

**RESOLUTION NO. 22-120**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH FLORIDA POWER & LIGHT COMPANY FOR THE UNDERGROUNDING OF OVERHEAD ELECTRIC DISTRIBUTION FACILITIES LOCATED IN FRONT BEACH ROAD CRA SEGMENT 3 IN THE TOTAL AMOUNT OF \$2,096,217.**

**BE IT RESOLVED** that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Underground Facilities Conversion Agreement between the City and Florida Power & Light Company, relating to the conversion of overhead electric distribution facilities to underground facilities located in Front Beach Road CRA Segment 3, in the total amount of Two Million, Ninety-Six Thousand, Two Hundred Seventeen Dollars (\$2,096,217.00), in substantially the form **attached** and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 24<sup>th</sup> day of March, 2022.

**CITY OF PANAMA CITY BEACH**

By:   
Mark Sheldon, Mayor

**ATTEST:**

  
Lynne Fasone, City Clerk

**UNDERGROUND FACILITIES CONVERSION AGREEMENT**

This Agreement, is made and entered into this 10th day of January, 2022, by and between The City of Panama City Beach ("Applicant"), with an address of and FLORIDA POWER & LIGHT COMPANY ("FPL"), a Florida corporation with an address of 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, the Applicant has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the "Conversion"):

Front Beach Rd CRA Phase 3 - Hwy 79 from Hwy 98 to Front Beach Road and Front Beach Road from Cabana Cay Cir to Sterling Breeze Hotel.

NOW THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, the parties intending to be legally bound, hereby covenant and agree as follows:

1. **Avoided Storm Restoration Cost ("ASRC") Eligibility Criteria.** The Applicant represents and warrants that it meets, and is capable and willing to enforce, the applicable eligibility criteria for the Conversion.
  
2. **Contribution-in-Aid-of-Construction (CIAC).** The Applicant shall pay FPL a CIAC as required by FPL's Electric Tariff and Section 25-6.115 of the Florida Administrative Code.
 

i. CIAC (excluding ASRC)	\$ <u>2,511,933</u>
ii. ASRC	\$ <u>415,715</u>
iii. CIAC Due	\$ <u>2,096,217</u>

In the event the actual cost of the Conversion (excluding ASRC) exceeds the estimate, the CIAC (excluding ASRC) shall be adjusted by the lesser of (a) the difference between the actual cost of the Conversion and the estimate, or (b) 10% of the CIAC (excluding ASRC) identified above. The ASRC shall also be adjusted accordingly and the Applicant shall pay FPL the resulting difference in the amount of the CIAC Due.
  
3. **Applicant-Installed Facilities.** The Applicant may, upon entering into an applicant-installed facilities agreement satisfactory to FPL, construct and install all or a portion of the Underground Facilities. Such work must meet FPL's construction standards and FPL will own and maintain the completed facilities. The Applicant agrees to rectify any deficiencies, found by FPL, prior to the connection of any customers to the Underground Facilities and the removal of the Existing Overhead Facilities.
  
4. **Compliance with Tariff.** The Applicant agrees to comply with and abide by the requirements, terms, and conditions of FPL's Electric Tariff.

(Continued on Sheet No. 9.721)

(Continued from Sheet No. 9.720)

5. **Timing of Conversion.** Upon compliance by the Applicant with the requirements, terms, and conditions of FPL's Electric Tariff, this Agreement and any other applicable agreements, FPL will proceed in a timely manner with the Conversion in accordance with the construction drawings and specifications set forth in Attachment A hereof.
6. **Relocation.** In the event that the Underground Facilities are part of, or are for the purposes of, relocation, then this Agreement shall be an addendum to the relocation agreement between FPL and the Applicant. In the event of any conflict between the relocation agreement and this Agreement or the Electric Tariff, this Agreement and the Electric Tariff shall control.
7. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities.
8. **ASRC Repayment.** If the Applicant does not satisfy the relevant eligibility criteria, the Applicant shall repay the ASRC within 30 days of written notice from FPL of such failure. Additionally, if at any point within 30 years of completion of the Underground Facilities installation, the Applicant elects to have electric service within the Conversion Area supplied by a provider other than FPL, the Applicant shall repay FPL a pro-rata share of the ASRC. The pro-rata share (which shall reflect partial years) shall be determined as follows:

$$\text{ASRC} * [(30 - \text{years since the Underground Facilities completion date}) / 30]$$

Non-governmental-Applicants shall provide, at the time of execution of this Agreement, either a surety bond or irrevocable bank letter of credit (the "Security Instrument") in a form acceptable to FPL evidencing ability to repay the ASRC. This Security Instrument shall remain in effect until such time as all customers within the Conversion Area are converted. The Applicant may provide either an amended or replacement Security Instrument in a form acceptable to FPL at any time to reflect the pro-rata adjustments to the ASRC amount. If, upon notice of cancellation or prior to expiration of the Security Instrument, a replacement Security Instrument in a form acceptable to FPL is not provided by the Applicant to FPL, FPL will require the third party issuing the Security Instrument to pay the full balance due in accordance with this Agreement in cash.

9. **Termination Prior to the Conversion Completion.** Failure by the Applicant to comply with any of the requirements, terms, or conditions of this Agreement or FPL's Electric Tariff shall result in termination of this Agreement. The Applicant may terminate this Agreement at any time prior to the start of the Conversion and the CIAC paid by the Applicant will be refunded to the Applicant; provided however, that the refund of the CIAC shall be offset by any costs incurred by FPL in performing under the Agreement up to the date of termination.
10. **Assignment.** The Applicant shall not assign this Agreement without the written consent of FPL.
11. **Adoption and Recording.** This Agreement shall be adopted by the Applicant and maintained in the official records of the Applicant for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.
12. **Conflict between Terms of Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Applicant and FPL, the terms of this Agreement shall control.

(Continued on Sheet No. 9.722)

13. **Applicability.** This subpart applies to requests for underground facilities addressing the conversion of existing overhead facilities. In order for the Company to take action pursuant to a request for conversion:
- a. the conversion area must be at least two contiguous city blocks or 1,000 feet in length;
  - b. all electric services to the real property on both sides of the existing overhead primary lines must be part of the conversion;
  - c. all other existing overhead utility facilities (e.g. telephone, CATV, etc.) must also be converted to underground facilities.

IN WITNESS WHEREOF, FPL and the Applicant have executed this Agreement on the date first set forth above.

APPLICANT

Signed *Drew Whitman*  
 Name Drew Whitman  
 Title City Manager

Signed \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_

Approved as to Terms and Conditions (if required by Applicant)

Signed \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_

Approved as to Form and Legal Sufficiency (if required by Applicant)

Signed *J. Cole Davis*  
 Name J. Cole Davis  
 Title CITY ATTORNEY

FPL

Signed *Justin Palumbo*  
 Name Justin Palumbo  
 Title Engineer I

**PAYMENT COUPON**

/4115006402026800088872180026648540209621700

CITY OF PANAMA CITY BEACH  
 116 S ARNOLD RD  
 PANAMA CITY BEACH FL 32413

Cust. No.: <b>6800088872</b>	Bill No.: <b>1800266485</b>
Payment Due Upon Receipt	Amount Due This Bill \$ 2,096,217.00
Reference# D00009427523	

Your payment may be eligible to be paid online. Visit [www.fpl.com/construction](http://www.fpl.com/construction) to learn more. You can also mail a check payable to FPL in USD to the FPL address listed below right. Please mail the top portion of the coupon with your check.

FPL  
 General Mail Facility  
 Miami FL 33188-0001

-----  
 Please retain this portion for your records.

Florida Power & Light Company  
 Federal Tax Id.#: 59-0247775  
 Customer Name and Address

**Customer Number:** 6800088872  
**Reference Number:** D00009427523  
**Bill Number:** 1800266485  
**Bill Date:** 01/10/2022

CITY OF PANAMA CITY BEACH  
 116 S ARNOLD RD  
 PANAMA CITY BEACH FL 32413

**CURRENT CHARGES AND CREDITS**  
 Customer No: 6800088872 Bill No: 1800266485

Description	Amount
CAP NON-AGENCY RELO/116 S ARNOLD RD Reference# D00009427523	2,096,217.00
<b>For Inquiries Contact:</b> Palumbo, Justin 850-872-3334	<b>Total Amount Due \$2,096,217.00</b> Payment Due Upon Receipt