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AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING ORDINANCE NO. 04-18 RELATING TO THE ELECTRIC FRANCHISE GRANTED TO LEE COUNTY ELECTRIC COOPERATIVE, INC. (“LCEC”) ITS SUCCESSORS AND ASSIGNS TO ESTABLISH THE FRANCHISE FEE PAYABLE TO THE CITY FOR FISCAL YEAR 2026 AT 3% AND SETTING FORTH THE PROCESS TO ESTABLISH THE FRANCHISE FEE THEREAFTER; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 4, 2004, the City Council of Marco Island passed and adopted Ordinance No. 04-18 (the “Ordinance”) to grant an electric franchise to Lee County Electric Cooperative, Inc. (“LCEC”) and its successors and assigns for the non-exclusive right and privilege to supply electricity and other services within the City of Marco Island, Florida (“City”) which includes the non-exclusive right to construct, operate and maintain in roads, streets, alleys, bridges, easements, rights-of-way and other public places electric light and power facilities in accordance with the terms and conditions of the Ordinance (the “Franchise”); and

WHEREAS, the initial term of the Franchise was for the period of twenty (20) years from the effective date through October 4, 2024. The Franchise automatically renewed for one (1) ten (10) period and will continue through October 4, 2034, unless otherwise amended or terminated; and

WHEREAS, in consideration for the granting of the electric franchise, LCEC is required to remit payment to the City as set forth in the Ordinance; and

WHEREAS, Section 4 of the Ordinance required LCEC to remit a franchise fee amount equaling five percent (5%) of LCEC's billed revenues from the sale of energy, less actual write-offs, to residential, commercial and industrial customers within the incorporated areas of the City, however, City Council reserved the right, at its sole discretion, to reduce the franchise fee from the initial level of 5%, upon 90 days written notice to LCEC; and

WHEREAS, effective January 1, 2009, the franchise fee was reduced by City Council from 5% to 3.6%; and subsequently on October 1, 2009, the franchise fee was further reduced to -0- %; and

WHEREAS, it is recommended that the franchise fee be reinstated by Council and that the fee be reset at three percent (3%), consistent with the terms of the Ordinance, and as amended by this Ordinance 25- __ (the “Amending Ordinance”).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION 1. Recitals.

47
48 The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct,
49 and reflective of the legislative intent underling this Ordinance.
50

51 **SECTION 2.** That Ordinance No. 04-18 is hereby amended to provide as follows:
52

53 2.1 In consideration for the Franchise granted pursuant to Ordinance No. 04-18, and as the
54 reasonable rental for the rights-of-way granted herein, LCEC shall pay to the City, commencing
55 thirty (30) days after the end of the calendar quarter following the effective date hereof, and each
56 calendar quarter thereafter for the remainder of this Franchise, an amount equal to three percent
57 (3%) of LCEC's billed revenues from the sale of electrical energy, less actual write-offs, to
58 residential, commercial and industrial customers within the incorporated area of the City
59 (excluding public street, highway and private area lighting) for the quarterly billing period ending
60 30 days prior to each such payment.
61

62 2.2 Effective date for the commencement of this three percent (3%) franchise fee shall be
63 within forty-five (45) days of the effective date of this Amending Ordinance. Further, upon the
64 expressed condition that in the event LCEC is required by another municipality under which it is
65 presently or may in the future be franchised to pay a greater percentage franchise consideration
66 than that provided, LCEC shall also pay the same increased percentage fee to the City under this
67 Amending Ordinance and Agreement upon the City giving written notice of such increase pursuant
68 to a Resolution of the City Council. The effective date of any such increase shall be within forty-
69 five (45) days of the date of written notice of such increase pursuant to the Resolution of the City
70 Council and shall be payable upon the same terms and conditions as herein provided. LCEC shall
71 promptly notify the City of any franchise fees paid to any other municipality in excess of that
72 herein provided.
73

74 2.3 The City reserves the right, at its sole discretion, to increase or reduce the franchise fee
75 from the reinstated level of three percent (3%), subject to the limitations contained in Ordinance
76 No. 04-18, upon passage and adoption of a Resolution by the City Council and such Resolution
77 provided to LCEC deemed to be written notice of such franchise fee adjustment.
78

79 **SECTION 3.** That all other parts of Ordinance No. 04-18 shall remain in full force and effect.
80

81 **SECTION 4. Conflicts.**
82

83 All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the
84 provisions of this Ordinance are hereby superseded and resolved to the extent of any conflict in favor of
85 the provisions of this Ordinance.
86

87 **SECTION 5. Severability.**
88

89 If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid,
90 illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of
91 the other or remaining terms, sections, clauses, sentences or phrases portions of this Ordinance, and this

Ordinance shall be read and applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence or section did not exist.

SECTION 6. Effective Date.

This Amending Ordinance shall take effect immediately upon approval at second reading and acceptance by LCEC. Consistent with Section 15 of the Ordinance, LCEC shall file its written acceptance hereof with the City Clerk within 45 days of adoption of this Amending Ordinance. The effective date of this Amending Ordinance shall be the date upon which LCEC files such acceptance.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this ____ day of _____, 2025.

CITY OF MARCO ISLAND, FLORIDA

By: _____
Erik Brechnitz, Chair

Attest:

By: _____
Joan A. Taylor, City Clerk

Approved as to Form and Legal Sufficiency:

By: _____
Alan L. Gabriel, City Attorney