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**ORDINANCE NO. 2024-24**

**AN ORDINANCE OF WELLINGTON, FLORIDA’S COUNCIL GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF WELLINGTON; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Village Council of the Village of Wellington, Florida recognizes that the Village of Wellington and its citizens need and desire the continued benefits of electric service; and

**WHEREAS**, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the Village of Wellington does not desire to undertake to provide such services; and

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

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

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

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

**WHEREAS**, the Village Council of the Village of Wellington deems it to be in the best interest of the Village of Wellington and its citizens to enter into the New Franchise Agreement prior to expiration of the Current Franchise Agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE**

1 **VILLAGE OF WELLINGTON, FLORIDA:**  
2

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  
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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