

REQUESTED COMMISSION ACTION:

Consent       Ordinance       Resolution       Consideration       Workshop

SHORT TITLE OR MOTION: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN UNDERGROUND FACILITIES CONVERSION AGREEMENT (NON-GAF) BETWEEN THE CITY OF POMPANO BEACH AND FLORIDA POWER & LIGHT COMPANY; PROVIDING AN EFFECTIVE DATE (\$412,808.00).

**Summary of Purpose and Why:**

Burkhardt Construction, Inc., was awarded the construction contract for Briny Avenue Undergrounding and Streetscape Improvements in March 2016. Our contract with Burkhardt includes the installation of all electrical equipment related to this project but does not include the supply of the electrical equipment (transformers, hand holes, conduit, cable, etc.) or removal of existing electric poles and overhead utilities owned by Florida Power & Light Company (FPL), which is required to be furnished and completed by FPL. Please find the attached Agreement to be executed between City and FPL for these services.



Accomplishing this item supports achieving Initiative 2.3, Objective 2.3.4 "Undergrounding Utility Lines on Briny" identified in the City's Great Places Strategy.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Engineering
- (2) Primary staff contact: John Sfiropoulos, PE / Horacio Danovich Ext 7044 / 7834
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: \$412,808.00, CIP 12-208, Account No. 302-7486-530-6511

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Engineering	<u>6/1/16</u>	APPROVE	
City Attorney	<u>6/2/16</u>	APPROVE	
Finance	<u>6/2/16</u>	APPROVE	
Budget	<u>6/2/16</u>	APPROVE	

Advisory Board  
 Development Services Director  
 City Manager

Dennis W. Beard

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1st Reading _____	1st Reading _____	Results: _____	Results: _____
2nd Reading _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



**City Attorney's Communication #2016-858**

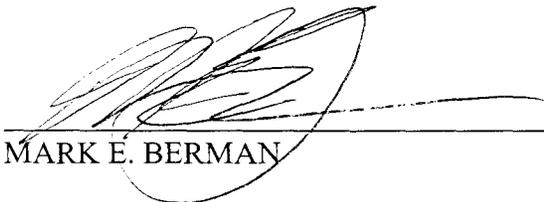
June 1, 2016

**TO:** John Sfiropoulos, P.E., City Engineer  
**FROM:** Mark E. Berman, City Attorney  
**RE:** Resolution – Underground Facilities Conversion Agreement (NON-GAF)

Pursuant to your memorandum dated May 24, 2016, Engineering Department Memorandum No. 16-81, I have prepared and attached the following form of Resolution:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN UNDERGROUND FACILITIES CONVERSION AGREEMENT (NON-GAF) BETWEEN THE CITY OF POMPANO BEACH AND FLORIDA POWER & LIGHT COMPANY; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

  
MARK E. BERMAN

/jrm  
l:cor/engr/2016-858

Attachment

RESOLUTION NO. 2016-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN UNDERGROUND FACILITIES CONVERSION AGREEMENT (NON-GAF) BETWEEN THE CITY OF POMPANO BEACH AND FLORIDA POWER & LIGHT COMPANY; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That an Agreement between the City of Pompano Beach and Florida Power & Light Company, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and Florida Power & Light Company.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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**LAMAR FISHER, MAYOR**

**ATTEST:**

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**ASCELETA HAMMOND, CITY CLERK**

/jrm  
6/1/16  
l:reso/2016-218

**UNDERGROUND FACILITIES CONVERSION AGREEMENT (NON-GAF)**

This Agreement, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between CITY OF POMPANO BEACH ("Applicant"), with an address of 100 W. Atlantic Blvd., Rm. 276, Pompano Beach, FL and FLORIDA POWER & LIGHT COMPANY ("FPL"), a Florida corporation with an address of P.O. Box 14000, 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"):

Briny Conversion area - Briny Ave from the east, S.E. 8<sup>th</sup> St. to the south, Ocean Blvd. (A1A) to the west and S.E. 2th St. to the north. (collectively, the "Existing Overhead Facilities") to underground facilities, including transformers, switch cabinets and other appurtenant facilities installed above ground as set forth in Attachment A hereof (collectively, the "Underground Facilities", WR # 4860334).

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 (select one of the following ASRC Tiers):

**ASRC Tier 1:**

- a. In order for the Conversion to incorporate a sufficient amount of overhead facilities to provide electrical continuity, the Conversion must include a minimum of approximately 3 pole line miles or approximately 200 detached dwelling units within contiguous or closely proximate geographic areas (the "Conversion Area"). The Conversion may be completed in mutually agreed upon phases, with the project size minimums applying to the aggregate project – provided that any necessary subsequent phase begins within a 1 year period from completion of the prior phase and the minimums are met within, at most, 3 phases; and
- b. The Applicant must require all customers within the Conversion Area who currently have overhead service directly from the Existing Overhead Facilities to convert their service entrances to underground within 6 months of completion of the Underground Facilities installation or each phase thereof; and
- c. If the Applicant requests that facilities be placed in the ROW, the Applicant must be willing and able to execute a right of way ("ROW") agreement with FPL or secure a ROW agreement through the appropriate local government(s) with FPL; and
- d. For any affected laterals, the complete lateral must be converted, including all stages of any multi-stage lateral; and
- e. There are no state or federal funds available to the Applicant to cover any portion of the cost of the Conversion.

Special Circumstances. Conversions which do not meet the Tier 1 project size minimums described in section 1.a are eligible for the ASRC in the following special circumstances:

- i. An island or peninsula where 100% of the Existing Overhead Facilities are to be converted; or
- ii. When the aggregate size of the first 3 phases of a project would satisfy the minimum size criteria but, for mutually-agreed engineering or logistical reasons, those phases are non-contiguous; provided that (a) the next (4th) phase must be adjacent to one or more of the first 3 phases such that the combined contiguous area meets the minimum size criteria, and (b) this 4th phase begins within 1 year from completion of the 3rd phase.

(Continued on Sheet No. 9.721)

(Continued from Sheet No. 9.720)

**ASRC Tier 2.** All eligibility criteria remain the same as Tier 1 with the exception that the Conversion Area must only include between approximately 1 to 3 pole line miles or a minimum of approximately 85 detached dwelling units within contiguous or closely proximate geographic areas.

**ASRC Tier 3.** A Conversion Area that is less than 1 pole line mile within contiguous or closely proximate geographic areas. Additionally, Tier 1 requirements for project completion timing in paragraph 1.a., as well as, paragraphs 1.b. and 1.d. do not apply.

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) | \$ 462,347 |                              |
| ii. ASRC                 | \$ 43,558  |                              |
| iii. CIAC Due            | \$ 418,789 | (Cust. Performs ALL UG Work) |

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.
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, whose CIAC includes a Tier 1 or Tier 2 ASRC, 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.

(Continued on Sheet No. 9.722)

(Continued from Sheet No. 9.721)

- 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.

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

CITY OF POMPANO BEACH

FPL

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

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 \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

## Overhead to Underground Conversion - Customer Cost Sheet

Project: Pompano Beach - Briny

Date Estimate Provided to Customer: May 12, 2016

Customer Performs All UG Work

### Underground Cost

New UG Installation (+)	\$478,615	Cost for FPL to install new underground facilities
Equivalent OH Installation (-)	(\$250,331)	Cost to install an overhead system at current hardening standards

### Existing Overhead Cost

OH Removal & Make Ready Cost (-)	\$192,216	Cost for FPL to remove existing overhead facilities
Existing OH Value (+)	\$33,976	Net Book Value of existing OH facilities to be removed
Operational Cost Diff (+)	\$7,871	
Salvage Value (-)	\$0	Credit for re-usable items
<b>Subtotal*</b>	<b>\$462,347</b>	Total customer contribution as specified in Tariff 12.2.3
<b>ASRC</b>	<b>(\$43,558)</b>	Tier #3
<b>CIAC*</b>	<b>\$418,789</b>	
Engineering Deposit (-)	(\$5,981)	Engineering deposit previously collected
<b>Net Due FPL*</b>	<b>\$412,808</b>	Total customer contribution owed

### Cost Breakdowns for Customer Contributions

	Total	Labor/Vehicle	Material	Direct Engineering, Supervision, and Support
New UG Facilities (+)	\$478,615	\$0	\$332,266	\$146,349
Credit for equivalent OH (-)	(\$250,331)	(\$107,690)	(\$96,614)	(\$46,027)
OH Removal Cost (+)	\$192,216	\$133,647	\$26,533	\$32,036
<b>Total</b>	<b>\$420,500</b>	<b>\$25,957</b>	<b>\$262,185</b>	<b>\$132,358</b>
Net Book Value (+)	\$33,976			
Operational Cost Diff (+)	\$7,871	(0.9 miles)		
Salvage Value (-)	\$0			
<b>Subtotal*</b>	<b>\$462,347</b>			
<b>ASRC</b>	<b>(\$43,558)</b>			
<b>CIAC*</b>	<b>\$418,789</b>			
Engineering Deposit (-)	(\$5,981)			Engineering deposit previously collected
<b>Net Due FPL*</b>	<b>\$412,808</b>			

### Major Material Breakdown

	Quantity	Item
Install	23,541	Primary UG Cable (feet)
	3	UG Switch Cabinet ( VISTA's)
	16	UG Transformer (each)
	1	Splice box for UG feeder (each)
Remove	8,699	OH Primary Conductor (feet)
	38	Poles (each)
	16	OH Transformer (each)
	600	Primary UG Cable (feet)