



Ordinance 2025-02

AN ORDINANCE OF THE TOWN OF ESTO, FLORIDA, GRANTING TO WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC., AN ELECTRIC UTILITY FRANCHISE WITHIN THE TOWN OF ESTO, FLORIDA

WHEREAS, the Town Council of the Town of Esto, Florida recognizes that the Town of Esto and its citizens need and desire the continued benefits of electric service; and

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

WHEREAS, Florida Courts have consistently recognized the home rule authority of a municipality to enter into a franchise agreement with a utility company and to impose a fee that is bargained for in exchange for the government property rights granted therein; and

WHEREAS, West Florida Electric Cooperative Association, Inc. (WFEC) is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, WFEC and the Town of Esto are parties to an existing franchise agreement, the terms of which are set forth in Town of Esto Ordinance No. 1222-005, passed and adopted in February 2023, and WFEC's written acceptance thereof the Town of Esto granting to WFEC, its successors and assigns, an electric franchise ("Current Franchise Agreement"); and

WHEREAS, WFEC and the Town of Esto desire to enter into a new agreement ("New Franchise Agreement") providing for the payment of fees to the Town of Esto in exchange for the nonexclusive right and privilege of supplying electricity and other services within the Town of Esto free of



competition from the Town of Esto, and to use the related rights-of-way in relation thereto, and subject to the terms and conditions as contained herein; and

WHEREAS, the Town Council of the Town of Esto deems it to be in the best interest of the Town of Esto and its citizens to enter into the New Franchise Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ESTO, FLORIDA:

SECTION 1: RECITALS. The Whereas Clauses above are hereby incorporated into this Ordinance as the intent of the Town of Esto.

SECTION 2: DEFINITIONS. For the purposes of this Ordinance, the following terms shall have the meaning given herein.

“Customer” shall mean any person served by WFEC within the corporate limits of the Town.

“Town” shall mean the Town of Esto, Holmes County, Florida, its successors, and assigns.

“Company” shall mean West Florida Electric Cooperative Association, Inc., a Touchstone Energy Cooperative, its successors, and permitted assigns.

“Effective Date” shall mean the date the Franchise becomes effective as described herein.

“Franchise” or “Franchise Agreement” shall mean this Ordinance, and any related agreement stemming from this Ordinance, as passed, and adopted by the Town and accepted by WFEC.

“Person” shall mean any individual, firm, partnership, estate, corporation, company, or other entity, including, but not limited to, any government entity.



“Right-of-way” shall mean any street, road, lane, highway, avenue, boulevard, alley, waterway, bridge, easement, public place, or other right-of-way that is owned by the Town of Esto, Florida.

SECTION 3. GRANT OF EASEMENT. The Town hereby grants to WFEC, the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all rights-of-way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present incorporated limits of the Town, or in such territory as may be hereafter added or annexed to, or consolidated with, the Town, an electricity distribution system subject to the terms and conditions herein contained.

SECTION 4. TERM. Except as provided in Section 13, the franchise provided to WFEC hereby granted shall be for a period of five (5) years from the effective date of this ordinance.

SECTION 5. ASSIGNMENT. The Franchise granted herein shall not be leased, assigned, or otherwise alienated or disposed of except with the prior express written consent of the Town, which shall not be unreasonably withheld. No assignment shall be allowed by the Town without the assignee assuming the terms of this Agreement with the Town.

SECTION 6. TOWN COVENANT. As further consideration for this Agreement, the Town covenants and agrees that it will not, during the term of this Agreement, or any extension thereof, engage in the business of distributing or selling electricity within the corporate limits of the Town.

SECTION 7. USE OF RIGHTS-OF-WAY. The distribution system shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the rights-of-way, and said rights-of-way shall not be unnecessarily obstructed, and before, except in an emergency situation, WFEC makes any excavation or disturbs the surface of any of the rights-of-way, it shall make application for a permit, where required by local rule or ordinance, to the appropriate Town authority.



SECTION 8. MAINTENANCE. All such components of the distribution system of WFEC located within the Town shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules and regulations of the Florida Public Service Commission, or other applicable State or Federal regulatory body. All other components of the distribution system shall be constructed with all applicable codes, rules, regulations, and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in Town ordinances or permitting requirements.

SECTION 9. FRANCHISE FEE. Within thirty (30) days after the close of the first full billing month following the effective date of this Agreement, and each month thereafter during the term of this Agreement, WFEC, its successors or permitted assigns, shall pay to the Town, or its successors, a sum of money equal to six percent (6.0%) of WFEC's gross revenue, less any adjustments for uncollectable accounts, from the sale of electricity to customers within the corporate limits of the Town of Esto. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month.

SECTION 10. IDENTIFICATION OF TOWN RESIDENTS. WFEC has sufficient information (including Town limit streets and block numbers) as is needed by the Company to determine which of its customers are located within the Town limits as of the effective date. No less than thirty (30) days prior to the effectiveness of any change in the Town's limits, the Town shall deliver to the WFEC written notice thereof and include in such notice a description of the affected limits thereof, whether by addition, annexation, or consolidation. WFEC shall be relieved of any obligation to pay franchise fees to the extent the Town has failed to provide information as set forth in the foregoing sentence.

SECTION 11. ACCOUNTS AND RECORDS. WFEC shall maintain accounting, maintenance, and construction records as prescribed by the Florida Public Service Commission, or as otherwise required by State or Federal law. WFEC shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the Town are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida and shall be open



at all reasonable times and upon reasonable notice for inspection by a duly authorized representative of the Town. Upon request by the Town, or its designated representative, WFEC shall make available said records within thirty (30) days. WFEC shall maintain its billing records for the period of time required by the Florida Public Service Commission, or other applicable State or Federal law, and any examination conducted after such period shall be confined to the billing records then available.

SECTION 12. INDEMNIFICATION. In consideration of the permissions granted to WFEC by this Agreement, WFEC hereby agrees to indemnify and hold harmless the Town, its officers, agents and employees from and against any and all claims, demands, suits, actions, damages, expenses, and causes of action, to the extent caused by the WFEC's negligent construction or operation of the distribution system within the Town during the term of this Agreement and which results in personal injury, loss of life, or damage to property, sustained by any person or entity, through or as a result of the doing of any work herein authorized or the failure to do work herein required, and including all reasonable costs, attorneys' fees, expenses and liabilities incurred by the Town in connection with any such claim, demand, suit or cause of action, damage, expense, including the investigation thereof, and the defense of any action or proceeding brought thereon and/or any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof; provided, however, that neither WFEC nor any of its employees, agents, contractors, licensees, or sublessees shall be liable under this section for any claims, demands, suits, actions, losses, damages, or expenses, including attorneys' fees, arising out of the sole negligence, strict liability, intentional torts, or criminal acts, of the Town, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

SECTION 13. TERMINATION. Violation by WFEC of any of the covenants, terms, and conditions hereof, or default by the Company in observing or carrying into effect any of said covenants, terms, and conditions, shall authorize and empower the Town to declare a termination of this Agreement; provided, however, that before such action by the Town shall become operative and effective, the Company shall have been served by the Town with a written notice setting forth all matters pertinent to such violation or default, and describing the action of WFEC with respect thereto, and the Company



shall, except in emergency situations, have a period of sixty (60) days after service of such notice, or, in the event such cure reasonably requires a period of more than sixty (60) days, sixty (60) days to present a plan, reasonably satisfactory to the Town, to effect such cure and diligently commence to execute, and to the extent commercially practicable, continues to execute on said plan; and provided further that any violation or default resulting from a strike, a lockout, or an act of God, or any other cause beyond the control of the Company shall not constitute grounds for termination.

SECTION 14. CHANGES IN PROVISIONS. Changes in the terms and conditions hereof may be made by written agreement between the Town and WFEC.

SECTION 15. SEVERABILITY; CHANGE IN LAW.

A. If any section, part of a section, paragraph, sentence, or clause of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion hereof, but shall be restricted and limited in its operation and effect to that specific portion hereof involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Ordinance adjudged to be invalid results in significant adverse consequences to a party, then that party may terminate this Agreement by providing ninety (90) days written notice to the other party.

B. Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the Town or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then WFEC or the Town may terminate this Agreement by providing ninety (90) days written notice to the other party.



SECTION 16. GOVERNING LAW. The Franchise granted herein, and this Agreement, shall be governed by the laws of the State of Florida and applicable Federal law. Any litigation between the parties arising from this Agreement shall only be in Holmes County, Florida, and the parties agree to venue in Holmes County, Florida.

SECTION 17. CONFLICT. This Ordinance supersedes and repeals all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith.

SECTION 18. EFFECTIVE DATE. As a condition precedent to the taking effect of this Ordinance, WFEC shall file its acceptance hereof with the Town's Clerk within sixty (60) days of adoption of this Ordinance. The effective date of this Ordinance shall be the date upon which WFEC files such acceptance.

PASSED on first reading the 18th day of March, 2025.

ADVERTISED in the Holmes County Advertiser on the 9th day of April, 2025.

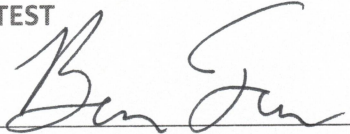
PASSED AND ADOPTED on the second reading the 15th day of April, 2025.

TOWN OF ESTO, FLORIDA

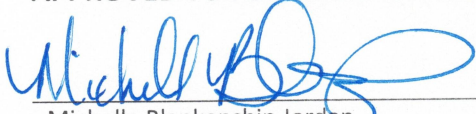

Greg Wells
Esto Town Council President



ATTEST


Ben Tew
Esto Town Clerk

APPROVED TO FORM AND CORRECTNESS


Michelle Blankenship Jordan
Town Attorney