ORDINANCE NO. 2013-__01_____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, PERTAINING TO THE CITY OF VERO BEACH ELECTRIC UTILITY; CALLING FOR A BINDING REFERENDUM TO BE HELD ON TUESDAY, MARCH 12, 2013 TO PRESENT A BALLOT QUESTION TO THE ELECTORS OF THE CITY OF VERO BEACH ON WHETHER OR NOT SUCH ELECTORS APPROVE OF THE SALE AND DISPOSITION OF THE CITY OF VERO BEACH ELECTRIC UTILITY AND SUBSTANTIALLY ALL OF ITS ASSETS FOR THE PURPOSE OF EXITING THE ELECTRIC UTILITY BUSINESS; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach, Florida (the "City") is a municipal corporation organized and existing pursuant to the laws of the State of Florida and is vested with the governmental, corporate, and proprietary powers to enable the City to conduct municipal government, perform municipal functions, and render municipal services, and is authorized to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, pursuant to said powers and authority the City owns and operates a municipal electric utility and its assets, including the Vero Beach Municipal Power Plant; and

WHEREAS, the City Council of the City of Vero Beach ("City Council") has determined it to be the policy of the City to exit the electric utility business and divest the City of its electric utility and substantially all of its assets if the City Council finds such action to be beneficial to the citizens of Vero Beach; and

WHEREAS, the City is currently negotiating with Florida Power & Light Company ("FPL") and has negotiated with the Orlando Utilities Commission ("OUC") regarding disposition of the City's electric utility and substantially all of its assets; and

WHEREAS, in consideration of all the foregoing, the City Council desires to submit the ballot question provided for in this Ordinance to the electors of the City to determine whether or not such electors approve of the sale and disposition of the City's electric utility and substantially all of its assets for the purpose of the City exiting the electric utility business,

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

Section 1 — Incorporation of "Whereas" Clauses.

The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance upon adoption hereof.

Section 2 — Authority for this Ordinance.

This Ordinance is enacted pursuant to Chapters 100 and 166, and section 101.161, Florida Statutes, and other applicable provisions of law and the Charter and Ordinances of the City.

Section 3 — Authorization for Sale and Disposition of Electric Utility.

Subject to the referendum results and pursuant to the provisions contained herein, the City Council is authorized to sell and dispose of the City's electric utility and substantially all of its assets and thereby exit the electric utility business if the City Council finds such action to be beneficial to and in the best interests of the City and its citizens. Such sale and disposition may include, but is not limited to, the City's municipal power plant and all other fixtures and improvements located on the site of the municipal power plant north of the 17th Street Bridge, west of the Indian River, and east of Indian River Boulevard, but excluding a sale of the power plant land.

Section 4 — Call for Referendum.

A referendum of the qualified electors residing in the City is hereby called to be held at a special election on March 12, 2013 to determine whether the sale and disposition of the City's electric utility and substantially all of its assets for the purpose of the City exiting the electric utility business shall be approved by such qualified electors. All qualified electors residing in the City shall be entitled and permitted to vote in such referendum. The polls will be open at the voting places, as identified in section 7 below, from 7:00 o'clock A.M. until 7:00 o'clock P.M. on the same day.

Section 5 — Notice of Referendum.

As required by law, at least 30 days' public notice of the referendum shall be provided by the City Clerk. This Ordinance shall be published in full as part of an appropriate notice of such referendum in substantially the form of the notice attached hereto as Exhibit "A," in the Indian River Press Journal or any other newspaper published and of general circulation in the area of the City, at least twice, once in the fifth week and once in the third week prior to the week in which the referendum is to be held.

Section 6 — Official Ballot Summary.

The ballot summary and title to be used for the referendum shall be in substantially the following form and shall be placed on the ballot:

Referendum on Sale and Disposition of Vero Beach Electric Utility

Do you approve of the sale and disposition of the City of Vero Beach electric utility and substantially all of its assets for the purpose of exiting the electric utility business under terms substantially similar to the asset purchase and sale agreement between the City and Florida Power & Light Company?

_____ Yes, for approval

_____ No, for rejection

Section 7 — Places of Voting, Inspections, Clerks.

The places of voting and the inspectors and clerks for the polling places for the referendum shall be the same as in general elections held in the City.

Section 8 — Absentee and Early Voting.

Ballots used at such election for absentee and early voting shall be the same as in general elections held in the City. The form of ballot to be used in the referendum for absentee and early voters shall be the form specified in section 6 above.

Section 9 — Printing of Ballots.

The Supervisor of Elections of Indian River County, Florida, is authorized and directed to have printed a sufficient number of such ballots for use of absentee and early electors qualified to cast ballots in the referendum, and shall also have printed sample ballots and deliver them to the inspectors and clerks on or before the date and time for the opening of the polls for such referendum for use at the voting places; and further is authorized and directed to have printed and delivered in accordance with law the official ballots for use in such referendum.

Section 10 — Referendum Procedure.

The referendum shall be held and conducted in the manner prescribed by law, except as may be provided by Sections 100.201 through 100.351, Florida Statutes. The inspectors and clerks at each polling place shall prepare and file, or cause to be prepared and filed, returns of such referendum and shall deliver the same to the Indian River County Supervisor of Elections who shall thereafter certify the results to the City. Such returns shall show the number of qualified electors who voted at such referendum, and the number of votes cast respectively for approval and for rejection of the proposition. The returns shall, as soon as practicable thereafter, be canvassed by the City Canvassing Board.

Section 11 — Effect of Referendum Results.

If a majority of the votes cast at such referendum shall be "Yes, for approval," such proposition shall be approved; and then the City may sell and dispose of the City's electric utility and substantially all of its assets, including but not limited to the City's municipal power plant and all other fixtures and improvements located on the site thereof, but excluding a sale of the power plant land, and thereby exit the electric utility business, which sale and other disposition may be consummated as hereinafter provided by subsequent action of the City Council if the City Council finds such action to be beneficial to and in the best interests of the City and its citizens. If a majority of the votes cast at such referendum shall be "No, for rejection," approval of such proposition shall be rejected; and then such sale and disposition of the City's electric utility and substantially all of its assets shall not be consummated.

Section 12 — Conflict.

In the event any provision of this Ordinance conflicts or is inconsistent with any provision of the Code of the City or any other ordinance or resolution of the City, the provisions of this Ordinance shall apply and supersede on the subject matter of this Ordinance.

Section 13 — Severability.

If any provision of this Ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 14 – Codification.

This Ordinance being of limited scope and applicability, it shall not be codified in the Code of the City.

Section 15 – Effective Date.

Section 3 of this Ordinance shall take effect only if and when the ballot question is approved by a majority of the qualified electors of the City voting in the referendum called in section 4 of this Ordinance. All other sections of this Ordinance shall become effective immediately upon final adoption of this Ordinance by the City Council.

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This Ordinance was read for the first time on the 11th day of December 2012, and was advertised in the Indian River Press Journal on the 29th day of December 2012, for a public hearing to be held on the 8th day of January 2013, at the conclusion of which hearing it was moved for adoption by Councilmember Turner, seconded by Councilmember Carroll, and adopted by the following vote of the City Council:

Mayor A. Craig Fletcher	yes
Vice Mayor Tracy M. Carroll	yes
Councilmember Pilar E. Turner	yes
Councilmember Jay Kramer	no
Councilmember Richard G. Winger	yes

ATTEST:

Tammy P. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

A. Craig Fletcher
Mayor

(CITY SEAL)

Approved as to form and legal sufficiency:

Wayne R. Coment
City Attorney

Approved as conforming to municipal policy:

James R. O'Connor
City Manager

NOTICE OF REFERENDUM IN THE CITY OF VERO BEACH, FLORIDA, ON MARCH 12, 2013

NOTICE IS HEREBY GIVEN THAT A REFERENDUM will be held on TUESDAY, MARCH 12, 2013, in the City of Vero Beach, Florida (the "City"), for the purpose of determining whether or not the qualified electors of the City approve of the sale and disposition of the City of Vero Beach Electric Utility and substantially all of its assets for the purpose of exiting the electric utility business; all as more particularly described and provided in Ordinance No. 2013-01 of the City of Vero Beach (the "Ordinance") published in full below (excluding this notice) as part of this notice.

The places of voting in the referendum shall be those same places of voting as for general elections held in the area of the City. The polls will be open at the voting places on the date of the referendum from 7:00 o'clock AM until 7:00 o'clock PM on the same day; all as more particularly described in the Ordinance.

All qualified electors residing within the area of the City shall be entitled, qualified and permitted to vote at such referendum.

CITY OF VERO BEACH, FLORIDA

By: s. TAMMY K. VOCK
City Clerk

EXHIBIT "A"