



UNDERGROUND CONVERSION AGREEMENT BASED ON A BINDING COST ESTIMATE

THIS UNDERGROUND CONVERSION AGREEMENT (the "Agreement") entered into this _____ day of _____, _____ (the "Effective Date") by and between Duke Energy Florida, LLC, d/b/a Duke Energy ("DE") and City of Clearwater (the "Applicant"). DE and the Applicant shall be referred to individually as a "Party" and collectively as the "Parties."

W I T N E S S E T H:

WHEREAS, the Applicant desires to have DE relocate and replace certain of its existing overhead distribution lines and related facilities with new underground distribution lines and related facilities, all as noted in the Work Request, which is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, DE is willing to relocate and replace the aforesaid existing overhead facilities with the new facilities set forth in the attached Work Request ("Facilities") at the locations set forth more specifically in the attached Work Request ("Cable Route"); and

WHEREAS, Applicant has paid a deposit in the amount of \$ 1,756.00 ("Deposit") and requested a binding estimate ("Binding Cost Estimate") of the total cost it will be responsible to pay DE for the Relocation Work (as that term is defined below); and

WHEREAS, DE has provided Applicant with the Binding Cost Estimate (in the amount referenced in Article 7 below) and in consideration of DE's performance of the Relocation Work, Applicant agrees to pay DE the Binding Cost Estimate as it may be adjusted in accordance with the terms of this Agreement below;

NOW THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound, DE and the Applicant hereby agree as follows:

ARTICLE 1. RECITALS

The foregoing recitals are true and correct and are a part of this Agreement.

ARTICLE 2. DEFINITIONS

"Additional Work"- Shall mean the additional work to be performed by DE with respect to this underground conversion project beyond the Relocation Work, as said Additional Work may be authorized by the Parties in accordance with the terms of this Agreement.

"Additional Binding Cost Estimate"- Shall have the meaning given to it in Article 9 of this Agreement.

"Additional Deposit"- Shall have the meaning given to it in Article 9 of this Agreement.

"Agreement"- Shall mean this Underground Conversion Agreement entered into between the Parties.

"Applicant"- Shall mean the counter party to DE under this Agreement as noted in the above first paragraph of this Agreement.

"Applicant Delay"- Shall have the meaning given to it in Article 8 of this Agreement.

"Binding Cost Estimate"- Shall have the meaning given to it in the recitals above and in Article 7 of this Agreement.

"Cable Route"- Shall have the meaning given to it in the recitals above.

"CPR"- Shall have the meaning given to it in Article 17 of this Agreement.

"Deposit"- shall have the meaning given to it in the recitals above.

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“Effective Date”- Shall be the date entered in the above first paragraph of this Agreement.

“Facilities”- Shall mean the facilities specifically described and detailed in the Work Request.

“Final Price”- Shall have the meaning given to it in Article 7 of this Agreement.

“Final Statement”- Shall have the meaning given to it in Article 7 of this Agreement.

“Force Majeure”- Shall have the meaning given to it in Article 14 of this Agreement.

“Notice to Proceed”- Shall mean duly authorized and executed written notice given by the Applicant to DE requesting DE to proceed with the Relocation Work (or Additional Work, if any) under the terms and conditions of this Agreement.

“Party”- Shall mean any single party to this Agreement.

“Parties”- Shall mean both parties to this Agreement.

“DE”- Shall mean Duke Energy Florida, LLC.

“Relocation Work”- Shall mean only that work which is specifically described and detailed in the Work Request and Article 4 of this Agreement.

“Work”- Shall mean the Relocation Work and the Additional Work.

“Work Request”- Shall mean the documents attached to this Agreement as Exhibit A.

ARTICLE 3. CONDITIONS PRECEDENT

3.1 Notwithstanding any other provision hereof to the contrary, this Agreement and the rights and obligations of the Parties set forth herein are expressly subject to and contingent upon:

- A. Applicant securing all required easements and rights-of-way for the performance of the Relocation Work;
- B. Applicant receiving funding adequate for the payment of all costs and expenses that will be due and owing by Applicant to DE under this Agreement, and the Applicant providing reasonable evidence to DE that Applicant has received or otherwise secured such funding;
- C. The issuance by governmental agencies of all required permits and approvals necessary for the performance by both Parties under this Agreement;
- D. Applicant paying DE all funds that are required by this Agreement to be paid prior to DE beginning the Relocation Work; and
- E. Applicant obtaining written confirmation from all affected DE customers agreeing to accept underground service upon customer's property.

3.2 In the event the conditions in this Article have not been fulfilled or satisfied within 90 days of the Effective Date of this Agreement, either Party may terminate this Agreement upon written notice to the other Party with no obligation or liability under this Agreement to the other Party resulting from such termination (other than DE's right to retain the Deposit), or the Parties may mutually agree upon an extension of time within which such conditions may be met. Notwithstanding anything herein to the contrary, DE shall not be required to proceed with the Relocation Work unless and until the above noted conditions precedent have been satisfied or mutually waived in writing by the Parties. Further, notwithstanding anything herein to the contrary, it is the intention of the Parties that the provisions of this Article 3 also shall apply to any Additional Work, so that the Parties' rights and obligations with respect to any such Additional Work is expressly subject to and contingent upon the satisfaction of the conditions set forth above within 90 days of the date of the amendment authorizing such Additional Work, and failing which either Party may terminate the subject amendment upon written notice to the other Party with no obligation or liability under this Agreement or that amendment to the other Party resulting from such termination (other than DE's right to retain the Additional Deposit, if any), or the Parties may mutually agree upon an extension of the time within which such conditions may be met.

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ARTICLE 4. DE'S SCOPE OF WORK

4.1 In consideration of the payments by Applicant of the amounts set forth in Article 7 below, DE shall provide (except to the extent excluded in the Work Request) the following as part of the Relocation Work:

A. Dismantle and at DE's discretion salvage or dispose of existing overhead distribution lines and facilities which will be replaced by the Facilities;

B. Design, permit, install and test the Facilities within the designated locations in the Cable Route;

C. Install, by directional bore, open-trench or such other means or methods as DE may determine in its sole discretion, all new primary and secondary cable, wire, conduit and appurtenances;

D. Perform all Relocation Work in accordance with applicable laws, including locating, positioning and installing (at DE's sole discretion) switchgear, pad-mounted transformers, service pedestals, pull boxes, and other related distribution equipment in accordance with the National Electrical Safety Code and other applicable industry standards, if any;

E. Modify existing DE distribution facilities located outside the Cable Route boundary as determined by DE in its sole discretion for connection to the Facilities;

F. To the extent authorized in the Work Request and to the extent the Applicant has obtained the necessary consents of the residential service users to the conversion, coordinate with such users and convert affected residential service laterals from overhead to underground;

G. Procure and maintain such insurance as DE may determine in its sole discretion is appropriate to cover property damage, personal injury and general liability of DE and its contractors, if any, arising out of or relating to their performance of the Relocation Work;

H. Provide reasonable notice to DE's customers regarding planned interruptions of electric service occasioned by the Relocation Work; and,

I. Maintain a safe work site in compliance with applicable laws, rules and safety standards pertaining to installation of the Facilities.

4.2 The above noted provisions also shall apply to and be deemed a part of any Additional Work hereafter authorized by the Parties in accordance with the terms set forth herein, except to the extent otherwise expressly noted in the applicable amendment.

ARTICLE 5. APPLICANT'S RESPONSIBILITIES

The following are Applicant's responsibilities, to be provided or satisfied by Applicant at no cost to DE:

A. Within 30 days of the Effective Date, Applicant shall provide a Notice to Proceed for the Relocation Work to DE, and shall convey to DE a non-exclusive and irrevocable license to use any easement, right-of-way or other appropriate real property interest which Applicant has with respect to the performance of the Relocation Work and the delivery of utility services thereafter by DE. Subject to the other terms of this Agreement, upon receipt of the Notice to Proceed, DE shall commence with the performance of the Relocation Work. DE shall notify Applicant, in writing, when DE believes it has received all necessary easements and rights-of-way for the Relocation Work to be obtained and provided by Applicant;

B. With respect to any Additional Work authorized by the Parties in accordance with the terms set forth herein, each amendment authorizing any such Additional Work shall address the date by when Applicant is to provide a Notice to Proceed for the subject Additional Work, as well as the date by when Applicant shall convey to DE a non-exclusive and irrevocable license to use any easement, right-of-way or other appropriate real property interest which Applicant has with respect to the performance of the subject Additional Work and the delivery of utility services thereafter by DE. DE shall notify Applicant in writing when DE believes it has received all necessary easements and rights-of-way for the subject Additional Work to be obtained and provided by Applicant. Subject to the other terms of this Agreement and the applicable amendment, DE shall not commence performance of

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the subject Additional Work until all conditions to be fulfilled by Applicant as to that Additional Work have been satisfied and DE has received Applicant's Notice to Proceed for that subject Additional Work;

C. The Applicant shall cooperate and assist DE's permitting efforts with respect to the Work and shall not take any action (or fail to take any action required of it) that violates the conditions of any permits and approvals from any applicable governmental entities so as to allow DE to: (a) relocate the Facilities within the Cable Route, (b) cross any federal, state, or local highway or cross any rail lines or corridors along the Cable Route necessary to relocate the Facilities, and (c) otherwise perform the Work as planned by DE;

D. With respect to all easements and rights-of-way to be provided by Applicant, it is Applicant's responsibility to clear, survey, stake, and grade to within six inches of final grade, at no cost to DE, all such easements and rights-of-way. All such clearing, surveying, staking and grading must be accomplished by Applicant so as to cause no delay to DE's performance of the Work. Accordingly, as part of its clearing and grading obligation hereunder, Applicant is responsible for all removal and restoration of buildings, roads, driveways, sidewalks, patios, fences, ditches, landscaping, sprinkler systems, and all other improvements or utilities located within the easements and rights-of-way to be provided by Applicant, at no cost to DE, all such removal and restoration work located within the easements and rights-of-way to be performed so as to cause no delay to the performance of the Work by DE;

E. Applicant shall provide traffic management along affected roadways within the Cable Route;

F. Applicant is responsible for making all arrangements necessary with all other utilities or joint users of DE's above ground facilities (including telephone and cable) to remove their equipment and facilities at no cost to DE and in a manner and schedule so as not to delay DE's performance of the Work. Applicant shall acquire all contracts or agreements required to provide for the timely removal of all such joint users' equipment and facilities, and provide a copy of all such contracts and agreements to DE upon request from DE;

G. Applicant is responsible for ensuring that DE's distribution facilities are not damaged, destroyed or otherwise disturbed during the performance of Applicant's responsibilities hereunder. This obligation extends not only to Applicant's employees, but also to any contractors, subcontractors, consultants or agents of Applicant. Applicant is responsible for the full cost of repairing any such damage, destruction or disturbance; and

H. Applicant is responsible for making all necessary arrangements with all affected DE customers to prepare their premises and service entrance in a timely manner for underground service, so as not to delay DE's performance of the Work. All such consents, arrangements, and preparations shall be provided by Applicant at no cost to DE.

ARTICLE 6. TERM

The Term of this Agreement shall commence upon the Effective Date and shall continue until the end of the period set forth in Article 8, unless terminated earlier by a Party in accordance with the terms set forth herein.

ARTICLE 7. PRICE AND PAYMENT TERMS

A. DE has provided Applicant, and Applicant has accepted, the Binding Cost Estimate of DE's costs to perform the Relocation Work in the amount of \$ 671,431.56, which is the price to be paid by Applicant for the Relocation Work performed by DE under this Agreement, subject to adjustment for the Final Price in accordance with the provision of this Article.

B. The Binding Cost Estimate shall be paid by Applicant in accordance with the Payment Schedule attached hereto and incorporated herein as Exhibit B. With respect to any Additional Work authorized hereunder, the compensation to be paid DE for such Additional Work, including the payment of any Additional Deposit and Additional Binding Cost Estimate amount for such Additional Work, shall be made by Applicant in accordance with the terms set forth in the subject amendment authorizing that Additional Work.

C. Because the Binding Cost Estimate is only for the Relocation Work to be performed by DE, it does not cover the costs associated with Applicant's performance of its responsibilities with respect to this Project, which costs include the cost of: (a) conversion of customers' meter bases to accommodate underground service, (b) an

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underground street lighting system, (c) easement acquisition; (d) restoration of landscaping, sprinkler system sidewalks, road pavement and other existing improvements within the required easements or rights-of-way, and (e) underground conversion or relocation of other utilities' facilities (telephone, cable, etc.).

D. The Parties acknowledge that the Binding Cost Estimate and any Additional Binding Cost Estimate(s) are based on estimates of the various cost components that comprise the Relocation Work and Additional Work, and that the actual cost of the Work subject to the Binding Cost Estimate and Additional Binding Cost Estimate(s) may be more or less than the amounts reflected in the Binding Cost Estimate and applicable Additional Binding Cost Estimates. Within approximately ninety (90) days following the completion of the Work, DE shall furnish to Applicant an itemized statement signed by an authorized representative of DE setting forth the actual final costs of the Work ("Final Statement"). The sums of the final actual costs of the Relocation Work plus the Additional Work (if any) is the final price to be paid hereunder by Applicant to DE ("Final Price"); provided, however, in no event may a sum of more than 10% above the Binding Cost Estimate for the Relocation Work or a sum of more than 10% above the Additional Binding Cost Estimate for any particular Additional Work, be included in the Final Price amount. If the sum of all payments theretofore made by Applicant for the Work (including the Deposit and any Additional Deposits) is less than the Final Price, Applicant shall pay the remaining balance to DE within thirty (30) days after presentment of the Final Statement by DE. If the sum of such payments made by Applicant for the Work is greater than the Final Price, DE shall refund the difference to Applicant within thirty (30) days after the presentment of the Final Statement. If Applicant objects to any of the amounts reflected in the Final Statement, Applicant shall provide DE with written notice of same, stating in detail the objections Applicant has to the Final Statement. Applicant shall provide that written notice within fourteen (14) calendar days of receiving the Final Statement. All items in the Final Statement not expressly objected to by Applicant in writing within said fourteen (14) day period shall be deemed accepted by Applicant as being final and binding, without any further right to challenge or appeal such items.

E. If Applicant fails to pay any amount owed DE hereunder when due, such past due amounts shall accrue interest at the rate of 18% per annum or the maximum legal rate, whichever is lower. Further, if Applicant fails to make any undisputed payment owed DE hereunder within five (5) business days of receiving written notice from DE that such payment is past due, DE may suspend performance of all or any portion of the Work until such past due amounts have been paid in full. Any such suspension shall be deemed an Applicant Delay (as defined in Article 8 below) and Applicant shall be liable for all costs and damages incurred by DE as provided in Article 8.

ARTICLE 8. WORK SCHEDULING

A. Upon DE's receipt of Applicant's Notice to Proceed and the satisfaction or mutual waiver of the conditions precedent set forth in Article 3 above, DE will commence performance of the Relocation Work.

B. DE shall endeavor to complete the Relocation Work in 6 months after all requirements have been satisfied, as said date may be extended for reasons beyond the fault or control of DE.

C. DE may utilize contractors in the performance of the Work, but such use of contractors shall not relieve DE of any of its obligations under this Agreement. Any such contractor shall not be considered a contractor to Applicant and Applicant shall not enter into any contracts directly with any such contractors during the term of this Agreement regarding any work associated with the conversion project anticipated under this Agreement.

D. If the Work falls behind schedule: (i) for reasons due to a Force Majeure event (as defined in Article 14) or any other reason not due to the fault or beyond the control of DE, its contractors, agents or employees; (ii) as the result of the actions or inactions of Applicant, its contractors, employees or agents ("Applicant Delay"), or (iii) as a result of the actions or inactions of any third parties, the time period referenced in Section 8.B above shall be extended for each such day of delay. Further, in the event of any such delay, DE, at its sole discretion, may accelerate the performance of the Work to mitigate the impact of such delay on the schedule. To the extent the delay is attributable to an Applicant Delay; Applicant shall be liable to DE for all increased costs and expenses incurred by DE, including any acceleration or other schedule impact costs and delay damages incurred by DE or its contractors, as a result of such delay. All such increased cost and expenses, damages, acceleration and other impacts associated with any such delay shall be deemed Additional Work under this Agreement. If Applicant refuses to execute an

amendment to this Agreement reasonably acceptable to DE equitably adjusting DE's time and compensation under this Agreement for such Additional Work, among any other rights or remedies it may have hereunder, DE may suspend all or any portion of the Work until such time as that amendment is executed by the Parties and delivered to DE. If the delay is due to any reason other than an Applicant Delay or the fault or neglect of DE, Applicant shall have the right to request DE to accelerate its performance of the Work, to the extent commercially reasonably possible, in an attempt to mitigate the impact of the delay upon the schedule. Provided, however, DE shall perform such requested acceleration work only if the Parties reach written agreement upon the scope and the time and compensation adjustment for such acceleration work, which agreement shall be in the form of an amendment to this Agreement, and the acceleration work shall be deemed Additional Work hereunder. Until such amendment is executed by the Parties, DE shall have no obligation to accelerate its performance of the Work as a result of any such delay. If the Work falls behind schedule for reasons attributable to the fault or neglect of DE, its contractors, agents or employees, DE shall, to the extent commercially reasonably possible and as Applicant's sole and exclusive remedy for any such delay, accelerate its performance of the Work in an attempt to mitigate the impact of such delay upon the schedule, at no increased cost to Applicant.

ARTICLE 9. ADDITIONAL WORK

Any Additional Work to be performed by DE beyond the Relocation Work with respect to this underground conversion project must be authorized by a written amendment to this Agreement executed by both Parties. DE shall not be required to perform any Additional Work except to the extent a mutually acceptable amendment is executed by the Parties that sets forth the scope, compensation, schedule and other relevant terms concerning such Additional Work. To the extent the Additional Work involves the underground conversion of overhead facilities owned by DE that are not included within the scope of Relocation Work, Applicant may request DE to provide a binding estimate for the cost of such Additional Work ("Additional Binding Cost Estimate"). In the event that Applicant makes such a request, Applicant shall be required to pay an additional deposit ("Additional Deposit") in an amount to be mutually agreed to by the Parties. If the Parties fail to reach agreement on the Additional Deposit or Applicant otherwise fails to pay the Additional Deposit, DE shall not be required to provide the Additional Binding Cost Estimate. In the event an Additional Binding Cost Estimate is provided by DE for certain Additional Work, but the parties fail to reach agreement on the amendment for such Additional Work within 180 days from the date the Additional Binding Cost Estimate is provided to Applicant, besides not being required to perform such Additional Work, DE shall retain the Additional Deposit as compensation for preparing and providing the Additional Binding Cost Estimate. Notwithstanding anything herein to the contrary, in the event Applicant requests DE to perform additional underground conversion work beyond the scope of the Work then authorized by this Agreement, DE shall have the right to require any such work be performed pursuant to a new and separate agreement between the Parties.

ARTICLE 10. DIFFERING SITE CONDITIONS; INSPECTIONS BY THE APPLICANT

A. DE shall stop the performance of the Work and immediately notify Applicant, if any of following differing or changed site conditions is discovered:

1. Subsurface or latent physical conditions in the Cable Route differing materially from those anticipated by DE in preparing its Binding Cost Estimate or Additional Binding Cost Estimate, as applicable; or
2. Other conditions, differing materially from those reflected in any information or documents concerning site conditions provided to or obtained by DE or of a nature not ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

B. As soon as practical after such notice, DE shall provide Applicant a written notice including a general description of any such differing or changed site conditions, a determination of whether DE can proceed with the Work despite such conditions and, if so, whether such conditions will cause an increase or decrease in the cost of, or the time required for, performance of the Work. Upon receipt of any such notice, and if DE has determined it can proceed with the Work, Applicant may either (i) request the Work to proceed, in which event, all increased and additional work incurred by DE in response to the differing or changed conditions shall be deemed Additional Work subject to the terms of Article 9 above, (ii) request DE to otherwise modify the scope of the Work to avoid the cost of the differing or changed conditions on terms mutually acceptable to both Parties, or (iii) request DE to discontinue the Work and demobilize its work force. Applicant shall issue its request in writing to DE as soon as possible, but in

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any event, within five (5) business days from its receipt of the notice. In the event Applicant exercises its right under (iii) above, it shall be considered a termination for convenience by Applicant and DE shall determine the Final Price based on the Work performed, including DE's reasonable demobilization costs. The Parties acknowledge that any costs associated with differing or changed site conditions are separate and not included in the Binding Cost Estimate or any Additional Binding Cost Estimate.

C. The discovery of hazardous material within the Cable Route, not specifically identified in either the Work Request or applicable amendment with respect to its location and quantity, shall be deemed to be a differing site condition pursuant to this Article. If hazardous materials are discovered, DE shall give prompt notice to Applicant of such discovery and stop that portion of the Work affected by such materials, and DE shall not recommence such portion of the Work until Applicant, at no cost to DE, has removed or otherwise neutralized such hazardous materials to DE's satisfaction. Any such suspension of the Work being deemed an Applicant Delay, with Applicant being responsible for all costs and damages as provided in Article 8 above. To the maximum extent permitted by law, Applicant agrees to indemnify, defend and hold DE and its contractors, employees and agents harmless from any cost, expense, damage, claim, liability, obligation, demand, loss, cause of action, or suit arising out of or relating to any such hazardous materials encountered during the performance of the Work, except to the extent such hazardous materials were brought onto the Cable Route by DE or its contractors, employees or agents. This indemnification, defense and hold harmless obligation shall survive the termination or expiration of this Agreement.

D. Applicant reserves the right during the performance of the Work to conduct, at its own expense, reasonable field inspections to verify compliance of the Work with the requirements of this Agreement, provided, however, that any such inspections by Applicant shall be conducted in a manner so that they do not unreasonably interfere with or delay the performance of the Work. Applicant shall promptly notify DE in writing of any Work that is incomplete or otherwise fails to comply with this Agreement. Any such Work that the Parties mutually agree to be non-compliant or incomplete shall be corrected by DE.

ARTICLE 11. WARRANTY

A. In the event that DE uses its own employees to perform such portions of the Work performed under this Agreement, DE warrants only that such Work hereunder shall be performed with that degree of skill and care which is customarily exercised in the industry by experienced firms with respect to work of a similar or like nature. In the event that DE hires a contractor to perform a portion of the Work required hereunder, DE makes no warranties or representations concerning that Work, except DE agrees to assign the contractor's warranties, if any, to Applicant for such Work.

B. EXCEPT AS EXPRESSLY STATED HEREIN, DE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER STATUTORY, BY OPERATION OF LAW OR OTHERWISE, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE, OR ANY OTHER MATTER WITH RESPECT TO THE WORK PERFORMED HEREUNDER. ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE EXPRESSLY WAIVED.

ARTICLE 12. INDEMNIFICATION

Subject to the other terms of this Agreement, including the terms of Article 13 below, the Parties shall indemnify, defend and hold each other harmless from any and all claims, liabilities, obligations, damages, costs and expenses (including, but not limited to, reasonable attorney's fees) or causes of action of whatsoever kind or nature for injury to or death of any person (including indemnitee's employees), and for damage to or destruction of property (including indemnitee's property), to the extent resulting from any or all negligent acts or omissions or willful misconduct of the indemnifying Party or anyone for whose acts that the indemnifying Party may be liable in

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connection with this Agreement. The indemnification, defend and hold harmless obligation shall survive the termination or expiration of this Agreement.

ARTICLE 13. LIMITATION OF LIABILITY

A. Notwithstanding anything in this Agreement to the contrary, in no event shall DE be liable for demands by Applicant for any incidental, indirect, special, consequential, exemplary, punitive, or multiple damages resulting from any claim or cause of action, whether brought in contract, tort, or under any other legal theory.

B. Notwithstanding anything in this Agreement to the contrary, DE's sole liability to Applicant for any non-conforming Work shall be to correct the defective Work, of which written notice must be given by Applicant to DE no later than seven (7) business days after such non-conforming Work is discovered or should have reasonably been discovered by Applicant. In any event, the aggregate liability of DE to Applicant arising out of or in connection with this Agreement shall not exceed the Final Price payable to DE for the Work performed hereunder.

ARTICLE 14. FORCE MAJEURE

A. Except for a Party's obligation to pay the other Party any sum of money owed it hereunder, neither Party shall be liable for its failure to perform hereunder if such failure is due to any act or circumstance beyond the reasonable control, and not due to the fault or neglect of, of the Party claiming the event of Force Majeure event including, but not limited to the following acts or circumstances: (i) act(s) of God, (ii) war or wars, (iii) government regulation by a governmental authority having jurisdiction (including, but not limited to, any law, rule, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency), (iv) act(s) or threatened act(s) of terror, including, but not limited to any acts by organized groups of terrorists or any acts of a public enemy (v) disaster(s) (including, but not limited to, hurricane, tornado, tropical storm, earthquake, or major storm), (vi) any pandemic, epidemic, pestilence, plague, or outbreak, (vii) strike, lockout, or industrial disputes, (viii) civil disorder, riot, or disturbance of the peace, (ix) any third party act for which the Party who fails to perform is not responsible, or (x) any other condition or circumstance, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances) beyond the reasonable control and fault of the Party claiming the Force Majeure event.

B. In the event that either Party is rendered unable, wholly or in part, by reason of an event of Force Majeure to perform any obligations set forth in the Agreement, other than an obligation to pay a sum of money owed hereunder by one Party to the other, then such Party shall give the other Party written notice and reasonably full particulars of such event as soon as practicable after the occurrence thereof, and thereafter, the obligations of both Parties shall be suspended to the extent and for the period of such Force Majeure condition and such cause shall be remedied with all reasonable dispatch. Settlement of strikes and lockouts shall be entirely within the discretion of the Party affected and the requirement that any event of Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the parties directly or indirectly involved in such strikes or lockouts when such course is inadvisable in the discretion of the Party having such difficulty.

C. To the extent the Force Majeure event causes a delay or an increase in costs or expenses to DE, Applicant shall be liable to DE for all increased costs and expenses incurred by DE, including any acceleration or other schedule impact costs and delay damages incurred by DE or its contractors, as a result of such Force Majeure event. All such increased cost and expenses, damages, acceleration and other impacts associated with any such delay shall be deemed Additional Work under this Agreement. If Applicant refuses to execute an amendment to this Agreement reasonably acceptable to DE equitably adjusting DE's time and compensation under this Agreement for such Additional Work, among any other rights or remedies it may have hereunder, DE may suspend all or any portion of the Work until such time as that amendment is executed by the Parties and delivered to DE.

ARTICLE 15. NOTICE

A. Unless otherwise stated herein, any notice required hereunder must be given in writing to the below-designated representative of each Party within the required specified period of time. Notice is deemed to be delivered by the Party providing such notice to the receiving Party at the address provided in Paragraph B below in the following manner: (1) upon hand-delivery; (2) upon confirmation of transmittal by facsimile or telex; (3) within five (5) business days after depositing such notice with the United States Postal Service first-class, registered or certified mail; or (4) within two (2) business days after depositing such notice with a nationally-recognized overnight courier service.

B. The Parties' respective authorized representatives and mailing addresses are as follows:

DE:
Duke Energy Florida, LLC
299 1st Avenue North
St Petersburg, FL 33701
Attn: Jason Williams, Regional SVP

Applicant:
City of Clearwater
100 S Myrtle Avenue
Clearwater, FL 33756
Attn: _____

C. Either Party may change its address or designated representatives for the receipt of notice, requests or other communications hereunder by providing the other Party with notice within ten (10) business days and in accordance with Paragraph A of this Article.

ARTICLE 16. TERMINATION

In the event either Party is unable to perform its obligations because of any Force Majeure as defined in Article 14 herein, the Party awaiting performance by the other Party may elect to terminate this Agreement by giving written notice to the non-performing Party if the Force Majeure exceeds one hundred twenty (120) days. In the event either Party is in default of any of its material obligations under this Agreement, the non-defaulting Party shall notify the defaulting Party in writing, setting forth in detail the default. If the defaulting Party fails to commence to diligently and continuously cure such default within fourteen (14) days of receipt of the written notice from the non-defaulting Party, the non-defaulting Party may terminate this Agreement upon giving the defaulting Party written notice of such termination. Within approximately ninety (90) days following any termination of this Agreement, DE shall furnish to Applicant the Final Statement referenced in Article 7 above setting forth the Final Price for the Work to be paid by Applicant, including DE's reasonable demobilization costs.

ARTICLE 17. DISPUTE RESOLUTION

Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties shall meet at a mutually acceptable time and place within ten (10) business days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. In such meetings and exchanges, a Party shall have the right to designate any information that a Party offers as confidential, and no designated confidential information exchanged in such meetings for the purpose of resolving a dispute will be used by a Party in litigation against another Party. If the matter has not been resolved by these individuals within thirty (30) calendar days of the disputing Party's notice, or if the Parties fail to meet within ten (10) business days as required above, either Party may initiate mediation as provided hereinafter. The mediation proceeding shall be conducted in accordance with the then current Center for Public Resources ("CPR") Model Procedure for Mediation of Business Dispute or other mutually agreed upon procedures, with the following exceptions:

(1) if the Parties have agreed to pursue mediation but have not agreed within thirty (30) calendar days of the request for mediation on the selection of a mediator willing to serve, the CPR, upon the request of either Party, shall appoint a member of the CPR Panel of Neutrals as the mediator; and

ISSUED BY: Lori Cross, Manager, Regulatory Services - Florida

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(2) efforts to reach a settlement shall continue until the conclusion of the proceeding, which is deemed to occur when: a) a written settlement is reached, or b) the mediator concludes and informs the Parties in writing that further efforts would not be useful, or c) the Parties agree in writing that an impasse has been reached. Neither Party may withdraw before the conclusion of the proceeding; provided, however, notwithstanding the foregoing, an impasse shall be deemed to have occurred if the Parties have failed to execute a written settlement within ninety (90) calendar days after the date the mediation proceeding was initiated by either Party.

If the Parties are unable to resolve the dispute and litigation proves necessary, either Party may initiate such litigation.

ARTICLE 18. GOVERNING LAW AND VENUE

This Agreement and the rights and obligations of the Parties to this Agreement shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to any principles of conflicts of laws where the giving of effect to any such principles would result in the laws of any other state or jurisdiction being applied to this Agreement.

ARTICLE 19. ENTIRE AGREEMENT

The Agreement constitutes the entire understanding between DE and Applicant relating to the subject matter hereof, superseding any prior or contemporaneous agreements or understanding between the Parties. The Parties shall not be bound by or be liable for any statement, prior negotiation, correspondence, representation, promise, draft agreements, inducement or understanding of any kind or nature not set forth or provided for herein. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition, or instruction used in this Agreement.

ARTICLE 20. MODIFICATION

No statements or agreements, oral or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, signed by both Parties and specifically states it is an amendment to this Agreement.

ARTICLE 21. WAIVER

There shall be no waiver by either Party of any right, remedy, term, condition, or provision of this Agreement unless such waiver is expressed in writing and signed by the Party against which such waiver is sought to be enforced. Nor shall any usage of trade, course of dealing, practice of performance, or failure to strictly enforce any term, right, obligation or provision of this Agreement by either Party be construed as a waiver of any provision herein unless such waiver is expressed in writing and signed by the Party against which such waiver is sought to be enforced.

ARTICLE 22. SEVERABILITY

In the event any provision, or any part or portion of any provision of this Agreement shall be deemed or defined by any law or order any court or any governmental agency, or regulatory body having jurisdiction over either Party, or held or declared by a court of competent jurisdiction to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the Parties shall be reduced or abated only to the extent required to remove or cure such illegal or unenforceable portion, so long as the Agreement is not affected in a manner or to the extent which would render it economically, technically, materially, or commercially infeasible to either Party.

ARTICLE 23. SURVIVAL OF PROVISIONS

Neither termination nor cancellation of this Agreement shall be deemed to relieve the Parties of any obligations hereunder that by their nature survive termination or cancellation including, but not limited to, all warranty, indemnification, and limitation of liability obligations.

ARTICLE 24. CAPTIONS

The headings used throughout this Agreement are inserted for reference purposes only and are in no way to be construed as a limitation of the scope of the particular sections to which they refer.

ARTICLE 25. REPRESENTATIONS AND WARRANTIES FROM APPLICANT

25.1 Applicant represents and warrants as follows:

A. Applicant is a [public body/association/company] duly formed, validly existing, and in good standing under the laws of the State of Florida with its principle place of business and chief executive offices at its address set forth herein.

B. This Agreement, including all Exhibits referenced herein, on execution, will constitute valid obligations of Applicant, enforceable in accordance with their terms. The consummation of the transactions or actions contemplated by this Agreement, and the performance of any of the terms and conditions of this Agreement, will not result in a breach of, or constitute a default in, Applicant's organizational documents or in any deed, deed of trust, covenant, restriction of record, note, loan agreement, credit agreement, bond or trust indenture, or any other agreement to which Applicant is a party or by which Applicant may be bound or affected. Applicant is not in default of any order of any court or any requirement of any governmental authority that could materially adversely affect this Agreement or the easements or rights-of-way for and property along the Cable Route.

C. This Agreement is not misleading, and fully and fairly states all material facts relevant to the matters with which it purports to deal. There is no fact of which Applicant is aware that Applicant has not disclosed to DE in writing that could materially adversely affect this Agreement or the easements or rights-of-way for and property along the Cable Route. Applicant has furnished DE with a true and complete copy of all documents relating to this Agreement.

D. Applicant holds or will hold within the time periods set forth in this Agreement for obtaining easements and rights-of-way necessary for the Work, full legal and equitable title to the easements and rights-of-way obtained and provided to DE for the Work. The terms and conditions of all new easements and rights-of-way to be provided by Applicant hereunder, shall be substantially similar to the terms and conditions of the original easements or rights-of-way for the existing overhead facilities being relocated hereunder, unless otherwise agreed to in writing by DE, in its sole discretion.

E. There are no actions, suits, or proceedings pending or, to the knowledge of Applicant, threatened, in any court or before or by any governmental authority against or affecting Applicant or any of the property along the Cable Route, which, if adversely determined, would have a material adverse effect on the property along the Cable Route or impair the ability of Applicant to complete its obligations under this Agreement, or which involve the validity, enforceability, or priority of this Agreement and any easements or rights-of-way for the Work, at law or in equity.

F. There are no governmental requirements prohibiting the use and operation of the property along the Cable Route for the Relocation Work. There are no, nor are there any alleged or asserted, violations of governmental requirements, law, regulations, ordinances, codes, permits, licenses, declarations, covenants, conditions, or restrictions of record, or other agreements relating to the easements and rights-of-way for or property

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along the Cable Route. Applicant has obtained or is not aware of any reason why it cannot obtain all necessary easements, rights-of-way, permits, licenses, consents, or approvals for performance of the Relocation Work.

G. DE will have adequate access to perform the Relocation Work. Further, the property along the Cable Route is not located in a flood zone as defined in the Flood Disaster Protection Act of 1973, as amended, and the property along the Cable Route is not located within wetlands as defined by any governmental authority, or where wetlands are located on the property along the Cable Route, they have been delineated and all required governmental approvals for the Relocation Work have been obtained by Applicant.

H. The Applicant warrants and represents that it has the legal authority and is duly authorized to enter into each and every provision within this Agreement and to abide by and comply with each and every provision in this Agreement.

25.2 The representations and warranties in this Agreement are made by Applicant as an inducement to DE to enter into this Agreement and Applicant understands that DE is relying on these representations and warranties. These representations and warranties shall survive any breach or default of this Agreement, any bankruptcy proceedings involving Applicant, any termination of this Agreement, and any assignment or conveyance of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date and year first above written.

DUKE ENERGY FLORIDA, LLC D/B/A

DUKE ENERGY

CITY OF CLEARWATER

By: _____

By: _____

Printed Name

Printed Name

Title

Title

ISSUED BY: Lori Cross, Manager, Regulatory Services - Florida

EFFECTIVE: _____

SUMMARY

All terms used herein shall have the same meaning as those used in the Agreement to which this Exhibit is attached, except as otherwise expressly noted herein. The Relocation Work consists of converting Duke Energy Florida's ("DE") power line Facilities identified herein from overhead ("OH") to underground ("UG"). Applicant is working independently with all other utilities that may be impacted by this work order. Where reasonably possible, DE will endeavor to enter into joint trench agreements with such other utilities. The UG Facilities are to be installed in the easements and rights-of-way provided by Applicant.

SCOPE OF WORK

- DE will convert the Facilities from OH to UG. The specific Facilities to be converted from OH to UG as part of the Relocation Work are set forth in more detail in attached Schedule 1. Schedule 1 drawings to be provided to applicant prior to construction start.
- The plans and specifications for the Relocation Work, if any, are identified in attached Schedule 2.

LOCATES

- Prior to the start of Work in any particular area, DE shall seek to locate all pre-existing UG utilities that might lie within the anticipated Cable Route in accordance with the guidelines established within the "Call Sunshine" program.
- DE and its contractors and consultants shall not be responsible for any damage to any pre-existing UG utilities or improvements not identified under the Call Sunshine program. Such facilities not identified under the guidelines of Call Sunshine program are to be located by and are the responsibility of Applicant.

CONSTRUCTION

- The method of excavation for the Relocation Work primarily be done by bore.

RESTORATION

- Restoration of the Cable Route, including all improvements located within it except for those pre-existing UG utilities and improvements identified pursuant to the Call Sunshine program, is not included in the Binding Cost Estimate. DE's crews and/or contractors only will be required to backfill and level the easements and rights-of-way within the Cable Route disturbed by the Work. Applicant is responsible for all other restoration work.

SERVICES

- DE will provide a point of service for all non-residential services. These services will be owned and maintained by their respective customers.
- Meter-can conversions will be coordinated by DE under a separate contract with N/A.



Exhibit A – Work Order Summary

City of Clearwater
City Hall – S Myrtle Avenue
Undergrounding Project

STAKING

- DE shall be responsible for staking all of its Pedestal, Transformer, and Pull-Box locations. Subject to the terms of the Agreement, DE shall be entitled to reimbursement from Applicant as a cost of the Work all costs associated with installation and/or relocation of any such Pedestal, Transformer, and Pull-Boxes resulting from the Relocation Work.
- Applicant is responsible for clearly staking and clearing the easements and rights-of-way along the Cable Route in a timely manner so as to cause no delay to DE's performance of the Work.

STREETLIGHTING

- Any streetlights to be installed shall be based on designs provided by DE. Any such streetlights will be metered by DE and DE shall obtain the billing information from relevant customers seeking such lighting.

CUSTOMER COMMUNICATION

- Applicant is required to obtain all necessary letters of consent from all customers affected by the Work.

EASEMENTS

- Applicant shall provide the necessary easement(s) to allow access and installation of Duke Energy underground cables and equipment in easements as designated by DE.



Exhibit B – Payment Schedule

City of Clearwater
City Hall – S Myrtle Avenue
Undergrounding Project

PAYMENT SCHEDULE

- In accordance to Article 7, the Binding Cost estimate shall be paid by the Applicant in conjunction with providing the Notice to Proceed.



Schedule 1 – Work Order Drawings

City of Clearwater
City Hall – S Myrtle Avenue
Undergrounding Project

WORK ORDER DRAWINGS

- Duke Energy Florida (“DE”) shall provide a copy of the preliminary work order drawing(s) of the design to Applicant, if requested. Work order drawings are construction prints for DE crews and are subject to change based on field conditions.



Schedule 2 – Plans and Specifications

City of Clearwater
City Hall – S Myrtle Avenue
Undergrounding Project

PLANS AND SPECIFICATIONS

- Duke Energy Florida (“DE”) shall provide a copy of the preliminary work order drawing(s) of the design to Applicant, if requested. Work order drawings are construction prints for DE crews and are subject to change based on field conditions.



Schedule 3 – Planned Sequencing and Schedule

City of Clearwater
City Hall – S Myrtle Avenue
Undergrounding Project

PLANNED SEQUENCING

- Applicant has asked Duke Energy Florida ("DE") to start the Relocation Work at the following location: N/A.

SCHEDULE

- DE shall not be required to perform any work on weekends or holidays.
- DE shall notify Applicant when work is scheduled to begin.