

Regular Workshop – March 17, 2014
Agenda Item 7

- Agenda Item:** Proposed Ordinance 2014-13, Florida Power and Light (FPL) Franchise Agreement
- Presenter:** Town Manager and Staff
- Summary:** In May 1984 the Town granted FPL a thirty (30) year Franchise Agreement to provide exclusive electric service to the Town's residents and businesses. This Franchise Agreement is due to expire on May 29, 2014. The Town Manager, assisted by the Town Attorney and our outside counsel, have negotiated a new agreement with representatives of FPL.
- Attachments:** 3-14-14, Memo Public Works Director to Manager; Ordinance 84-8, Current FPL Franchise Agreement; Proposed Ordinance 2014-13, Electric Franchise Agreement; 2-6-14 Memo, Wright to Manager; PowerPoint Presentation.
- Recommended Action:** Pending discussion, forward Ordinance 2014-13 to the April 7, 2014 Regular Meeting for first reading.

M E M O R A N D U M

Date: March 05, 2014

TO: Dave Bullock, Town Manager
FROM: Juan Florensa, Public Works Director
SUBJECT: Proposed Ordinance 2014-13, Florida Power & Light Franchise Agreement

In May 1984 the Town granted Florida Power & Light a thirty (30) year Franchise (Ordinance 84-8, attached) to provide exclusive electric service to the Town's residents. This Franchise Agreement is due to expire on May 29, 2014.

For the past several months, the Town Manager, assisted by the Town Attorney and our outside counsel, have been discussing and negotiating with Florida Power & Light representatives to develop a new Franchise Agreement.

The attached proposed Ordinance reflects the results of these negotiations. The negotiations were straightforward, cordial, and productive. FPL's negotiating team was led locally by Ms. Rae Dowling, FPL External Affairs Manager, with substantial input from an FPL attorney, Mr. Patrick Bryan, in Juno Beach. The Town's Special Legal Counsel, Mr. Robert Scheffel (Schef) Wright was the principal negotiator for the Town along with Town Attorney, Maggie Mooney-Portale. Schef Wright and Maggie Mooney-Portale kept the Town Manager and I fully informed throughout the process.

Salient items of the proposed Franchise Agreement are:

- Term: Thirty (30) Years
- Franchise Fee: 6.0% (currently 5.9%)
- Limits FPL to provide only free of competition, retail electricity service
- Limits FPL to locate services only on public right of ways.
- Provides indemnification to the Town for FPL's negligence or fault in FPL's construction or maintenance activities in the Town's public right of ways and reasonable attorney's fees in defending any such claims.
- "Most Favored Nation" clause in favor of the Town stating that if FPL agrees to pay a higher franchise fee to any municipality of comparable population in Sarasota, Manatee, Charlotte, Collier or Lee County, FPL would negotiate a new Franchise Agreement granting a higher rate to the Town.

Together with the attached proposed Ordinance, I am providing Schef Wright's February 6, 2014 memorandum that fully explains each section of the proposed agreement as well as a PowerPoint presentation which sets forth the main provisions. The memorandum also summarizes and provides details of the negotiations, and the Town negotiating team's reasons and positions in the final document.

Schef Wright will attend the March 17, 2014 Regular Workshop Meeting to respond to any questions the Town Commission may have.

Proposed Ordinance 2014-13 is placed on the March 17, 2014 Regular Workshop Meeting for Town Commission consideration.

May 2014

ORDINANCE 84-8

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF LONGBOAT KEY; PROVIDING FOR SEVERABILITY, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY:

Section 1. There is hereby granted to Florida Power & Light Company (herein called the "Grantee"), its successors and assigns, the non-exclusive right, privilege or franchise 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 Town of Longboat Key, Florida (herein called the "Grantor") and its successors, in accordance with established practice with respect to electrical construction and maintenance, for the period of 30 years from the date of acceptance hereof, electric light and power facilities (including conduits, poles, wires and transmission lines, and, for its own use, telephone and telegraph lines) for the purpose of supplying electricity to the Grantor and its successors, and inhabitants thereof, and persons and corporations beyond the limits thereof.

Section 2. As a condition precedent to the taking effect of this grant, the Grantee shall have filed its acceptance hereof with the Grantor's Clerk within 30 days hereof.

Section 3. The facilities of the Grantee shall be so located or relocated 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. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of the Grantor may designate for the purpose, but not so as to unreasonably interfere with the proper operation of the Grantee's facilities and service. When any portion of a street is excavated by the Grantee in the location or relocation of any of its 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 Grantee at its expense and in a condition as good as it was at the time of such excavation.

Section 4. Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance 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, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5. All rates and rules and regulations established by the Grantee from time to time shall at all times be reasonable and the Grantee's rates for electricity shall at all times be subject to such regulation as may be provided by law.

Section 6. No later than 60 days after the first anniversary date of this grant, and no later than 60 days after each succeeding anniversary date of this grant, the Grantee, its successors and assigns, shall have paid to the Grantor and its successors an amount which added to the amount of all taxes as assessed, levied, or imposed (without regard to any discount for early payment or any interest or penalty for late payment), licenses, and other impositions levied or imposed by the Grantor upon the Grantee's electric property, business, or operations, and those of the Grantee's electric subsidiaries for the preceding tax year, will equal six percent of the Grantee's revenues from the sale of electrical energy to residential, commercial and industrial customers within the corporate limits of the Grantor for the 12 fiscal months preceding the applicable anniversary date.

Section 7. Payment of the amount to be paid to the Grantor by the Grantee under the terms of Section 6 hereof shall be made in advance by estimated monthly installments commencing 90 days after the effective date of this grant. Each estimated monthly installment shall be calculated on the basis of 90% of the Grantee's revenues (as defined in Section 6) for the monthly billing period ending 60 days prior to each scheduled monthly payment. It is also understood that for purposes of calculating each monthly installment, all taxes, licenses, and other impositions shall be

estimated on the basis of the latest data available for all such amounts imposed on the Grantee, before being prorated monthly. The final installment for each fiscal year of this grant shall be adjusted to reflect any underpayment or overpayment resulting from estimated monthly installments made for said fiscal year.

Section 8. As a further consideration of this franchise, the Grantor agrees not to engage in the business of distributing and selling electricity during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns.

Section 9. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this ordinance shall be grounds for forfeiture of this grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until a court of competent jurisdiction (with right of appeal in either party) shall have found that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after the final determination of the question to make good the default before a forfeiture shall result with the right in the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

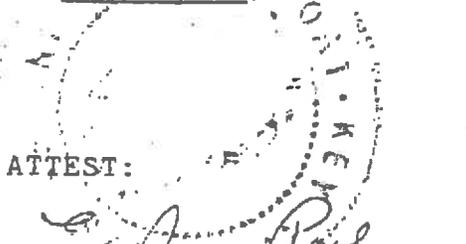
Section 10. Should any section or provision of this ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder as a whole or as to any part, other than the part declared to be invalid.

Section 11. All ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 12. This ordinance shall take effect on the date upon which the Grantee files its acceptance.

PASSED on first reading this 2nd day of April, 1984.

PASSED and adopted on second reading this 7th day of May, 1984.

ATTEST:

Jane Pool
TOWN CLERK

Jerry P. Kural
MAYOR
I, E. Jane Pool, Town Clerk of the Town of Longboat Key, Florida do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in my office.
Witness my hand and seal of said Town this 11th day of May, 1984
Jane Pool
Town Clerk of the Town of Longboat Key, Florida

ORDINANCE NO. 2014-13

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR MONTHLY PAYMENTS TO THE TOWN OF LONGBOAT KEY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission of the Town of Longboat Key, Florida recognizes that the Town of Longboat Key and its citizens need and desire the continued benefits of electric service; and

WHEREAS, there is currently in effect a franchise agreement between the Town of Longboat Key and FPL, the terms of which are set forth in Town of Longboat Key Ordinance No. 84-8, passed and adopted May 7, 1984, and FPL's written acceptance thereof dated May 29, 1984 granting to FPL, its successors and assigns, a thirty (30) year electric franchise ("Current Franchise Agreement"); and

WHEREAS, FPL and the Town of Longboat Key desire to enter into a new agreement ("New Franchise Agreement") providing for the payment of fees to the Town of Longboat Key in exchange for the nonexclusive right and privilege of supplying retail electricity service within the Town of Longboat Key free of competition from the Town of Longboat Key, pursuant to certain terms and conditions, and

WHEREAS, the Town Commission of the Town of Longboat Key deems it to be in the best interests of the Town of Longboat Key and its citizens to enter into the New Franchise Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA:

SECTION 1. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, and rights-of-way (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Town of Longboat Key, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called "facilities"), for the purpose of supplying retail electricity service and other electricity-related services incidental thereto (which other electricity-related services are defined as FPL's facility to facility data capabilities over the lines to identify faults, load information, and other data necessary or helpful to the provision of electric service, and which

do not include any services that are sold to others) to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

SECTION 2. (a) The facilities of the Grantee shall be so located, relocated, installed, constructed and so erected as to not unreasonably interfere with the convenient, safe, continuous use or the maintenance, improvement, extension or expansion of any public "road" as defined under the Florida Transportation Code, nor unreasonably interfere with reasonable egress from and ingress to abutting property.

(b) To minimize such conflicts with the standards set forth in subsection (a) above, the location, relocation, installation, construction or erection of all facilities shall be made as representatives of the Grantor may prescribe in accordance with all applicable federal, state and local statutes, laws, ordinances, rules and regulations and pursuant to Grantor's valid rules and regulations with respect to utilities' use of public rights-of-way relative to the placing and maintaining, in, under, upon, along, over and across said public rights-of-way, provided such rules and regulations:

- (i) shall be for a valid municipal purpose,
- (ii) shall not prohibit the exercise of Grantee's rights to use said public rights-of-way for reasons other than conflict with the standards set forth above,
- (iii) shall not unreasonably interfere with Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all its customers while not conflicting with the standards set forth above, or
- (iv) shall not require relocation of any of the Grantee's facilities installed before or after the effective date hereof in any public right-of-way unless or until the facilities unreasonably interfere with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of any such public "road".

(c) Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should, unless otherwise permitted, 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.

(d) When any portion of a public right-of-way is excavated, damaged or impaired by Grantee or any of its agents, contractors or subcontractors because of the installation, inspection, or repair of any of its facilities, the portion so excavated, damaged or impaired shall, within a reasonable time and as early as practicable after such excavation, be restored to a condition equal to or better than its original condition before such damage by the Grantee at its expense.

(e) The Grantor shall not be liable to the Grantee for any cost or expense incurred in connection with the relocation of any of the Grantee's facilities required under this Section, except, however, that Grantee may be entitled to reimbursement of its costs and expenses from others and as provided by law.

SECTION 3. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance 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, including Grantor's reasonable attorneys fees and costs incurred in defending itself against any claims for such liabilities, losses, costs, damages, or expenses asserted against Grantor by others, which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

SECTION 4. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

SECTION 5(a). As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal 6.0 percent of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment. In no event shall payment for the rights and privileges granted herein exceed 6.0 percent of such revenues for any monthly billing period of the Grantee, provided, however, that this limitation shall not apply if the Grantor and Grantee have, pursuant to Section 5(b) below, entered into a new franchise agreement providing for a rate greater than 6.0 percent.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited, as in the existing franchise Ordinance No. 84-8, to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; and (h) other service charges.

With each monthly payment remitted to Grantor, Grantee shall include a detailed calculation showing how the amount remitted was determined. Each such detailed calculation shall show: (i) the amount of Grantee's revenues subject to the franchise fee, (ii) the actual calculation of 6.0 percent of that amount, (iii) the resulting franchise fee amount before offsets and write-offs, (iv) the amount of actual write-offs deducted by Grantee, and (v) the resulting amount of the franchise fee payment being remitted to Grantor. Itemized information regarding any write-offs or deductions from the franchise fee shall be made available to the Grantor upon request to the Grantee.

(b). If during the term of this franchise the Grantee enters into a franchise agreement with any other municipality located in Sarasota County, Manatee County, Charlotte County, Collier County, or Lee County, Florida, where the number of Grantee's active electrical customers is equal to or less than the number of Grantee's active electrical customers within the incorporated areas of Grantor, the terms of which provide for the payment of franchise fees by the Grantee at a rate greater than 6.0% of the Grantee's residential, commercial and industrial revenues (as such customers are defined by FPL's tariff), under the same terms

and conditions as specified in Section 5(a) 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 5(a) hereof shall be equal to that percentage which the Grantee has agreed to use as a basis for the calculation of payments to the other municipality, 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 such other municipality.

SECTION 6. As a further consideration, during the term of this franchise 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(ies) to any other retail customer's facility(ies), provided that the Grantor 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, which are subject to the provisions of the Federal Power Act, or from utilizing generators and/or other electricity or energy-generating equipment during emergency situations. Nothing herein is intended to restrict the Grantor from providing services other than retail electricity service, which is the subject of the Grantor's agreement not to compete set forth in this paragraph.

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(ies) 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 which 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. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, then Grantor may purchase such electric capacity and/or electric energy from such other person and all of the remaining terms and conditions of this franchise shall remain in effect.

SECTION 7. 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 Grantor 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 if such terms and conditions are not remedied, or if the dispute between Grantee and Grantor is not resolved, as provided hereafter. The Grantee shall give the Grantor at least 180 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 and the objective basis or bases of the claimed competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee, and the Grantor and Grantee agree to negotiate in good faith toward a mutually acceptable resolution of Grantee's claims during this 90-day period. If the Grantee reasonably determines that such terms or conditions are not remedied by the Grantor within said time period, and if no mutually acceptable resolution is reached by Grantee and Grantor through negotiation, 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. Nothing contained herein shall be construed as constraining Grantor's rights to legally challenge at any time Grantee's determination leading to termination under this Section.

SECTION 8. 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) 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 reasonably determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, 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 if such competitive disadvantage is not remedied as provided hereafter. The Grantee shall give the Grantor at least 180 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 consequences of such action which resulted in the claimed competitive disadvantage and the objective basis or bases of the claimed competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage, and the Grantor and Grantee agree to negotiate in good faith toward a mutually acceptable resolution of Grantee's claimed disadvantage during this 90-day period. If such competitive disadvantage is, in the reasonable determination of Grantee, 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 take effect on the date of delivery of such notice. Nothing contained herein shall be construed as constraining Grantor's rights to legally challenge at any time Grantee's determination of competitive disadvantage leading to termination under this Section.

SECTION 9. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, 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 a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

SECTION 10. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than as set forth in Section 2 of this New Franchise Agreement; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this New 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 and entitle the Grantee to withhold such portion of the payments provided for in Section 5 hereof as a court of competent jurisdiction has, upon action instituted by Grantee, determined to be equitable, just, and reasonable, considering the totality of the circumstances, 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) 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 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 provided by law, provided that the Grantor shall not exercise such right so as to violate the Grantor's covenant, set forth in Section 6 hereof, not to compete against the Grantee in the distribution and/or sale of electricity to ultimate consumers.

SECTION 11. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not otherwise created, prepared, maintained, or kept 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.

Consistent with the foregoing, Grantor shall have 90 days following acceptance by the Grantee of the franchise granted by this New Franchise Agreement to initiate a final audit of Grantee's franchise fee payments pursuant to Ordinance No. 84-8. Upon the conclusion of any such audit, or upon the expiration of 90 days following Grantee's acceptance of the franchise granted by this New Franchise Agreement, whichever is later, any and all of Grantor's claims, other than such claims as may have been raised pursuant to the final audit contemplated by this section, relating in any way to the amounts paid by the Grantee under the Current Franchise Agreement embodied in Ordinance No. 84-8 shall be deemed waived, settled, and barred.

SECTION 12. Should any section or provision of this ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or any part hereof, other than the part declared to be invalid. In the event that any material provision of this ordinance is thus

declared to be invalid, the Grantor and Grantee will negotiate in good faith to amend this Agreement so as to restore, to the maximum extent legally permissible, the original economic bargain embodied in this ordinance. The parties recognize that Sections 1, 2, 3, 5, and 6 are critical to the fundamental economic bargain of this Franchise Agreement, and accordingly, if any of the provisions of these sections are found or adjudged to be invalid, and the Grantor and Grantee are unable to agree on replacement language that restores the original economic bargain embodied in the ordinance to their mutual satisfaction, then either party may, in its sole discretion, terminate the franchise by giving 60 days written notice to the other party.

SECTION 13. 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 14. Subject to the Grantor's right to conduct a final audit expressly reserved by Section 11 of this New Franchise Agreement, Ordinance No. 84-8, passed and adopted May 7, 1984 and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

SECTION 15. Notwithstanding any provision of this Ordinance, nothing herein shall prevent, prohibit or in any way restrict the Grantor's ability to take advantage of all applicable services set forth in Grantee's tariffs as those tariffs are approved from time to time by Grantee's regulators, and nothing herein shall prevent, prohibit or in any way restrict the Grantor's ability to avail itself of all rights accruing to Grantor as a retail customer of Grantee under Florida law and the rules and regulations of the Florida Public Service Commission.

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

PASSED on first reading the _____ day of _____, 2014.

PASSED AND ADOPTED on second reading and public hearing the _____ day of _____, 2014.

TOWN OF LONGBOAT KEY, FLORIDA

By: _____
James L. Brown, Mayor

ATTEST:

By: _____
Trish Granger, Town Clerk

APPROVED AS TO FORM AND LEGALITY

Town Attorney, Town of Longboat Key, Florida



Gardner, Bist, Wiener,
Wadsworth, Bowden, Bush,
Dee, LaVia & Wright, P.A.
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M E M O R A N D U M

February 6, 2014

TO: DAVID BULLOCK, TOWN MANAGER
 MAGGIE MOONEY-PORTALE, TOWN ATTORNEY
 JUAN FLORENSA, DIRECTOR OF PUBLIC WORKS

FROM: ROBERT SCHEFFEL WRIGHT

SUBJECT: FPL FRANCHISE RENEWAL - SUMMARY OF NEGOTIATIONS AND FINAL DRAFT OF NEW FRANCHISE AGREEMENT

As we discussed, this memorandum summarizes the final proposed version of the new Franchise Agreement between the Town of Longboat Key ("Town" or "Longboat Key") and Florida Power & Light Company ("FPL"), and the negotiations that led to this version. The memo addresses what the Town negotiating team (David Bullock, Maggie Mooney-Portale, David Persson, Juan Florensa, Annie Ross, and Scheff Wright, who was the principal negotiator and drafter for the Town's positions) requested that was different from FPL's initial proposals, why the Town team made the requests, and the final agreement between FPL's negotiators and the Town team. (To be clear, the Town team recommends that the Town Commission adopt this version of the Franchise, but of course, nothing is binding on the Town until the Commission gives its final approval to the Franchise.) In virtually all instances, FPL agreed to the Town team's requests, and in those few instances where the agreement was not complete and immediate, the Town team and FPL's negotiators reached what the Town team believes to be reasonable and workable compromises. I would also note that, while a number of the issues addressed in the Town's requested revisions to the Franchise do not pose significant problems at present, this Franchise will govern the relationship between FPL and Longboat Key for the next 30 years, and accordingly, the Town team negotiated terms

that it believes will protect the Town in the event that issues arise in the future.

The final version of the new Franchise Agreement is also being transmitted with this memo. The memo follows the order of the sections in the Franchise Agreement. Unless otherwise noted, references to the "Franchise" or the "Franchise Agreement" are to the new proposed version.

Recitals

The Town team proposed to delete two of FPL's proposed recitals, believing them to be unnecessary, and FPL agreed.

The Town team also proposed deleting the phrase "prior to expiration of the Current Franchise Agreement" from the last recital, to avoid any potential timing issue between the time of the negotiations and the time of the Town's final approval and execution of the new Franchise. FPL agreed to this change as well. (Note: As of this writing, it appears that the Town will be able to obtain final Town Commission approval and execution before the current Franchise expires, which is on May 29, 2014.)

Substantively, the Town team also requested, and FPL agreed to, changes to the language in the next-to-last recital, in order to make it clear that the only service that FPL is authorized to provide "free of competition from the Town of Longboat Key" is "retail electricity service," rather than FPL's proposal that it be granted the "right and privilege of supplying electricity and other services within the Town of Longboat Key free of competition from the Town of Longboat Key." Literally, this could have allowed FPL to provide other retail services using its facilities, e.g., broadband or similar services, without paying any franchise fees to the Town for that privilege, and could also have been construed as the Town's consent not to compete with FPL in the provision of such services. Although such scenarios are perhaps unlikely, these provisions could have significant value impacts on the Town.

Section 1 - Grant of Franchise

This section of the Franchise provides the grant of the franchise right to FPL by the Town to use the Town's rights-of-way ("ROWS") for the purpose of supplying retail electric service to the Town and its citizens. The Town team requested two changes to this section. The first was to delete the phrase "other public places" from the enumerated types of places (e.g., roads, streets, alleys, bridges, and easements) where FPL would be allowed to place its facilities; the Town team's concern was that it might expressly allow FPL to put its

facilities in public parks, publicly owned golf courses, or other "public places" where the Town might prefer them not to be located. FPL agreed to this change.

The Town team's second proposed change further clarified that the FPL services authorized by the Franchise (1) include only "retail electricity service and other electricity-related services incidental thereto," with such other services defined as FPL's internal data communications capabilities and (2) exclude any services sold to others. FPL also agreed to this change.

Section 2 - Limitations on FPL's Use of Rights-of-Way

Section 2 of the Franchise addresses certain limitations on FPL's use of the Town's ROWs, including the Town's ability to regulate FPL's use of the ROWs, FPL's obligations to restore excavated areas, and FPL's responsibility for the costs of relocating its facilities.

The Town team was concerned that the Franchise not allow for interference with the use of bicycle paths and walking trails. As initially proposed by FPL, the only limitation on FPL's use of the public rights-of-way would be that such use could not "unreasonably interfere with traffic over the public rights-of-way," which, taken together with other references to not interfering with "motor vehicular traffic," was the basis for the Town team's concern. The Town team initially proposed 2 changes: (1) a specific reference to bicycle paths and walking trails located within public rights-of-way, and (2) language that gets away from the "unreasonable interference with traffic" language proposed by FPL.

FPL was not agreeable to the specific references to bicycle and pedestrian traffic, but the language that the Town team and FPL agreed to would recognize the Town's rights to regulate (without being trumped by the Franchise) FPL's location of its facilities within any public "road" as that term is defined in the Transportation Code section of the Florida Statutes. That definition is as follows:

334.03 Definitions.—When used in the Florida Transportation Code, the term:

* * *

(22) "Road" means a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary

for the maintenance of travel and all ferries used in connection therewith.

This definition includes the right-of-way itself and specifically includes sidewalks, and thus would encompass the town's ability to regulate the use of its ROWs to support the safe and convenient use and maintenance of any bicycle paths or walking trails located within the ROWs. (However, in the unlikely event of an irreconcilable conflict between FPL's ability - and statutory obligation - to provide safe and reliable electric service and the Town's use of ROW space for a bike path or a sidewalk, FPL's obligation to provide service would probably be superior.) Further, if the Town has any bike paths or walking paths or trails that are outside the ROWs, the Franchise doesn't give FPL any rights to use those areas in any event.

The Town team's proposals, to which FPL has agreed, also recognize the Town's rights to regulate FPL's use of the ROWs to the extent such regulation is lawful.

FPL also accepted the Town's proposal to require that any excavation or damage by FPL, or by any of its agents or contractors, would have to be restored to a condition equal to or better than its original condition.

Section 3 - FPL Indemnification of the Town

Section 3 is an indemnification provision by which FPL agrees to hold the Town harmless against any liability, loss, cost, damage, or expense accruing to the Town by reason of the negligence or fault of FPL in constructing, maintaining, or operating its facilities. In addition to this basic provision, FPL agreed to the Town team's proposal to indemnify the Town not only for such losses, damages, claims, or expenses, but also for any attorneys fees and costs that the Town might incur in defending against any such claims.

Section 4 - FPL Rates to be Consistent with All Lawful Regulation

There were no proposed modifications to Section 4.

Section 5 - Franchise Fee Amount and Calculation; "Most Favored Nations" Clause in Favor of Longboat Key

In its initial franchise proposal, FPL offered to pay Longboat Key a franchise fee equal to 5.9 percent of the specific revenues subject to the franchise fee in the proposed Franchise. (The subject revenues are those from sales of electricity to residential, commercial, and industrial customers. This encompasses the vast majority of FPL revenues, but excludes sales of service for street and highway lighting, late payment charges, and other service charges.)

At the Town team's request, FPL agreed to increase the franchise fee rate to 6.0 percent, as it did for the City of Sarasota. Additionally, FPL agreed to the Town team's request to provide itemized calculations of each monthly franchise fee payment.

Section 7 of the Franchise includes, at FPL's request, a "Most Favored Nations" ("MFN") clause in favor of FPL, by which the Town agrees that if the Town were, in the future, to grant another electricity supplier a franchise to sell retail electricity in Longboat Key subject to a lower franchise fee rate, the Town would reduce FPL's franchise fee rate to the lower rate. The Town team requested, and FPL agreed to include, as new Section 5(b), a reciprocal "Most Favored Nations" ("MFN") clause in favor of the Town. Under the new provision, FPL agrees that, if it agrees to pay a higher franchise fee rate to any municipality with a comparable population in Sarasota, Manatee, Charlotte, Collier, or Lee County, FPL would negotiate a new Franchise Agreement by which it would also pay the higher rate to Longboat Key.

Section 6 - Town's Non-Compete Covenants

Section 6 of the Franchise mainly addresses the Town's covenants not to compete against FPL for retail sales of electricity and not to participate in any proceeding the purpose of which would be to force FPL to transmit (or "wheel") electricity from another power supplier to a customer located in Longboat Key. (This situation is not likely to arise in Longboat Key, but in other states, large customers sometimes attempt to enlist the backing of local governments to get cheaper power from third-party suppliers, hence FPL's concern.) Other than clarifying that the Town as a customer would not be subject to these provisions, consistent with the second paragraph of Section 6, which allows for the Town to seek such purchases for its own use under certain defined conditions (which do not exist at present), the Town team did not have any issues with this part of FPL's proposed Section 6.

However, the Town team took issue with FPL's proposed Subsection 6(c), in which FPL proposed that the Town give up a right that the Town already has pursuant to applicable rules of the Florida Public Service Commission, which is the right to petition the PSC to have a utility (FPL in this instance) transmit power generated by a customer at one location to the customer's facilities at other locations. This is called "self-service wheeling." While it is not likely that the Town would want to avail itself of this right anytime soon, it is conceivable that, sometime in the next 30 years, there could be technological advances such that the Town might want to install solar or hydroelectric (e.g., using the energy in tides, waves, or ocean currents) facilities at one location and then ask FPL to "wheel" the

power from that location to the Town Hall or other Town facilities, and accordingly, the Town requested that this proposal be deleted. FPL agreed.

The Town team also requested, and FPL agreed, to include language that specifically allows the Town to utilize electric generators during emergency situations without running afoul of the Franchise, and language that makes clear that the Town's non-compete agreement extends only to retail electric service and not to any other services provided by the Town. (This latter provision could be particularly important with respect to the Town's interests in providing broadband service.)

Section 7 - Most Favored Nations Clause in Favor of FPL

Section 7 is a "Most Favored Nations" clause by which the Town agrees that, if it grants a franchise to another electricity supplier with a lower franchise fee rate than FPL's, it will lower FPL's rate. This provision by itself was and is agreeable to the Town team, particularly in conjunction with the MFN clause in favor of the Town that FPL has agreed to add in Subsection 5(b).

The Town team took issue with certain aspects of FPL's proposed language, which would effectively give it sole discretion to terminate the Franchise Agreement if it believed that the Town had granted a better franchise deal to another provider and also to determine, again in FPL's sole discretion, whether the Town's proposed remedies were acceptable to FPL, without any right to a judicial resolution of the dispute. While this is unlikely, the consequences to the Town (lost franchise revenues) are potentially significant, and so the Town team requested, and FPL agreed to, language that provides protection to the Town in terms of longer response times, a requirement that FPL explain the objective basis for its claimed harm, mandatory negotiations toward resolution, and express recognition of the Town's right to pursue legal action challenging any determination by FPL to terminate the franchise.

Section 8 - Change in Law

As proposed by FPL, Section 8 would give FPL the right to terminate the franchise in the event of a change in law that FPL deemed disadvantageous to FPL. The Town team recognized that such provisions are not inherently unreasonable, but again, as with Section 7, the Town team took issue with FPL's proposal that it would be the sole arbiter of whether its position was really adversely impacted by a change in law, i.e., that FPL would be able to terminate without any judicial or other objective determination that FPL's position had really been impaired, or that the Town's proposed remedies were

inadequate. Accordingly, the Town proposed, and FPL agreed to, language much like that in Section 7, including a longer response time for the Town, a requirement that FPL explain the objective basis for its claimed harm, mandatory negotiations toward resolution, and express recognition of the Town's right to pursue legal action challenging any determination by FPL to terminate the franchise.

Section 9 - FPL Default & Cure Provisions

There were no proposed modifications to Section 9.

Section 10 - Town Default & Cure Provisions

As proposed by FPL, Section 10 posed several issues. First, it would limit the Town's rights to regulate FPL's activities: specifically, FPL's proposed language would have prohibited the Town from denying FPL the use of rights-of-way for any reason "other than unreasonable interference with motor vehicular traffic" (emphasis supplied). This issue was also addressed in Section 2 above, and correspondingly, this section - with FPL's agreement - now allows the Town to regulate the use of its ROWs consistent with the specific terms of Section 2, which recognizes the Town's rights to regulate FPL's activities in the Town's ROWs so as to prevent unreasonable interference with the convenient, safe, and continuous use of any public "road," which includes the entire ROW.

Second, FPL's proposal would give FPL the unilateral right to withhold "all or part" of the franchise fee payments due to the Town until the Town issued a permit, or until the Town prevailed in legal proceedings, including appeals. The Town team requested, and FPL agreed to, modifications that would permit FPL to withhold franchise fees only upon a court's determination that such withholding is equitable, just, and reasonable under the circumstances.

Finally, although this would probably not be a significant issue once the franchise is negotiated (because of the fundamental non-compete agreement that the Town would be giving FPL), FPL proposed that the Town expressly recognize FPL's delegated sovereign right of condemnation, but FPL did not correspondingly propose to recognize the Town's right. The Town team proposed, and FPL agreed, to include language that recognizes the Town's right of condemnation.

Section 11 - Town's Rights to Audit Franchise Fee Payments

Section 11 addresses the Town's right to audit FPL's franchise fee payments. The Town team requested two changes to this section, to which FPL agreed. First, the Town team proposed language that would have embodied the Town's right to receive copies of documents related

to the franchise agreement at no cost pursuant to Section 119.0701, Florida Statutes. FPL proposed alternate language, to which the Town team agreed, that provides that FPL will provide copies of any records that are created, prepared, maintained, or kept by FPL in the ordinary course of business, and that any other records - i.e., records that FPL would actually have to create - would be provided at the Town's expense.

Second, the Town team proposed, and FPL agreed, to add language to the Franchise that would allow the Town, if it wishes, to conduct a final audit of franchise fee payments under the previous 1984 Franchise within 90 days after the new Franchise Agreement is adopted.

Section 12 - Severability Clause

FPL's initial proposal was a non-standard severability clause, which would have provided that if any provision of the Franchise Agreement were held invalid, illegal, void, or of no effect, the entire ordinance would be null and void. Albeit unlikely to occur, this language could have severe consequences - loss of franchise fee revenues - if even a non-material term of the Franchise were to be declared invalid. To address this concern, the Town team proposed standard severability language, i.e., that if one part of the agreement is declared invalid, the rest remains valid. After further negotiations with FPL, the Town team and FPL agreed on the following language:

Section 12. Should any section or provision of this ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or any part hereof, other than the part declared to be invalid. In the event that any material provision of this ordinance is thus declared to be invalid, the Grantor and Grantee will negotiate in good faith to amend this Agreement so as to restore, to the maximum extent legally permissible, the original economic bargain embodied in this ordinance. The parties recognize that Sections 1, 2, 3, 5, and 6 are critical to the fundamental economic bargain of this Franchise Agreement, and accordingly, if any of the provisions of these sections are found or adjudged to be invalid, and the Grantor and Grantee are unable to agree on replacement language that restores the original economic bargain embodied in the ordinance to their mutual satisfaction, then either party may, in its sole discretion, terminate the franchise by giving 60 days written notice to the other party.

The compromise reached by FPL and the Town begins by including standard severability language, which is in the first sentence of the new Section 12. The second sentence, proposed by the Town team and accepted by FPL, would, in the event that any provision were held invalid by a court, require the Parties to negotiate in good faith to restore the original economic bargain embodied in the Franchise.

The final sentence of the revised Section 12 was requested by FPL and agreed to by the Town team; it would enable either party to

terminate the agreement if one of the fundamental, critical value terms of the Franchise were declared invalid and the Parties were unable to negotiate a mutually acceptable replacement provision. These terms and their importance are summarized here as follows.

Section 1 - Grant of the franchise to FPL to use the Town's ROWs, which is critical to FPL.

Section 2 - Town's ability to regulate FPL's use of its ROWs, critical to the Town of Longboat Key.

Section 3 - FPL's indemnification of the Town against claims, losses, and damages caused by FPL, critical to the Town.

Section 5 - FPL's obligation to pay franchise fees, critical to the Town; also MFN clause in favor of the Town, which is valuable, although less critical, to the Town.

Section 6 - Town's covenant not to compete against FPL in selling electricity, critical to FPL.

As with many other provisions addressed in the negotiations with FPL, as of today, it appears unlikely that this severability provision would ever come into play, but thirty years is a long time, and the potential consequences of either party being able to walk away from the Franchise if even a non-material term were declared invalid are, in the Town team's judgment, so significant as to render the literal provision proposed by FPL unacceptable. The compromise reasonably balances the interests of both the Town and FPL in being able to terminate the Franchise in the unlikely event that a critical term becomes unenforceable and the parties are unable to negotiate legally permissible replacement language.

Section 13 - Definitions

There were no proposed modifications to Section 13.

Section 14 - Repeal of Prior Franchise Ordinances

There were no proposed modifications to Section 14.

Section 15 - Town's Right to Take Full Advantage of FPL Rates and Service Opportunities

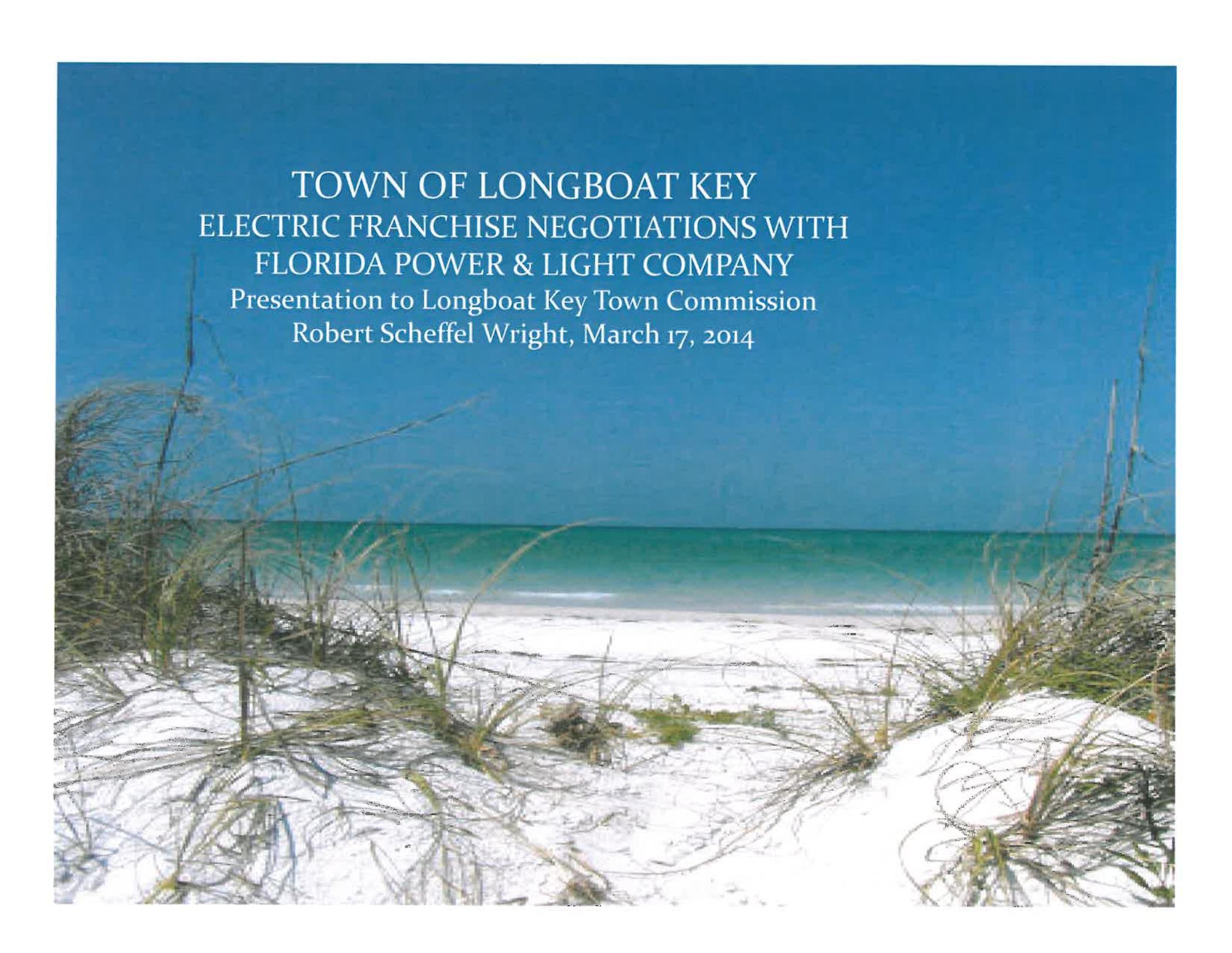
At the Town team's request, FPL agreed to include a new Section 15, which clarifies that nothing in the New Franchise Agreement would in any way limit the Town's rights and ability to take advantage of all rights and opportunities that the Town has as a retail customer of

FPL. While this is probably not absolutely necessary, a number of Schef Wright's other municipal clients have wanted such protection included in their franchise agreements.

Section 16 - Acceptance Terms

There were no proposed modifications to Section 16.

Thank you again for the opportunity to be of service to the Town of Longboat Key and your citizens. If you have any questions, please call or e-mail me any time.



TOWN OF LONGBOAT KEY
ELECTRIC FRANCHISE NEGOTIATIONS WITH
FLORIDA POWER & LIGHT COMPANY
Presentation to Longboat Key Town Commission
Robert Scheffel Wright, March 17, 2014

TOWN OF LONGBOAT KEY

ELECTRIC FRANCHISE NEGOTIATIONS WITH FLORIDA POWER & LIGHT COMPANY

Presentation to Longboat Key Town Commission
Public Workshop, March 17, 2014

Robert Scheffel “Schef” Wright, Gardner Bist Wiener Law Firm, Tallahassee
Special Counsel to the Town for Utility Matters



TOWN OF LONGBOAT KEY ELECTRIC FRANCHISE NEGOTIATIONS HISTORY & BACKGROUND

- Existing Franchise Ordinance No. 84-8 enacted May 7, 1984
- 30-Year Agreement
- FPL Proposed New 30-Year Franchise, November 2011
- Town Engaged Special Utility Counsel, September 2013
- Longboat Key Negotiation Team - Town Manager, Assistant Town Manager, Director of Public Works, Town Attorney, and Special Utility Counsel
- Town Team Evaluation and Negotiations with FPL from October 2013 until February 2014 produced recommended Franchise Agreement agreed to by FPL and Town Negotiation Team, subject to approval by Town Commission



Background: Fundamental Bargain of Franchise Agreements

- Utility (FPL) agrees to collect and remit to the franchising authority (Longboat Key) a “franchise fee”
IN RETURN FOR WHICH
- Franchising authority (Town) grants Utility the right to use its Rights-of-Way (ROWs), agrees to maintain its ROWs for the Utility’s use, and also agrees not to compete against the Utility for customers and sales for the term of the Franchise.



Areas in Which FPL Would be Authorized to Place Its Facilities

- FPL proposed that it be allowed to locate its facilities “in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places” in Longboat Key
- Town Concern: FPL’s proposal was considerably broader than general understanding of ROWs; e.g., “other public places” could include parks.
- Town proposed deleting “other public places.”
- Resolution: FPL agreed to Town’s proposal.



Scope of Services Covered by the Franchise Granted by the Town

- FPL proposed that the Town grant it a franchise for the “right and privilege of supplying electricity and other services within the Town of Longboat Key.”
- Town Concern: Request was too broad – no limit on services covered by the franchise.
- Town proposed to limit the franchise to the provision of retail electricity service and “other electricity-related services.”
- Resolution: FPL agreed to Town’s proposal.

Limitations on FPL's Use of ROWs

- FPL proposed that its use of ROWs be limited only to extent that such use not “unreasonably interfere with traffic” (§2) and “with motor vehicular traffic.” (§10)
- Town Concern: Town should have ability to regulate FPL's use so as to prevent unreasonable interference with pedestrian and bicycle traffic.
- Town proposed such language. FPL countered with proposal to recognize Town's ability to regulate FPL's use so that it would not “unreasonably interfere with the convenient, safe, continuous use” or maintenance of any public road.
- Resolution: Town agreed to FPL's counter-proposal.



Franchise Fee Rate

- FPL proposed a Franchise Fee Rate of 5.9%. FPL also proposed to change the formula in favor of the Town by deleting the previously-included “offset” for property taxes paid.
- Town Goal: To obtain additional franchise revenues for the benefit of the Town and its citizens.
- Town proposed a Franchise Fee Rate of 6.0% (same as FPL pays the City of Sarasota) and accepted FPL’s proposed modification to calculation formula.
- Resolution: FPL agreed to the Town’s proposal.

“Most Favored Nations” Clause in Favor of Town of Longboat Key

- FPL proposed (§7) a “Most Favored Nations” (MFN) clause in favor of FPL. (If Town grants a franchise to another utility with a lower FF rate, Town must reduce FF rate paid by FPL.)
- Town Concern: Town should have a corresponding MFN clause in favor of the Town.
- Town proposed such language to FPL: If FPL agrees to pay a higher FF rate to a similar city/town in defined counties, FPL must give Longboat Key the higher rate.
- Resolution: FPL agreed to the Town’s proposal. (§5b)

“Self-Service Wheeling” –

Right to Seek to Have FPL Deliver Power from Town Facilities at One Location to Other Usage Points

- FPL proposed that Town agree to waive its right (under existing PSC rules) to ask FPL to transmit or “wheel” power produced by Town generators (e.g., solar, tidal, wave energy) at one location to Town facilities at other usage points.
- Town Concern: Albeit unlikely in the near term, Town Team believes it is inappropriate to waive a right that’s already granted by the PSC’s rules.
- Town proposed deletion of FPL’s proposed waiver.
- Resolution: FPL agreed to the Town’s proposal.



Final Audit Under 1984 Franchise

- FPL's proposed Franchise provided that the Town's rights to assert any claim with respect to Franchise Fee payments under existing Franchise Ordinance No. 84-8 would be settled and barred by the New Franchise.
- Town Concern: Town Team wanted Town to have the right to conduct a final audit of payments under the 1984 Franchise.
- Town proposed final audit provisions.
- Resolution: FPL agreed to the Town's proposals.

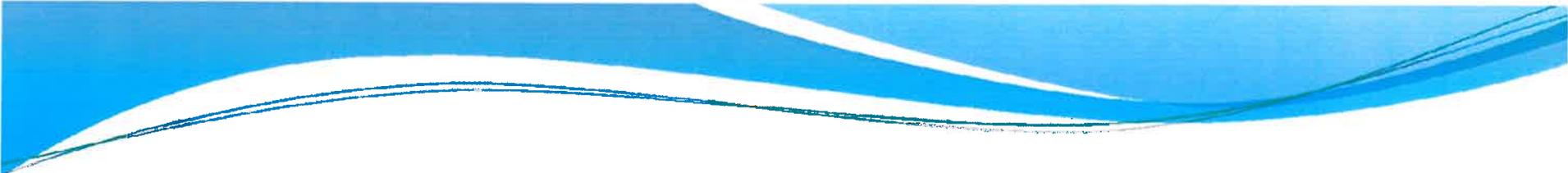


Severability Clauses - General

- Severability Clauses address what happens in the unlikely event that one or more specific provisions of a contract are declared invalid by a court.
- Standard Severability Clause language provides that, if one provision is declared invalid, “such decision shall not affect the validity of the remainder as a whole or as to any part.” (Quote from Ordinance No. 84-8)
- RSW recommends including language committing parties to negotiate in good faith to alternate language that restores the original economic bargain to the maximum extent legally possible.

Severability Clause (§12)

- FPL proposed a non-standard Severability Clause, such that if any provision of the New Franchise were to be declared invalid, the entire Franchise Ordinance would “be null and void and of no force or effect.”
- Town Concern: Potentially draconian result if a minor provision were declared invalid.
- Town proposed same language as in 1984 Franchise.
- Compromise Resolution: If any of the critical terms (§§1,2,3,5,6) are declared invalid, FPL and Town commit to good-faith negotiations to restore original economic bargain. If negotiations are unsuccessful, then either party may terminate the Franchise.
- Notes: HIGHLY UNLIKELY EVENT. Compromise protects both Town’s (§§2,3,5) and FPL’s (§§1&6) critical parts of the bargain.

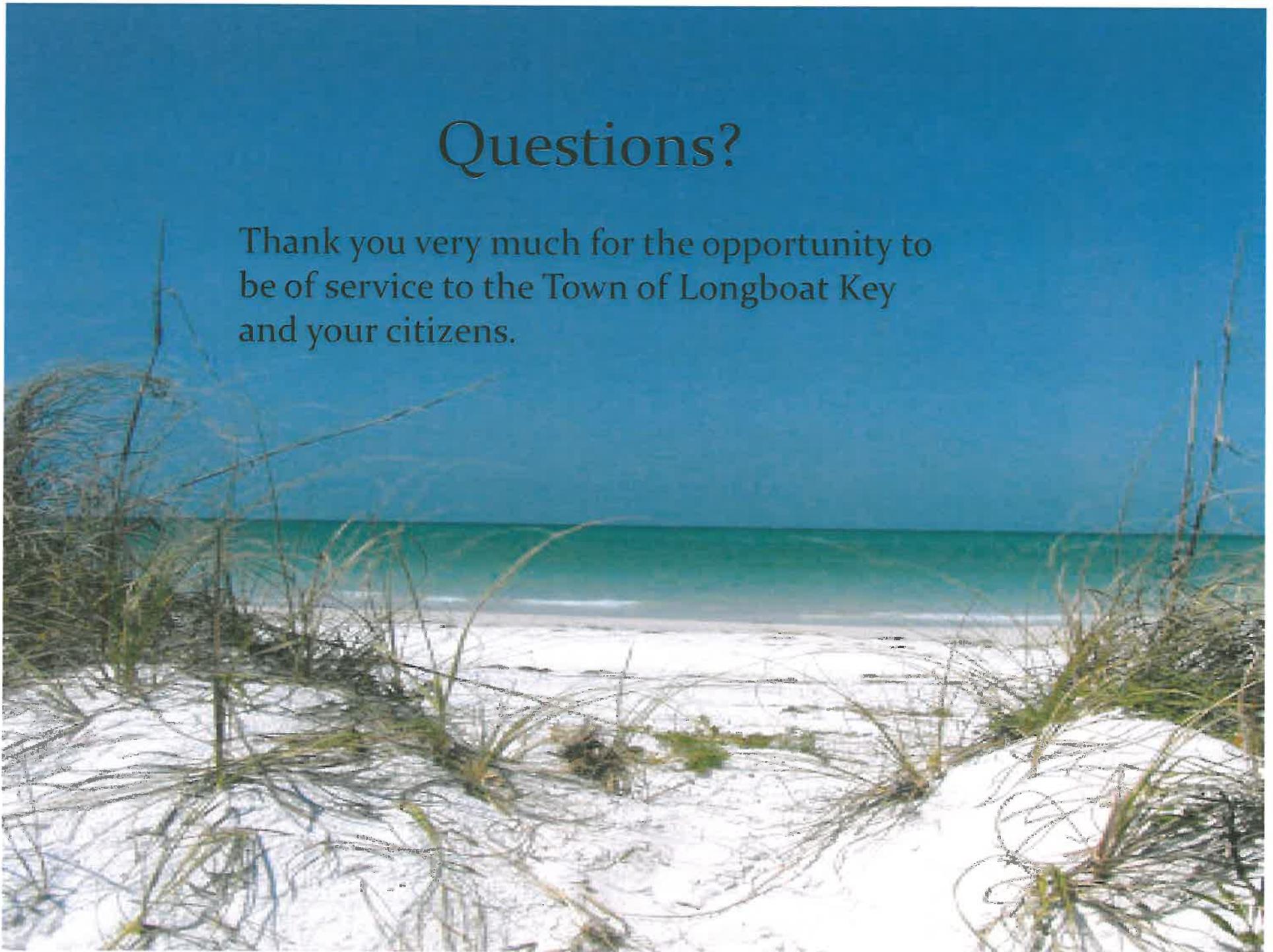


Additional Terms Negotiated with FPL

- Clarified Town's legal ability to use its own generators to serve critical infrastructure in emergencies.
- Clarified that nothing in the non-compete provisions of the Franchise limits the Town's ability to provide services other than retail electric service.
- Negotiated more favorable dispute resolution provisions relative to default and change in law provisions.
- Added "attorneys fees" provision to indemnification section.

Questions?

Thank you very much for the opportunity to be of service to the Town of Longboat Key and your citizens.



Robert Scheffel "Schef" Wright

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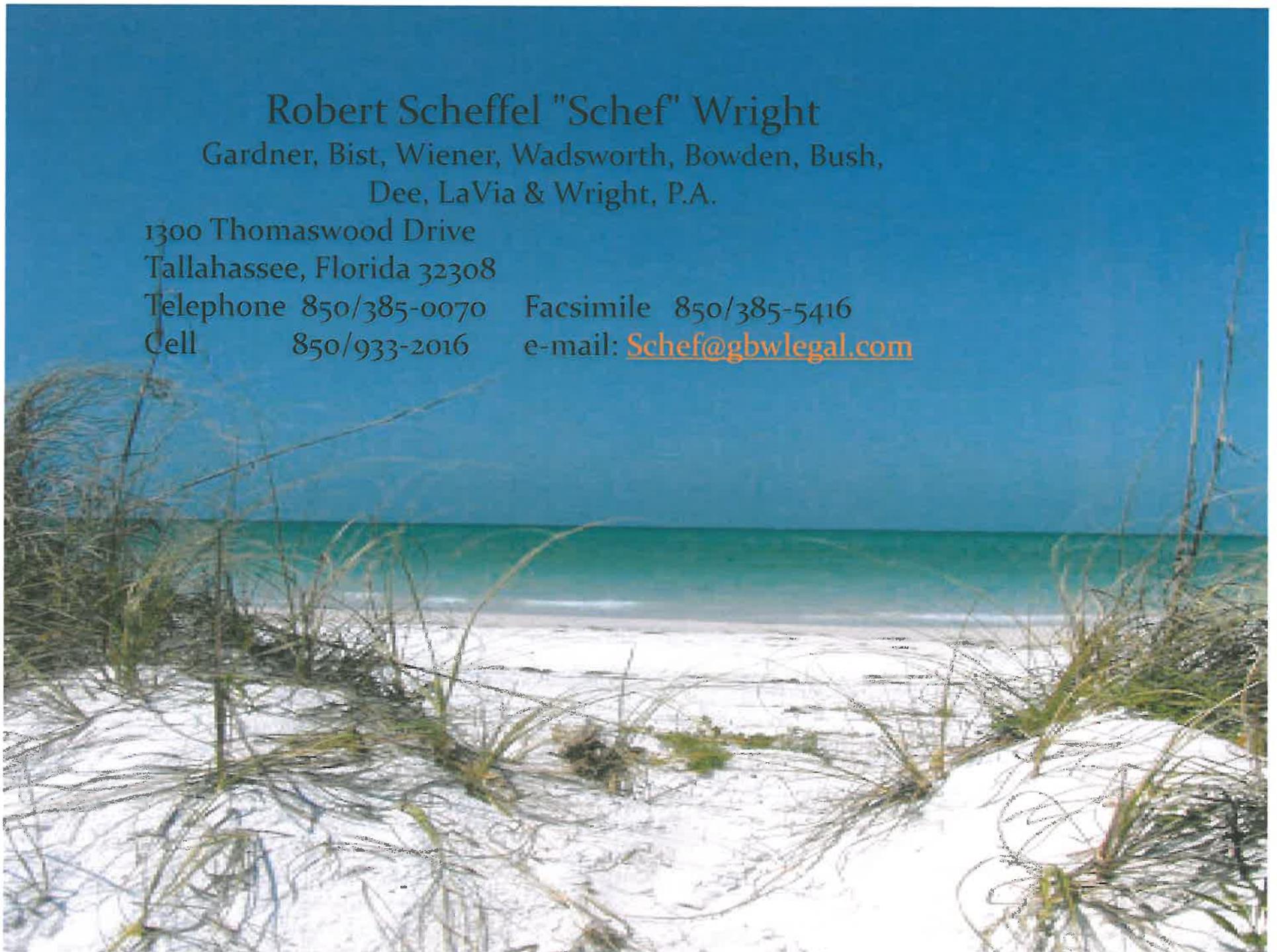
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End of Agenda Item