying electricity and
40 other services within the Village of Wellington free of competition from the Village of
41 Wellington, pursuant to certain terms and conditions; and
42

43 **WHEREAS**, the Village Council of the Village of Wellington deems it to be in the
44 best interest of the Village of Wellington and its citizens to enter into the New Franchise
45 Agreement prior to expiration of the Current Franchise Agreement.
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47
48 **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE**

1 **VILLAGE OF WELLINGTON, FLORIDA:**
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3 **SECTION 1.** There is hereby granted to Florida Power & Light Company, its
4 successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from
5 the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called
6 "franchise") to construct, operate and maintain in, under, upon, along, over and across
7 the present and future roads, streets, alleys, bridges, easements, rights-of-way and other
8 public places (hereinafter called "public rights-of-way") throughout all of the incorporated
9 areas, as such incorporated areas may be constituted from time to time, of the Village of
10 Wellington, Florida, and its successors (hereinafter called the "Grantor"), in accordance
11 with the Grantee's customary practice with respect to construction and maintenance,
12 electric light and power facilities, including, without limitation, conduits, poles, wires,
13 transmission and distribution lines, and all other facilities installed in conjunction with or
14 ancillary to all of the Grantee's electric light and power operations (hereinafter called
15 "facilities"), for the purpose of supplying electricity and other services related to the supply
16 of electricity to the Grantor and its successors, the inhabitants thereof, and persons
17 beyond the limits thereof. Grantee shall not have access or rights to any exclusive public
18 easements.
19

20 **SECTION 2.** The facilities of the Grantee shall be installed, located or relocated so
21 as to not unreasonably interfere with the convenient, safe, or continuous use, or the
22 maintenance, improvement, extension or expansion, of the public rights-of-way,
23 including, but not limited to drainage facilities, water facilities, sewer facilities and/or other
24 facilities in such public rights of way or with reasonable egress from and ingress to abutting
25 property. As used herein, the term "drainage facilities" shall mean ponds, canals, lakes,
26 streams, or swales, along with any above ground, underground, or at grade structure,
27 used for the purposes of providing stormwater attenuation or conveyance. To avoid such
28 conflicts, the location or relocation of all facilities shall be made as representatives of the
29 Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations
30 with reference to the placing and maintaining in, under, upon, along, over and across said
31 public rights-of-way; provided, however, that such rules or regulations shall not prohibit
32 the exercise of the Grantee's right to use said public rights-of-way or unreasonably
33 interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient
34 electric service to all of its customers. Grantee's location or relocation work shall be
35 subject the requirements of Wellington Engineering Standards Manual for work near any
36 Grantor owned drainage facilities and the Wellington Utility Standards Manual for any
37 work near any Grantor owned water or sewer facilities, as they may be amended. When
38 any portion of a public right-of-way is excavated by the Grantee in the location or
39 relocation of any of its facilities, the portion of the public right-of-way so excavated shall
40 within a reasonable time be replaced by the Grantee at its expense and in as good
41 condition as it was at the time of such excavation and in compliance with current
42 standards as defined by the Wellington Engineering Standards Manual, as it may be
43 amended. The Grantor shall not be liable to the Grantee for any cost or expense in
44 connection with any location or relocation of Grantee's facilities found by Grantor to be
45 unreasonably interfering in any way with the convenient, safe, or continuous use, or the
46 maintenance, improvement, extension, or expansion of any of the present and future

1 public rights-of-way, except, however, the Grantee shall be entitled to reimbursement of
2 its costs from sources other than Grantor as may be provided by law.
3

4 **SECTION 3.** The Grantor shall in no way be liable or responsible for any accident
5 or damage that may occur in the construction, operation or maintenance by the Grantee of
6 its facilities hereunder, and the acceptance of this ordinance shall be deemed an
7 agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against
8 any and all liability, loss, cost, damage or expense which may accrue to the Grantor by
9 reason of the existence of Grantee's facilities in the public rights-of-way or negligence,
10 default or misconduct of the Grantee in the construction, operation or maintenance of its
11 facilities hereunder.
12

13 **SECTION 4.** All rates, rules, and regulations established by the Grantee from
14 time to time shall at all times be reasonable and the Grantee's rates for electricity shall at all
15 times be subject to such regulation as may be provided by law.
16

17 **SECTION 5.** As a consideration for this franchise, the Grantee shall pay to the
18 Grantor, commencing 90 days after the effective date hereof, and each month thereafter
19 for the remainder of the term of this franchise, an amount which added to the amount of
20 all licenses, excises, fees, charges and other impositions of any kind whatsoever (except
21 ad valorem property taxes and non-ad valorem tax assessments on property) levied or
22 imposed by the Grantor against the Grantee's property, business or operations and those
23 of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each
24 such payment will equal six percent (6%) of the Grantee's billed revenues, less actual
25 write-offs, from the sale of electrical energy to residential, commercial, and industrial
26 customers (as such customers are defined by FPL's tariff) within the incorporated areas
27 of the Grantor for the monthly billing period ending 60 days prior to each such payment
28 (the "Franchise Fee"), and in no event shall payment for the rights and privileges granted
29 herein exceed six percent (6%) of such revenues for any monthly billing period of the
30 Grantee. The Grantee further agrees that until such time as it is required to pay the
31 Grantor the six percent (6%) Franchise Fee provided for herein, the Grantee shall
32 continue to pay to the Grantor the five percent (5%) Franchise Fee as provided for in the
33 Current Franchise Agreement.
34

35 The Grantor understands and agrees that such revenues as described in the
36 preceding paragraph are limited to the precise revenues described therein, and that such
37 revenues do not include, by way of example and not limitation: (a) revenues from the
38 sale of electrical energy for Public Street and Highway Lighting (service for lighting public
39 ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility
40 restricted to governmental entities); (c) revenues from Sales to Railroads and Railways
41 (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for
42 Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment
43 Charges; (g) Field Collection Visit Charges; (h) other service charges.
44

45 **SECTION 6.** The Village shall, as provided herein, have the right to change the
46 percentage remitted by the City to any rate between 0.5 percent and 6.0 percent. The

1 Village shall not exercise such right more than once in any calendar year. If the Village
2 changes the rate, Village shall give Franchisee at least 60 days advance written notice
3 prior to the effective date of the new rate, which date shall always be on the first day of a
4 "billing cycle" of the Grantee, and the Grantee shall have 60 days after such new effective
5 date to begin remitting the fee provided for herein to the Village. If during the term of this
6 franchise the Grantee enters into a franchise agreement with any other municipality located
7 in Palm Beach County, Florida where the number of Grantee's active electrical customers
8 is equal to or less than the number of Grantee's active electrical customers within the
9 incorporated area of the Grantor, the terms of which provide for the payment of franchise
10 fees by the Grantee at a rate greater than 6.0% of the Grantee's residential, general
11 service, and industrial revenues (as such customers are defined by FPL's tariff) under the
12 same terms and conditions as specified in Section 5, hereof, the Grantee, upon written
13 request of the Grantor shall negotiate and enter into a new franchise agreement with the
14 Grantor in which the percentage to be used in calculating monthly payments under Section
15 5 hereof shall be no greater than that percentage which the Grantee has agreed to use as
16 a basis for the calculation of payments to the other Palm Beach County municipality,
17 provided however, that such new franchise agreement shall include additional benefits to
18 the Grantee, in addition to all benefits provided herein, at least equal to those provided by
19 its franchise agreement with the other Palm Beach County municipality. Subject to all
20 limitations, terms and conditions specified in the preceding sentence, the Grantor shall
21 have the sole discretion to determine the percentage to be used in calculating monthly
22 payments, and the Grantee shall have the sole discretion to determine those benefits to
23 which it would be entitled, under any such new franchise agreement.
24

25 **SECTION 7.** As a further consideration, during the term of this franchise or any
26 extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in
27 competition with the Grantee, of electric capacity and/or electric energy to any ultimate
28 consumer of electric utility service (herein called a "retail customer") or to any electrical
29 distribution system established solely to serve any retail customer formerly served by the
30 Grantee, however, the self-generation of electric energy for Grantor's own use shall not
31 be considered a distribution and/or sale of electric energy in competition with Grantee,
32 and (b) not seek to have the Grantee transmit and/or distribute electric capacity and/or
33 electric energy generated by or on behalf of the Grantor at one location to the Grantor's
34 facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor
35 from engaging with other utilities or persons in wholesale transactions which are subject
36 to the provisions of the Federal Power Act.
37

38 Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing
39 electric capacity and/or electric energy from any other person, (ii) from seeking to have
40 the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity
41 and/or electric energy purchased by the Grantor from any other person, or (iii) from
42 engaging in self-generation of electric energy for Grantor's own use, provided, however,
43 that before the Grantor elects to purchase electric capacity and/or electric energy from
44 any other person pursuant to subsections (i) and (ii) herein, the Grantor shall notify the
45 Grantee. Such notice shall include a summary of the specific rates, terms and conditions
46 which have been offered by the other person and identify the Grantor's facilities to be

1 served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer
2 and, if the Grantee offers rates, terms and conditions which are equal to or better than
3 those offered by the other person, the Grantor shall be obligated to continue to purchase
4 from the Grantee electric capacity and/or electric energy to serve the previously-identified
5 facilities of the Grantor for a term no shorter than that offered by the other person. If the
6 Grantee does not agree to rates, terms and conditions which equal or better the other
7 person's offer, all of the terms and conditions of this franchise shall remain in effect.
8

9 **SECTION 8.** If the Grantor grants a right, privilege or franchise to any other person
10 or otherwise enables any other such person to construct, operate or maintain electric light
11 and power facilities within any part of the incorporated areas of the Grantor in which the
12 Grantee may lawfully serve or compete on terms and conditions which the Grantee
13 determines are more favorable than the terms and conditions contained herein, the
14 Grantee may at any time thereafter terminate this franchise if such more favorable terms
15 and conditions are not remedied within the time period provided hereafter. The Grantee
16 shall give the Grantor at least 60 days' advance written notice of its intent to terminate.
17 Such notice shall, without prejudice to any of the rights reserved for the Grantee herein,
18 advise the Grantor of such terms and conditions that it considers more favorable. The
19 Grantor shall then have 60 days in which to correct or otherwise remedy the terms and
20 conditions complained of by the Grantee. If the Grantee determines that such terms or
21 conditions are not remedied by the Grantor within said time period, the Grantee may
22 terminate this franchise agreement by delivering written notice to the Grantor's Clerk and
23 termination shall be effective on the date of delivery of such notice.
24

25 **SECTION 9.** If as a direct or indirect consequence of any legislative, regulatory or
26 other action by the United States of America or the State of Florida (or any department,
27 agency, authority, instrumentality or political subdivision of either of them) any person is
28 permitted to provide electric service within the incorporated areas of the Grantor to a
29 customer then being served by the Grantee, or to any new applicant for electric service
30 within any part of the incorporated areas of the Grantor in which the Grantee may lawfully
31 serve, and the Grantee determines that its obligations hereunder, or otherwise resulting
32 from this franchise in respect to rates and service, place it at a competitive disadvantage
33 with respect to such other person, the Grantee may, at any time after the taking of such
34 action, terminate this franchise if such competitive disadvantage is not remedied within the
35 time period provided hereafter. The Grantee shall give the Grantor at least 90 days'
36 advance written notice of its intent to terminate. Such notice shall, without prejudice to any
37 of the rights reserved for the Grantee herein, advise the Grantor of the consequences of
38 such action which resulted in the competitive disadvantage. The Grantor shall then have
39 90 days in which to correct or otherwise remedy the competitive disadvantage. If such
40 competitive disadvantage is not remedied by the Grantor within said time period, the
41 Grantee may terminate this franchise agreement by delivering written notice to the
42 Grantor's Clerk and termination shall take effect on the date of delivery of such notice.
43

44 **SECTION 10.** Failure on the part of the Grantee to comply in any substantial respect
45 with any of the provisions of this franchise shall be grounds for forfeiture, but no such
46 forfeiture shall take effect if the reasonableness or propriety thereof is protested by the

1 Grantee until there is final determination (after the expiration or exhaustion of all rights of
2 appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a
3 substantial respect with any of the provisions of this franchise, and the Grantee shall have
4 six months after such final determination to make good the default before a forfeiture shall
5 result with the right of the Grantor at its discretion to grant such additional time to the
6 Grantee for compliance as necessities in the case require.

7
8 **SECTION 11.** Failure on the part of the Grantor to comply in any substantial respect
9 with any of the provisions of this ordinance, including, but not limited to: (a) denying the
10 Grantee use of public rights-of-way for reasons other than unreasonable interference with
11 Grantor, the public's, or any other user's convenient, safe, or continuous use, or the
12 maintenance, improvement, extension, or expansion thereof; (b) imposing conditions for
13 use of public rights-of-way contrary to Florida law or the terms and conditions of this
14 franchise; (c) unreasonable delay in issuing the Grantee a permit, if any, to construct its
15 facilities in public rights-of-way, shall constitute a breach of this franchise. Grantee shall
16 notify the Grantor of any such breach in writing and the Grantor shall remedy such breach
17 as soon as practicable and in any event by no later than 90 days. Should the breach
18 remain unresolved after 90 days, Grantee, at its sole discretion, may withhold all or part
19 of the payments provided for in Section 5 hereof until such time as the breach is
20 remedied or a court of competent jurisdiction has reached a final determination in the
21 matter. The Grantor recognizes and agrees that nothing in this franchise agreement
22 constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign
23 right of condemnation and that the Grantee, in its sole discretion, may exercise such right
24 to obtain a greater right than is granted herein.

25
26 **SECTION 12.** The Grantor may, upon reasonable notice and within 90 days after
27 each anniversary date of this franchise, at the Grantor's expense, examine the records of
28 the Grantee relating to the calculation of the franchise payment for the year preceding
29 such anniversary date. Such examination shall be during normal business hours at
30 the Grantee's office where such records are maintained. Records not prepared by the
31 Grantee in the ordinary course of business may be provided at the Grantor's expense and
32 as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's
33 customers by name or their electric consumption shall not be taken from the Grantee's
34 premises. Such audit shall be impartial and all audit findings, whether they decrease
35 or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right
36 to examine the records of the Grantee in accordance with this Section shall not be
37 conducted by any third party employed by the Grantor whose fee, in whole or part, for
38 conducting such audit is contingent on findings of the audit.

39
40 Nothing precludes the Grantor from requesting a final audit of franchise payments
41 received under the Current Franchise Agreement. Such audit shall be requested within
42 the 90 days from the effective of date of the New Franchise Agreement.

43
44 **SECTION 13.** The provisions of this ordinance are interdependent upon one
45 another, and if any of the provisions of this ordinance are found or adjudged to be invalid,
46 illegal, void or of no effect, the entire ordinance shall be null and void and of no force or

1 effect.

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3 **SECTION 14.** As used herein "person" means an individual, a partnership, a
4 corporation, a business trust, a joint stock company, a trust, an incorporated association, a
5 joint venture, a governmental authority or any other entity of whatever nature.

6
7 **SECTION 15.** Ordinance No. 96-17, passed and adopted June 25, 1996,
8 Ordinance No. 97-07, passed and adopted April 29, 1997, and all other ordinances and
9 parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are
10 hereby repealed.

11
12 **SECTION 16.** As a condition precedent to the taking effect of this ordinance, the
13 Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption
14 of this ordinance. The effective date of this ordinance shall be the date upon which the
15 Grantee files such acceptance.

16
17 **SECTION 17.** Should any section, paragraph, sentence, clause, or phrase of this
18 Ordinance conflict with any section, paragraph, clause or phrase of any prior Wellington
19 Ordinance, Resolution, or Municipal Code provision; then in that event the provisions of
20 this Ordinance shall prevail to the extent of such conflict.

21
22 **SECTION 18:** Should any section, paragraph, sentence, clause, or phrase of this
23 Ordinance be declared by a court of competent jurisdiction to be invalid, such decision
24 shall not affect the validity of this Ordinance as a whole as a whole or any portion or part
25 thereof, other than the part so declared to be invalid.

26
27 **SECTION 19:** This Ordinance shall become effective immediately upon adoption
28 of the Wellington Council following second reading.

29
30 **PASSED** this _____ day of _____, 20__ upon first reading.

31
32 **PASSED AND ADOPTED** this _____ day of _____, 20__ on second and
33 final reading.

34
35 **WELLINGTON** **FOR** **AGAINST**

36
37
38
39 BY: _____
40 Michael J. Napoleone, Mayor

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42 _____
43 John T. McGovern, Vice Mayor

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Tanya Siskind, Councilwoman

Maria Antuña, Councilwoman

Amanda Silvestri, Councilwoman

ATTEST:

BY: _____
Chevelle D. Hall, MMC, Village Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Laurie S. Cohen, Village Attorney