

RECEIVED **APPLICANT-INSTALLED FACILITIES AGREEMENT FOR UNDERGROUND CONVERSIONS (WR # 7544355)**



By brandon at 11:20:41 AM, 3/4/2020

This Agreement, made and entered into this _____ day of _____, 20_____, by and between the CITY OF POMPANO BEACH (the "Applicant"), a Florida municipal corporation with an address of 100 W. Atlantic Blvd., Rm. 276, Pompano Beach, FL and FLORIDA POWER & LIGHT COMPANY ("FPL"), a Florida corporation organized under the laws of the State of Florida, with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WITNESSETH:

WHEREAS, the Applicant has executed the appropriate underground facilities conversion agreement ("Conversion Agreement") with FPL to convert certain overhead electric distribution facilities (collectively the "Existing Overhead Facilities") to underground distribution facilities (collectively the "Underground Facilities"), as described in the aforementioned Conversion Agreement (hereinafter the "Conversion");

WHEREAS, the Applicant desires to perform itself, or through its Contractors, certain Work as such term is described in Exhibit A associated with the Conversion;

WHEREAS, FPL is willing, subject to all the terms and conditions set forth below in this Agreement, to allow the Applicant to perform the Work based on Applicant's assurance that such Work will be in accordance with FPL's designs, instructions, standards and specifications, and such Work will not adversely impact FPL or its electric customers;

NOW, THEREFORE, in recognition of the foregoing premises, and in consideration of the covenants and promises set forth herein below, FPL and Applicant do hereby agree as follows:

1. **Compliance with Tariff.** Applicant shall comply with and abide by the requirements, terms, and conditions of this Agreement, the Conversion Agreement, and FPL's electric tariff (the "Tariff").
2. **Conditions for Work to be Performed.** Applicant shall, at its own cost and expense, perform or cause to be performed, all Work, as described in Exhibit A, in accordance with the terms and conditions of this Agreement and the standards and specifications shown in Exhibit B. The Applicant shall provide all survey and staking to ensure that all Underground Facilities are installed as shown in the Conversion Agreement and provide As-Built prints to FPL within two (2) weeks of installation, signed and certified by a Florida registered surveyor along with a FPL "Redline" document.
3. **Commencement of Work.** Applicant shall perform the Work, or any portion of the Work, only upon receipt of a notice to proceed containing the approved drawings, specifications and instructions from FPL ("Notice to Proceed"). After receipt of the Notice to Proceed, Applicant shall provide written notice of intent to commence work to FPL at least five (5) days prior to commencement of such Work. Applicant shall not perform any excavation

work without first notifying Sunshine State One Call for identification and marking of existing underground utilities and complying with the excavation requirements set forth in Florida Statute Chapter 556.

4. **Materials.** All Materials are to be supplied by FPL and shall be picked up by Applicant at the following address _____ at a mutually agreed upon time, typically with 5 business days minimum notice, but no more than 15 business days notice, unless mutually agreed upon. Alternatively, FPL will, at Applicant's expense, have the material delivered to a mutually agreed upon location. Applicant assumes liability for any materials lost, stolen or damaged once these materials are picked up by, or delivered to, the Applicant.
5. **Contractors.** Applicant may enter into a contract with a contractor for the performance of the Work, or any portion thereof, provided that the contractor has been approved by FPL in writing prior to execution of such contract. Applicant shall not make any substitution of any contractor for the performance of Work unless the substitution is approved by FPL in writing. The Applicant's contractor(s) shall perform ALL work as outlined within Exhibit A & Exhibit B. No contract or purchase order between Applicant and its contractor(s) shall bind or purport to bind FPL, but each contractor entering into a contract with Applicant with respect to the Work shall name FPL as an intended third-party beneficiary and include a provision permitting its assignment to FPL upon FPL's written request, following default by Applicant or termination or expiration of this Agreement. Applicant shall provide FPL with written certification from each of its contractors performing Work that all warranties, guarantees and obligations of such contractors are equivalent or better than those granted by such contractor to FPL for similar work and shall require that each such contractor name FPL as an intended third party beneficiary of such warranties, guarantees and obligations with the same rights of enforcement as Applicant. Applicant shall assign all representations, warranties, guaranties, and obligations of all contractors at the request and direction of FPL, and without recourse to Applicant, to FPL upon default by Applicant or termination or expiration of this Agreement; provided, however, that, notwithstanding such assignment, Applicant shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Applicant has any liability under this Agreement. Applicant hereby assigns to FPL, effective as of the termination or expiration of this Agreement, all representations, warranties, guaranties and obligations of all Contractors.
6. **Right of Entry.** FPL reserves the right, together with its agents or designees to enter the Jobsite as it may elect for the purpose of inspecting the Work, or constructing or installing such collateral work as it may desire, or testing, boring or surveying, or any other purpose.
7. **Inspection and Correction of Deficiencies.**
 - 7.1. All Work shall be properly inspected and tested, if appropriate, by Applicant and shall at all times be subject to additional inspection by FPL and its designee(s).



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- 7.2. Neither the failure to make such inspection, nor the failure to discover defective workmanship, materials, or equipment, nor approval of or payment to Applicant for such Work shall prejudice the rights of FPL thereafter to correct or reject the same.
- 7.3. Applicant shall correct any deficiencies found with the Work, including but not limited to discrepancies that are inconsistent with FPL's design, instructions, standards or specifications within two (2) business days. If Applicant does not adequately rectify the identified deficiencies in the required timeframe, FPL may, at its sole discretion, perform, or have performed by its contractor the required repairs and Applicant shall pay FPL for any costs incurred. These requirements apply whether the discovery of deficiencies occurs while Applicant is performing its Work or while FPL, or its contractor, is performing its portion of the work.
- 7.4. If any Work or part thereof is covered over contrary to the requirements of this Agreement or the written request of FPL, it must, if required by FPL, be uncovered for observation and inspection and covered again at Applicant's sole expense.
- 7.5. If any Work that FPL has not specifically requested to observe and inspect prior to being covered has been covered, FPL may request to see such Work or part thereof and it shall be uncovered by Applicant. If such Work or part thereof is found to be in accordance with this Agreement, the cost of uncovering and covering again shall be paid by FPL. If such Work or part thereof fails to meet the requirements of this Agreement, Applicant shall pay all costs of uncovering, correcting, and covering again.
- 7.6. Applicant shall pay FPL for all time spent reviewing and inspecting Applicant's Work.
- 7.7. No electric customers shall be connected to the Underground Facilities prior to all deficiencies being rectified.

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8. Indemnity / Liability of Applicant.

- 8.1. Subject to the provisions and limitations of Florida law, Applicant shall protect, defend, indemnify and hold FPL free and unharmed from and against any liabilities whatsoever resulting from or in connection with this Agreement, the Conversion or in connection with the performance of the Work by the Applicant, its employees, agents, Contractors or Contractors' employees. The Applicant's indemnity obligations to FPL shall not apply to any claims or liabilities that are caused by the sole negligence of FPL.
- 8.2. Applicant shall assume full responsibility for all damages and all restoration arising in connection with the Work.

9. **Design Work.** FPL shall provide all design, instruction, standards and specifications necessary to perform the Conversion.
10. **Completion of Work and Ownership.** Applicant shall complete the Work by _____, 20_____ and notify FPL when said Work is complete. Upon FPL's final written approval of the completion of the Work ("Acceptance"), Applicant acknowledges that all rights, title and interest, free and clear of all liens, in and to the Work shall vest in FPL. If requested by FPL, Applicant shall provide FPL, in a form acceptable to FPL, an affidavit of Applicant certifying payment of all indebtedness to all Contractors and a written release of liens from Applicant and each Contractor.
11. **No Liability by FPL.** FPL assumes no liability due to any damage, misunderstanding of installation drawings or specifications, or any actions due to Applicant or its Contractor.
12. **Suspension for Cause:**
- 12.1. FPL may at its sole discretion, by Notice, temporarily suspend the Work, or any portion thereof, under this Agreement when the performance by Applicant or its contractor is unsatisfactory by FPL to obtain the results required by this Agreement.
- 12.2. The methods by which Applicant performs its Work are entirely the responsibility of Applicant. FPL's right to suspend Work is intended solely to verify that the Work being performed by Applicant and its Contractor conforms to the design, instruction, standards and specifications and shall not obligate FPL to review the efficiency, adequacy or safety of Applicant's or its Contractors methods or means of operation or construction.
- 12.3. Any additional costs incurred by Applicant resulting from such suspension shall be borne solely by Applicant.
- 12.4. If Applicant immediately corrects the unsatisfactory condition FPL shall authorize resumption of the Work. Applicant's failure to immediately effect correction of the unsatisfactory conditions shall be cause for termination of this Agreement.
13. **Termination for Cause:**
- 13.1. FPL may, upon Notice to Applicant, and without prejudice to any remedy available to FPL under law, in equity or under this Agreement, terminate the whole or any part of this Agreement for cause and take possession of the Work without termination charge, penalty or obligation in the event Applicant fails to perform a material obligation under this Agreement and fails to cure such material obligation default within a reasonable period of time, but in no event more than ten (10) business days, after Notice from FPL specifying the nature of such default (any such termination referred to as a "Termination for Cause").

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13.2. In the event of Termination for Cause by FPL, Applicant shall:

- a. Unless instructed otherwise in the Notice, immediately stop all Work hereunder;
- b. Issue no further contracts except with the prior written consent of FPL;
- c. Assign to FPL, to the extent requested by FPL, all rights of Applicant under contracts outstanding;
- d. Terminate, to the extent requested by FPL, outstanding contracts;
- e. Fully cooperate and refrain from hindering or interfering in any manner with any other persons or parties currently or prospectively performing the Work; and
- f. Take any other action toward termination, or toward preservation of the Work, that FPL may direct.

13.3. Upon a Termination for Cause, all obligations of FPL hereunder shall terminate effective immediately. Upon such Termination for Cause, FPL may either rework or take over the terminated Work and proceed to provide such materials, supplies, equipment and labor of both FPL and FPL contractors, as may be reasonably necessary to complete said Work. FPL may have any partially fabricated portion of the Work removed from Applicant's or contractor's facilities upon Notice to Applicant. Applicant shall be liable for any increase of FPL's costs, including rework costs, incurred by FPL as a result of FPL's termination of the contract for cause.

13.4. In the event of Termination for Cause, FPL shall have no liability to Applicant for costs incurred by Applicant as a result of such termination.

14. **Termination Prior to Construction.** Applicant may terminate this Agreement at any time prior to the start of construction. If Applicant elects to still complete the Conversion, then the Contribution-In-Aid-of-Construction (CIAC) amount provided in the Conversion Agreement shall be revised accordingly. The revised Conversion Agreement must be executed and any additional CIAC due received by FPL prior to the start of construction.

15. **Assignment.** This Agreement is not assignable.

16. **Applicant's Payments to FPL.** Any monies that are owed by Applicant to FPL under this Agreement shall be paid to FPL within thirty (30) days of FPL producing an invoice.

17. **Notice.** As used herein, the term "Notice" shall mean any formal written correspondence providing notice of action, purpose, intent or the like given under the provisions of this Agreement. Unless otherwise provided in this Agreement, Notice shall be delivered in

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By Brandon at 11:21:33 AM, 3/4/2020

person, by courier or by certified mail and shall be effective when received. General correspondence is not categorized as Notice.

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By brandon at 11:21:38 AM, 3/4/2020

IN WITNESS WHEREOF, FPL and Applicant have executed this Agreement for the provision of Applicant-Installed facilities to be effective as of the date first above written.

For: **CITY OF POMPANO BEACH**

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

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By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Approved as to Terms and Conditions: _____
(signature/title)

Approved as to Form and Legal Sufficiency: _____
(signature/title)

For **FLORIDA POWER & LIGHT COMPANY**

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Exhibit A

WR # 7544355

Work to be Performed:

Applicant shall:

- Install all conduit and concrete product based on the attached specifications and in the locations as indicated on the attached drawings.
- Install cable, transformers and switch pads including the primary and secondary cable terminations and connections. FPL will be responsible for energizing the new underground circuit (s) to the existing FPL electrical system.

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Exhibit B

WR # 7544355

Standards and Specifications

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