RESOLUTION 2008-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POLK CITY GRANTING TAMPA ELECTRIC COMPANY, A FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE AGREEMENT IN THE CITY OF POLK CITY AND IMPOSING PROVISIONS AND CONDITIONS RELATED THERETO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF POLK CITY FLORIDA:

FRANCHISE AGREEMENT

This Franchise Agreement is entered into by and between the City of Polk City, Florida and Tampa Electric Company, a Florida corporation, with offices located at 702 North Franklin Street, Tampa, Florida 33601.

SECTION 1. DEFINITIONS.

For the purposes of this Franchise Agreement, the following terms, phrases, words, and their derivations 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 directory.

- (A) "City" The City of Polk City, Florida.
- (B) "Company" Tampa Electric Company, its successors and assigns.
- (C) "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 (including conduits, cables, poles, wires, supports and such other structures or appurtenances as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system), , with such extensions thereof and additions thereto as shall hereafter be made.
- (D) "Franchise Area" That area for which Company provides Electric Utility Service which is within the corporate city limits of the City.
- (E) "Base Revenues" Revenues from the sale of electricity, including sales of electricity for outdoor lighting, to all residential, commercial, industrial customers and any other class of customers located within the corporate limits of the City, net of any credits and bad debt.

- (F) "Person" Any person, firm, partnership, association, corporation, company or organization of any kind.
- (G) "Rights-of-Way" All of the public streets, alleys, highways, waterways, bridges, easements, sidewalks and parks (when used in conformance with the City charter) of 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 to, consolidated or annexed to the City.

SECTION 2. GRANT OF NON-EXCLUSIVE AUTHORITY.

This grant of authority is limited to the provision by Company of electric utility services. Accordingly, the City hereby grants to the Company, its successors and assigns, the non-exclusive right, authority, easement, privilege, and franchise to lay, erect, construct, maintain and operate in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public ways or places of 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 be hereafter added to, consolidated with or annexed to the City and its successors so as to be compatible with the City's streetscapes and other development standards in accordance with established practice with respect to electrical construction and maintenance, electric light and power facilities (including conduits, cables, poles, wires, supports and such other structures or appurtenances as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system, including information transmission and all other related uses) ("Electric System"), subject to the terms and conditions herein contained under this Agreement. Both parties agree that that company will provide its standard method of construction on all installations in the City Rights-of-Way and any enhanced or premium construction methods will be paid for by the City or an appropriate third party. The Company agrees to work with the City to provide cost estimates and alternatives for these enhanced levels of construction. Nothing herein shall preclude the Company from entering into a contract with any person, firm, partnership, or corporation for the use of any portion of its Electric Utility System located within the Franchise area, provided that said person, firm, partnership or corporation first obtains as appropriate, any governmental or regulatory approvals required by applicable law. In the event Company desires to use its existing facilities, or construct new facilities, in order to provide public communications, fiber optic capacity built primarily for third parties, or video services to existing or potential consumers, Company shall obtain additional and separate permission from City for each such activity to the extent the authority to grant such permission has not been preempted by state and/or federal laws.

SECTION 3. NOTICE OF ACCEPTANCE AND TERM OF FRANCHISE.

Within thirty (30) days following approval of this Franchise Agreement by the City Council of Polk City, the Company shall signify its acceptance of the Franchise granted herein by filing a written notice of its acceptance with the City Clerk ("Notice of

Acceptance"). The Franchise granted herein shall become effective on the date that the Company files its Notice of Acceptance ("Effective Date"). The term of the Franchise granted herein shall be a period of 30 years commencing on the Effective Date.

In all events, City shall not grant more favorable treatment to other electric service providers than is granted to Company under this Franchise Agreement, it being the intent of the parties that no future provider of electric service, be it generation, transmission or distribution service, to customers within the corporate limits of City shall be given a competitive advantage over Company.

SECTION 4. LOCATION OF ELECTRIC FACILITIES.

4.1. The Electric Facilities shall be so located or relocated and so erected as to interfere as little as possible with traffic over said streets, alleys, bridges, easements and other public ways or places, and with reasonable egress from and ingress to abutting property and be placed so as to comply with all current City code and land development regulations to the extent that such requirements do not conflict with the laws of the State of Florida, the lawful regulations of any state or federal agency possessing the power to regulate the business of or operations of Company. Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, sidewalks, bridges, easements or other public ways or places, or in the location or manner of construction of any water pipes, conduits, sewers, or other underground structure it shall be deemed necessary by the City to alter, relocate, change, adapt, or conform ("Change") the Electric System of the Company, such Changes shall be made by the Company as ordered in writing by the City, as soon as practicable without claim for reimbursement or compensation for any damages, costs, or contribution against and/or from the City unless such alterations or changes shall significantly impair the operation or efficiency of Company's Electric System or service. If the City shall require the Company to Change its Electric System, or other appurtenances, or in any way to Change its property for the benefit of or to accommodate any person other than the City in the use of said street, alley, sidewalk, bridge, easement or other public way or place, the Company shall be reimbursed by the person desiring or occasioning such Change for any loss, cost or expense caused by or arising out of such Change of the Company's Electric System, prior to any such Change. Should the City require the Company to further Change Electric Facilities that have been changed at the Company's expense and at the City's request within the preceding 36 months, then any such further Change shall be done at the City's expense. City and Company agree that they will coordinate and cooperate with each other and mutually agree to the practices to be utilized so as not to unreasonably interfere with the operation of the other. All work performed by the Company pursuant to the rights granted in this Franchise Agreement shall be coordinated and conducted with prior notice in writing to the City. The Company agrees to comply with all applicable City codes and other applicable laws rules and regulations regarding such work and to the extent same are not pre-empted by state and/or federal laws or have the effect of unilaterally modifying the terms of this agreement.

SECTION 5. CITY RIGHTS IN FRANCHISE.

This Franchise Agreement shall not be construed to limit or impair a continuing right, power and authority in the City throughout the term of this Franchise to abandon, vacate, realign and/or otherwise utilize its streets, alleys, sidewalks, bridges, easements and other public ways and places. Provided further that the right is hereby reserved to the City to adopt, in addition to the provisions herein contained any existing applicable ordinances, and such additional regulations, by ordinance or otherwise, that shall be reasonable, and 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, materially interfere with the benefits conferred on Company hereunder or have the effect of unilaterally modifying this Franchise Agreement.

SECTION 6. WORK IN THE RIGHT-OF-WAY.

- 6.1. The Company is hereby authorized, empowered and permitted during the term of this Franchise, to enter upon, excavate, occupy or use the said streets, alleys, sidewalks, bridges, easements and other public ways and places within the City's corporate limits, for any installation, operation, maintenance, alteration or repair of its Electric Facilities which may be necessary, proper or convenient in the provision of electric service; subject, however, to the restrictions, limitations and conditions herein contained. If, in the course of installing, operating, maintaining, altering or repairing its Electric Facilities, the Company or its agents excavate or damage any of the present or future streets, alleys, sidewalks, bridges, easements and other public ways and places within the City's corporate limits, such street, alley, sidewalk, bridge, easement or public way or place shall, within a reasonable time, and as early as practicable after such excavation or damage, be replaced or caused to be replaced in as good condition as it was at the time of such excavation or damage. All of said work shall be done or caused to be done by the Company at its sole cost and expense. The City may request that an excavation opened by the Company be closed if the Company has not done so promptly after completing the work that occasioned the excavation. If the Company has failed to so restore said premises prior to the expiration of five (5) days after receipt by Company of written notice of the City's request for such restoration and/or immediately prior to the expiration of the said five (5) day period if for safety, health, and/or welfare reasons, the City may, upon expiration of such period, proceed to close any excavation or restore any such premises all at the Company's sole cost and expense.
- 6.2. All permit applications submitted by Company shall contain plans showing known utility facilities, specifications prepared by a qualified engineer/technician, and be accompanied by letters of no conflict or other appropriate verification of no conflict with other utilities (which can be a letter from Company to the City indicating no comments received by Company from other utilities if such responses have not been received within seven business days after Company's request).

Company will not assert the existence of any vested rights if City issues a permit, except to the extent that it is entitled to place its facilities as indicated by the permit.

- 6.3. Company shall notify the City's Designee in writing prior to performing any underground excavation and /or any other work in the City's streets, alleys, bridges, easements, and other public ways and places. This provision does not apply to emergency work associated with the restoration of electric power or lighting services.
- 6.4. In order to minimize potential hazards of inadequate clearance from overhead and underground facilities associated with landscape planting, trees and/or similar type plantings and maintenance, City and Company shall develop and adopt landscape and tree planting guidelines, to include appropriate tree species planted under overhead electric facilities and proper setbacks for designated species planted adjacent to overhead facilities. Any potential hazards of inadequate clearance from overhead and underground facilities associated with landscape planting and maintenance arising prior to and/or after the development and adoption of such guidelines, shall be resolved by the City's Designee, in collaboration with Company's Senior Supervisor-Line Clearance. Any potential hazards related to trees and/or similar type plantings from Company's facilities arising prior to and/or after the development and adoption of such guidelines, shall be resolved by the City's Designee, in collaboration with the Company's Senior Supervisor-Line Clearance. In the event Company deems the trimming or removal of any trees reasonably necessary to maintain its existing facilities for the integrity and safety of its electric lines within City Right-of-Way, the Company is exempt from permitting and associated fees. In the event Company deems the trimming or removal of any trees reasonably necessary to construct its facilities and maintain the integrity and safety of its electric lines it shall notify the City in writing of same and comply with the requirements of existing or subsequently enacted City Charter provisions and ordinances, obtain all permits from, and pay all fees therefore to the City's Designee, and comply with all other requirements of said City Charter provisions and ordinances.
- 6.5. City shall, at its sole risk, have access at any time to the manholes of Company in which City has facilities, upon giving reasonable notice to Company and as otherwise provided in this Section. Company shall provide a qualified representative, as soon as practicable following the City request, to assist City in accessing the manholes of Company in the proper exercise of its municipal powers and duties with respect to its public streets and other ways. If circumstances require immediate access, City shall notify Company and Company shall dispatch a qualified representative on an emergency basis.
- 6.6. For those projects for which a permit is required, Company will produce and maintain at its expense a complete set of annotated permit drawings indicating any significant deviation from the permit drawing originally filed with the City for the project. For any permitted project for which construction differs significantly from the permit drawing originally filed, the Company at its expense will forward to the City

copies of as-built drawings for the said construction project. Additionally, Company agrees to physically mark the location in the field of any portion of its electric facilities ("Engineering Locates"), upon request of the City.

SECTION 7. INDEMNIFICATION AND INSURANCE.

7.1. Indemnification. The City shall not be liable or responsible for any accident or damage that may occur in the course of the construction, operation or maintenance by the Company, its employees, agents, contractors, sublessees or licensees of any of its Electric Facilities. In consideration of the permissions granted to the Company by this Agreement, the Company hereby agrees to indemnify and hold harmless, the City, its officers, agents and employees from and against any and all claims, suits, actions, and causes of action whatever, arising from Company's construction, operation or maintenance of its Electric Facilities within City rights-of-way during the term of the Franchise Agreement and resulting in personal injury, loss of life, or damage to persons or property sustained by any person or entity, and including all damages, costs, attorney's fees, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action, including the investigation thereof, and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof, except that neither the Company nor any of its employees, agents, contractors, licensees, or sublessees shall be liable under this Paragraph 9 for damages to the extent that such damages or costs arise out of injury, loss of life, or damage to persons or personal property caused by or resulting from the negligence of the City, its officers, agents, or employees. If, in the course of maintaining the public rights-of-way within the City limits or other City-owned facilities, the City, its agents, representatives or employees damage Company facilities, the City shall fully compensate the Company for the cost of repairing or replacing such Company facilities. Provided further that nothing herein is intended to act as a waiver of the City's rights, privileges, and immunities under the doctrine of "Sovereign Immunity". The provisions of this section shall survive this Franchise Agreement.

The Company shall not be liable or responsible for any accident or damage that may occur in the course of the construction, operation or maintenance by the City, its employees, agents, contractors, sublessees or licensees. In consideration of this agreement, the City hereby agrees to indemnify and hold harmless the Company, its officers, agents and employees to the extent permitted under Florida Law and other federal law whether such liability is based in tort, contract, statute, strict liability, negligence, product liability or otherwise from and against any and all claims, suits, actions, and causes of action whatever, arising during the term of this Franchise Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, but only to the extent that such claims directly result from the negligence or misconduct of the City as a result of the doing of any work herein authorized or the failure to do work herein required, and including all costs, attorney's fees, expenses and liabilities incurred by the Company in connection with any such claim, suit, action or cause of action, including the investigation thereof, and the defense

of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof, except that neither the City nor any of its employees, agents, contractors, licensees, or sublessees shall be liable under this Paragraph 9 for damages to the extent that such damages or costs arise out of injury, loss of life or damage to persons or property caused by or resulting from the sole negligence of the Company, its officers, agents, or employees. Provided further that nothing herein is intended to act as a waiver of the City's rights, privileges, and immunities under the doctrine of "Sovereign Immunity". The provisions of this section shall survive this Franchise Agreement.

Insurance. During the term of this Franchise Agreement, each 7.2. Party shall self insure through an actuarially sound and prudent self-insurance program with regard to such risks as are consistent with the implementation of recommendations of a qualified insurance consultant and/or provide, pay for and maintain with companies satisfactory to the other Party the types of insurance described herein. All insurance maintained by the Company shall be from responsible companies duly authorized to do business in the State of Florida and having a financial rating in Best's Insurance Guide, or other successor or comparable rating agency, of B+ Class VI or better. All insurance maintained by the City shall be from responsible companies duly authorized to do business in the State of Florida. The required coverages must be evidenced by properly executed Certificates of Insurance. The Certificates must be manually signed by the authorized representative of the insurance company. Thirty (30) days advanced written notice by registered or certified mail must be given to the other Party of any cancellation, intent not to renew or reduction in the policy coverages.

The limits of coverage of insurance required shall be not less than the following:

Workers' Compensation/Employer's Liability. Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than any endorsements required by NCCI or the State of Florida. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

There shall be no maximum limit (other than as limited by the applicable statute) for liability imposed by the Florida Workers' Compensation Act, the Longshoremen's and Harbor Workers' Compensation Act or any other coverages required by the contract documents which are customarily insured under Part One of the standard Workers' Compensation Policy.

The minimum amount of coverages required by the contract documents which are customarily insured under Part Two of the standard Workers' Compensation Policy shall be:

\$5,000,000 (Each Accident) \$5,000,000 (Disease-Policy Limit) \$5,000,000 (Disease-Each Employee)

<u>Commercial General Liability</u>. Such insurance shall be no more restrictive than that provided by Coverage A (Bodily Injury and Property Damage) and Coverage B (Personal and Advertising Injury) of the latest edition of the standard occurrence Commercial General Liability Form (Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office (ISO), without any restrictive endorsements other than any endorsements specifically required by ISO or the State of Florida. The minimum limits of such coverage shall be:

\$5,000,000 Each Occurrence \$5,000,000 General Aggregate \$5,000,000 Products/Completed Operations Aggregate \$5,000,000 Personal and Advertising Injury

<u>Business Auto Policy</u>. Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the latest occurrence edition of the standard Business Auto Policy (ISO Form CA 00 01), without any restrictive endorsements, other than any endorsements required by ISO or the State of Florida, and including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The minimum limits of such coverage shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined

\$5,000,000

SECTION 8. COMPLIANCE BY COMPANY.

- 8.1. The Company shall at all times comply with and be subject to any ordinance and all ordinances of the City now or hereafter in existence, relating to the use and appearance of the said streets, alleys, sidewalks, bridges, easements and other public ways and places except to the extent that such ordinance(s) are inconsistent with the terms of this Franchise Agreement, inconsistent with state or federal laws or have the effect of unilaterally modifying this Franchise Agreement.
- 8.2. Company shall timely remove all abandoned facilities which are not occupied by joint users at its expense within thirty (30) days after receipt of written notice from City. Information on all abandoned, direct buried cable and underground vaults will be maintained by Company and will be located, to the best of its ability, in the field along with active facilities.

SECTION 9. PAYMENT TO CITY.

The sums of money to be paid by Company to the City pursuant to this section are compensation and consideration for (1) the cost to the City of regulating the use by Company of the City streets and other public rights-of-way for the installation, maintenance, operation, transmission and distribution of Company's Electric Utility System and (2) the City's agreement not to engage in the business of distributing and/or selling of retail electric power during the life of this agreement, or any extension thereof, in competition with Company.

In consideration for the granting of this Franchise to occupy and use the City rights-ofway, and in consideration of the City's agreement to not compete with the Company in the distribution of electricity, and as compensation for the specific property rights relinquished to the Company by the City, the Company, its successors and assigns, shall pay to the City and its successors, an annual amount which shall equal six percent of Base Revenues from customers located within the corporate limits of the City as now or hereafter constituted. It is the intent of the City and the Company that all classifications and categories of customers of Company shall be subject to the payment of the Franchise Fees due hereunder. Payments shall be computed monthly and shall be made each August, subject to annual reconciliation or adjustment, as necessary, to reflect the formula set forth in this section. Under remittances by the Company shall be corrected and paid to the City in a form and manner mutually agreeable to the parties. Likewise, over remittances to the City shall be offset against future Franchise fee remittances on a mutually agreeable schedule. That the sums of money to be paid by the Company to the City under this Franchise Agreement are compensation and consideration for the use by the Company of the City's streets and other ways for the installation, maintenance, operation, transmission and distribution of the Company's electric generation, transmission and distribution system facilities and are valid and lawful in the context of this Franchise Agreement. The Company shall at all times continue to be subject to and shall pay to the City all public service taxes (Section 166.231, Florida Statutes), ad valorem taxes (Section 166.211, Florida Statutes), and such other taxes, charges or fees as may be lawfully authorized by the Florida Constitution, the general or special laws of the State of Florida, the provisions of the Municipal Home Rule Powers Act (Chapter 166, Florida Statutes), or the Charter and ordinances of the City. Such charges and fees shall include but not be limited to permit fees, development review and inspection fees and all other such fees including fees, charges, taxes, and/or assessments validly adopted and/or imposed during the term of this Franchise Agreement.

SECTION 10. RATES AND SERVICES PROVIDED.

The rates to be charged and services provided by the Company for electric service within the corporate limits of City during the term of this Franchise Agreement shall be as provided in the Company's tariffs now or hereafter approved by the Florida Public Service Commission, or such agency of the State of Florida or other entity as may have proper jurisdiction over such rates and charges of Company. Except as

provided in Section 9 of this Franchise Agreement, the City shall have no responsibility and/or obligation of any kind for damages, costs, and/or expenses, and/or assessments, and/or refunds as a result of Company's billing errors.

SECTION 11. CHARACTER OF SERVICE.

- 11.1. The company agrees to address the relocation of its overhead facilities underground in a manner consistent with any adopted PSC requirements with provisions for cost recovery for the undergrounding of electric distribution facilities. Additionally, the company agrees to work with the City to develop undergrounding cost estimates for specific locations with the understanding that costs related to the undergrounding of electrical facilities will be paid for by the City or an appropriate third party. Additionally, the Company agrees to comply with Rule 25-6.074 et. seq. of the Florida Administrative Code in furtherance of the installation of underground distribution facilities in new residential subdivisions.
- 11.2. Substation Aesthetics. The Company agrees to install low-maintenance landscaping additions to improve the aesthetics of the substations that exist within the City of Polk City in accordance with standards agreed to by Company and City.
- 11.3 The Company and the City agree that reliable electric service is important to the City and its residents and customers. The Company agrees throughout the length of this Franchise Agreement to meet with the City at the City's request to discuss and address issues of reliability from the City or the residents and customers of City. If there are legitimate issues or problems related to the reliability of the electric service provided, the Company agrees to discuss these issues with the City and/or residents and address the issues as appropriate.

SECTION 12. RECORDS AND REPORTS.

- 12.1. Company Rules and Regulations. Copies of rules, regulations, terms and conditions adopted by Company that relate to Company's use of City's streets, alleys, bridges, easements, and other public ways and places shall be available upon request by City.
- 12.2. 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 as mutually agreed to by City and Company. Should the Florida Public Service Commission cease to exist, the City retains the right to require the Company to maintain a system of accounts and forms of books and accounts and memoranda prescribed by the Federal Energy Regulatory Commission or other appropriate regulating authority.

Reports. The Company will attach to each payment a statement of its estimated Base Revenues and kWh sales by revenue category (account) for the period on which such

payment is based, in such reasonable form and detail as City may from time to time prescribe, sufficient to show the source and method of computation of Base Revenues. In addition, the Company will provide a year-end accounting of the revenues and associated franchise fees paid to City in the previous fiscal year. This accounting will include details showing the amount of revenue collected from the various customer classes and the associated franchise fees. The Company further agrees to meet with the City at the City's request to discuss said accounting report. The acceptance of any statement or payment shall not estop the City from asserting its rights set forth in section 14.4 herein and/or 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 9.

12.3. In addition to the information provided pursuant to the provisions of section 14.2 above, the City or its designated representative shall have the right during the life of this Franchise Agreement, upon reasonable advance written notice and (to the extent allowed under Florida law) pursuant to a mutually agreeable non-disclosure agreement, to examine the books, records and accounts of the company on an annual basis during the regular business hours of the Company to determine accuracy of the gross revenues upon which this payment is based.

SECTION 13. TERMINATION/FORFEITURE.

Failure on the part of the Company to comply in any substantial respect with any of the provisions of this Agreement, shall be grounds for a forfeiture of this Agreement, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Company until a court of competent jurisdiction (with right of appeal in either party) shall have found that the Company has failed to comply in a substantial respect with any of the provisions of this Agreement, and the Company shall have three (3) months after the final determination of the question, to make good the default before a forfeiture shall result, with the right in the City at its discretion to grant such additional time to the Company for compliance as the necessities of the case require.

SECTION 14. APPROVAL OF TRANSFER.

The Franchise hereby granted under this Agreement shall not be leased, assigned, or otherwise alienated or disposed of except with the express consent of the City Commission of the City to such lease, assignment, alienation or other disposition prior to the making of same; provided, however, that nothing herein contained shall be so construed as to prohibit the Company from transferring operational control over its transmission and/or distribution system to an independent system operator or other such entity or from leasing, assigning or otherwise alienating and transferring this franchise in connection with the lease or sale of its entire system or any portion thereof or upon its merger and consolidation with any other corporation engaged in a similar business, nor as prohibiting the pledging or mortgaging of such Franchise in connection with all the physical property owned and used by it in the operating of its electric system

for the purpose of securing payment of monies borrowed by the Company. The express consent of the City is hereby given to each, any and all of the excepted transactions enumerated in the above provision provided however Company shall give City written notice of each such transaction within thirty (30) days of the effective dates of such transaction.

SECTION 15. SEVERABILITY.

Should any section or provision of this Franchise Agreement or any portion thereof, the deletion of which would not adversely affect (in the general sense) 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, the 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 and restores the originally intended balance of benefits and burdens to both parties.

SECTION 16. GOVERNING LAW AND VENUE.

- A. The Franchise and rights herein granted are subject to the provisions of existing Federal laws and the laws of the State of Florida and those hereafter enacted.
- B. Venue. In the event that any legal proceeding is brought to enforce the terms of this Franchise Agreement, the same shall be brought in Polk County, Florida, or, if a federal claim, in the U. S. District Court in and for the Middle District of Florida, Tampa Division.

SECTION 17. ATTORNEY'S FEES AND EXPENSES.

In the event of any legal action (including appellate review) which may arise between the parties hereto which may be required to enforce the terms and conditions of this Franchise Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorney's fees and costs. This provision is in addition to any statutory rights of the parties to recover attorneys' fees and costs including fees and costs on appeal, from the non-prevailing party.

SECTION 18. INTEGRATION.

In the event this Franchise Agreement becomes effective and is accepted by the Company as hereinafter provided, it shall cancel all existing Franchises now held or claimed by the Company in the City of Polk City.

SECTION 19. NOTICES.

Except in exigent circumstances, all notices by City or Company to the other shall be made by either depositing such notice in the United States Mail, Certified Mail return receipt requested or by facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and City and Company observed holidays excepted. All notices shall be addressed as follows:

To City: To Company:

Cory Carrier, City Manager

City of Polk City

Tampa Electric Company
P. O. Box 111

P. U. BOX 111

Polk City, FL Tampa, FL 33601-0111

With copy to City Attorney:

Notice shall be given as required by this Franchise Agreement and for all other emergencies. Notice shall be provided to the above-named addressees unless directed otherwise in writing by City or Company.

SECTION 20. 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 Franchise Agreement 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.

CITY OF POLK CITY, FLORIDA
MAYOR- COMMISSIONER
Attest:
CITY CLERK
CITY ATTORNEY
TAMPA ELECTRIC COMPANY
BY:
Title: