

TMS COMMENTS

AGREEMENT FOR EXCHANGE OF REAL PROPERTY

This Agreement for Exchange of Real Property (“Agreement”) is entered into as of the Effective Date (as defined below) by and between **FRANKLIN COUNTY**, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, whose address is 33 Market Street, Suite 203, Apalachicola, Florida 32320, (hereinafter the “County”), and **DUKE ENERGY FLORIDA, LLC, a Florida Limited Liability Company d/b/a/ Duke Energy as successor in interest to Florida Power Corporation**, with an address of 525 S. Tryon St., DEP-21B, Charlotte, NC 28202 (hereinafter “Duke Energy”). The County and Duke Energy may be referred to herein individually as a “Party” or collectively as the “Parties.” The Parties hereby agree that Duke Energy shall convey certain real property, more particularly described herein, to the County pursuant to the terms and conditions of this Agreement and the County shall convey certain real property more particularly described herein, in exchange to Duke Energy pursuant to the terms and conditions of this Agreement.

WITNESSETH

WHEREAS, Duke Energy presently owns parcel 01-09S-08W-8330-00H2-0060 located at 174 Commerce Street, Apalachicola, Florida, improved with vertical infrastructure; and

WHEREAS, Duke Energy plans to expand the use of said Duke Energy’s fee owned property at 174 Commerce Street, its infrastructure; and

WHEREAS, the County currently owns parcel 01-09S-08W-8330-00H2-0050, which is a tract of land that is adjacent to Duke Energy’s communication tower site at said 174 Commerce Street, as depicted in the attached Exhibit “A” and incorporated herein by reference (the “County Parcel” a/k/a Exhibit A); and

WHEREAS, Duke Energy currently owns parcel 02-09S-08W-0000-0890-0060, which is a tract of land of interest to the County for public purposes (“the Duke Energy Parcel” a/k/a Exhibit B) ; and

WHEREAS, Duke Energy is willing to convey the Duke Energy Parcel to the County in exchange for the County Parcel adjacent to the Duke Energy communication tower site at 174 Commerce Street as the County Parcel would provide additional land for future expansion project; and,

WHEREAS, pursuant to Section 125.37, Florida Statutes, the County has determined that it is in the best interest of the County to exchange the County Parcel for the Duke Energy Parcel to expand the public use of the property .

NOW THEREFORE, in consideration of the premises, which shall be deemed an integral part of this agreement, and of the mutual covenants and conditions set forth in this agreement, the County and Duke Energy intending to be legally bound thereby agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

2. Duke Energy Agreement.

(a) Duke Energy Conveyance. Duke Energy shall convey the fee parcel more particularly described in **Exhibit “B”** and incorporated herein by reference (the “Duke Energy Parcel”) in exchange for the County Parcel and other good and valuable consideration as set forth herein and otherwise, the receipt and sufficiency of which is hereby acknowledged pursuant to this Agreement. Duke Energy shall execute all required documents and submit all disclosures required by law and requested by the County to convey said Duke Energy Parcel. Duke Energy shall convey the Duke Energy Parcel on the Closing Date via a Special Warranty Deed, free of all encumbrances or liens that are not satisfactory to County, in County’s sole discretion. With the exception of ad valorem taxes prorated through the Closing Date (as such term is hereinafter defined); excise taxes on documents, if any, which are required to be paid by the nonexempt party pursuant to section 201.01 of the Florida Statutes; and any other closing costs otherwise attributed pursuant to the provisions of this **Agreement**, Duke Energy shall prepare all closing documents and pay all closing costs and recording fees associated with this conveyance.

(b) Duke Energy Warranty. Duke Energy warrants that it is the sole owner of the Duke Energy Parcel and has full power and authority to convey the Duke Energy Parcel to the County as outlined herein. Duke Energy further warrants that it will convey the Duke Energy Parcel on the Closing Date via a Special Warranty Deed, free and clear of all encumbrances or liens that are not satisfactory to County, in County’s sole discretion.

(c) Due Diligence. At any time prior to the expiration of a period of one hundred twenty (120) days following the execution of this Agreement (the “Inspection Period”), County and its agents shall have the right and privilege to enter upon the Duke Energy Parcel, at their own risk and expense, to inspect, examine, survey and perform such tests, inspections, studies or other evaluations of the Duke Energy Parcel as County may deem necessary (the “Inspection”). County may consult with any governmental agencies having jurisdiction over approvals or permits relating to the Duke Energy Parcel. County shall have the right, which may be exercised by delivering written notice to Duke Energy at any time during the Inspection Period, to terminate this Contract for any reason that County deems appropriate in its sole discretion. Upon delivery of written notice of termination to

Duke Energy during the Inspection Period, this Contract shall terminate, the parties hereto will have no further rights or obligations hereunder. If the Inspection reveals that the Duke Energy Parcel has environmental contamination, Duke Energy shall have thirty (30) days after written notice of such contamination to either clean up the contamination or obtain an assessment of the cost and the estimated time to clean up the contamination and deposit a sum equal to that cost in a trust. Should the estimated time for clean-up extend beyond the Closing Date or if Duke Energy chooses not to clean up or deposit the cost to clean up, County shall have the option to terminate this Contract and the Parties shall be relieved from all obligations under the Contract and, if the County does not terminate this Agreement and elects to Close, then it shall be deemed to have accepted the Duke Energy Parcel in its “as is where is” condition. In connection with County’s Inspection of the Duke Energy Parcel, Duke Energy shall deliver to County, within fifteen (15) days after the execution of this Agreement, copies of the following information and/or documentation about the Duke Energy Parcel (collective the “Due Diligence Materials”) that are in Duke Energy’s possession or control: (i) all surveys, environmental studies, engineering studies, archeological reports, leases and contracts; (ii) wetland delineation reports or determinations from any applicable regulatory agency; (iii) documentation indicating the presence, existence or location of any flood plains on all or a portion of the Duke Energy Parcel; (iv) reports indicating that the Duke Energy Parcel contains species of plant or animal life which is on a federal, state or local list of protected or endangered species; and (v) all active environmental regulatory permits, plans or approvals (i.e.: ERP, or operational storm water permits, as-built drawings, agreements for use, air permits, Army Corps of Engineers Permits, etc.). County may extend the Inspection Period by thirty (30) days (“Inspection Period Extension”) by notifying Duke Energy prior to the expiration of the Inspection Period if necessary to secure the approvals or permits required for County’s intended use.

3. County’s Agreement.

(a) County Parcel Conveyance. The County shall convey to Duke Energy the fee parcel more particularly described in **Exhibit “A”** and incorporated herein by reference (the “County Parcel”) in exchange for the Duke Energy Parcel and other good and valuable consideration as set forth herein and otherwise, the receipt and sufficiency of which is hereby acknowledged pursuant to this Agreement. The County shall execute all documents and disclosures required by law and requested by Duke Energy to convey said County Parcel. The County shall convey the County Parcel on the Closing Date via a statutory County deed, free of all encumbrances or liens that are not satisfactory to Duke Energy, in Duke Energy’s sole discretion. With the exception of excise taxes on documents, if any, which are required to be paid by the nonexempt party pursuant to section 201.01 of the Florida Statutes and any other closing costs otherwise attributed pursuant to the provisions of this Agreement, the County shall prepare the closing documents and pay all closing costs and recording fees associated with this conveyance.

(b) County Warranty. The County warrants that it is the sole owner of the County Parcel and has full power and authority to convey the County Parcel to the Duke Energy as outlined herein. The County further warrants that it will convey the County Parcel on the Closing Date via a statutory County deed, free and clear of all encumbrances or liens that are not satisfactory to Duke Energy, in Duke Energy's sole discretion.

(c) Due Diligence. At any time prior to the expiration of a period of one hundred twenty (120) days following the execution of this Agreement (the "Inspection Period"), Duke Energy and its agents shall have the right and privilege to enter upon the County Parcel, at their own risk and expense, to inspect, examine, survey and perform such tests, inspections, studies or other evaluations of the County Parcel as Duke Energy may deem necessary (the "Inspection"). Duke Energy may consult with any governmental agencies having jurisdiction over approvals or permits relating to the County Parcel. Duke Energy shall have the right, which may be exercised by delivering written notice to County at any time during the Inspection Period, to terminate this Contract for any reason that Duke Energy deems appropriate in its sole discretion. Upon delivery of written notice of termination to County during the Inspection Period, this Contract shall terminate, the parties hereto will have no further rights or obligations hereunder. If the Inspection reveals that the County Parcel has environmental contamination, the County shall have thirty (30) days after written notice of such contamination to either clean up the contamination or obtain an assessment of the cost and the estimated time to clean up the contamination and deposit a sum equal to that cost in a trust. Should the estimated time for clean-up extend beyond the Closing Date or if the County chooses not to clean up or deposit the cost to clean up, Duke Energy shall have the option to terminate this Contract and the Parties shall be relieved from all obligations under the Contract and, if Duke Energy does not terminate this Agreement and elects to Close, then it shall be deemed to have accept the County Parcel in its "as is where is" condition. In connection with Duke Energy's Inspection of the County Parcel, County shall deliver to Duke Energy, within fifteen (15) days after the execution of this Agreement, copies of the following information and/or documentation about the County Parcel (collective the "Due Diligence Materials") that are in County's possession or control: (i) all surveys, environmental studies, engineering studies, archeological reports, leases and contracts; (ii) wetland delineation reports or determinations from any applicable regulatory agency; (iii) documentation indicating the presence, existence or location of any flood plains on all or a portion of the County Parcel; (iv) reports indicating that the County Parcel contains species of plant or animal life which is on a federal, state or local list of protected or endangered species; and (v) all active environmental regulatory permits, plans or approvals (i.e.: ERP, or operational storm water permits, as-built drawings, agreements for use, air permits, Army Corps of Engineers Permits, etc.). Duke Energy may extend the Inspection Period by thirty (30) days ("Inspection Period Extension") by notifying County prior to

the expiration of the Inspection Period if necessary to secure the approvals or permits required for Duke Energy's intended use.

4. Title Insurance. As soon as practicable, but in no event later than thirty (30) days after the execution of this Agreement by the Board of County Commissioners, the County shall acquire, at its sole expense, an ALTA standard title commitment for the County Parcel and Duke Energy shall acquire an ALTA standard title commitment for the Duke Energy Parcel. Duke Energy agrees to convey title to the County free and clear of all encumbrances or liens that are not satisfactory to County, in County's sole discretion. The County agrees to convey title to Duke Energy free and clear of all encumbrances or liens that are not satisfactory to Duke Energy, in Duke Energy's sole discretion.
5. Release of Lien. Subsequent to the Closing, Duke Energy shall obtain and deliver to County a release of the Duke Energy Parcel in recordable form releasing the Duke Energy Parcel from the lien of Duke Energy's First Mortgage Bond Indenture within at least one hundred eighty (180) days from the closing date. The Parties hereby agree that the existence of the Mortgage Bond Indenture at closing shall not constitute a title defect.
6. This paragraph intentionally left blank.
7. This paragraph intentionally left blank.
8. Closing Date. The transactions contemplated herein shall be closed within thirty (30) days of the completion of both the Inspection Period and the Contingency Period.
9. Survey. The Properties described in Exhibits "A" and "B" shall be surveyed by each party at their own expense, and the descriptions obtained from said surveys shall be utilized in the deed of conveyance. A copy of the surveys shall be provided to the closing agent and Title Company.
10. Notice. Any notice to Duke Energy or the County hereunder shall be sent to the addresses set forth below, in each case by (a) hand delivery, (b) registered or certified mail, return receipt requested, or (c) by overnight delivery or next day courier service. Notice shall be deemed effective upon delivery.

If to Duke Energy:

Duke Energy Florida, LLC
Attention: Brian Gorham,
3300 Exchange Place
Lake Mary, FL 32746

If to the County:

Franklin County Board of County Commissioners
c/o Clerk of Court
33 Market Street, Suite 203
Apalachicola, Florida 32320

With a Copy to:

Duke Energy Florida, LLC
Attention: Shantel Ocampo, Counsel
3300 Exchange Place
Lake Mary, FL 32746

With a Copy to:

Law Offices Thomas M. Shuler, PA
34 4th Street
Apalachicola, Florida 32320

11. CONTINGENCIES: This Contract is contingent upon Duke Energy obtaining proper authorization from the applicable public agencies for utilization of the Property for Duke Energy's intended use. Failure to obtain such proper authorization and conditions acceptable to Duke Energy shall give Duke Energy the right in its discretion to either extend the Closing Date or declare this Contract terminated.
12. Miscellaneous.
- (a) Mutual Cooperation. Other than as specifically outlined otherwise herein, at no additional cost to the other Party, the Parties hereto agree to cooperate with and support the other Party in its efforts to secure permits, variances, amendments and any other rights or approvals (collectively referred to herein as "Permits") from governmental entities, agencies or any other oversight entity responsible for granting such rights to allow the other party to complete its project. The Parties further agree, at no additional cost to the other party, to provide any materials or written documents necessary for the other party to secure such Permits, perfect title to the properties described herein, or otherwise allow a Party to perform a duty or obligation required pursuant to this Agreement. The provisions of this paragraph shall survive the closing of this transaction.
- (b) Applicable Law and Venue. This Agreement and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the laws of the State of Florida. Venue for any dispute arising under this Agreement shall be in Franklin County, Florida.
- (c) Partial Invalidity. In the event any term or provision hereto shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions hereby shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.
- (d) Binding on Successors. This Agreement shall run with the land and be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- (e) Entire Agreement. This Agreement embodies the entire agreement between the parties hereto relating to the exchange of the Duke Energy Parcel and County Parcel and supersedes any and all prior agreements and understandings, written or oral, formal or informal relating to this subject. No modifications or amendments to this Agreement, of any kind whatsoever, shall be made or claimed by Duke

Energy or the County, and no notices of any extension, change, modification or amendment made or claimed by Duke Energy or the County shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Duke Energy and the County. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Duke Energy and the County have contributed substantially and materially to the preparation of this Agreement.

(f) Survival. In addition to other survival provisions indicated herein, all representations and warranties made by Duke Energy and the County herein shall survive the closing of the transaction contemplated herein.

(g) Incorporation of Recitals; Counterparts; Captions. This Agreement may be executed in counterparts, each of which shall be deemed an original. The captions are for convenience of reference only and shall not affect the construction to be given any of the provisions hereof.

(h) Waivers: No waiver or any breach of any agreement or provisions herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provisions herein contained.

(i) Time. Time is of the essence of this Agreement.

(j) Effective Date. The Effective Date of this Agreement shall be the date that the Board of County Commissioners executes counterpart copies of this Agreement and adopts a resolution authorizing the exchange, as required by Section 125.37, Florida Statutes, after publication of a notice, once a week for at least two consecutive weeks, in a newspaper of general circulation published in Franklin County, setting forth the terms and conditions of the exchange.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the Parties have executed this Agreement for Exchange of Real Property as of the date(s) written below.

DUKE ENERGY:

Duke Energy Florida, LLC, a Florida
Limited liability Company

d/b/a Duke Energy, as **successor in
interest to Florida Power Corporation**

Print Name: _____

Title: _____

Dated: _____

ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____ as _____ of DUKE ENERGY FLORIDA, LLC, a Florida limited liability company d/b/a/ Duke Energy, who is personally known to me or produced _____ as identification.

Notary

(Name of Notary printed or stamped)

Commission No. _____

My Commission Expires _____

ATTEST:

FRANKLIN COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

, Clerk and
Comptroller of the Board of
County Commissioners of
Franklin County, Florida

Chairman

This _____ day of _____, 2024.