



PROJECT DEVELOPMENT GRANT AGREEMENT

THIS GRANT AGREEMENT (the “**Agreement**”) is made and entered into effective as of July 17, 2023, by and between **DUKE ENERGY FLORIDA, LLC** (“**Duke**”), and City of Haines City (“**Recipient**”). Duke and Recipient may be collectively referred to as the “**Parties**” and either may be referred to as a “**Party**.”

WITNESSETH:

WHEREAS, Duke has created and set aside the Duke Energy Advancing Sites Infrastructure Fund for the purpose of funding economic development activities within Florida (the “**Fund**”);

WHEREAS, Recipient has requested that Duke grant **\$200,000** to Recipient for the purpose of completing the economic development activity, consistent with Rule 25-6.0426(7), F.A.C., set forth in Exhibit A attached hereto (the “**Purpose**”); and

WHEREAS, Duke has made, and Recipient has accepted, an offer to grant up to **\$200,000** to be used by Recipient to carry out the Purpose in accordance with the terms and conditions set forth herein (the “**Grant Amount**”).

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE 1: SCOPE; PAYMENT

1.1 Recipient shall use its best efforts to ensure that, throughout the term of this Agreement, the Purpose satisfies Duke’s requirements for a grant of the Grant Amount from the Fund, which requirements include, without limitation, that (a) the Purpose is development of new businesses or industries or expansion of existing businesses or industries and (b) the Grant Amount is used solely for payment of reasonable expenses that would otherwise hinder successful completion of the Purpose if not supported by the grant. Recipient shall use funds received hereunder solely for the completion of the Purpose.

1.2 Recipient may not be entitled to any portion of the Grant Amount unless all of the Conditions occur on or before the Deadline. The “**Deadline**” shall mean **Q4 of 2024**. “**Conditions**” shall mean (x) completion of the Purpose. The first date on or before the Deadline by which all of the Conditions have occurred shall be the “**Completion Date**.” The terms by which funds will be released to the Recipient will be as follows: when other funding source(s) (i.e. the city budget allocation or other funding source) can be confirmed and proven. Duke will make payments based upon agreed upon thresholds being met.

1.3 Duke may advance to Recipient all or a portion of the Grant Amount (the total of any such payments from Duke to Recipient being the “**Payments**”), provided, however, that within 30 days following the Completion Date, Duke shall pay Recipient the lesser of (a) the Grant Amount minus the Payments or (b) the Expenditures minus the Payments, provided, further, that if the Payments exceed the Expenditures as of the Completion Date, then no payment shall be due Recipient from Duke and Duke may demand within 30 days following the Completion Date that Recipient repay all or a portion of such excess and Recipient shall repay such demanded amount within 60 days following the Completion Date. If by the Deadline all of the Conditions have not occurred, then Duke may demand within 30 days following the Deadline that Recipient repay all or a portion of the Payments, with interest, and Recipient shall repay such demanded amount within 60 days following the Deadline.

ARTICLE 2: TERM AND TERMINATION

2.1 This Agreement shall terminate upon the earlier of (a) the date two years from the date hereof, (b) the date that Duke terminates this Agreement pursuant to Section 2.2 or (c) the Completion Date. The termination of this Agreement shall not relieve either Party of its obligation to pay the other Party in accordance with Article 1 of this Agreement.

2.2 Duke may terminate this Agreement upon the occurrence of any of the following, which termination shall be effective 10 days following Duke's notification to Recipient of such termination or such later date as Duke may specify therein:

- (i) **Material Breach.** Recipient breaches any of its material obligations set forth herein, including without limitation Recipient's obligations set forth in Section 1.1.
- (ii) **Insolvency.** Recipient becomes insolvent, fails generally to pay its debts as they become due, admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, commences any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of itself or its debts or assets, or adopts an arrangement with creditors, under any bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally.
- (iii) **Assignment.** Recipient assigns, transfers, or attempts to assign or transfer, this Agreement or any right or interest herein without the express written consent of Duke.
- (iv) **Abandonment.** Recipient abandons its efforts to complete the Purpose and fails to recommence its efforts within 5 business days after written notice from Duke.
- (v) **Repudiation.** Recipient repudiates this Agreement.

ARTICLE 3: REPRESENTATIONS AND COVENANTS

Recipient represents and warrants that:

3.1 Recipient is, and for the term of this Agreement shall at all times be, in good standing and qualified to do business in Florida, as the case may be;

3.2 Recipient has, and for the term of this Agreement shall at all times have, all licenses, permits and other authorizations required to perform the Purpose;

3.3 Recipient shall perform the Purpose in accordance with all applicable laws, rules, regulations, orders and ordinances; and

3.4 Execution of this Agreement and performance of the Purpose hereunder does not require any third party consent and does not and will not violate the terms of any agreement to which Recipient may be bound.

ARTICLE 4: NO PUBLICATION

Recipient shall not use Duke's name or the fact that Recipient has entered into this Agreement with Duke or received any funds hereunder from Duke in any press releases, media statements or public communications or otherwise publicize the existence or content of this Agreement without Duke's prior written consent. Recipient shall not use Duke's (including its subsidiaries and affiliates) name, logos, copyrights, trademarks, service marks, trade names or trade secrets in any way without Duke's prior written consent, and Duke shall not be deemed to have granted Recipient a license of, or granted Recipient any rights in, any of the foregoing by entering into this Agreement.

ARTICLE 5: RECORDS; INSPECTION AND AUDIT; COOPERATION

For a period of three years after the termination of this Agreement, (a) Recipient shall maintain and retain records relating to the Purpose and Recipient's receipt of funds hereunder, and (b) Duke and its auditors and other representatives shall have the right and free access during normal business hours to examine, audit and copy any and all records or other documents relating to the Purpose or Recipient's receipt of funds hereunder. Upon Duke's reasonable request, Recipient shall cooperate fully with Duke with respect to any discussions, negotiations, agreements, arrangements or disputes with any city, county, state or federal governmental body relating in any way to this Agreement, the Grant Amount, the Purpose or Recipient's receipt of funds hereunder.

ARTICLE 6: INDEMNIFICATION; NO CONSEQUENTIAL DAMAGES

6.1 To the extent allowed by law, Recipient shall defend, indemnify and hold harmless Duke and its directors, officers, employees, agents, representatives, and subsidiary and affiliated companies and their directors, officers, employees, agents and representatives, from and against all claims, demands, losses, damages, penalties, fines, liabilities, obligations, and attorneys' and other professionals' fees and expenses arising out of or relating to any negligent or wrongful act or omission of Recipient or its employees, contractors and agents in connection with the Purpose or Recipient's receipt of funds hereunder, including without limitation any claim arising out of Recipient's failure to comply with applicable laws, rules, regulations, orders or ordinances.

6.2 In no event shall either Party be liable hereunder for any consequential, special, incidental or indirect damages, except to the extent the indemnifications in this Agreement may be construed to constitute those damages. In no event shall either Party's liability hereunder exceed the Grant Amount.

ARTICLE 7: GENERAL

7.1 This Agreement and all of its provisions shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

7.2 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of laws principles.

7.3 Those provisions that would require survival in order to give them full force and effect shall survive the termination or expiration of this Agreement, regardless of the date, cause or manner of such termination, and shall remain in full force and effect.

7.4 This Agreement, including the Exhibits attached hereto, is intended by Duke and Recipient to constitute the final and complete statement of their agreement and all prior proposals, communications, negotiations, understandings and representations relating to the subject matter of this Agreement, whether verbal or written, are

hereby superseded. No modification or amendment of this Agreement shall be effective unless the same is in writing and signed by both Parties.

7.5 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

7.6 Any notice required or permitted to be given by either Party hereto to the other Party shall be deemed to have been duly given when delivered personally or otherwise actually received after mailing by certified mail, return receipt requested, or by reputable overnight courier, addressed to the Contact Person for such Party set forth on the signature page of this Agreement at the address provided below such person's name or addressed to any such Party at such other address as such Party shall hereafter furnish to the other Party in writing in accordance with this Section 7.6, provided that a copy of any notice to Duke shall also be sent to:

Duke Energy Florida
Legal Department – FL 151
299 1st Ave N.
St. Petersburg, FL 33701

7.7 No course of dealing or failure of either Duke or Recipient to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of that term, right or condition. The failure of either Party to exercise any right hereunder or to take any action permitted on a breach by the other Party shall not be deemed a waiver of such right or of any other rights in the event of a subsequent breach of a like or different nature. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition or a waiver of that term, right or condition in any other instance.

7.8 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

CITY OF HAINES CITY

DUKE ENERGY FLORIDA, LLC

H. L. "Roy" Tyler
Mayor

Marc Hoenstine
Managing Director, DEF Economic Development

Duke Contact: Omar DeJesus, Finance Director

EXHIBIT A

Application

Name of Organization	Haines City, City of
Contact Name	Omar DeJesus
Contact Phone Number	(863) 421-9902
Contact Email	omar.dejesus@hainescity.com
Program Title	Haines City Rail Spur
Total Project Budget Amount	400000
Requested Funding Amount	200000
Project Summary	<p>The City of Haines City in partnership with the Haines City Economic Development Council are looking to repair the rail spur which services properties in the industrial park. The repair of the spur will assist in attraction of companies that manufacture and distribute items such as food, lumber, trusses, pavers and other housing components to take advantage of its prime location and the City's rail spur connection to the main CSX line.</p>
Additional Funding Sources	<p>The City is committed to matching the Duke Energy proposed funding request from either operation funds that are to be appropriated in the budget. Additionally, the City is also pursuing</p>

	the Florida Job Growth Grant Funding as an additional funding source.
Fund Use	The grant funding request will strictly be utilized for the repair to make the rail spur fully operational. The City will abide by purchasing requirements to ensure the best pricing from a qualified contractor is obtained.
Outcomes	The desired outcome would be to provide additional benefits to potential industrial users to choose and select Haines City as its operation center. The Haines City EDC currently has approximately 5 properties with a total of 368 acres of industrial land advertised on its webpage. By making the rail spur functional and attracting just one commercial company to Haines City would result in an increase in job creation and additional tax revenues for the City. In 2008, the addition of a large food retailer brought in over 200 jobs and is currently the largest tax provider to the City with an \$65M appraised value. There is a clear and definitive return on investment for each commercial user that the City is able to obtain. Our goal is to make our location the most attractive for them and the use of a functional rail spur just provides another end benefit for the City to promote.

ADDITIONAL PROPERTY/PROJECT INFORMATION

Property Overview/Map	Map Overview to be emailed per instructions.
Property History	The property is solely owned by the City of Haines City and included not only the rail spur but also a walking trail for residents and easements for providers such as Duke Energy.
Physical Property Attributes	0 Grace Ave E, Haines City, FL 33844. The property is solely owned by the City and does

	not have any title defects. The rail spur stretches over approximately 50 acres of land.
Current Property Conditions - Strengths	The rail spur connects to the main CSX line and provides an alternative means of transportation of goods to reduce cost and overhead.
Current Property Conditions - Challenges	The City rail spur has been inoperable for over 10+ years due to the economic climate and continual repair and maintenance cost. With that said, the economic climate of Haines City is changing at a rapid pace with growth and its central location. With the use of taxpayer dollars, the City is looking to minimize the overall impact and also find an operator who can keep the spur in working conditions. Additional funding sources are pivotal to making this a feasible project for the City.
Current Property Conditions - Community coordination	Yes. No zoning or land use changes required.
Development Plan	The City will first take the repair scope of services out to bid per it's required procurement practices. Once all repairs are completed, the City will also issue an Request for Qualified contractors to run and lease the spur in order for it to be maintained and fully operational.
Property Ownership	The property is solely owned by the City of Haines City.
Development/Construction Timeline	The development plan will be implemented as soon as viable funding options are approved. If this grant request is approved, the repair RFP will be issued the following month from date of approval.

Market Study/Marketing Plan	The Haines City Economic Development Council has a dedicated webpage to the promotion of the Industrial Site. There are listed properties for sale with descriptions that include the potential opportunity of a rail spur and other City incentives for economic development attraction. https://hainescityedc.com/properties
Applicant Information	The City of Haines City along with the Haines City Economic Development Council both will be a part of advertising and promoting this project to Industrial end users. The EDC dedicates its efforts as a City partner organization to promote and attract Commercial Clientele.
End Paragraph	

EXHIBIT B



July 17, 2023

Marc Hoenstine | Managing Director, Economic Development - Florida
Duke Energy
452 East Crown Point Road | Winter Garden, FL 34787 | WG-13

Re: Request for Advancing Sites Infrastructure Fund Grant –
Project Haines City Rail Spur, Haines City, Polk County, Florida

Dear Marc:

On behalf of the Haines City Economic Development Council, Inc., we support and appreciate the opportunity for the City of Haines City to partner with Duke Energy and the Advancing Sites Infrastructure Fund. The City of Haines City has requested \$200,000.00 from the Advancing Sites Infrastructure Fund to support the improvements to the Haines City Rail Spur.

In the ever-evolving world of business, the choice of transportation methods for our goods is a crucial aspect. While trucks have been a long-standing choice for many, the rail-served industry provides unique advantages that may redefine our business operations. Beyond efficiency and reliability, rail transportation is also one of the most environmentally responsible modes. The Haines City 2.8-mile railroad spur connects the central CSX railroad line through the City to the Haines City Industrial Park. The spur is accessible to companies in the Industrial Park as well as others that can access from County Road 544. The rail spur has not been utilized since completion in 2005, and will require an investment for repairs, such as all the ties would need to be replaced due to age and a thorough review of the line would need to be done to assess work necessary prior to operation. The rail spur is an asset to Haines City, and a tool in the Haines City EDC's toolbox, in the recruitment of rail served target industries, that will provide jobs for our citizens and capital for the City as we continue to move Haines City forward.

These funds will be used to help offset costs associated with improvements associated with bringing the rail spur to code for operation.

We appreciate the ongoing support of Duke Energy, and we look forward to working closely with Duke on this and all future projects.

Please feel free to contact me with any questions you may have about our support of this grant funding request. I may be reached at 863-422-2525 or cyndi@hainescityedc.com. Thank you for your kind consideration.

Sincerely,

Cyndi Jantomaso, MEDP
President/CEO
Haines City Economic Development Council, Inc.

