Finance Committee Meeting
City Hall, Council Chambers
116 First Street, Neptune Beach, Florida 32266
Tuesday, November 25, 2025, 9:00 a.m.

Agenda

1. Call to Order
2. Public Comments
3. City Investment Plan p. 2
4. Agreement between the City of Neptune Beach and City of Jacksonville Beach d/b/a Beaches Energy Services p. 12
5. Adjourn

Committee Members:

Chair: Councilor Brent Rogers
Lynda Padrta
Jerry Wetzel

***Council Members in attendance at the Committee Meeting may include:**

Mayor Cori Bylund
Vice Mayor Nia Livingston
Councilor Josh Messinger
Councilor Tim Horvath

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statute, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at least 48 hours prior to the meeting.

CITY OF NEPTUNE BEACH, FLORIDA

Investment Plan

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1. INVESTMENT PLAN

This Investment Plan establishes a framework for the prudent and diversified management of public funds held by the City of Neptune Beach and ensuring compliance with Ordinance 2025-12 and Florida Statutes §218.415.

a. Purpose

To optimize capital deployment across diversified investment vehicles, balancing risk and return while aligning with organizational liquidity needs and long-term financial goals.

b. Scope

This plan applies to all cash and investment balances of the City, including:

- General Fund
- Special Revenue Funds
- Capital Project Funds
- Enterprise Funds

c. Objectives

In order of priority:

- **Safety** – Preservation of capital is the foremost objective.
- **Liquidity** – Investments must remain sufficiently liquid to meet cash flow needs.
- **Income Generation** – Investments should earn a reasonable return within the constraints of safety and liquidity.
- **Growth** – Allow for modest capital appreciation through limited equity exposure.

d. Legal Compliance

All investments shall comply with:

- **Florida Statutes §218.415**
- **City Ordinance 2025-12**
- **Applicable GASB standards**
- **Prudent Person Rule**

e. **Authorized Investments**
Authorized investments under Florida Statute 218.415 and City Ordinance 2025-12, the following investments are authorized:

- **Intergovernmental Investment Pools:**
    - **Florida PRIME** – A highly liquid, AAAm-rated local government investment pool.
        - **State Board of Administration (SBA)** – For short-term investments.
    - **FMIvT (Florida Municipal Investment Trust)** – Offers a range of fixed-income portfolios.
    - **FGIT (Florida Government Investment Trust)** – Another pooled investment option for local governments.
- **U.S. Government Securities** – Treasury, agencies.
- **Certificates of Deposit (CDs)** – In-state and national banks, if secured.
- **Intergovernmental Investment Pools** – If rated or approved.
- **Money Market Funds** – SEC-registered, AAAm-rated.

f. Risk Management

- **Diversification:** No more than 25% in any single issuer (except U.S. Treasury).
- **Maturity Limits:** Weighted average maturity (WAM) not to exceed 2 years for operating funds.
- **Credit Quality:** Minimum A-rating for MMFs.
- **Collateralization:** All public deposits must be in qualified public depositories under the Florida Security for Public Deposits Act.

g. **Risks Associated with Each Type of Investment**

Even though the investment vehicles authorized under **Florida Statute 218.415** are designed to be conservative and compliant with public fund safety standards, each carries **some level of risk**. The following is a breakdown of the risk associated with each investment option:

- **Florida PRIME**

    - **Risk Type**: *Liquidity Risk, Credit Risk (minimal)*
    - **Details**: While PRIME is AAAm-rated and highly liquid, it is still a pooled investment. In extreme market stress, liquidity could be constrained, or yields could drop sharply.
    - **Mitigation**: Daily monitoring, diversification with other pools.

- **FMIvT (Florida Municipal Investment Trust)**
  - **Risk Type**: *Interest Rate Risk, Credit Risk*
  - **Details**: Depending on the portfolio (e.g., 1-3 Year, Intermediate), longer durations can expose you to interest rate fluctuations.
  - Credit risk exists if corporate or agency bonds are included.
  - **Mitigation**: Match duration to cash flow needs; monitor credit quality.

- **FGIT (Florida Government Investment Trust)**
  - **Risk Type**: *Market Risk, Liquidity Risk*
  - **Details**: Similar to FMIvT, FGIT pools may include a mix of securities. Market volatility can affect NAV (Net Asset Value).
  - **Mitigation**: Use for medium-term funds, not immediate liquidity needs.

- **U.S. Treasuries**
  - **Risk Type**: *Interest Rate Risk*
  - **Details**: Virtually no credit risk, but longer-term Treasuries can lose value if rates rise.
  - **Mitigation**: Ladder maturities to reduce reinvestment and duration of risk.

- **Collateralized Certificates of Deposit (CDs)**
  - **Risk Type**: *Liquidity Risk, Reinvestment Risk*
  - **Details**: May be locked in for a term; early withdrawal could incur penalties or may be required to sell at a discount.
  - **Mitigation**: Use for funds not needed in the short term.

- **Money Market Funds (AAAm-rated)**
  - **Risk Type**: *Low Yield Risk, Liquidity Risk (in rare cases)*
  - **Details**: Very low risk, but yields may not keep up with inflation or rising rates.
  - **Mitigation**: Use as a liquidity buffer, not for long-term growth.

- **Repurchase Agreements**
  - **Risk Type**: *Counterparty Risk, Collateral Risk*
  - **Details**: If the counterparty defaults and collateral are insufficient or illiquid, losses could occur.

- **Mitigation**: Only use fully collateralized repos with reputable institutions.

- **General Risks Across All Vehicles**
  - **Regulatory Risk**: Changes in laws or interpretations of 218.415.
  - **Operational Risk**: Errors in execution, custody, or reporting.
  - **Inflation Risk**: Returns may not keep pace with inflation, especially in low-rate environments.

Public Funds Investment Risk Matrix

Investment Vehicle	Credit Risk	Interest Rate Risk	Liquidity Risk	Market/Volatility Risk	Notes
Bank-Sweep MMA	🟢 Low	🟢 Low	🟢 Low	🟢 Low	Daily Liquidity
Florida PRIME	🟢 Low	🟢 Low	🟡 Moderate	🟢 Low	Liquidity; AAAm-rated
FMIvT (1-3 Yr)	🟡 Moderate	🟡 Moderate	🟡 Moderate	🟡 Moderate	Duration risk if rates rise
FGIT	🟡 Moderate	🟡 Moderate	🟡 Moderate	🟡 Moderate	NAV can fluctuate slightly
U.S. Treasuries	🟢 None	🔴 High	🟡 Moderate	🟢 Low	Laddering helps mitigate
Collateralized CDs	🟢 Low	🟡 Moderate	🔴 High	🟢 Low	Not liquid; use for reserves
Money Market Funds	🟢 Low	🟢 Low	🟢 Low	🟢 Low	Ideal for cash buffer
Repurchase Agreements	🟡 Moderate	🟢 Low	🟡 Moderate	🟡 Moderate	Use only with strong counterparties

Legend:
🟢 = Low Risk | 🟡 = Moderate Risk | 🔴 = High Risk

h. Performance Monitoring

- **Benchmarks:**
  - Operating funds: 90-day Treasury bill
  - Intermediate funds: 1 to 3-year Treasury index
- **Review:**
  - Annual review of the investment policy and strategy
  - Periodic audits by external auditors

i. Operations, Oversight & Governance

- **Investment Officer:** Per Sec. 2-172, Investment of Funds, the City's Chief Financial Officer (CFO) shall serve as the Investment Officer and invest funds not required for immediate disbursements.
- **Internal Controls:** Segregation of duties, dual authorization, and reconciliation procedures shall be maintained.
- **Reporting:**
  - The CFO must prepare a monthly internal report for the Finance Committee.
  - Quarterly investment report to the City Council

j. Adoption & Amendments

This plan shall be adopted by resolution of the City Council and reviewed quarterly. Any amendments must be approved by Council and comply with applicable laws.

2. **PORTFOLIO ALLOCATION**

The portfolio is based on all cash-in-bank (CIB) of **$11,500,000** available at the time this plan was developed. The strategy would be for the City of Neptune Beach to develop an investment portfolio that balances a **conservative-to-moderate allocations strategy** that balances **liquidity**, **safety**, and **reasonable return**, while complying with **Florida Statutes §218.415** and **Ordinance 2025-12**.

This investment allocation is based on:

- Public sector best practices
- Florida Statutes §218.415
- Code of Ordinance, Sec. 2-172 – Investment of Funds
- Ordinance 2025-12
- Moderate risk tolerance (focused on capital preservation, liquidity, and reasonable return)

Target Allocation Strategy (All Cash in Banks (CIB) and Estimated Returns:

Investment Portfolio Allocation Summary

Total Portfolio **$ 11,500,000**

1. Liquidity & Operational Funds (57%)

Instrument	Allocation	Amount	Yield	Gross Return	Purpose
Bank Accounts	6.96%	$800,000	2.25%	$ 18,000	Daily Cash Flow, Payroll, Vendor Pmts. (Liquidity)
Overnight Sweep Accounts	14.78%	1,699,999	3.90%	66,300	Other operational cash
Florida PRIME	34.78%	3,999,988	5.00%	199,999	Idle cash optimization
Total Liquidity & Operational Funds	**56.52%**	**$6,499,987**	**3.72%**	**284,299**	

2. Yield-Oriented Core (43%)

Instrument	Allocation	Amount	Yield		Purpose
FMIvT (1-3 Yr Fund)	27.83%	$3,200,000	4.75%	152,000	Intermediate-term reserves
FMIvT (1-3 Yr Fund)	6.96%	$800,000	4.75%	38,000	Long-term Liability
Certificates of Deposit (CDs)	8.70%	$1,000,000	4.25%	42,500	Matching, Reimbursable Grants
Total Yield Oriented Core	**43.49%**	**$ 5,000,000**	**4.58%**	**232,500**	
Estimated Annual Gross Income Summary	**100.01%**	**$ 11,499,987**	**4.12%**	**$ 516,799**	

Strategic Rationale

- **Liquidity (57% or $6,500,000):**
  Florida PRIME, Bank Accounts, and sweep accounts ensure that more than half the portfolio is liquid and accessible for operational need and/or emergencies.
- **Yield Enhancement (43% or $5,000,000):**

Considerations

a. **Liquidity Needs**: Ensure enough is in Bank Overnight Sweeps, PRIME or MMFs for short-term (weekly) obligations.
b. **Diversification**: Spread across multiple pools and instruments to reduce risk.
c. **Compliance**: All investments must meet the credit quality, maturity, and diversification requirements of 218.415.
d. **Oversight**: Regularly review performance, credit ratings, and compliance.

3. **ESTIMATED COSTS & FEES**

Potential costs are based on typical fee structures for the investment vehicles used:

a. Florida PRIME

- **Typical Fee**: ~0.06% (7 bps)
- **Amount Invested**: \$3,999,988
- **Estimated Annual Fee**: ≈ \$2,800

b. FMIvT (Florida Municipal Investment Trust)

- **Typical Fee Range**: 0.25%–0.35%
- **Amount Invested**: \$4,000,000
- **Estimated Annual Fee**: ≈ \$10,000–\$14,000

c. Certificates of Deposit (CDs)

- **Typical Fee**: Usually no direct management fee; banks earn via spread
- **Amount Invested**: \$1,000,000
- **Estimated Fee**: \$0 (assumed)

d. Bank Accounts & Sweep Accounts

- **Sweep Account Fee**: Often embedded in yield; may range from 0.10%–0.25%
- **Amount in Sweeps**: \$2,499,999
- **Estimated Fee**: ≈ \$2,500–\$8,750

Estimated Total Annual Fees

Category	Investment	Percentage	Estimated Annual Fees
Florida PRIME	$ 4,000,000.00	0.070%	$ 2,800.00
FMIvT	$ 4,000,000.00	0.350%	14,000.00
Banks & Sweep Accounts	$ 3,500,000.00	0.250%	8,750.00
Estimated Fee:			$ 25,550.00

4. FINAL ASSESSMENT

a. The portfolio is fully compliance with Florida Statutes §218.415 and the City's Ordinance 2025-12:
b. Provides adequate risk management
c. Oversight structure is robust and compliant with public-fund best practices
d. Strategy is conservative-to-moderate (aligned with public-fund best practices)

Clean Final Version

CITY OF NEPTUNE BEACH JOINT FINAL DRAFT – 10/7

ORDINANCE NO. ________________

AN ORDINANCE GRANTING TO THE CITY OF JACKSONVILLE BEACH, FLORIDA, DOING BUSINESS AS BEACHES ENERGY SERVICES, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO OPERATE AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN THE CITY OF NEPTUNE BEACH AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION LINES IN THE PUBLIC RIGHTS-OF-WAY OF SAID CITY; PROVIDING THE TERMS AND CONDITIONS OF SUCH FRANCHISE; PROVIDING TERMS AND CONDITIONS FOR THE UNDERGROUNDING OF ELECTRIC FACILITIES WITHIN THE CITY OF NEPTUNE BEACH; PROVIDING FOR MONTHLY FRANCHISE FEE PAYMENTS TO THE CITY OF NEPTUNE BEACH; PROVIDING FOR EITHER PARTY'S RIGHT TO TERMINATE THE FRANCHISE AGREEMENT CREATED HEREBY UNDER SPECIFIED CIRCUMSTANCES; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS IN OTHER CITY ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Neptune Beach ("Neptune Beach" or "Grantor") finds it in the public interest to ensure that all areas within its corporate limits are adequately provided with high-quality and reliable electric service; and

WHEREAS, the City of Neptune Beach and the City of Jacksonville Beach, d/b/a Beaches Energy Services ("Beaches Energy" or "Grantee") are parties to that certain ELECTRIC SERVICE AGREEMENT Between CITY OF JACKSONVILLE BEACH, FLORIDA and CITY OF NEPTUNE BEACH, FLORIDA, dated and effective as of October 1, 2002 ("2002 Electric Agreement"); and

WHEREAS, Neptune Beach has determined that the public health, safety, and welfare will be promoted and served by converting the existing overhead electric facilities within the corporate limits of Neptune Beach to underground facilities to the maximum extent feasible; and

WHEREAS, Neptune Beach and Beaches Energy (each a "Party" and collectively, the "Parties") have negotiated this franchise agreement ("Franchise Agreement") to supersede and replace the 2002 Electric Agreement and to confirm the Parties' mutually agreed-upon rights and responsibilities applicable to Beaches Energy's provision of electric service to retail customers within Neptune Beach; and

WHEREAS, the City of Neptune Beach finds it in the public interest to retain control over the use of public rights-of-way by providers of electricity and other utilities to protect the public health, safety, and welfare, 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 in and use of right-of-way property; and

WHEREAS, the City of Neptune Beach finds that entering into the franchise agreement created hereby is the best means of assuring that the above-described interests of the City, its inhabitants, and its individual and corporate citizens are promoted and protected;

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

<ins>Section 1</ins>. <ins>Grant of Electric Franchise</ins>. In consideration of the mutual benefits that will accrue to the City of Neptune Beach, a municipal corporation of the State of

Florida, sometimes referred to herein as the Grantor or as the “City,” and the inhabitants and citizens thereof, on the one hand, and to the City of Jacksonville Beach, doing business as Beaches Energy Services, a municipal corporation of the State of Florida, its successors and assigns, sometimes referred to herein as the Grantee or “Beaches Energy,” on the other hand, the City of Neptune Beach hereby gives and grants to the Grantee the nonexclusive right, authority, privilege, and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate, and conduct in said City of Neptune Beach’s public rights-of-way a system of overhead and underground electric light and power transmission and distribution facilities, including, without limitation, conduits, poles, wires, transformers, transformation substations, meters, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations and such other utility or other facilities of Grantee to provide service of any kind or nature to Customers, as hereinafter defined, including, without limitation, broadband, communications, dark fiber, natural gas, but not then in direct competition with utility services offered by City of Neptune Beach (hereinafter called “Grantee’s Facilities” or "Facilities"), for the purpose of supplying electricity, other electricity-related services incidental thereto, and other utilities to the Grantor and its successors and assigns, to the inhabitants of the City and to business entities operating therein, and to persons and business entities beyond the corporate limits of the Grantor who purchase electric service from the Grantee. (Collectively, all such entities that purchase electric service or other utilities services from Grantee are sometimes referred to herein as “Customers.”) As used in the preceding sentence, the term “other electricity-related services” means Grantee’s facility-to-facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the Grantee's provision of electric service. As used herein, the terms "public rights-of-way" and "Grantor's public rights-of-way" shall mean property or any interest therein that is acquired for or devoted to a public road or alleyway, including but not limited to, roadways, highways, streets, or bridges for which the Grantor is the authority and to which the Grantor may lawfully grant access pursuant to applicable law, and includes the surface, the air space over the surface, and the area below the surface of such places. The rights and privileges granted hereby do not extend to any other public places, of any type whatsoever, that are administered by the Grantor but not located in any space within the specific definition of the Grantor's public rights-of-way set forth hereinabove, or to any similar places. The determination of whether a public place or public space is part of Grantor's public rights-of-way is within the sole and sound discretion of the Grantor and, except as to whatever statutory rights the Grantee may have to install its Facilities in certain road rights-of-way, which may be determined by a court of competent jurisdiction, as necessary, the Grantor's determination may not be challenged in any way in any venue.

This Ordinance and the mutual agreements created by this Ordinance and the Grantee's acceptance hereof are referred to herein as the "Franchise Agreement." As appropriate to the context, each of the Grantor and Grantee may be referred to herein individually as a "Party," and they may be referred to collectively as the "Parties" to this Franchise Agreement. The rights and privileges granted hereby are expressly subject to all of the provisions and limitations contained in this Franchise Agreement, including, expressly but without limitation, the Grantor's reserved Right to Purchase established herein and all provisions relating to the Grantor's right and ability to exercise that Right to Purchase as provided in various sections of this Franchise Agreement.

Section 2. Term & Termination The franchise and related rights and privileges granted by this Ordinance shall exist and continue for a period of thirty (30) years from the Effective Date of this Franchise Agreement. In the event that the Franchise Agreement has not otherwise been terminated or replaced by a new franchise agreement before the thirtieth anniversary of its Effective Date, then the Franchise Agreement shall continue in effect on a year-to-year basis until terminated pursuant to the terms hereof.

Section 3. Obligation to Supply Electrical Energy; Reliability; Force Majeure. Beaches Energy shall, at its sole cost and expense, furnish and provide reasonably uninterrupted service sufficient to meet the requirements of its Customers in the City of Neptune Beach; provided, however, that Beaches Energy shall not be liable or responsible for interruption of service or voltage fluctuations that result from fire, strike, riot, vandalism, explosion, failure of defective equipment or materials, flood, windstorm including named tropical storm systems and tornadoes, lightning, accident, acts of God, acts of the public enemy, any act by the supplier of bulk electrical energy to Beaches Energy, or other acts beyond the control of Beaches Energy, but Beaches Energy shall be prompt and diligent in removing and overcoming the cause or causes of any such interruptions to the extent reasonably practicable. Nothing herein contained shall be construed as permitting Beaches Energy to refuse to deliver electrical energy to Customers in the City of Neptune Beach after the cause of any interruption has been removed.

Beaches Energy does not guarantee that the supply of electrical energy pursuant to this Franchise Agreement shall be free from interruption occasioned by any of the causes heretofore mentioned, and it is agreed that such interruptions shall not constitute a breach of this Franchise Agreement on the part of Beaches Energy. With respect to the distribution of electrical energy, Beaches Energy shall not discriminate among its Customers, including the City of Neptune Beach and Customers located therein and also including Customers located in other parts of Grantee's service area outside the city limits of the City of Jacksonville Beach, and all services rendered hereunder shall be on an equal basis.

Unless otherwise expressly agreed to in writing by the Parties, no termination of this Franchise Agreement shall relieve either the Grantee or any of its successors or assigns of the Grantee's obligation to provide reasonably reliable electric service at lawful rates.

Section 4. Installation, Operation and Maintenance of Facilities. The Facilities of the Grantee shall be installed, located or relocated, erected, maintained, and operated in accordance with all laws, rules, and regulations applicable to the Grantee and the operation of its electric system, including without limitation ordinances and rules and regulations duly adopted and in effect within the City of Neptune Beach, provided that such ordinances, rules, and regulations shall be non-discriminatory and shall not make any adverse distinction between Grantee and any other person in intent, effect, and application. To avoid conflicts with traffic, the location or relocation of the Grantee's Facilities shall be made in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining of the Grantee's Facilities in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations: (a) shall not prohibit nor limit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with vehicular (including bicycles) and pedestrian traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its Customers, and (c) shall not require the relocation of any of the Grantee's Facilities installed before or after the Effective Date (as defined in Section 26 herein) of this Franchise Agreement in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed Facilities to unreasonably interfere with motor vehicular traffic. Any relocation of Grantee’s Facilities due to such widening or changes in the configuration of the paved portions of public rights-of-way by the Grantor, shall be accomplished at the sole expense of the Grantor. If such relocations of the Grantee’s Facilities are due to widening or changes in the configurations of public rights-of-way that are owned by FDOT or the City of Jacksonville, such relocation shall be made by the Grantee at its sole cost and expense. The FDOT owns the median-placed street lights on State Highway A1A from Atlantic Boulevard to the southern corporate limits of the City of Neptune Beach. If a decision by the FDOT requires the relocation of part or all of the existing median-placed street lights, and if such relocation of street light facilities necessitates the relocation of any of Grantee’s Facilities, Grantor and Grantee agree that such relocation of Grantee’s Facilities shall be accomplished at the sole expense of FDOT. Grantor and Grantee further agree to coordinate and cooperate, to the maximum extent possible, to ensure that such relocation of Grantee’s Facilities is accomplished at the sole expense of FDOT. In the event that FDOT cannot be required to bear the expense of such relocation of Grantee's Facilities, then Grantor and Grantee will negotiate a mutually acceptable resolution of all issues relating to the relocation of the Grantee's Facilities. If the relocation of the median-placed street lights is the result of a request by the Grantor, then the relocation of Grantee's Facilities shall be accomplished at the sole expense of the Grantor. The Grantor hereby agrees that for all decisions it makes as to widening or changes in the configuration of the paved portions of public rights-of-way that may have an impact on the Grantee, the Grantor shall (x) use reasonable efforts to minimize impacts on the Grantee and (y) reasonably communicate with the Grantee in advance of its final decision so that the Grantee has the right to evaluate the proposed decision of the Grantor and provider feedback to the Grantor on such proposed decision. Such rules and regulations shall recognize that above-grade Facilities of the Grantee installed after the Effective Date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible, and such installation shall be consistent with the Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

The Grantee's rights to operate its Facilities are and shall remain subject to all applicable provisions of the Code of the City of Neptune Beach, all applicable and valid rules and regulations of the City of Neptune Beach, and all applicable laws, rules, and regulations of Duval County, the State of Florida, and the United States, as such laws, rules and regulations may be amended from time to time.

When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its Facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. Nothing in this Franchise Agreement shall limit any entitlement or other right that the Grantee has to receive reimbursement of its costs from persons other than the Grantor.

Section 5. Indemnity. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, location, relocation, operation, or maintenance by the Grantee of its Facilities hereunder due to Grantee's negligence or other misconduct, and the acceptance of this Franchise Agreement shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, or other misconduct of the Grantee in the construction, location, relocation, operation, or maintenance of the Facilities of Grantee's electric system subject to this Franchise Agreement. Notwithstanding the foregoing in this Section 5, the Grantee's indemnification and hold harmless obligations to the Grantor shall be limited as the Grantee's liability is limited by section 728.28, Florida Statutes, and no part of this Franchise Agreement is intended to be a waiver of any rights of sovereign immunity that the Grantee may possess or assert under applicable law.

Section 6. Underground Electric Facilities. (a) To promote the public health, safety, and welfare of the inhabitants of the City of Neptune Beach and of all persons and entities who live, work, and conduct their business therein, and subject to the terms and conditions of this Franchise Agreement, Grantor plans to undertake the conversion of all overhead utility facilities within the Grantor's corporate limits to underground facilities to the extent technically and economically feasible, and Grantee will communicate regularly, and otherwise as requested by Grantor, on the status of its related undergrounding plans. The utility facilities to be converted include the Grantee's electrical distribution facilities and all other overhead utility facilities, including telecommunications, cable television, broadband, internet, fiber, and similar facilities, that are presently installed using overhead facilities and equipment; provided, however, that Grantee takes no responsibility or liability for the overhead utilities facilities of any utility provider other than Grantee.

(b) In the public interest, and as consideration for this Franchise Agreement, Grantee agrees that it will cooperate in good faith with Grantor to facilitate Grantor's plan to complete its contemplated undergrounding project(s), subject to the terms and conditions of this Franchise Agreement, at the lowest reasonable cost to Grantor that is consistent with good engineering practice; good utility practice; all applicable codes and standards, including without limitation the National Electrical Safety Code; and basic principles of fair and equitable cost allocation and rate structure that recognize the costs and benefits, including avoided operating, maintenance, and storm restoration cost savings, that result from having electric distribution facilities placed underground. Grantee expressly agrees that it will provide Grantor with all reasonably necessary information, including sufficient advance notice of any planned upgrades or "hardening" projects that Grantee plans to implement on its distribution facilities in the City, so that the City can undertake efforts to minimize its costs for any part or phase of its undergrounding project(s). This covenant is specifically intended to enable the City to avoid certain costs, including the costs for removal of existing facilities and compensation for the remaining net book value of existing facilities that would be increased if the Grantee were to replace existing facilities before the City is reasonably able to convert them to underground facilities.

(c) The Parties also agree to cooperate and coordinate with each other and with other providers of utility services in the City to facilitate the conversion of all utility-type facilities to underground facilities to be accomplished in an orderly and cost-effective manner.

(d) Grantee agrees to provide, upon request by the Grantor and at no cost to the Grantor, a non-binding or "ballpark" cost estimate of the cost and required contribution payment in aid of construction ("CIAC") for any underground project(s) proposed by the Grantor. Grantee further agrees to provide a "Binding Cost Estimate" for any underground construction or conversion project as requested by the Grantor at a reasonable charge sufficient to cover the costs for engineering and design of the proposed underground project; this charge shall be considered to be a deposit (the "engineering deposit") to cover the cost of engineering work necessary to accurately estimate the cost of a particular underground project, and shall be applied as a credit to the total cost of any project if the Grantor proceeds with such project. Any Binding Cost Estimate shall be good for a period of 180 days from the date on which it is delivered to the Grantor, and Grantee shall not increase the cost of the project by more than ten (10) percent from the amount of the Binding Cost Estimate.

(e) The Grantor shall have the right, or the Grantee may elect, to have the Grantor engage its own contractors to construct and install all or part of any proposed underground distribution facilities, provided that: (i) all such work meets the construction standards and requirements of the Grantee, including Grantee's right to conduct a final inspection and approval of such work; (ii) that Grantor's contractors are approved contractors of Grantee; and (iii) Grantee and Grantor have reasonably coordinated and agreed upon the timing, schedule, and mitigation of impacts on Grantee and Grantee's system associated with such work.

(f) Grantor hereby affirms that it recognizes that, as the conversion of Grantee's overhead facilities to underground facilities is completed and each section or area of underground electrical facilities becomes operational, those facilities will be owned by the Grantee, and, as such, Grantor hereby acknowledges it has no right and shall not direct the Grantee's means and methods of undergrounding, including overhead conversion to underground facilities or installing new underground facilities. Both Grantor and Grantee further recognize and affirm that Grantor's decisions on undergrounding of existing overhead facilities are based on economics and reliability, not aesthetics. Notwithstanding any other provision or term of this Franchise Agreement, with respect to any and all undergrounding of Grantee's Facilities that are driven, prioritized, or requested by Grantor for or related to aesthetic concerns, Grantor shall be fully responsible and liable for all costs and expenses related to such undergrounding work

<u>Section 7</u>. <u>Payment in Lieu of Taxes</u>. The City of Jacksonville Beach, its successors and assigns, shall pay to the City of Neptune Beach and its successors and assigns an amount that will equal $0.00302 per kilowatt-hour for all metered electrical energy sold during each calendar year of this agreement to all customers, including the

City of Neptune Beach, within the corporate limits of the City of Neptune Beach. The aforementioned payment to the City of Neptune Beach by the Beaches Energy shall be made monthly on or before the last day of the calendar month immediately following the calendar month during which the sales occurred. Payment to the City of Neptune Beach shall not include any payment for kilowatt-hours used by streetlights for which service is billed under Beaches Energy's flat-rate charges for such lighting service, and no payment shall be made on sales or revenues collected by Beaches Energy for other electric companies, late charges, connection or reconnection charges, electric service installation charges, appliance repair charges, service charges, nor on sales tax collected on behalf of the State of Florida. Such payment shall be accepted by the City of Neptune Beach in lieu of any property, privilege, occupation, franchise, or other tax against the electrical distribution system situated in the City of Neptune Beach or the right or privilege of carrying on and conducting the business of selling and delivering electrical energy as contemplated hereunder. The remittances to the City of Neptune Beach shall be accompanied by a statement showing the amount of gross metered kilowatt-hours sold by Beaches Energy in the City of Neptune Beach. Beaches Energy shall keep proper records of its gross sales and revenues derived from the provision of electric service within the corporate limits of the City of Neptune Beach and such records shall be kept open to inspection at all reasonable times by the duly authorized representative of the City of Neptune Beach. Said authorized representatives are hereby given the right of access to and full authority to inspect, examine, audit, and verify such records relating to the sale of electrical energy within the corporate limits of the City of Neptune Beach.

The Parties expressly agree that the above-stated payment provisions have been freely bargained for and represent fair and just compensation relative to the fair rental value of the rights-of-way and the other consideration given by the Grantor to the Grantee pursuant to this Franchise Agreement. In recognition of the foregoing agreement, each Party, intending to be legally bound, agrees not to contest or seek to limit or change the amount of such fee provided for herein in any legal, regulatory, or legislative proceedings of any type whatsoever; provided, however, that if at any time during the term of this Franchise Agreement Grantor notifies Beaches Energy that it desires to impose an additional franchise fee in support of Grantor's undergrounding project(s), which the Parties hereby acknowledge and agree that Beaches Energy will be entitled to pass along to Customers within the corporate boundaries of the City of Neptune Beach as a separate retail billing line item, the Parties will use good faith, reasonable efforts to negotiate amendments or supplements to this Franchise Agreement to provide therefor.

Section 8. Grantor's Obligations and Reserved Rights. As a further consideration, during the term of this Franchise Agreement or any extension thereof the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, and (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party (or third parties) to any other retail customer's facility or facilities, provided that the City of Neptune Beach shall not be considered a "third party" or an "other retail customer" for purposes of this provision.

Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions that are subject to the provisions of the Federal Power Act. The Grantor retains the right to generate and distribute electric power for its own use, subject to the requirements of Florida law, and the right to operate emergency generating facilities owned by the Grantor for purposes of serving critical facilities (e.g., nursing homes, hospitals, water and wastewater treatment plants, and similar facilities) during declared emergencies such as hurricanes or tropical storms.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility (or facilities) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions that have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person, provided that Grantee shall ensure by all means necessary that such purchases by the

Grantor shall be made at the rates offered by the Grantee for the term of such transaction, and provided further that, if for any reason the Grantee does not honor its obligation to serve the Grantor’s facilities at the rates offered by the Grantee for the term of the transaction, such failure shall entitle Grantor to terminate the transaction and purchase electric capacity and/or electric energy from another provider. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, then the Grantor shall be permitted and entitled to enter into the proposed transaction with the other person, and all of the terms and conditions of this Franchise Agreement shall remain in effect. In the event of a dispute as to whether the Grantee has offered rates, terms, and conditions what are equal to or better than those offered by the other person, it is the intent of the Parties that the determination of such dispute shall be made on an objective basis to the maximum extent possible. If the Parties are unable to agree, then the Parties agree to submit the dispute to binding arbitration pursuant to the arbitration protocols of the American Arbitration Association; the Parties will each bear their own costs in any such arbitration proceedings.

The Grantor may also, if permitted by law and in compliance with any applicable provisions of Grantee’s tariffs, (i) generate renewable electricity at any facility or property owned by the Grantor for storage or utilization at that facility, property, or other Grantor facilities, operations or equipment; (ii) use renewable energy sources to generate electricity for use in demonstration projects or at the Grantor’s facilities; (iii) engage in net metering programs in accordance with any applicable Grantee tariffs; and (iv) sell electricity to the Grantee or other wholesale purchaser in compliance with applicable rules and regulations controlling such transactions.

Section 9. Streetlight Facilities Installation and Maintenance. The Grantee shall provide streetlighting service and private lighting service pursuant to its tariffs as approved by the City Council of Jacksonville Beach. The Grantee commits to work toward converting its existing streetlighting and private lighting luminaires to Light Emitting Diode (LED) technology as expeditiously as possible, consistent with commercially reasonable principles in the best interests of all of Grantee's customers.

Section 10. Joint Use of Poles, Conduits, and Similar Facilities. The Grantee shall have the right to enter into such contracts or agreements concerning the joint use of, or attachment to, its poles, conduits, or other facilities for the furnishing of telephone, telegraph, cable television, broadband, internet, and similar or other services as it may in its discretion desire. No such joint use or attachment agreements shall be construed or applied to limit or restrict the Grantor's plans to convert existing utility facilities from overhead to underground facilities and service, except that the Grantee hereby expressly disclaims any promise to the Grantor that undergrounding will eliminate all above ground facilities that are subject to joint use or other attachment agreements. The Grantee agrees to use its reasonable efforts to cause counterparties under its joint use or other attachment agreements to remove facilities from existing poles after undergrounding of the Grantee's Facilities, but nothing in this Section 10 or otherwise is a guarantee or promise that the Grantee will secure such counterparties' agreement and cooperation. Any and all income derived from said joint use or other attachment agreements shall accrue solely and exclusively to the Grantee; provided, however, nothing herein shall be construed to prevent either the granting of a franchise for any such services by the City of Neptune Beach to any providers thereof or the retention of all income from such franchises by the Grantor.

Section 11. Public Meetings in Advance of Approval of a Sale, if any, of Beaches Energy's Electric System. Prior to the City Council of the City of Jacksonville Beach, Florida approving the sale of the Beaches Energy electric system, if such event ever were proposed or anticipated to occur, the City Council of Neptune Beach, Florida must be given the opportunity to hold a meeting to address such potential sale of the Beaches Energy electric system, with representatives of Beaches Energy Services present to present information and answer questions. In addition to the foregoing sentence, the City Council of the City of Jacksonville Beach, Florida shall also hold a meeting so that Neptune Beach can send representatives and ask questions of Grantee in a public meeting prior to the meeting at which a final decision to sell the Beaches Energy electric system will be decided.

Section 12. Default by Grantee. Failure on the part of the Grantee to comply in any material respect with any of the provisions of this Franchise Agreement shall be grounds for forfeiture of Grantee's rights and privileges hereunder, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal by either Party) by a court of competent jurisdiction that the Grantee has failed to comply in a material respect with any of the provisions, terms, or requirements of this Franchise Agreement, and the Grantee shall have six months after such final determination to cure the default before a forfeiture shall result. The Grantor, in its sole discretion, may grant additional time to the Grantee for compliance.

Section 13. Default by Grantor. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this Franchise Agreement, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with vehicular (including motor and bicycle) or pedestrian traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this Franchise Agreement; or (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this Franchise Agreement and entitle the Grantee to withhold a portion of the payments provided for in Section 7 hereof, such portion being demonstrably commensurate with any cost or loss suffered by Grantee as a result of the Grantor's action, until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination, after the expiration or exhaustion of all rights of appeal by either Party, in the matter. The Grantor recognizes and agrees that nothing in this Franchise Agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right as may be provided by law. The Grantee recognizes and agrees that nothing in this Franchise Agreement constitutes or shall be deemed to constitute a waiver of the Grantor's delegated sovereign right of condemnation and that the Grantor, in its sole discretion, may exercise such right as may be provided by law, provided that the Grantor shall not exercise such right so as to violate the Grantor's covenant, set forth in Section 8 hereof, not to compete against the Grantee in the distribution and/or sale of electricity to ultimate consumers during the term of this Franchise Agreement.

Section 14. Change in Law. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality, or political subdivision of either of them having jurisdiction), any person is permitted to provide electric service within the incorporated areas of the Grantor to a Customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this Franchise Agreement if such competitive disadvantage is not remedied to the reasonable satisfaction of the Grantee within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the obligations of the Grantee hereunder that cause the competitive disadvantage. The Grantee and the Grantor shall then have 90 days in which to negotiate an amendment to this Franchise Agreement that eliminates such competitive disadvantage, as determined in the reasonable discretion of the Grantee. If such competitive disadvantage is not so eliminated within said time period, the Grantee may terminate this Franchise Agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 15. Audit; Accuracy of Billing. (a) The Grantor may, upon reasonable notice and within 90 days after the end of each fiscal year of the Grantor, at the Grantor's expense, examine and audit the records of the Grantee relating directly to the calculation of the Franchise Fee payments for the five years preceding the end of such fiscal year. Such examination shall be during normal business hours at the Grantee's office where such records are maintained, or as otherwise mutually agreed in writing by the Parties. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's Customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit. This provision shall survive termination of this Franchise Agreement.

(b) Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the terms embodied in the 2002 Electric Agreement, or amounts allegedly owed by Grantee to Grantor as of the effective date of this Ordinance, provided that Grantee pays all amounts due and owing to Grantor as of the effective date of this Ordinance, including all amounts due and owing pursuant to any audit then in process.

<u>Section 16</u>. <u>Severability</u>. The provisions of this Franchise Agreement are interdependent upon one another, and if any of the provisions of this Franchise Agreement are found or adjudged by a court of competent jurisdiction (after the expiration of all rights of appeal) to be invalid, illegal, void, or of no effect, such finding or adjudication shall not affect the validity of the remaining provisions for a period of ninety

(90) days, during which period the Parties will negotiate in good faith to amend this Franchise Agreement so as to restore to the maximum extent permissible, the original economic bargain embodied in this ordinance. If an agreement to amend the ordinance is not reached at the end of such ninety (90) day period, either party may provide notice to the other declaring this entire Franchise Agreement to be null and void and of no force or effect; provided, however, that in the event that this Franchise Agreement is terminated by either Party pursuant to this provision of this Franchise Agreement, the Grantee expressly recognizes and agrees that the Grantor's Right to Purchase pursuant to Section 2(b) shall survive any such termination and thereupon immediately vest in Grantor.

Section 17. Entire Agreement. This Franchise Agreement is intended to constitute the sole and entire agreement between the Grantor and Grantee with respect to the subject matter hereof and correctly sets forth the rights, duties, and obligations of each of the other as of its date. Any prior agreements, promises, negotiations, or representations with respect to the subject matter hereof not expressly set forth in this Franchise Agreement are of no force or effect, and this supersedes all prior drafts and verbal or written agreements, commitments, or understandings with respect to the subject matter hereof, which shall not be used to vary or contradict the expressed terms herein. Both Parties have been represented by counsel of their choosing with regard to this Franchise Agreement. The Parties agree expressly that the Franchise Fee provisions set forth herein were freely bargained for and represent fair consideration for the terms provided by the Grantor to Grantee under this Franchise Agreement and that each Party agrees not to contest the amount of the Franchise Fee provided herein, excepting any changes resulting from the application of the Favored Nations provisions in Section 11 hereof.

Section 18. Certain Definitions. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority, or any other entity of whatever nature.

Section 19. Successors and Assigns; Assignment. Whenever in this Franchise Agreement either the City of Neptune Beach or the City of Jacksonville Beach (or Beaches Energy Services) is named or referred to, it shall be deemed and understood to include the respective successor, successors, or assigns of either Party, 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 of the Grantee. Any assignment by either Party shall be effective only upon the written consent of the non-assigning Party, which consent shall not be unreasonably withheld or delayed.

Section 20. Modification. It is further understood that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith and approved by the Grantor's City Council.

Section 21. Governing Laws; Compliance with Federal, State, and Local Laws. This Franchise Agreement shall be governed and construed by the applicable laws of the United States, State of Florida, and the Codes and Ordinances of the Grantor to the extent not preempted. The Parties agree to comply with and observe all applicable Federal, State, and valid and non-preempted local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

Section 22. Preliminary Dispute Resolution. The Parties agree that it is in each of their respective best interests to avoid costly litigation or arbitration as a means of resolving disputes which may arise hereunder. Accordingly, the Parties agree that in the event of any dispute between the Parties, senior management of each Party will engage in an in-person meeting to attempt to resolve any dispute within thirty (30) days of notification of the dispute or as mutually agreed to by the Parties; the Parties further agree to continue discussions toward resolving the dispute for a reasonable time relative to the nature and complexity of the dispute. Such meeting and discussions shall be required prior filing an action in an appropriate court, unless either Party determines that it will be irreparably harmed as a result of such delay.

Section 23. Venue. In the event that any legal proceeding is brought to enforce the terms of this Franchise Agreement, it shall be brought exclusively in Duval County, Florida, or, if applicable, in the U.S. District Court for the Northern District of Florida.

Section 24. Notices. Except in exigent circumstances, and except as may otherwise be specifically provided for in this Franchise Agreement, all notices by either party shall be made by United States Certified Mail, return receipt requested, or via a nationally recognized overnight courier service. Any notice given by facsimile or email is deemed to be supplementary, and does not alone constitute notice hereunder, unless acknowledged as received by the other party. All notices shall be addressed as follows:

To the City:	To Grantee:
City of Neptune Beach City Hall 116 First Street Neptune Beach, Florida 32266	Beaches Energy Services City Hall 11 North 3rd Street Jacksonville Beach, Florida 32250

Attn: City Manager	Attn: Utilities Director/City Manager
Copy to:	Copy to:
City of Neptune Beach City Hall 116 First Street Neptune Beach, Florida 32266 Attn: City Attorney	Beaches Energy Services City Hall 11 North 3rd Street Jacksonville Beach, Florida 32250 Attn: City Attorney

Any changes to the above shall be in writing and provided to the other Party as soon as practicable.

Section 25. Repealer; Surrender of Existing Franchise. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict. As a further consideration for the granting of the franchise and associated rights and privileges granted hereby, the Grantee surrenders all franchises and associated rights and privileges heretofore granted by the City of Neptune Beach or the State of Florida for any of the purposes stated in Section 1 or any other sections of this Franchise Agreement and now enjoyed by Grantee in the City of Neptune Beach; provided, however, that such surrender shall not be effective unless and until: (a) this Ordinance shall be finally adopted by the City, (b) the Franchise Agreement created and established hereby shall be accepted by the Grantee, and (c) the Franchise Agreement and associated rights and privileges granted hereby shall be validly in force and effect pursuant to such adoption by the City and acceptance by the Grantee.

Section 26. Acceptance of Franchise Agreement; Effective Date. This Ordinance shall be effective to create the Grantee's right to accept the Franchise Agreement under the terms and conditions set forth herein as of the date of its adoption by the City. As a condition precedent to the full effectiveness of the Franchise

Agreement embodied in this Ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of the Grantor's adoption of this Ordinance. The date upon which the Grantee files such acceptance shall be the "Effective Date" of the Franchise Agreement as between the City of Neptune Beach and the City of Jacksonville Beach, d/b/a Beaches Energy Services.

PASSED on first reading this _____ day of _______________, 2025.

PASSED AND ADOPTED on second reading this _____ day of __________________, 2025.

CITY OF NEPTUNE BEACH FLORIDA

By: ______________________________

ATTEST:

By: ___________________________________ (SEAL)
Clerk of the City of Neptune Beach, Florida

APPROVED AS TO FORM AND LEGALITY

____
City Attorney, City of Neptune Beach, Florida

Red-lined Version

CITY OF NEPTUNE BEACH DRAFT – JLF ~~2/7~~8/2 + CONB 10./7 - ~~/2025 + RSW 3/23/2025~~

ORDINANCE NO. ___________________

AN ORDINANCE GRANTING TO THE CITY OF JACKSONVILLE BEACH, FLORIDA, DOING BUSINESS AS BEACHES ENERGY SERVICES, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO OPERATE AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN THE CITY OF NEPTUNE BEACH AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION LINES IN THE PUBLIC RIGHTS-OF-WAY OF SAID CITY; PROVIDING THE TERMS AND CONDITIONS OF SUCH FRANCHISE; ~~PROVIDING FOR THE CITY'S RIGHT TO PURCHASE THE GRANTEE'S ELECTRIC FACILITIES AND RELATED PROPERTY UNDER SPECIFIED CIRCUMSTANCES;~~ PROVIDING TERMS AND CONDITIONS FOR THE UNDERGROUNDING OF ELECTRIC FACILITIES WITHIN THE CITY OF NEPTUNE BEACH; PROVIDING FOR MONTHLY FRANCHISE FEE PAYMENTS TO THE CITY OF NEPTUNE BEACH; PROVIDING FOR EITHER PARTY'S RIGHT TO TERMINATE THE FRANCHISE AGREEMENT CREATED HEREBY UNDER SPECIFIED CIRCUMSTANCES; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS IN OTHER CITY ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Neptune Beach ("Neptune Beach" or "Grantor") finds it in the public interest to ensure that all areas within its corporate limits are adequately provided with high-quality and reliable electric service; and

WHEREAS, the City of Neptune Beach and the City of Jacksonville Beach, d/b/a Beaches Energy Services ("Beaches Energy" or "Grantee") are parties to that certain ELECTRIC SERVICE AGREEMENT Between CITY OF JACKSONVILLE

BEACH, FLORIDA and CITY OF NEPTUNE BEACH, FLORIDA, dated and effective as of October 1, 2002 (“2002 Electric Agreement”); and

WHEREAS, Neptune Beach has determined that the public health, safety, and welfare will be promoted and served by converting the existing overhead electric facilities within the corporate limits of Neptune Beach to underground facilities to the maximum extent feasible; and

WHEREAS, Neptune Beach and Beaches Energy (each a “Party” and collectively, the “Parties”) have negotiated this franchise agreement (“Franchise Agreement”) to supersede and replace the 2002 Electric Agreement and to confirm the Parties’ mutually agreed-upon rights and responsibilities applicable to Beaches Energy’s provision of electric service to retail customers within Neptune Beach; and

WHEREAS, the City of Neptune Beach finds it in the public interest to retain control over the use of public rights-of-way by providers of electricity and other utilities to protect the public health, safety, and welfare, 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 in and use of right-of-way property; and

WHEREAS, the City of Neptune Beach finds that entering into the franchise agreement created hereby is the best means of assuring that the above-described interests of the City, its inhabitants, and its individual and corporate citizens are promoted and protected;

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

Section 1. Grant of Electric Franchise. In consideration of the mutual benefits that will accrue to the City of Neptune Beach, a municipal corporation of the State of Florida, sometimes referred to herein as the Grantor or as the "City," and the inhabitants and citizens thereof, on the one hand, and to the City of Jacksonville Beach, doing business as Beaches Energy Services, a municipal corporation of the State of Florida, its successors and assigns, sometimes referred to herein as the Grantee or "Beaches Energy," on the other hand, the City of Neptune Beach hereby gives and grants to the Grantee the nonexclusive right, authority, privilege, and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate, and conduct in said City of Neptune Beach's public rights-of-way a system of overhead and underground electric light and power transmission and distribution facilities, including, without limitation, conduits, poles, wires, transformers, transformation substations, meters, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations and such other utility or other facilities of Grantee to provide service of any kind or nature to Customers, as hereinafter defined, including, without limitation, broadband, communications, dark fiber, natural gas, but not then in direct competition with utility services offered by City of Neptune Beach (hereinafter called "Grantee's Facilities" or "Facilities"), for the purpose of supplying electricity, ~~and~~ other electricity-related services incidental thereto, and other utilities to the Grantor and its successors and assigns, to the inhabitants of the City and to business entities operating therein, and to persons and business entities beyond the corporate limits of the Grantor who purchase electric service from the Grantee. (Collectively, all such entities that purchase electric service or other utilities services from Grantee are sometimes referred to herein as “Customers.”) As used in the preceding sentence, the term “other electricity-related services” means Grantee’s facility-to-facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the Grantee’s provision of electric service. As used herein, the terms “public rights-of-way” and “Grantor’s public rights-of-way” shall mean property or any interest therein that is acquired for or devoted to a public road or alleyway, including but not limited to, roadways, highways, streets, or bridges for which the Grantor is the authority and to which the Grantor may lawfully grant access pursuant to applicable law, and includes the surface, the air space over the surface, and the area below the surface of such places. The rights and privileges granted hereby do not extend to any other public places, of any type whatsoever, that are administered by the Grantor but not located in any space within the specific definition of the Grantor’s public rights-of-way set forth hereinabove, or to any similar places. The determination of whether a public place or public space is part of Grantor’s public rights-of-way is within the sole and sound discretion of the Grantor and, except as to whatever statutory rights the Grantee may have to install its Facilities in certain road rights-of-way, which may be determined by a court of competent jurisdiction, as necessary, the Grantor’s determination may not be challenged in any way in any venue.

This Ordinance and the mutual agreements created by this Ordinance and the Grantee’s acceptance hereof are referred to herein as the “Franchise Agreement.” As appropriate to the context, each of the Grantor and Grantee may be referred to herein individually as a “Party,” and they may be referred to collectively as the “Parties” to this Franchise Agreement. The rights and privileges granted hereby are expressly subject to all of the provisions and limitations contained in this Franchise Agreement, including, expressly but without limitation, the Grantor's reserved Right to Purchase established herein and all provisions relating to the Grantor's right and ability to exercise that Right to Purchase as provided in various sections of this Franchise Agreement.

Section 2. Term & Termination~~; Grantor's Right to Purchase Under Defined Circumstances~~. ~~(a) Subject to the Grantor's Right to Purchase the Grantee's Facilities in the City pursuant to this Section 2 hereof (hereinafter the Grantor's "Right to Purchase"), t~~ The franchise and related rights and privileges granted by this Ordinance shall exist and continue for a period of thirty (30) years from the Effective Date of this Franchise Agreement. In the event that the Franchise Agreement has not otherwise been terminated or replaced by a new franchise agreement before the thirtieth anniversary of its Effective Date, then the Franchise Agreement shall continue in effect on a year-to-year basis until terminated pursuant to the terms hereof.

~~(b) As a condition precedent to the effectiveness of this Franchise Agreement, Grantor does hereby reserve and the Grantee hereby gives and grants to the said Grantor the irrevocable right to purchase the Grantee's Facilities and Related Property, as defined below, or such part of such Facilities and Related Property as the Grantor may desire, upon the occurrence of eitherany of the following dates or occurrence of events:~~

~~i. Any announcement or declaration of intent by the Grantee to sell its electric system and facilities serving Neptune Beach, or its entire electric system, to any other entity, including any other electric utilityUpon and within one calendar year following the tenth anniversary of the Effective Date of this Franchise Agreement; or~~

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~~ii. Any announcement, declaration, or initiation of legal process the result of which would be the abandonment of the Grantee's Facilities serving Neptune BeachUpon and within one calendar year following the twentieth anniversary of the Effective Date of this Franchise Agreement.;~~

~~iii. Any time at or after the thirtieth anniversary of the Effective Date of this Franchise Agreement;~~

~~iv. At any time when Beaches Energy announces or indicates its intention to sell its electric distribution facilities located in the City to any entity, including any other electric utility; or~~

~~v. Any time at or after the occurrence of certain potential events or termination of this Franchise Agreement pursuant to Sections 11, 12, 14, or 16 hereof.~~

~~For clarity, the Grantor's Right to Purchase is a right that may be exercised by the Grantor giving notice to the Grantee, within the time periods specified above, of its intent to proceed with the purchase pursuant to the Grantor's Right to Purchase. For further clarity, the Grantor's Right to Purchase under the circumstances defined above shall survive any termination of this Franchise Agreement for any reason.~~

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~~These provisions do not require that the purchase be completed within any particular such time periods, provided, however, that beginning within a reasonable time after the Grantor delivers such written notice to Grantee, the Grantor will take material steps to purchase the Grantee's Facilities in accordance with this Section 2(b). With respect to the rights granted pursuant to Sections 2(b)(i) and 2(b)(ii) above, if Grantor does not elect to exercise its Right to Purchase within one calendar year following either respective anniversary, then the Grantor's Right to Purchase pursuant to those~~

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~~specified Sections 2(b)(i) or 2(b)(ii) shall expire, but such expiration shall in no way impact Grantor's Right to Purchase pursuant to any other provisions hereof. Nothing herein shall require the Grantor to acquire all of the Grantee's Facilities and Related Property.~~

~~The Right to Purchase reserved by Grantor and granted by Grantee hereby is the right to purchase the Grantee's Facilities, as defined above, and related property of the Grantee used in operating its electric system within the City. Such related property, hereinafter referred to as the Grantee's "Related Property," includes all of the Grantee's property and property interests other than its Facilities, as defined above, including all real property, interests in real property, any improvements or fixtures on such real property, vehicles, equipment, materials, and supplies, within the Grantor's corporate limits subject to this Franchise Agreement used under or in connection with the franchise hereby granted. The amount to be paid shall include the reproduction cost of the property sought to be acquired, less depreciation, together with the going concern value and severance costs; provided further, that if the Grantor exercises its Right to Purchase because the Grantee plans to sell its Facilities to another utility, then the amount to be paid by the Grantor shall also be reduced by any remaining unamortized amount of Contributions in Aid of Construction paid by the Grantor to the Grantee for any underground facilities installations (whether conversions or new installations). All closing costs of such purchase shall be borne by Grantor. If the Grantor and Grantee are unable to agree upon the amount to be paid, the amount shall be determined in a declaratory action which may be instituted by either Grantor or Grantee. Any such declaratory action shall be brought in a court~~

~~of competent jurisdiction in Duval County, Florida. Each party shall bear its own experts' and attorneys' fees and costs incurred in connection with such declaratory action.~~

Section 3. Obligation to Supply Electrical Energy; Reliability; Force Majeure. Beaches Energy shall, at its sole cost and expense, furnish and provide reasonably uninterrupted service sufficient to meet the requirements of its ~~c~~Customers in the City of Neptune Beach; provided, however, that Beaches Energy shall not be liable or responsible for interruption of service or voltage fluctuations that result from fire, strike, riot, vandalism, explosion, failure of defective equipment or materials, flood, windstorm including named tropical storm systems and tornadoes, lightning, accident, acts of God, acts of the public enemy, any act by the supplier of bulk electrical energy to Beaches Energy, or other acts beyond the control of Beaches Energy, but Beaches Energy shall be prompt and diligent in removing and overcoming the cause or causes of any such interruptions to the extent reasonably practicable. Nothing herein contained shall be construed as permitting Beaches Energy to refuse to deliver electrical energy to Customers in the City of Neptune Beach after the cause of any interruption has been removed.

Beaches Energy does not guarantee that the supply of electrical energy pursuant to this Franchise Agreement shall be free from interruption occasioned by any of the causes heretofore mentioned, and it is agreed that such interruptions shall not constitute a breach of this Franchise Agreement on the part of Beaches Energy. With respect to the distribution of electrical energy, Beaches Energy shall not discriminate among its ~~customers~~Customers, including the City of Neptune Beach and ~~c~~Customers located therein and also including ~~c~~Customers located in other parts of Grantee's service area outside the city limits of the City of Jacksonville Beach, and all services rendered hereunder shall be on an equal basis.

Unless otherwise expressly agreed to in writing by the Parties, no termination of this Franchise Agreement shall relieve either the Grantee or any of its successors or assigns of the Grantee's obligation to provide reasonably reliable electric service at lawful rates.

Section 4. Installation, Operation and Maintenance of Facilities. The Facilities of the Grantee shall be installed, located or relocated, erected, maintained, and operated in accordance with all laws, rules, and regulations applicable to the Grantee and the operation of its electric system, including without limitation ordinances and rules and regulations duly adopted and in effect within the City of Neptune Beach, provided that such ordinances, rules, and regulations shall be non-discriminatory and shall not make any adverse distinction between Grantee an~~y~~d any other person in intent, effect, and application. To avoid conflicts with traffic, the location or relocation of the Grantee's Facilities shall be made in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining of the Grantee's Facilities in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations: (a) shall not prohibit nor limit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with vehicular (including bicycles) and pedestrian traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its Customers, and (c) shall not require the relocation of any of the

Grantee's Facilities installed before or after the Effective Date (as defined in Section 26 herein) of this Franchise Agreement in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed Facilities to unreasonably interfere with motor vehicular traffic. Any relocation of Grantee's Facilities due to such widening or changes in the configuration of the paved portions of public rights-of-way by the Grantor, ~~-~~shall be accomplished at the sole expense of the Grantor.~~; provided, however, i~~If such relocations of the Grantee's Facilities are due to widening or changes in the configurations of public rights-of-way that are owned by~~the decision of authority(ies)~~ FDOT or the City of Jacksonville~~other than the Grantor~~, such relocation shall be made by the Grantee at its sole cost and expense.~~; provided further, however, that, relocation of Grantee's Facilities made necessary, by FDOT or otherwise, due to a decision to relocate the current median-placed-street lights on US Highway AIA from Atlantic Boulevard to the southern corporate limits of the City of Neptune Beach shall be accomplished at the sole expense of the Grantor, unless otherwise agreed by the Parties. The Parties hereby acknowledge their mutual intent to coordinate on the relocation of such currently median-placed-street lights.~~ The FDOT owns the median-placed street lights on State Highway A1A from Atlantic Boulevard to the southern corporate limits of the City of Neptune Beach. If a decision by the FDOT requires the relocation of part or all of the existing median-placed street lights, and if such relocation of street light facilities necessitates the relocation of any of Grantee's Facilities, Grantor and Grantee agree that such relocation of Grantee's Facilities shall be accomplished at the sole expense of FDOT. Grantor and Grantee further agree to coordinate and cooperate, to the maximum extent possible, to ensure that such relocation of Grantee’s Facilities is accomplished at the sole expense of FDOT. In the event that FDOT cannot be required to bear the expense of such relocation of Grantee’s Facilities, then Grantor and Grantee will negotiate a mutually acceptable resolution of all issues relating to the relocation of the Grantee’s Facilities. If the relocation of the median-placed street lights is the result of a request by the Grantor, then the relocation of Grantee’s Facilities shall be accomplished at the sole expense of the Grantor. The Grantor hereby agrees that for all decisions it makes as to widening or changes in the configuration of the paved portions of public rights-of-way that may have an impact on the Grantee, the Grantor shall (x) use reasonable efforts to minimize impacts on the Grantee and (y) reasonably communicate with the Grantee in advance of its final decision so that the Grantee has the right to evaluate the proposed decision of the Grantor and provider feedback to the Grantor on such proposed decision. Such rules and regulations shall recognize that above-grade Facilities of the Grantee installed after the Effective Date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible, and such installation shall be consistent with the Florida Department of Transportation’s Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

The Grantee’s rights to operate its Facilities are and shall remain subject to all applicable provisions of the Code of the City of Neptune Beach, all applicable and valid rules and regulations of the City of Neptune Beach, and all applicable laws, rules, and regulations of Duval County, the State of Florida, and the United States, as such laws, rules and regulations may be amended from time to time.

When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its Facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. Nothing in this Franchise Agreement shall limit any entitlement or other right that the Grantee has to receive reimbursement of its costs from persons other than the Grantor.

Section 5. Indemnity. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, location, relocation, operation, or maintenance by the Grantee of its Facilities hereunder due to Grantee's negligence or other misconduct, and the acceptance of this Franchise Agreement shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, or other misconduct of the Grantee in the construction, location, relocation, operation, or maintenance of the Facilities of Grantee's electric system subject to this Franchise Agreement. Notwithstanding the foregoing in this Section 5, the Grantee's indemnification and hold harmless obligations to the Grantor shall be limited as the Grantee's liability is limited by section 728.28, Florida Statutes, and no part of this Franchise Agreement is intended to be a waiver of any rights of sovereign immunity that the Grantee may possess or assert under applicable law.

Section 6. Underground Electric Facilities. (a) To promote the public health, safety, and welfare of the inhabitants of the City of Neptune Beach and of all persons and entities who live, work, and conduct their business therein, and subject to the terms and conditions of this Franchise Agreement, Grantor plans to undertake the conversion of all overhead utility facilities within the Grantor's corporate limits to underground facilities to the ~~maximum~~ extent technically and economically feasible, and Grantee will communicate regularly, and otherwise as requested by Grantor, on the status of its related undergrounding plans~~as expeditiously as possible~~. The utility facilities to be converted include the Grantee's electrical distribution facilities and all other overhead utility facilities, including telecommunications, cable television, broadband, internet, fiber, and similar facilities, that are presently installed using overhead facilities and equipment; provided, however, that Grantee takes no responsibility or liability for the overhead utilities facilities of any utility provider other than Grantee.

(b) In the public interest, and as consideration for this Franchise Agreement, Grantee agrees that it will cooperate in good faith with Grantor to facilitate Grantor's plan to complete its contemplated undergrounding project(s), subject to the terms and conditions of this Franchise Agreement, at the lowest reasonable cost to Grantor that is consistent with good engineering practice; good utility practice; all applicable codes and standards, including without limitation the National Electrical Safety Code; and basic principles of fair and equitable cost allocation and rate structure that recognize the costs and benefits, including avoided operating, maintenance, and storm restoration cost savings, that result from having electric distribution facilities placed underground. Grantee expressly agrees that it will provide Grantor with all reasonably necessary information, including sufficient advance notice of any planned upgrades or "hardening" projects that Grantee plans to implement on its distribution facilities in the City, ~~to enable~~ so that the City can undertake efforts to minimize its costs for any part or phase of its undergrounding project(s). This covenant is specifically intended to enable the City to avoid certain costs, including the costs for removal of existing facilities and compensation for the remaining net book value of existing facilities that would be increased if the Grantee were to replace existing facilities before the City is reasonably able to convert them to underground facilities.

(c) The Parties also agree to cooperate and coordinate with each other and with other providers of utility services in the City to ~~ensure that~~facilitate the conversion of all utility-type facilities to underground facilities ~~is~~ to be accomplished in an orderly and cost-effective manner.

(d) Grantee agrees to provide, upon request by the Grantor and at no cost to the Grantor, a non-binding or "ballpark" cost estimate of the cost and required contribution payment in aid of construction ("CIAC") for any underground project(s) proposed by the Grantor. Grantee further agrees to provide a "Binding Cost Estimate" for any underground construction or conversion project as requested by the Grantor at a reasonable charge sufficient to cover the costs for engineering and design of the proposed underground project; this charge shall be considered to be a deposit (the "engineering deposit") to cover the cost of engineering work necessary to accurately estimate the cost of a particular underground project, and shall be applied as a credit to the total cost of any project if the Grantor proceeds with such project. Any Binding Cost Estimate shall be good for a period of 180 days from the date on which it is delivered to the Grantor, and Grantee shall not increase the cost of the project by more than ten (10) percent from the amount of the Binding Cost Estimate.

(e) The Grantor shall have the right, or the Grantee may elect, to have the Grantor ~~to~~ engage its own contractors to construct and install all or part of any proposed underground distribution facilities, provided that: (i) all such work meets the construction standards and requirements of the Grantee, including Grantee's right to conduct a final inspection and approval of such work~~,~~; ~~and~~ (ii) that Grantor's contractors are approved contractors of Grantee; and (iii) Grantee and Grantor have reasonably coordinated and agreed upon the timing, schedule, and mitigation of impacts on Grantee and Grantee's system associated with such work. ~~If Grantee elects to have the Grantor perform any underground conversion project, the Parties may, but are not required to, negotiate to have any Contribution in Aid of Construction ("CIAC") required for such project recovered by a separate charge on Grantor's bills to customers in Neptune Beach.~~

(f) Grantor hereby affirms that it recognizes that, as the conversion of Grantee's overhead facilities to underground facilities is completed and each section or area of underground electrical facilities becomes operational, those facilities will be owned by the Grantee, and, as such, Grantor hereby acknowledges it has no right and shall not direct the Grantee's means and methods of undergrounding, including overhead conversion to underground facilities or installing new underground facilities. Both Grantor and Grantee further recognize and affirm that Grantor's decisions on undergrounding of existing overhead facilities are based on economics and reliability, not aesthetics. Notwithstanding any other provision or term of this Franchise Agreement, with respect to any and all undergrounding of Grantee's Facilities that are driven, prioritized, or requested by Grantor for or related to aesthetic concerns, Grantor shall be fully responsible and liable for all costs and expenses related to such underground work ~~such underground facilities will be part of Grantee’s Facilities that the Grantor would have the right to acquire pursuant to its Right to Purchase as set forth herein, in the event that the Grantor exercises its Right to Purchase; provided, that if the Grantor exercises its Right to Purchase because the Grantee plans to sell its Facilities to another utility, then the amount to be paid by the Grantor shall also be reduced by any remaining unamortized amount of CIACs paid by the Grantor to the Grantee for any underground facilities installations (whether conversions or new underground facilities installations). .~~

Section 7. Payment in Lieu of Taxes. The City of Jacksonville Beach, its successors and assigns, shall pay to the City of Neptune Beach and its successors and assigns an amount that will equal $0.00302 per kilowatt-hour for all metered electrical energy sold during each calendar year of this agreement to all customers, including the City of Neptune Beach, within the corporate limits of the City of Neptune Beach. The aforementioned payment to the City of Neptune Beach by the ~~City of Jacksonville~~ Beaches Energy shall be made monthly on or before the last day of the calendar month immediately following the calendar month during which the sales occurred. Payment to the City of Neptune Beach shall not include any payment for kilowatt-hours used by streetlights for which service is billed under ~~Jacksonville~~ Beache~~’~~s Energy’s flat-rate charges for such lighting service, and no payment shall be made on sales or revenues collected by ~~the City of Jacksonville~~ Beaches Energy for other electric companies, late charges, connection or reconnection charges, electric service installation charges, appliance repair charges, service charges, nor on sales tax collected on behalf of the

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State of Florida. Such payment shall be accepted by the City of Neptune Beach in lieu of any property, privilege, occupation, franchise, or other tax against the electrical distribution system situated in the City of Neptune Beach or the right or privilege of carrying on and conducting the business of selling and delivering electrical energy as contemplated hereunder. The remittances to the City of Neptune Beach shall be accompanied by a statement showing the amount of gross metered kilowatt-hours sold by ~~the City of Jacksonville~~ Beaches Energy in the City of Neptune Beach. ~~The City of Jacksonville~~ Beaches Energy shall keep proper records of its gross sales and revenues derived from the provision of electric service within the corporate limits of the City of Neptune Beach and such records shall be kept open to inspection at all reasonable times by the duly authorized representative of the City of Neptune Beach. Said authorized representatives are hereby given the right of access to and full authority to inspect, examine, audit, and verify such records relating to the sale of electrical energy within the corporate limits of the City of Neptune Beach.

The Parties expressly agree that the above-stated ~~Franchise F~~fee ~~payment~~payment provisions have been freely bargained for and represent fair and just compensation relative to the fair rental value of the rights-of-way and the other consideration given by the Grantor~~City~~ to the Grantee~~Beaches Energy~~ pursuant to this Franchise Agreement. In recognition of the foregoing agreement, each Party, intending to be legally bound, agrees not to contest or seek to limit or change the amount of such~~the Franchise~~ f~~F~~ee provided for herein in any legal, regulatory, or legislative proceedings of any type whatsoever~~, excepting any changes resulting from the application of the Favored Nations provisions in Section 11 hereof~~; provided, however, that if at any time during the term of this Franchise Agreement Grantor notifies Beaches Energy that it desires to impose an additional franchise fee in support of Grantor's undergrounding project(s), which the Parties hereby acknowledge and agree that Beaches Energy will be entitled to pass along to Customers within the corporate boundaries of the City of Neptune Beach as a separate retail billing line item, the Parties will use good faith, reasonable efforts to negotiate amendments or supplements to this Franchise Agreement to provide therefor~~e~~.

Section 8. Grantor's Obligations and Reserved Rights. As a further consideration, during the term of this Franchise Agreement or any extension thereof~~, and subject to the Grantor's Right to Purchase Grantee's Facilities in the City pursuant to this Franchise Agreement, including such Right to Purchase that may vest upon termination of this Franchise Agreement as set forth herein,~~ the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, and (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party (or third parties) to any other retail customer's facility or facilities, provided that the City of Neptune Beach shall not be considered a "third party" or an "other retail customer" for purposes of this provision.

Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions that are subject to the provisions of the

Federal Power Act. The Grantor retains the right to generate and distribute electric power for its own use, subject to the requirements of Florida law, and the right to operate emergency generating facilities owned by the Grantor for purposes of serving critical facilities (e.g., nursing homes, hospitals, water and wastewater treatment plants, and similar facilities) during declared emergencies such as hurricanes or tropical storms.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility (or facilities) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions that have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person, provided that Grantee shall ensure by all means necessary that such purchases by the Grantor shall be made at the rates offered by the Grantee for the term of such transaction, and provided further that, if for any reason the Grantee does not honor its obligation to serve the Grantor’s facilities at the rates offered by the Grantee for the term of the transaction, such failure shall entitle Grantor to terminate the transaction and purchase electric capacity and/or electric energy from another provider. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, then the Grantor shall be permitted and entitled to enter into the proposed transaction with the other person, and all of the terms and conditions of this Franchise Agreement shall remain in effect. In the event of a dispute as to whether the Grantee has offered rates, terms, and conditions what are equal to or better than those offered by the other person, it is the intent of the Parties that the determination of such dispute shall be made on an objective basis to the maximum extent possible. If the Parties are unable to agree, then the Parties agree to submit the dispute to binding arbitration pursuant to the arbitration protocols of the American Arbitration Association; the Parties will each bear their own costs in any such arbitration proceedings.

The Grantor may also, if permitted by law and in compliance with any applicable provisions of Grantee's tariffs, (i) generate renewable electricity at any facility or property owned by the Grantor for storage or utilization at that facility, property, or other Grantor facilities, operations or equipment; (ii) use renewable energy sources to generate electricity for use in demonstration projects or at the Grantor's facilities; (iii) engage in net metering programs in accordance with any applicable Grantee tariffs; and (iv) sell electricity to the Grantee or other wholesale purchaser in compliance with applicable rules and regulations controlling such transactions.

Section 9. Streetlight Facilities Installation and Maintenance. The Grantee shall provide streetlighting service and private lighting service pursuant to its tariffs as approved by the City Council of Jacksonville Beach. The Grantee commits to work toward converting its existing streetlighting and private lighting luminaires to Light

Emitting Diode (LED) technology as expeditiously as possible, consistent with commercially reasonable principles in the best interests of all of Grantee's customers.

Section 10. Joint Use of Poles, Conduits, and Similar Facilities. The Grantee shall have the right to enter into such contracts or agreements concerning the joint use of, or attachment to, its poles, conduits, or other facilities for the furnishing of telephone, telegraph, cable television, broadband, internet, and similar or other services as it may in its discretion desire. No such joint use or attachment agreements shall be construed or applied to limit or restrict the Grantor's plans to convert existing utility facilities from overhead to underground facilities and service, except that the Grantee hereby expressly disclaims any promise to the Grantor that undergrounding will eliminate all above ground facilities that are subject to joint use or other attachment agreements. The Grantee agrees to use its reasonable efforts to cause counterparties under its joint use or other attachment agreements to remove facilities from existing poles after undergrounding of the Grantee's Facilities, but nothing in this Section 10 or otherwise is a guarantee or promise that the Grantee will secure such counterparties' agreement and cooperation. Any and all income derived from said joint use or other attachment agreements shall accrue solely and exclusively to the Grantee; provided, however, nothing herein shall be construed to prevent either the granting of a franchise for any such services by the City of Neptune Beach to any providers thereof or the retention of all income from such franchises by the Grantor.

Section 11. ~~Reciprocal Favored Nations Provisions. As part of the mutual and reciprocal exchange of consideration pursuant to this Franchise Agreement, the Parties hereby agree to the following reciprocal covenants to offer improved terms to each other~~

~~upon the occurrence of certain conditions or events, such terms being generally recognized as "Favored Nations" provisions in agreements of this type.~~

~~(a) If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the City in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this Franchise Agreement if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this Franchise Agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice. Any such termination of this Franchise Agreement by the Grantee shall result in the immediate vesting of the Grantor's Right to Purchase set forth in Section 2(b) of this Franchise Agreement.~~

~~(b) Upon request, Grantee shall furnish the Grantor a copy of all franchise agreements with other municipalities and counties that it is granted, or that it has been granted, from time to time during the term of this Franchise Agreement. If the Grantee~~

~~enters into a franchise agreement or similar agreement with any other local government entity that provides for a franchise fee rate greater than the maximum rate allowable under this Franchise Agreement, under the same terms and conditions as specified in Section 7 hereof, the Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 7 hereof shall be no greater than that percentage which the Grantee has agreed to use as a basis for the calculation of payments to the other municipality or county, provided, however, that such new franchise agreement shall include additional benefits to the Grantee, in addition to all benefits provided herein, at least equal to those provided by its franchise agreement with the other municipality. Subject to all limitations, terms and conditions specified in the preceding sentence, the Grantor shall have the sole discretion to determine the percentage to be used in calculating monthly Franchise Fee payments, and the Grantee shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement. It is the intent of the Parties that any modifications to this Franchise Agreement pursuant to this subsection are to be as objective as possible and that the reciprocal modifications contemplated hereby are to be as close as is reasonably practicable to the respective changes in the franchise fee rate to be received by the City and the other terms and conditions realized by the Grantee in the franchise agreement that gave rise to the modifications contemplated by this subsection. With respect to any dispute between the Parties as to whether the modifications requested or demanded by the Grantor or the Grantee are objective and as close as reasonably practicable to those in the reference~~

~~franchise agreement, if the Parties are unable to agree between themselves, they agree to submit any such dispute to binding arbitration pursuant to the arbitration protocols of the American Arbitration Association; the Parties will each bear their own costs in any such arbitration proceedings.~~Public Meetings in Advance of Approval of a Sale, if any, of Beaches Energy's Electric System. Prior to the City Council of the City of Jacksonville Beach, Florida approving the sale of the Beaches Energy electric system, if such event ever were proposed or anticipated to occur, the City Council of Neptune Beach, Florida must be given the opportunity to hold a meeting to address such potential sale of the Beaches Energy electric system, with representatives of Beaches Energy Services present to present information and answer questions. In addition to the foregoing sentence, the City Council of the City of Jacksonville Beach, Florida shall also hold a meeting so that Neptune Beach can send representatives and ask questions of Grantee in a public meeting prior to the meeting at which a final decision to sell the Beaches Energy electric system will be decided.

Section 12. Default by Grantee. Failure on the part of the Grantee to comply in any ~~substantial~~material respect with any of the provisions of this Franchise Agreement shall be grounds for forfeiture of Grantee's rights and privileges hereunder, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal by either Party) by a court of competent jurisdiction that the Grantee has failed to comply in a ~~substantial~~material respect with any of the provisions, terms, or requirements of this Franchise Agreement, and the Grantee shall have six months after such final determination to cure the default before a forfeiture shall result. The Grantor, in its sole discretion, may grant additional time to the Grantee for compliance.

Section 13. Default by Grantor. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this Franchise Agreement, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with vehicular (including motor and bicycle) or pedestrian traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this Franchise Agreement; or (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this Franchise Agreement and entitle the Grantee to withhold a portion of the payments provided for in Section 7 hereof, such portion being demonstrably commensurate with any cost or loss suffered by Grantee as a result of the Grantor's action, until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination, after the expiration or exhaustion of all rights of appeal by either Party, in the matter. The Grantor recognizes and agrees that nothing in this Franchise Agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right as may be provided by law. The Grantee recognizes and agrees that nothing in this Franchise Agreement constitutes or shall be deemed to constitute a waiver of the Grantor's delegated sovereign right of condemnation and that the Grantor, in its sole discretion, may exercise such right as may be provided by law, provided that the Grantor shall not exercise such right so as to violate the Grantor's covenant, set forth in Section 8 hereof, not to compete against the Grantee in the distribution and/or sale of electricity to ultimate consumers during the term of this Franchise Agreement.

Section 14. Change in Law. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality, or political subdivision of either of them having jurisdiction), any person is permitted to provide electric service within the incorporated areas of the Grantor to a Customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this Franchise Agreement if such competitive disadvantage is not remedied to the reasonable satisfaction of the Grantee within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the obligations of the Grantee hereunder that cause the competitive disadvantage. The Grantee and the Grantor shall then have 90 days in which to negotiate an amendment to this Franchise Agreement that eliminates such competitive disadvantage, as determined in the reasonable discretion of the Grantee. If such competitive disadvantage is not so eliminated within said time period, the Grantee may terminate this Franchise Agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

Section 15. Audit; Accuracy of Billing. (a) The Grantor may, upon reasonable notice and within 90 days after the end of each fiscal year of the Grantor, at the Grantor's expense, examine and audit the records of the Grantee relating directly to the calculation of the Franchise Fee payments for the five years preceding the end of such fiscal year. Such examination shall be during normal business hours at the Grantee's office where such records are maintained, or as otherwise mutually agreed in writing by the Parties. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's Customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit. This provision shall survive termination of this Franchise Agreement.

(b) Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the terms embodied in the 2002 Electric Agreement, or amounts allegedly owed by Grantee to Grantor as of the effective date of this Ordinance, provided that Grantee pays all amounts due and owing to Grantor as of the effective date of this Ordinance, including all amounts due and owing pursuant to any audit then in process.

Section 16. Severability. The provisions of this Franchise Agreement are interdependent upon one another, and if any of the provisions of this Franchise

Agreement are found or adjudged by a court of competent jurisdiction (after the expiration of all rights of appeal) to be invalid, illegal, void, or of no effect, such finding or adjudication shall not affect the validity of the remaining provisions for a period of ninety (90) days, during which period the Parties will negotiate in good faith to amend this Franchise Agreement so as to restore to the maximum extent permissible, the original economic bargain embodied in this ordinance. If an agreement to amend the ordinance is not reached at the end of such ninety (90) day period, either party may provide notice to the other declaring this entire Franchise Agreement to be null and void and of no force or effect; provided, however, that in the event that this Franchise Agreement is terminated by either Party pursuant to this provision of this Franchise Agreement, the Grantee expressly recognizes and agrees that the Grantor's Right to Purchase pursuant to Section 2(b) shall survive any such termination and thereupon immediately vest in Grantor.

Section 17. Entire Agreement. This Franchise Agreement is intended to constitute the sole and entire agreement between the Grantor and Grantee with respect to the subject matter hereof and correctly sets forth the rights, duties, and obligations of each of the other as of its date. Any prior agreements, promises, negotiations, or representations with respect to the subject matter hereof not expressly set forth in this Franchise Agreement are of no force or effect, and this supersedes all prior drafts and verbal or written agreements, commitments, or understandings with respect to the subject matter hereof, which shall not be used to vary or contradict the expressed terms herein. Both Parties have been represented by counsel of their choosing with regard to this Franchise Agreement. The Parties agree expressly that the Franchise Fee provisions set forth herein were freely bargained for and represent fair consideration for the terms provided by the Grantor to Grantee under this Franchise Agreement and that each Party agrees not to contest the amount of the Franchise Fee provided herein, excepting any changes resulting from the application of the Favored Nations provisions in Section 11 hereof.

Section 18. Certain Definitions. As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority, or any other entity of whatever nature.

Section 19. Successors and Assigns; Assignment. Whenever in this Franchise Agreement either the City of Neptune Beach or the City of Jacksonville Beach (or Beaches Energy Services) is named or referred to, it shall be deemed and understood to include the respective successor, successors, or assigns of either Party, 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 of the Grantee. Any assignment by either Party shall be effective only upon the written consent of the non-assigning Party, which consent shall not be unreasonably withheld or delayed.

Section 20. Modification. It is further understood that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith and approved by the Grantor's City Council.

Section 21. Governing Laws; Compliance with Federal, State, and Local Laws. This Franchise Agreement shall be governed and construed by the applicable laws of the United States, State of Florida, and the Codes and Ordinances of the Grantor to the extent not preempted. The Parties agree to comply with and observe all applicable Federal, State, and valid and non-preempted local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

Section 22. Preliminary Dispute Resolution. The Parties agree that it is in each of their respective best interests to avoid costly litigation or arbitration as a means of resolving disputes which may arise hereunder. Accordingly, the Parties agree that in the event of any dispute between the Parties, ~~the Parties shall adhere to and comply with the provisions of Chapter 164, Florida Statutes. The Parties further agree that, to the extent practicable, before invoking the provisions of Chapter 164, Florida Statutes,~~ senior management of each Party will engage in an in-person meeting to attempt to resolve any dispute within thirty (30) days of notification of the dispute or as mutually agreed to by the Parties; the Parties further agree to continue discussions toward resolving the dispute for a reasonable time relative to the nature and complexity of the dispute. Such meeting and discussions shall be required prior filing an action in an appropriate court, unless either Party determines that it will be irreparably harmed as a result of such delay.

Section 23. Venue. In the event that any legal proceeding is brought to enforce the terms of this Franchise Agreement, it shall be brought exclusively in Duval County, Florida, or, if applicable, in the U.S. District Court for the Northern District of Florida.

Section 24. Notices. Except in exigent circumstances, and except as may otherwise be specifically provided for in this Franchise Agreement, all notices by either party shall be made by United States Certified Mail, return receipt requested, or via a nationally recognized overnight courier service. Any notice given by facsimile or email is deemed to be supplementary, and does not alone constitute notice hereunder, unless acknowledged as received by the other party. All notices shall be addressed as follows:

To the City:	To Grantee:
City of Neptune Beach City Hall 116 First Street Neptune Beach, Florida 32266 Attn: City Manager	Beaches Energy Services City Hall 11 North 3rd Street Jacksonville Beach, Florida 32250 Attn: Utilities Director/City Manager
Copy to:	Copy to:
City of Neptune Beach City Hall 116 First Street Neptune Beach, Florida 32266 Attn: City Attorney	Beaches Energy Services City Hall 11 North 3rd Street Jacksonville Beach, Florida 32250 Attn: City Attorney

Any changes to the above shall be in writing and provided to the other Party as soon as practicable.

Section 25. Repealer; Surrender of Existing Franchise. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict. As a further consideration for the granting of the franchise and associated rights and privileges granted hereby, the Grantee surrenders all franchises and associated rights and privileges heretofore granted by the City of Neptune Beach or the State of Florida for any of the purposes stated in Section 1 or any other sections of this Franchise Agreement and now enjoyed by Grantee in the City of Neptune Beach; provided, however, that such surrender shall not be effective unless and until: (a) this Ordinance shall be finally adopted by the City, (b) the Franchise Agreement created and established hereby shall be accepted by the Grantee, and (c) the Franchise

Agreement and associated rights and privileges granted hereby shall be validly in force and effect pursuant to such adoption by the City and acceptance by the Grantee.

Section 26. Acceptance of Franchise Agreement; Effective Date. This Ordinance shall be effective to create the Grantee's right to accept the Franchise Agreement under the terms and conditions set forth herein as of the date of its adoption by the City. As a condition precedent to the full effectiveness of the Franchise Agreement embodied in this Ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of the Grantor's adoption of this Ordinance. The date upon which the Grantee files such acceptance shall be the "Effective Date" of the Franchise Agreement as between the City of Neptune Beach and the City of Jacksonville Beach, d/b/a Beaches Energy Services.

PASSED on first reading this _____ day of _______________, 2025.

PASSED AND ADOPTED on second reading this _____ day of ___________________, 2025.

CITY OF NEPTUNE BEACH FLORIDA

By: ______________________________

ATTEST:

By: ___________________________________ (SEAL)
Clerk of the City of Neptune Beach, Florida

APPROVED AS TO FORM AND LEGALITY

____
City Attorney, City of Neptune Beach, Florida

Sidney C. Bigham, III
Michael P. Bist*
Garvin B. Bowden†
Robert B. Celander
David S. Dee*
Charles R. Gardner*
Robert A. "Gus" Harper, III
Kimberly L. King
John T. LaVia, III
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Timothy J. Perry¥
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Robert Scheffel "Schef" Wright

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Summary of Changes

MEMORANDUM

October 28, 2025

TO: RICHARD PIKE, CITY MANAGER
DERYLE CALHOUN, P.E., CITY ENGINEER

FROM: ROBERT SCHEFFEL WRIGHT

SUBJECT: SUMMARY OF SIGNIFICANT DIFFERENCES BETWEEN 2002 AGREEMENT AND PROPOSED 2025 AGREEMENT

This memo responds to Council Member Rogers's questions regarding changes in the financial and operating responsibilities from the 2002 Electric Service Agreement ("2002 Agreement") between the City of Neptune Beach ("CONB") and the City of Jacksonville Beach, which now operates its electric utility system as Beaches Energy Services ("Beaches Energy" or "Beaches"), to the proposed new 2025 Franchise Agreement ("2025 Franchise"). In addition, the memo provides summaries of significant new provisions and identifies a number of new, but non-controversial, provisions in the 2025 Franchise. Unless specifically noted, section references are to the sections in the new 2025 Franchise.

Changes from 2002 Agreement to 2025 Franchise

Section 1 - Scope of Franchise Granted. The 2002 Agreement granted a franchise to Beaches to operate an electric system and to provide only electric service. The 2025 Franchise grants Beaches a franchise that includes the right to operate an electric system and other utility service facilities, including broadband, communications, dark fiber, and natural gas, but not where such services by Beaches would be in direct competition with similar services provided by CONB.

Section 2 – Term & Termination. The 2002 Agreement had a term of 10 years, thereafter terminable by either party with 6 months' notice. The 2025 Franchise has a term of 30 years, and provides that unless terminated or replaced before the end of the initial 30-year term, it will continue on a year-to-year basis until terminated.

Right to Remove (Section 12 of 2002 Agreement) has been deleted. The 2002 Agreement provided that, upon termination of that Agreement, Beaches Energy would remove its equipment from Neptune Beach. This provision was not rational and probably not lawful and has therefore been deleted from the 2025 Franchise.

New Provisions in 2025 Franchise

Section 4 - Streetlights in Median on A1A: FDOT owns the median-placed streetlights on A1A in CONB. If FDOT requires these lights to be relocated, CONB and Beaches agree that FDOT is to pay for such relocation; however, if FDOT cannot be required to pay for relocation, CONB and Beaches agree to negotiate a mutually acceptable resolution of all issues related to such relocation. If CONB requests or requires such relocation, then CONB is responsible for the costs.

Section 6 - Underground Electric Facilities. New Section 6 of the 2025 Franchise recognizes that CONB intends to pursue conversion of existing overhead ("OH") facilities to underground ("UG") facilities as such conversion projects are feasible. Beaches Energy agrees to cooperate with CONB to facilitate CONB's UG projects at the lowest reasonable cost and to provide notice to CONB of potential "hardening" projects in CONB so that CONB can make decisions to support the most cost-effective pursuit of its UG projects. Beaches also agrees to provide a "ballpark" estimate for any potential UG projects at no cost to CONB, but Beaches may charge a reasonable fee for engineering and design work if necessary in order to provide a firm cost estimate for any UG project. Beaches further agrees that CONB can engage its own contractors to perform the work, subject to such contractors meeting Beaches Energy's requirements. (This is completely reasonable because Beaches Energy will own and be responsible for maintaining any new UG facilities.)

Section 7 – Payment in Lieu of Taxes and Potential Supplemental Franchise Fee to Cover UG Projects. The provision defining the amount of the PILOT fee remains unchanged. While the PILOT payment rate itself (3.02 mills per kWh) translates into a percentage rate of approximately 2.5 percent (lower than typical franchise fee rates) on a residential bill, this arrangement is favorable to Neptune Beach and customers living in Neptune Beach as compared to common electric franchise fee payments. This is because the PILOT amount is paid to Neptune Beach by Beaches Energy from Beaches' general revenues, as opposed to typical utility franchise fees that are applied as an add-on percentage fee on each customer's bill. Additionally, if CONB decides to pursue a UG project, Beaches and CONB agree to negotiate amendments to the 2025 Franchise Agreement by which Beaches will charge a UG Conversion Fee on Beaches' retail service bills to customers within CONB and ensure that funds thus collected are used to pay for the UG project (depends on whether CONB engages its own contractors or agrees to pay Beaches for the project).

Section 8 - Non-Compete Agreement and CONB's Right to Purchase Electricity from Others if Permitted by Law. The 2025 Franchise contains an express non-compete agreement by CONB; this is standard for all electric franchises. The 2025 Franchise also would allow CONB to purchase electricity at retail from others if such purchases are otherwise permitted under Florida law. (This is not permitted at the present time, and the prospects for such retail choice in Florida are quite remote; though not impossible, this would require a change in Florida law.) The 2025 Franchise also expressly permits CONB to generate renewable electricity for its own use.

Section 9 - Streetlight Facilities. Beaches commits to work toward converting its existing streetlighting and private area lighting luminaires to LED technology as expeditiously as commercially reasonable.

Section 11: Public Meetings if Beaches Energy Contemplates Selling Its Electric System. Although CONB requested a right to purchase, the parties ultimately agreed to address a potential sale of Beaches' system to another utility (e.g., FPL or Duke Energy) by providing for notice and public meetings of both City Councils at which issues relating to such possible sale would be discussed. The possibility of such a sale must be considered highly unlikely. In addition to political issues at the Jax Beach level, any purchase of Beaches Energy would require Beaches Energy to pay Beaches' remaining contractual obligation to the Florida Municipal Power Agency ("FMPA") as a member of FMPA's All Requirements Project. That obligation rolls forward on a 30-year basis and is currently estimated to be approximately $500 million; while that would not be an insurmountable barrier for a purchaser such as FPL or Duke, it is obviously a significant cost to any such purchaser.

Additional New Non-Controversial Provisions

Sections 12 & 13: Beefed up default provisions applicable to defaults by either Beaches Energy or CONB.

Section 14: Change in Law provision. This addresses what may happen in the event that retail choice becomes lawful in Florida (again, highly unlikely). Basically the 2025 Franchise gives Beaches the right to terminate the Franchise if this occurs and if the change in law material disadvantages Beaches, provided that the parties will attempt to negotiate replacement provisions. (Provisions such as this have become fairly standard in new franchises in Florida.)

Section 15: Right to Audit. CONB has the right to audit franchise fee payment and billing information; Beaches is obligated to bill and remit accurately.

Sections 16-24: Additional Legal Boilerplate Terms: Severability; Entire Agreement; Definitions; Assignment; Modification of Agreement; Governing Laws; Preliminary Dispute Resolution (by meeting of senior officials); Venue for legal actions; Notices.

Document No. 875

COPY

ELECTRIC SERVICE AGREEMENT

Between

CITY OF JACKSONVILLE BEACH, FLORIDA

and

CITY OF NEPTUNE BEACH, FLORIDA

THIS AGREEMENT, made and entered into this 1st day of October, 2002, by and between the City of Jacksonville Beach, a municipal corporation of the State of Florida, and the City of Neptune Beach, a municipal corporation of the State of Florida, pursuant to the resolutions of their respective councils adopted at public meetings held on October 7, 2002 and Sept. 23, 2002, respectively.

WITNESSETH:

That in consideration of the premises and of the mutual undertakings, covenants, promises and agreements of the respective parties hereto as hereinafter provided, and other valuable considerations moving to each of said parties, it is hereby mutually covenanted and agreed by and between the parties hereto, as follows:

SECTION 1. DATE AND TERM: This Agreement shall become effective on October 1, 2002, and shall continue in effect for a period of ten (10) years, and shall thereafter continue in effect on a year to year basis.

During the initial ten (10) years, this Agreement can not be terminated by either party except for failure to comply in a substantial respect with the provisions of this Agreement.

After the expiration of the initial ten (10) years, this Agreement may be terminated at the option of either party by giving written advance notice of not less than six (6) months prior to the end of any calendar year of its intention to terminate this Agreement at the end of said calendar year.

SECTION 2. RIGHT OF THE CITY OF JACKSONVILLE BEACH TO OPERATE ELECTRIC DISTRIBUTION SYSTEM: Subject to the terms and conditions hereinafter set forth, the City of Jacksonville Beach, and its successors and assigns, shall have and exercise the exclusive right, privilege and authority to construct, maintain and operate in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places of the City of Neptune Beach and its successors, in accordance with established practice with respect to electrical distribution system construction and maintenance, electric light and power facilities including conduits, poles, wires, cables, transformers and the like, for the purpose of supplying electricity to the City of Neptune Beach, its successors, the inhabitants thereof and persons and corporations within and without the limits thereof, and including the operation and maintenance of watt hour meters, the reading thereof and billing and collection for the electrical service rendered. The facilities shall be so located and so erected as to interfere as little as possible with traffic over said streets, alleys, bridges and public places, and with reasonable egress from and ingress to abutting property. When any portion of a street is excavated in the location or relocation of electric facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by the City of Jacksonville Beach at its expense and in as good condition as it was at the time of such excavation.

SECTION 3. OBLIGATION OF THE CITY OF JACKSONVILLE BEACH TO SUPPLY ELECTRICAL ENERGY: The City of Jacksonville Beach shall, at its sole cost and expense, furnish and maintain an adequate modern electrical distribution system in the City of Neptune Beach, sufficient to meet the requirements of the users of electricity therein, and to maintain reasonably uninterrupted service sufficient to meet such requirements; provided, however, that the City of Jacksonville Beach shall not be liable or responsible for interruption of service or voltage fluctuation as the result of fire, strike, riot, vandalism, explosion, failure of defective equipment or materials, flood, windstorm, lightning, accident, acts of God, or the public enemy, any act by the supplier of bulk electrical energy to the City of Jacksonville Beach or other acts beyond the control of the

City of Jacksonville Beach, but the City of Jacksonville Beach shall be prompt and diligent in removing and overcoming the cause or causes of said interruption, but nothing herein contained shall be construed as permitting the City of Jacksonville Beach to refuse to deliver electrical energy after the cause of the interruption has been removed.

The City of Jacksonville Beach does not guarantee that the supply of electrical energy hereunder shall be free from interruption occasioned by any of the causes heretofore mentioned, and it is agreed that such interruption shall not constitute a breach of this contract on the part of the City of Jacksonville Beach. With respect to the distribution of electrical energy, the City of Jacksonville Beach shall not discriminate among its customers, including the City of Neptune Beach, and the services rendered hereunder shall be on an equal basis.

SECTION 4. ELECTRICAL ENERGY CONSUMED BY THE CITY OF NEPTUNE BEACH: All electrical energy consumed by facilities owned, leased, or operated by the City of Neptune Beach except unmetered street lights shall be measured by means of watt hour meters and billing for such electrical energy consumption shall be at the current municipal service rate established by ordinances of the City of Jacksonville Beach and charged to facilities of the City of Jacksonville Beach. Jacksonville Beach shall notify Neptune Beach of any change in the municipal rate at least thirty (30) days prior to the effective date of such change.

SECTION 5. STREET LIGHTS: All non-metered street lights now existing or installed in the future in the City of Neptune Beach shall be maintained, repaired, installed or re-installed or replaced by the City of Jacksonville Beach, including lamps, fixtures, arms, ballasts, photoelectric cells, switches, standards and other appurtenances necessary to the normal maintenance and operation of un-metered street lights, during the life of this agreement.

The City of Neptune Beach shall pay to the City of Jacksonville Beach a monthly flat-rate charge per unmetered street light in accordance with the then current published flat-rate street light charge of the City of Jacksonville Beach as now or hereafter in effect for consumers within the corporate limits of the City of Jacksonville Beach. Such flat-rate monthly charge shall cover all installation and maintenance costs and the cost of electrical energy consumed by said unmetered street lights.

SECTION 6. RATES TO CONSUMERS: The City of Jacksonville Beach shall furnish electrical energy to all consumers within the corporate limits of the City of Neptune Beach in accordance with the published and established schedules of rates and regulations for the purchase of electrical energy, as now or hereafter in effect for consumers, within the corporate limits of the City of Jacksonville Beach. Consumers shall be subject to the rules and regulations of the City of Jacksonville Beach for the purchase of electrical energy, provided, however, that in the event any of such rules and regulations conflict with the terms of this agreement, then and in such event, the terms of this agreement shall control.

SECTION 7. LIABILITY: The City of Neptune Beach shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the City of Jacksonville Beach of its facilities hereunder and the City of Jacksonville Beach agrees to indemnify the City of Neptune Beach and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the City of Neptune Beach by reason of neglect, default or misconduct of the City of Jacksonville Beach in the construction, operation or maintenance of its facility hereunder.

SECTION 8. JOINT POLE USE: The City of Jacksonville Beach shall have the right to enter into such contracts or agreements concerning the joint use of its poles, conduits or other facilities for the erection or furnishing of telephone, telegraph, and cable television service as it may in its discretion desire, so long as it will not unreasonably interfere with the discharge of the obligations of the City of Jacksonville Beach hereunder. Any and all income derived from said joint use of poles, conduits or other facilities shall accrue solely and exclusively to the City of Jacksonville Beach; provided, however, nothing herein shall be construed to either prevent the granting of a franchise for any or all such services by the City of Neptune Beach or the retention of all income from such franchise; and, provided further, in the absence of the grant of any such franchise, no such use for such services shall be permitted by the City of Jacksonville Beach.

SECTION 9. PAYMENT IN LIEU OF TAXES: The City of Jacksonville Beach, its successors and assigns, shall pay to the City of Neptune Beach and its successors an amount that will equal $0.00302 per kilowatt hour for all metered electrical energy sold during each calendar year of this agreement to all customers, including the City of Neptune Beach, within the corporate limits of the City of Neptune Beach. The aforementioned payment to the City of Neptune Beach by the City of Jacksonville Beach shall be made monthly on or before the last day of the calendar month immediately following the calendar month during which the sales occurred. Payment to the City of Neptune Beach shall not include the sales from flat-rate charges for street lights whether such revenues be collected from the City of Neptune Beach or the inhabitants thereof and no payment shall be made on sales or revenues collected by the City of Jacksonville Beach for other electric companies, late charges, connection or reconnection charges, electric service installation charges, appliance repair charges, service charges, nor on sales tax collected on behalf of the State of Florida. Such payment shall be accepted by the City of Neptune Beach in lieu of any property, privilege, occupation, franchise, or other tax against the electrical distribution system situated in the City of Neptune Beach or the right or privilege of carrying on and conducting the business of selling and delivering electrical energy as contemplated hereunder. The remittances to the City of Neptune Beach shall be accompanied by a statement showing the amount of gross metered kilowatt hours sold by the City of Jacksonville Beach in the City of Neptune Beach. The City of Jacksonville Beach shall keep proper records of its gross sales and revenues derived from the provisions of electrical service within the corporate limits of the City of Neptune Beach and such records shall be kept open to inspection at all reasonable times by the duly authorized representatives of the City of Neptune Beach. Said authorized representatives are hereby given the right of access to and full authority to inspect, examine, audit, and verify such records relating to the sale of electrical energy within the corporate limits of the City of Neptune Beach.

SECTION 10. <u>FAILURE TO COMPLY</u>: Failure on the part of the City of Jacksonville Beach to comply in any substantial respect with any of the provisions of this agreement, shall be grounds for cancellation of the agreement, but no such cancellation shall take effect if the reasonableness or propriety thereof is protested by the City of Jacksonville Beach, until a court of competent jurisdiction, with right of appeal in either party, shall have found that the City of Jacksonville Beach has failed to comply in a substantial respect with any of the provisions of this agreement, and the City of Jacksonville Beach shall have six (6) months after the final determination of the question, to make good the default before a cancellation shall result, with the right in the City of Neptune Beach at its discretion to grant such additional time to the City of Jacksonville Beach for compliance as necessities in the case require.

SECTION 11. In the event that during the life of this agreement the City of Jacksonville Beach shall negotiate a similar agreement with another municipality, then and in that event the City of Neptune Beach shall have the right and privilege to substitute any section, paragraph or provision of such agreement which may be considered more favorable than that contained herein. Any such substitution shall not be held to change, modify or affect the validity of any other section, paragraph or provision of this franchise.

SECTION 12. <u>RIGHT TO REMOVE</u>: Upon the termination of this agreement upon notice, by forfeiture or otherwise, every right and privilege of the City of Jacksonville Beach to have, operate or maintain; or to furnish or distribute electrical energy in the City of Neptune Beach shall cease and desist, and the City of Jacksonville Beach shall have a period of twelve (12) months from the date of such termination within which to remove its equipment and property from the City of Neptune Beach; and the City of Neptune Beach hereby disclaims any right, title, claim, interest or estate in, of and to the physical equipment and properties constituting the electrical distributions system as now located in the City of Neptune Beach or as may be extended or replaced under the provisions of this agreement.

SECTION 13. SUPERSEDURE: This agreement supersedes, as of the effective date hereof, all previous contracts or representations, whether written or verbal, heretofore in effect by the City of Jacksonville Beach and the City of Neptune Beach with respect to matters herein contained, and constitutes the sole contract by the parties hereto concerning such matters.

IN WITNESS WHEREOF the City of Jacksonville Beach and the City of Neptune Beach have each caused these presents to be duly executed in their respective names, by their respective officers thereunto duly authorized, and their respective seals to be hereto affixed, the day and the year first above written.

ATTEST:	CITY OF JACKSONVILLE BEACH, FLORIDA
Judy L. Bullock	Bob D. Marsden
~~Heidi Reagan,~~ City Clerk ASST.	Bob D. Marsden, Mayor
Judy L. Bullock	George D. Forbes
	George D. Forbes, City Manager

ATTEST:	CITY OF NEPTUNE BEACH, FLORIDA
Lisa Volpe	Richard Brown
Lisa Volpe, City Clerk	Richard Brown, Mayor

CERTIFICATION

I certify this to be a true and correct copy of the official record on file in the office of the City Clerk.

WITNESSETH my hand and official seal of the City of Neptune Beach, Florida.

this the 27th day of September, 2018

Catherine Ponson City Clerk