ORDINANCE NO. 9929-26

AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC d/b/a DUKE ENERGY, NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE TO OCCUPY MUNICIPAL STREETS AND RIGHTS-OF-WAY IN THE CITY OF CLEARWATER, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC AND POWER SERVICES; PRESCRIBING THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise power for municipal purposes, except when expressly prohibited by law; and,

WHEREAS, Section 166.021(1), Florida Statutes, provides that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except when expressly prohibited by law; and,

WHEREAS, the City Council of the City of Clearwater, Florida (“City” or “Grantor”), recognizes that the City and its citizens need and desire the continued benefits of electric service; and,

WHEREAS, Duke Energy Florida, LLC, (“Company” or “Grantee”) is a public utility which has the demonstrated ability to supply such services; and,

WHEREAS, on December 7, 1995, the City Council granted a thirty-year franchise to Florida Power Corporation, the predecessor of Company, for the purpose of supplying electricity to the City and for the other purposes stated in Ordinance Number 5944-95, effective December 7, 1995; and,

WHEREAS, under the terms of the 1995 franchise agreement, the franchise expired on December 7, 2025;

WHEREAS, the Company is willing to undertake installation and operation of its electric utility facilities under a franchise from the City; and,

WHEREAS, the City Council has determined that it is in the best interests of the City of Clearwater and its citizens to enter into a new franchise agreement and to adopt this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA IN SESSION AND DULY ASSEMBLED THAT:

Section 1. Recitals. The above-mentioned recitals are true and accurate and included herein by reference.

Section 2. Short Title. This Ordinance shall be known and may be cited as the "Duke Energy Florida Electric Franchise."

Section 3. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely permissive.

(A) "Adversely Affected" – For the Company, a loss of one percent (1%) of Base Revenues within the corporate City limits due to Retail Wheeling. For the City, a loss of one percent (1%) of Franchise Fees due to Retail Wheeling.

(B) "Base Revenues" – All of Company's revenues from the retail sale of electricity, net of customer credits, to residential, commercial and industrial customers and City sponsored street lighting, that are within the corporate limits of the City.

(C) "Electric Energy Provider" – Every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including City herein), which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing Company's distribution or other facilities. Without limitation of the foregoing, "Electric Energy Provider" shall also include every Electric Utility, electric power marketer or electric power aggregator. It shall also include every entity providing such services as metering, customer billing, payment collection and processing, and customer information and data processing on behalf of an Electric Energy Provider.

(D) "Electric Utility" – Shall have the meaning set out in Section 366.02(4), *Florida Statutes*, and shall also include every electric "Public Utility" as defined in Section 366.02(8), *Florida Statutes*. "Electric Utility" shall further include every investor owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers), which owns, maintains, or operates an electric generation, transmission, or distribution system in any State or County.

(E) "Electric Utility System" – An electric power system installed and operated in the Franchise Area in accordance with the provisions of the Florida Public Service Commission establishing technical standards, service areas, tariffs and operating standards, which shall include, but not be limited to, electric light, heat, power and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions hereto as shall hereafter be made.

(F) “Franchise Area” – That area for which Company provides electric utility service within the corporate City limits of the City as of the Effective Date per Section 24.

(G) “Franchise Fees” – Shall have the meaning set forth in Section 6 of this Ordinance.

(H) “Facilities” – Conduits, cables, poles, wires, street lighting, supports and such other structures, appurtenances or accessories as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system, including information, telecommunication, and video transmission used solely for the provision of electric service.

(I) “Ordinance” – The ordinance titled and described in the preamble herein and ordained by the City Council of Clearwater, Florida.

(J) “Person” – Any person, firm, partnership, association, corporation, company or organization of any kind.

(K) “Public Service Commission” – The Florida Public Service Commission.

(L) “Rights of Way” – All of the public streets, alleys, highways, waterways, easements, bridges, sidewalks and parks (only as it relates to Grantee's Facilities currently located within such parks as of the Effective date of this Ordinance), and any other public ways or places owned by the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added, consolidated or annexed to the City. It is understood that there are within the Franchise Area certain rights of ways, streets and easements which the City does not have the sole and unqualified right to authorize the Company to use, because of reservations in favor of the dedicators or because of legal impediments. Therefore, in making any grant hereunder the City does not warrant or represent as to any particular street or portion of a street or easement that it has the sole and unqualified right to authorize the Company to install or maintain portions of its Electric Utility System therein; provided that City shall work with Company in good faith and to the extent reasonably practical to resolve any issues arising out of the City’s possession of a qualified right to authorize Company to use a street or easement. Notwithstanding anything to the contrary, Company shall obtain City's prior written approval for the installation of new Facilities in parks and other public places owned by the City which are not public streets, alleys, highways, waterways, easements, bridges, sidewalks, or ways.

(M) “Retail Wheeling” – A customer/supplier arrangement whereby an Electric Energy Provider utilizes transmission and/or distribution facilities of Company to make energy sales directly to an end use customer located within the Franchise Area.

Section 4. Grant of Authority.

(A) There is hereby granted by Grantor, to Grantee, the right and privilege to lay, repair, construct, erect, operate, own and maintain Grantee’s Facilities, in, upon, along, across, above, over and under Rights-of-Way now laid out or dedicated, and all extensions thereof, and additions thereto in the corporate City limits, including poles, wires, cables, underground conduits, manholes, fiber optic cable for its own use and other fixtures necessary or proper for the maintenance and operation of its Electric Utility System, provided that all portions of the same shall conform to the National Electrical Safety Code. This Franchise is awarded subject to the provisions of general or special laws of Florida now existing or hereinafter enacted. This grant of authority is limited to the provision by Grantee to have, maintain or place its Facilities within Rights of Way for its electric utility services. In the event Grantee desires to use its existing facilities, or construct new facilities, in order for Grantee to provide public communications, leased fiber optic capacity, or video services to existing or potential consumers, Grantee must obtain additional and separate permission from the City for such activities. Nothing in this Ordinance shall require Grantee to remove, de-energize, or cease using any poles, wires, or other things or Facilities identified hereinabove that were in place under previous ordinances or permits prior to the Effective Date (as defined in Section 5) of this Ordinance, regardless of whether such poles, wires or other Facilities are located outside "Rights of Way" as defined herein. Nor shall anything in this Ordinance prohibit Company from performing upgrades, replacements, maintenance or servicing of such poles, wires, or other Facilities which are located within the Rights of Way or are otherwise lawfully placed after the Effective Date of this Ordinance. Rather, all such preexisting poles, wires, or other Facilities which are located within the Rights of Way or are otherwise lawfully placed shall be authorized under this Ordinance. Because this Franchise is intended to grant Company the unrestricted right to place its Facilities within the Rights of Way, the City expressly acknowledges and agrees that Company shall not be required to apply for, obtain, or pay for permits to construct, operate, maintain, or remove its Facilities within the Rights of Way.

(B) Annexation or Contraction. Grantee agrees that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If Grantor approves any Franchise Area expansion or reduction by annexation or contraction, Grantor will provide written notice to Grantee. Grantee must revise its payments due to any expansion or reduction by annexation within a reasonable time after notice to Grantee, but no later than sixty (60) days after receipt of notice. After notice of Annexation or Contraction of the Franchise Area, Grantor and Grantee agree to meet and agree upon the boundaries of, and addresses within, the updated Franchise Area using GIS mapping technology and the resulting updated Franchise Area shall be the basis for collection of the Franchise Fee per section 6 herein.

All notices of annexation or contraction shall be addressed to the Annexation Coordinator as follows, with the address subject to change:

Duke Energy
Tax Team DT02-V
9642 David Taylor Drive

Charlotte NC 28262
And by email to: TaxTeam@duke-energy.com

(C) Use of the Rights of Way. During the term of the Franchise granted herein, Company shall be the sole Electric Utility allowed to use and occupy the Rights of Way; provided, however, the Company's right to use and occupy Rights of Way for the purposes set forth herein shall be non-exclusive as to entities not engaged in the provision of electric energy and service, and the City reserves the right to grant to others the right to utilize the Rights of Way to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Company herein. In addition to any other rights and/or remedies Company may have under this Ordinance or at law or in equity, should City permit an Electric Utility other than Company to use and occupy the Rights of Way, City agrees that Company shall be entitled to injunctive relief.

Section 5. Acceptance by Grantee; Term of Franchise; Effective Date.

(A) This Ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the City Commission; and it is further agreed that Grantee shall accept this Franchise as of the date of the passage and adoption by the City Commission and shall signify its acceptance in writing within thirty (30) days after the City Commission's approval of this Ordinance by filing its written acceptance with the City Clerk. If Grantee fails to accept this Franchise within thirty (30) days of its date of passage and adoption, then this Ordinance shall be null and void, and of no force and effect of any kind.

(B) Commencing on the Effective Date, the term of the Franchise granted herein shall be for a period of thirty (30) years.

Section 6. Payment to City.

(A) Effective the first day of the second month beginning after the Effective Date of this Ordinance, City shall be entitled to receive from Company a monthly franchise amount that will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the preceding month, which amount shall be the total compensation due City for any and all rights, authority and privileges granted by this Franchise, including compensation for any permits, fees, or any other fee or cost related to the rights granted hereunder. Company will collect Franchise Fees due hereunder from Company's customers in the Franchise Area and those amounts will be paid to the City in the manner described herein. The City expressly acknowledges that no additional or other amounts shall be due or remitted by Company for the exercise of its rights granted hereunder.

Payment shall be made to City for each month no later than the twentieth (20^{th}) day of the following month. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof made twenty (20) days after the due date without good cause shall be subject to interest at the rate of ten percent (10%) per annum.

(B) Only disputed amounts shall be allowed to be withheld by Company, and any such amount shall not accrue any interest during the pendency of any such dispute provided Company timely notifies the City in writing concerning the reason for the dispute as soon as reasonably practical given the nature and circumstances of the dispute.

(C) The City acknowledges that all classifications and categories of retail customers of Company shall be subject to the payment of the Franchise Fee due hereunder.

Section 7. Favored Nations.

(A) In the event Grantee shall hereafter accept an electric utility franchise ordinance from another municipality providing for the payment of a franchise fee in excess of that provided for per Section 6 above, the Grantee shall immediately notify the Grantor and the Grantor reserves the right to amend this Franchise to increase the Franchise Fee payable under this Ordinance to no more than the greater franchise fee that Grantee has agreed to pay to such other municipality. The Grantee's failure to notify Grantor of such additional payments does not limit Granter's rights to such additional franchise fees nor limit Grantee's liability with respect thereto including late payments outlined in Section 6 (B).

(B) In the event applicable laws change to expressly permit additional Electric Utility Providers within the Franchise Area or prohibit Grantee from being the sole Electric Utility Provider within the Franchise Area, it is the intent of the Grantor and Grantee that the Franchise Fee paid by the Grantee will be adjusted to the lesser of the Franchise Fee per Section 6 herein or whatever amount Grantor agrees to accept from such other Electric Utility Provider.

(C) In no event shall Grantor receive a franchise fee that is less, in terms of percentage, than any other governmental entity within Grantee's service area, except that, in the event Grantor shall hereafter grant an electric utility franchise to any other electric energy supplier providing for the payment of a franchise fee less than the amount provided for in Section 6 above, then Grantor shall be obligated to accept an amendment of this ordinance providing for a decrease in the franchise fee to such lesser amount.

Section 8. Rates and Services Provided. The rates to be charged and services provided by the Grantee for electric service within the corporate limits of Grantor during the term of this franchise shall be as provided in the Grantee's tariffs now or hereafter approved by the Florida Public Service Commission, or such agency of the State of Florida as may have proper jurisdiction over such rates and charges of Grantee.

Section 9. Character of Service. Grantee agrees that the materials to be used in the construction, operation and maintenance of the electric distribution system and the service to be rendered thereby shall be in every respect equal to those provided to Grantee's other franchised communities.

Section 10. Grantor Rights in Franchise. The right is hereby reserved to the City to adopt such regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, and shall not conflict with or otherwise interfere with the benefits conferred on the Company hereunder. The rights and privileges granted to the Grantee hereunder shall at all times be subordinate and inferior to the rights of the public in and to the ordinary use of the Grantor's Right of Way and nothing herein shall be deemed a surrender by Grantor of its right and power to use and/or relocate the use of its Right of Way. In the event of a conflict between this Ordinance and any other ordinance or regulation adopted by the City or involving actions (or inactions) of the City relating to Company's rights to perform work in and/or occupancy of the Rights of Way as permitted hereunder, the rights under this Ordinance shall govern and control. In the event of such conflict, the City and Company agree to work together in good faith to promptly address and resolve such conflict; provided, however, that Company shall be permitted to continue to exercise the rights granted herein during the resolution of any conflict.

Section 11. Work in Rights of Way.

(A) The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights of Way of the City related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten, and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the rights and privileges necessary or convenient for the full use including the right, subject to restrictions set forth herein, to trim, cut, remove and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation or access of same. Company represents that its tree trimming procedures meet or exceed the standards promulgated in ANSI A300 and that its standards will continue to meet or exceed those standards unless ordered to modify its standards by the Florida Public Service Commission or other authority to which Company's operations are subject. Moreover, the Company shall have the right to construct, erect, operate and maintain within the City an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said City shall not be unnecessarily obstructed for an unreasonable amount of time and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the City for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

(B) The Company will notify the City of Significant Projects within City ROW to confirm that its designs will not unreasonably interfere with the convenient, safe and continuous use of the public road system and, upon request of the City, will provide construction plans and design specifications to assure compliance with the NESC safety and design guidelines. The Company will give the City a minimum of two (2) weeks advance notice of such Significant Projects. Significant Projects for the purposes of this section shall mean the installation of new transmission lines, the replacement of facilities spanning one or more blocks in residential areas or relocation of facilities due to road widening within the City. This is not to be construed to grant or imply authority upon the City to regulate the design, construction or maintenance of Company's electric transmission and distribution facilities; provided, however, that such design, construction or maintenance shall not unreasonably interfere with the City's own infrastructure located within its Rights of Way. Notice will not be required for emergency or maintenance activities.

(C) To the extent practical and reasonable, Company shall locate new facilities and relocated facilities in a manner that minimizes interference with traffic on said public Rights of Way. In such cases where the Facilities of Company unreasonably conflict with authorized street widening and improvements, Company shall relocate said Facilities in accordance with Section 337.403, Florida Statutes, as it exists now and as may be amended from time to time and any other applicable laws of the State of Florida or regulation by a state agency having the right to regulate Company. Upon Company's request, City shall grant such additional time to Company as may be reasonably necessary to accomplish relocation of Facilities considering the extent and complexity of the work required. When any public Rights of Way or public property of City is excavated by Company, that portion so excavated shall be restored as can be reasonably done to its pre-excavation condition by Company in accordance with Section 337.402, Florida Statutes, as it exists now and as may be amended from time to time and any other applicable laws of the State of Florida or regulation by a state agency having the right to regulate Company. City shall have the right to approve such restoration, which approval shall not be unreasonably withheld. Subject to any cost allocation requirements or standards set forth in Section 337.403, Florida Statutes, other applicable laws or regulations of the State of Florida or its agencies, or Company's approved tariffs, in each case as amended from time to time, all costs associated with relocation of existing Facilities located solely within Rights of Way or installation of new facilities, including costs to restore Rights of Way, shall be the sole responsibility of the Company.

(D) Notwithstanding anything herein to the contrary, Company shall be responsible for physical damage to the Rights of Way or any infrastructure or facilities of the City located thereon to the extent caused by Company.

(E) Any request to underground electric utility facilities shall be submitted to Grantee and performed in accordance with applicable public tariff sections as approved by the Florida Public Service Commission or other state agency as may have jurisdiction under the general laws of the State of Florida governing such underground work. Costs associated with such underground work shall be estimated and applied in accordance with the Grantee's standard public tariff as approved by the Florida Public Service Commission or other state agency as may have jurisdiction under the general laws of the State of Florida. In the event of a conflict between the City of Dunedin Code of Ordinances and the Grantee's tariffs approved by the Florida Public Service Commission, the tariff should control.

Section 12. Indemnification.

(A) The acceptance of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify City and hold it harmless from and against any and all claims for death, bodily injury or property damage resulting in direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs incurred by the City to the extent arising out of or resulted from the negligence or willful misconduct of Company, its contractors and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. Company shall not be required to indemnify and hold harmless City for any damages, claims, expenses, reasonable attorneys' fees and costs arising out of or resulting from the negligence or willful misconduct of City, its employees, contractors and/or agents. In no event shall Company be liable to City for any consequential, incidental, punitive, exemplary, multiple, or indirect damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise.

(B) Company shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring City and Company with regard to all damages set forth in Section 12 (A) in the minimum amounts of:

(i) $1,000,000 for bodily injury or death to a person;
$3,000,000 for bodily injury or death resulting from any one accident;
(ii) $500,000 for property damage resulting from any one accident; and
(iii) $1,000,000 for all other types of liability.

(C) Upon the request of the City, Company shall provide the City with a Certificate of Insurance, by U.S. Mail at the City address specified in Section 17, which certifies coverage in the minimum amounts listed above.

(C) City acknowledges that Company provides its own liability insurance (self-insured).

Section 13. Records and Reports.

(A) Company Rules and Regulations. The following documents shall be available to City upon City's reasonable request: copies of rules, regulations, and procedures adopted by Company that relate to Company's use of City's Rights of Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company, as determined by Company.

(C) Reports. Company will submit a statement monthly of its estimated Base Revenues for the period on which such payment is based with sufficient detail to show the method of computation for Base Revenues including the number of customer accounts upon which the computation is based. The acceptance of any statement or payment shall not prevent the City from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6 (A).

(D) Availability of Records and Reports. Company shall supply information and records that City or its representatives may from time to time reasonably request relative to the calculation of Franchise Fees, subject to the Company's obligation to keep certain records confidential. Such records shall, on written request of City, be open for examination and audit by City and City's representatives at a mutually agreed upon time and place, during ordinary business hours and such records shall be retained by Company for a period of three (3) years.

(E) Audit. City may require an audit of Company's books related to this Ordinance upon prior written notice and during Company's normal business hours not more than once every three (3) years and then only for the preceding three (3) years. Company will reimburse City's audit costs if the audit identifies errors in Company's Franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of Franchise Fees has occurred due to the Company's error, interest will be calculated at the rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

Section 14. Approval of Transfer.

(A) The rights and privileges granted by this Franchise shall not be sold, or assigned in whole or in part without the Grantor's written consent; however, such consent shall not be unreasonably withheld. No such sale or assignment shall be effective until the vendee or assignee has filed with the Grantor an instrument, duly executed, reciting the fact of such sale or assignment and agreeing to perform all the conditions thereof.

(B) Grantee shall annually submit to Grantor, Attention: City Clerk's Department, a copy of its Audited Annual Financial Report upon its normal issuance of same. By acceptance of this Franchise, the Grantee specifically agrees that in the event of any violation of this Section, after thirty (30) days written notice and an opportunity for Grantee to cure, Grantor may cause the Franchise granted herein to be terminated.

Section 15. Retail Wheeling. In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this Ordinance upon thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee payments between Company and the City. If the parties are unable to agree within ninety (90) days of reopening, either party may declare an impasse and may file an action in the Circuit Court in Pinellas County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail Wheeling.

Section 16. Severability. Should any section or provision of this Ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, 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 any part thereof, other than the part declared to be invalid. In the event of any such partial invalidity, City and Company shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

Section 17. Acceptance. This ordinance shall become effective upon being legally passed and adopted by the City Council of the City of Clearwater, as provided by law; and it is further agreed that Grantee shall accept this franchise as of the date of the passage and adoption by the City Council and shall signify its acceptance in writing within thirty days after the City Council's approval of this ordinance by filing its written acceptance with the City Clerk.

Section 18. Governing Law and Venue. This Ordinance shall be construed and interpreted according to the laws of the State of Florida. In the event that any legal proceeding is brought to enforce the terms of this Ordinance, the same shall be brought in the appropriate state court in Pinellas County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Tampa Division.

Section 19. Merger. This Ordinance is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this agreement. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set forth or provided herein.

Section 20. Notices. Except in exigent circumstances, all notices by either City or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested, or by recognized commercial delivery (e.g., FedEx, UPS or DHL). Any such notice shall be served by certified mail return receipt or commercial delivery deemed given based on the delivery receipt. All notices shall be mailed to the following or to such other address as either party may designate to the other in writing:

To City:
City Clerk
Rosemarie Call
600 Cleveland Street 6th Floor
Clearwater, FL 33755
Phone: (727) 562-4090

To Company:
Duke Energy
Govt. & Community Relations Dept.
299 1st Avenue North – FL163
St. Petersburg, FL 33701
Phone: (727) 820-5141

Section 21. Non-Waiver Provision. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

Section 22. Repealer and Superseding Provision. This Ordinance shall supersede, as to the rights, privileges, and obligations between City and Company, all ordinances and parts of ordinances in conflict with the terms of this Ordinance. Ordinance No. 5944-95 and any amendments thereto, are hereby deemed null and void and/or repealed upon the effective date of this Ordinance and none of the provisions of such repealed Ordinance No. 5944-95 and any amendments thereto shall have any further force and effect, , except that the indemnification clause under Ordinance No. 5944-95 shall remain in force and effect such that all claims made under such indemnification clause continue.

Section 23. Dispute Resolution. The parties to this Ordinance agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

Section 24. Effective Date. This Franchise shall take effect following adoption by Grantor and then immediately upon acceptance by Grantee.

PASSED ON FIRST READING ____________________

PASSED ON SECOND READING ____________________

____
Bruce Rector
Mayor

Approved as to form: Attest:

____
Owen Kohler
Interim City Attorney

____
Rosemarie Call
City Clerk

____
Melissa Seixas, State President
Duke Energy Florida, LLC