

ORDINANCE NO. 2017-0478

AN ORDINANCE OF THE CITY OF STARKE, FLORIDA GRANTING TO CLAY ELECTRIC COOPERATIVE AN ELECTRICAL FRANCHISE, IMPOSING CERTAIN CONDITIONS AND TERMS RELATING THERETO; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Starke, Florida, pursuant to its Charter and Florida Statutes, has proprietary and governmental powers to render electric utility services within the corporate limits of said City; and

WHEREAS, the City of Starke, Florida, owns and operates an electric utility and furnishes electricity to the inhabitants of said City and certain surrounding areas for domestic, business and other purposes, including health and safety; and

WHEREAS, the City of Starke, Florida, is capable of and is prepared to provide electric utility service to each service location and each inhabitant of said City and to charge reasonable rates, prices and compensation for furnishing and supplying these electric utility services; and

WHEREAS, the City of Starke, Florida, utilizes a portion of the revenues from the provision of these electric utility services to fund other City services including, but not limited to, police and fire protection and other governmental functions necessary for the health, safety and welfare of its inhabitants; and

WHEREAS, the police and fire protection and other governmental functions provided by the City has resulted in a population density which is attractive to other electric utility companies; and

WHEREAS, Clay Electric Cooperative, Inc., an electric cooperative organized and existing under the laws of the state of Florida (herein called "Clay Electric") is allowed by the City, pursuant to Territorial Agreement (herein called "Territorial Agreement" and attached hereto as Exhibit "A"), to serve certain customers within the City's corporate limits; and

WHEREAS, the City will suffer a loss of revenues if an electric utility company or electric utility provider serves customers within the City's corporate limits; and

WHEREAS, City Ordinance 377-A requires an electric utility company or electric utility provider to enter into a franchise agreement or have a Territorial Agreement with the City as a condition of doing business in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STARKE, FLORIDA, AS FOLLOWS:

SECTION 1. That for a period commencing on the date of Grantee's acceptance as set forth in Section 17 herein until the expiration of the Territorial Agreement attached hereto, the City of Starke, Florida (herein sometimes referred to as Grantor) does hereby give and grant to Clay Electric Cooperative, and to its legal representatives, successors and assigns (herein called Grantee) the right, privilege and franchise to furnish, sell or wheel electric power and energy and to construct, operate and maintain in those areas designated in Exhibit "A" which are all those locations authorized to be served by Clay Electric as designated in said Territorial Agreement, all electric power distribution facilities required by the Grantee for the purpose of supplying electricity to Grantor's inhabitants therein and the places of business located therein. This grant of authority is limited to the provision by Grantee of selling or wheeling electric utility services to those areas or service locations designated in said Exhibit "A" which are within the corporate boundaries of the City. The Grantor specifically reserves the right to continue annexing areas into the City in the future, and such areas to the extent that Clay Electric has the contractual right, pursuant to the Territorial Agreement, to serve customers in such annexed areas, shall then be subject to this franchise fees and other conditions set forth herein.

SECTION 2. That with respect to the right, privilege and franchise granted to Grantee in Section 1 above, said Grantee shall have for a period of twenty (20) years and during any extension of the parties' Territorial Agreement, the right, privilege, franchise, power and authority to use the streets, avenues, alleys, easements, bridges, public thoroughfares, public grounds and/or other public places of Grantor as they now exist or may hereafter be constructed, opened, laid out or extended in the geographical area described in Exhibit "A"; however, Grantor reserves the right to enforce reasonable regulations concerning the placement, construction, operation, and maintenance of facilities located along, over, or under the streets, avenues, alleys, easements, bridges, public thoroughfares, public grounds, and/or other public places of Grantor as they now exist or may hereafter be constructed, opened, laid out or extended in the present geographical area described in Exhibit "A." When any street, avenue, alley, easement, public thoroughfares, public grounds and/or other public places of Grantor are excavated by Grantee in the location, relocation, or repair of any of its facilities, that portion so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by Grantee at its expense and in as good condition as it was at the time of such excavation.

SECTION 3. Grantee agrees that without the prior written permission of Grantor, it will not allow any entity providing a wireless communication system or any other type of communication system to acquire rights to occupy rights-of-way under this franchise, provided, however, that this does not apply to Grantee's internal communication systems. In the event Grantee desires to use its existing facilities, or construct new facilities, in order to provide public communications, leased fiber optic capacity, or video services or like services to existing or future consumers, Grantee must obtain additional and separate permission from Grantor for such activities.

SECTION 4. In an effort to minimize the number of facilities within the Grantor's rights-of-way, the disruption of traffic and roadway destruction, the Grantee shall enter into joint use agreements with the Grantor and other parties who are expressly authorized by the Grantor to use its rights-of-way provided such agreements are satisfactory to the Grantee, which acceptance shall not be unreasonably withheld.

SECTION 5. Grantor reserves the right, if otherwise allowed by applicable law, to require by ordinance that new electrical facilities be placed underground provided, however, that all new similarly situated electric customers are required to do so.

SECTION 6. The rates to be charged by the Grantee for electric service rendered under this franchise shall at all times be reasonable and Grantee's rates for electricity shall at all time be subject to such regulation as may be provided by law.

SECTION 7. That within thirty (30) days after the effective date of this ordinance, and on the fifteenth day of the month thereafter, the Grantee, its successors and assigns, shall pay to the Grantor and its successors an amount which will equal six percent (6%) of Grantee's revenues from the retail sale or wheeling of electrical energy and services to residential, commercial, industrial, and all other customers by whatsoever rate category within the geographical area of the City limits of Starke, Florida, as it may be amended from time to time for the month preceding the payment date. Revenues for purposes of this franchise shall include all charges by Grantee to its customers including, but not limited to, wheeling charges, customer charges, back up charges and demand or energy charges. The Grantee shall attach to each payment a statement of its revenues from the retail sale or wheeling of electrical energy and services to residential, commercial, industrial, and all other customers by whatsoever rate category within the geographical area of the City of Starke, Florida, as it may be amended from time to time. The statement shall be signed by an authorized representative of the Grantee, in such reasonable form and details as the Grantor's auditor may from time to time prescribe, sufficient to show the source

and method of computation of said revenue from the retail sale or wheeling of electrical energy services. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof received five (5) days after the due date shall be subject to interest at the rate of five (5) percent (%) per annum until all payments are made in full. The acceptance of any statement or payment shall not prohibit the Grantor from asserting that the amount paid is not the amount due or from recovering any deficit by any lawful proceeding, including interest.

SECTION 8. That Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, or in the furnishing of electricity hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify Grantor, its boards, city commission, officers, agents, and employees, and hold Grantor, its boards, officers, agents, and employees, harmless against any and all liability, loss, cost, damage or expense which may accrue by reason of the neglect, default, or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder, or in the furnishing of electricity to Grantor and its inhabitants.

SECTION 9. The right to use and occupy rights-of-way for the purposes herein set forth shall be non-exclusive, and the Grantor reserves the right to grant similar use of said rights-of-way, to any person at any time during the period of this franchise so long as grant does not materially and adversely impact Grantee's right to use and occupy rights-of-way as aforesaid. The Grantor reserves the right to use the said rights-of-way in a similar manner, at any time during the period of this franchise.

SECTION 10. Grantor and Grantee hereby recognize that this Ordinance is in recognition of unique circumstances between Grantor and Grantee and is not intended to be used as precedent.

SECTION 11. The rights and privileges granted by this franchise shall not be sold, or assigned in whole or in part without the Grantor's prior written approval; however, such consent shall not be reasonably 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 herein.

SECTION 12. The right is hereby reserved to the Grantor to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional 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, the lawful regulations of any state agency possessing the power to regulate the activities of

the Grantee or the Territorial Agreement entered into between City and Clay Electric Cooperative, Inc.

SECTION 13. The following records and reports shall be filed with or available to Grantor by Grantee;

(A) Copies of rules, regulations, terms and conditions adopted by Grantee that relate to Grantee's use of Grantor's rights-of-way shall be available upon request by Grantor.

(B) Grantee shall maintain a system of accounts and form of books, accounts, records and memoranda in accordance with the generally accepted accounting practices applicable to similar type entities.

(C) Grantee shall supply all accounts and records of the Grantee and/or all such information that the Grantor or Grantor's representatives may from time to time reasonably request or require relative to the calculation of franchise fees. Such financial records shall be kept and maintained in accordance with generally accepted accounting principles. All of these records shall, on written request of the Grantor or Grantor's representatives, be open for examination and audit by Grantor and Grantor's representatives during ordinary business hours, in the Grantee's office and such records shall be retained by Grantee for a period of five (5) years.

(D) Grantor may require an audit of Grantee's books at a minimum of once every three (3) years. Errors identified during the audit process shall be projected for any additional time periods not covered during the audit if there is a reasonable probability these errors occurred during the unaudited period, but not for more than three (3) years. If an under payment of franchise fees has occurred, interest will be computed at a rate of five (5) percent (%) per annum. Both the underpayment and interest shall be paid within thirty (30) days after receipt of demand therefore from Grantor.

(E) Grantee shall make all records or reports enumerated in paragraph (A) - (D) of Section 11, available in the city limits of Grantor. Upon request by the Grantor, or its designated representative, the Grantee shall provide a copy of any annual report filed with the Florida Public Service Commission and a copy of all electric service reports required to be filed with the Florida Public Service Commission. The Grantor, or its designated representative, shall have the right during the life of this Franchise to examine any records or reports enumerated in this Section 11; provided, however, that the Grantee shall be obligated to maintain its billing records only for the period of time required by the Florida Public Service Commission (or its successor agency, or, in the event the Grantee is no longer subject to the jurisdiction of the Florida Public Service Commission, for the reasonable period of time required by the Grantor) and that any

examination conducted after such period shall be confined to the billing records then available. No later than thirty (30) days after the request of the Grantor or its representative, the Grantee shall supply to the Grantor, or its representative, a copy of said records or reports. Such copy shall be in a media requested by the Grantor or its representative, provided that it is economical and practical for the Grantee to do so; however, in no event shall paper copies of requested documentation be deemed uneconomical or impractical.

SECTION 14. Any material violation by the Grantee, its vendee, lessee, successor or assigns of the provision of this franchise or any material portions thereof, may cause the franchise and all rights hereunder to be terminated by the Grantor after written notice to the Grantee and continuation of such violation, failure or default for a period of sixty (60) days thereafter. Following the sixty (60) day period, the Grantee may request additional time as is necessary to remedy the violation. The Grantor will not withhold approval of this request unreasonably if the Grantee is making a sufficient good faith effort to cure the violation. The Grantor may grant additional extensions to the Grantee in sixty (60) day increments.

SECTION 15. Should any section or provision of this Ordinance or any portion thereof be declared by a court of competent jurisdiction to be invalid or void, 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 or void; except that, the Grantor may elect to declare that the entire agreement invalid or void if the portion declared invalid or void is, in the sole judgment of the Grantor, an essential part of this Ordinance.

SECTION 16. All ordinances and parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 17. As a condition precedent to the taking effect of this ordinance, Grantee shall have filed its written acceptance hereof with the Grantor's Clerk within thirty (30) days hereof.

SECTION 18. This ordinance shall take effect immediately on the date Grantee's acceptance is received by the City Clerk.

SECTION 19. It shall be the Grantor's responsibility to provide written notice to Grantee of any annexation or changes to the city's corporate limits which affects any of Grantee's customers. Within sixty (60) days of receipt of any such written notice, Grantee shall commence remitting to the Grantee franchise fees for all of Grantee's customers newly annexed into the City of Starke.

SECTION 20. The rights and privileges granted to Grantee by this franchise shall at all times be subordinate and inferior to the rights of the public in and to the ordinary use of Grantor's rights-of-way and nothing in this franchise shall be considered as a surrender by Grantor of its rights and power to use and relocate the use of its rights-of-way.

SECTION 21. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in Bradford County, Florida, or, if a federal claim, the U.S. District in and for the Jacksonville, Florida, Division.

SECTION 22. Except in exigent circumstances, all notices by either Grantor or Grantee 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. Any notice given by facsimile is deemed received next business day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and Grantor and Grantee observed holidays excepted. All notices shall be addressed as follows:

Grantor:

City of Starke
209 N. Thompson Street
Starke, FL 32091
(904) 964-5027 Telephone
(904) 966-2584 Facsimile

Grantee:

Clay Electric Cooperative, Inc.
Post Office Box 3080
Keystone Heights, FL 32656
(352) 473-8000 Telephone
(352) 473-1776 Facsimile

General Counsel:

Charles Daniel Sikes PA

817 McMahan St
Starke, FL 32091
(904) 964-2020 Telephone
(904) 964-9400 Facsimile

John H. Haswell, Esquire
Chandler, Lang, Haswell & Cole
P.O. Box 23879
Gainesville, FL 32602
(352) 376-5226 Telephone
(352) 372-8858 Facsimile

SECTION 23. 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 shall not be constructed 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.

DULY ENACTED by the City Commission of Starke, Florida, in regular session on this 1st day of August, 2017.

**CITY COMMISSION OF
STARKE, FLORIDA**

**TOMMY CHASTAIN
JANICE D. MORTIMER
DANIEL NUGENT
WILBUR WATERS
TRAVIS WOODS**

By: _____

**TOMMY CHASTAIN
MAYOR AND COMMISSIONER**

ATTEST:

**RICKY THOMPSON
CITY CLERK**