

ORDINANCE NO. 91-02

AN ORDINANCE ESTABLISHING AND GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, CITY OF BLOUNTSTOWN, WEST FLORIDA ELECTRIC COOPERATIVE, GULF COAST ELECTRIC COOPERATIVE, AND ST. JOSEPH TELEPHONE AND TELEGRAPH COMPANY, THEIR SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE LINES FOR THE SALE OF UTILITIES IN THE UNINCORPORATED AREAS OF CALHOUN COUNTY, FLORIDA; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR PAYMENTS BY THE FRANCHISEES TO THE COUNTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CALHOUN COUNTY, FLORIDA, PURSUANT TO SECTION 125.42, FLORIDA STATUTES, AND OTHER APPLICABLE LAW, THAT:

Section 1. Calhoun County, Florida (hereinafter called "Grantor"), hereby grants to Florida Public Utilities Company, City of Blountstown, West Florida Electric Cooperative, Gulf Coast Electric Cooperative, and St. Joseph Telephone and Telegraph Company (herein called the "Grantees"), their successors and assigns, the nonexclusive right, privilege and franchise to construct, maintain and operate throughout the unincorporated areas of Calhoun County, as it may exist from time to time, in accordance with established practice with respect to the construction and maintenance of utilities, including but limited to electric light and power facilities (including conduits, poles, wire and transmission lines) for the purpose of supplying utilities, including electricity, to Grantor and persons and corporations within and beyond the limits of this franchise. This franchise shall be for the period of two (2) years, unless it is extended by the parties or terminated as further provided herein.

Section 2. The facilities shall be constructed, maintained and operated in accordance with all applicable provisions of law. The

facilities shall be so located or relocated and so erected as to interfere as little as possible with traffic over said streets, alleys, bridges and other 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 the approval of such representatives as the governing body of Grantor may designate for the purpose of, but not so as unreasonably to interfere with, the proper operation of the Grantees' facilities and service. When any portion of a street is excavated by a 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 in as good condition as it was at the time of such excavation.

Section 3. Grantor shall not be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by each Grantee of its facilities hereunder, and compliance with this ordinance shall be deemed an agreement on the part of each Grantee to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage or expense, which may accrue to Grantor by reason of the neglect, default, misconduct, or otherwise, of such Grantee in the construction, operation, maintenance, or otherwise, of its facilities pertaining hereto.

Section 4. The streets and other facilities of the Grantor to be used by the Grantees in their operation within the unincorporated areas of Calhoun County, are valuable public properties acquired and maintained by the Grantor at great expense to the taxpayers of Calhoun County, and

the grant to the Grantees to use said streets and facilities as herein provided is a valuable property right without which Grantees would be required to invest substantial sums in rights-of-way, costs, acquisitions and maintenance. Therefore, the Grantees, their successors and assigns, other than those pertaining to telephone service, shall initially pay to the Grantor the amount of 10% per month on gross sales per month sold within the unincorporated areas of Calhoun County, not to exceed \$10.00 per month per household or commercial property, on and after the effective date of this ordinance, it being understood that the stated rates may be decreased or increased by the Grantor. The 10% applicable to Grantees providing telephone service shall be upon the base rate only of such telephonic charges per household. Nothing herein shall be construed to be a limitation of the assessment and collection of valid taxes, special assessments, licenses, fees, charges or other impositions by the Grantor or other public or governmental body on or from the Grantees. Grantor agrees that if during the term of this franchise the Grantor enters into a franchise with any other utility or utility company which provides for lower payments than the rates provided herein, unless such lower rates be mandated by statute or judicial decree, then the Grantor, upon request of the Grantee, shall enter into a new franchise with the Grantee containing the lower payments.

Section 5. Payments to Grantor by each Grantee under the terms of Section 4 hereof shall be made monthly on the first working day of the second month after the month of sale. The final monthly payment for each fiscal year of this grant shall be adjusted to reflect any underpayments or overpayments made for said fiscal year.

Section 6. All funds received hereunder by the Grantor shall be used to defray the costs and expenses of providing emergency medical services.

Section 7. 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 Grantees, their successors, and assigns.

Section 8. Failure on the part of any Grantee to comply in any substantial respect with any of the provisions of this ordinance, other than the payment required, shall be grounds for a forfeiture of this grant if after thirty (30) days' notice the Grantee fails to correct same, 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 (6) months after the final determination of the question, to make good the default before a forfeiture shall result with the right in Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities of the case is required; provided, however, that the provisions of this section shall not be construed as impairing any alternative right which the Grantor may have with respect to the forfeiture of franchises under the Constitution or the general laws of Florida or the ordinances of the Grantor. Notwithstanding the above, failure of Grantee to make payment required hereunder within thirty (30) days of the date payment is due shall be grounds for immediate

revocation.

Section 9. The Board of County Commissioners of Grantor is authorized to adopt, modify, and repeal rules and regulations to carry out the implementation of the imposition and collection of the fees herein established.

Section 10. Grantees do not, and shall not, acquire any vested or other rights hereunder which would limit in any manner the Grantor's right to amend, modify or revoke this ordinance.

Section 11. Grantees shall promptly furnish Grantor a copy of all other franchises that they have granted from time to time during the life of this franchise.

Section 12. If any section, paragraph, sentence, clause, term, work or other portion of this ordinance shall be held to be invalid, the remainder of this ordinance shall not be affected.

Section 13. This ordinance shall take effect immediately upon becoming law.

Introduced in open session of the Board of County Commissioners of Calhoun County, Florida, on the 30th day of September, 1991.

PASSED IN OPEN SESSION OF THE BOARD OF COUNTY COMMISSIONERS OF CALHOUN COUNTY, FLORIDA, on the 15th of October, 1991.

BOARD OF COUNTY COMMISSIONERS
CALHOUN COUNTY, FLORIDA

By: S. Donnell Whitfield
S. Donnell Whitfield
Chairman

Attested with Seal:
Willie D. Wise
Willie D. Wise
Clerk of the County Commissioners
of Calhoun County, Florida

CERTIFIED A TRUE COPY.
Willie D. Wise, s/c county.ord
WILLIE D. WISE
CLERK CIRCUIT COURT
CALHOUN COUNTY, FLORIDA