

**REQUEST TO ESTABLISH DOCKET**

(Please Type)

Date:	1/28/2005	Docket No.:	0500190 - E1
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1. Division Name/Staff Name:	Ecr/Wheeler
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2. OPR:	ECR
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3. OCR:	
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4. Suggested Docket Title:	REQUEST FOR APPROVAL OF STANDARD FORM UNDERGROUND CONVERSION CONTRACT BY PROGRESS ENERGY FLORIDA, INC.
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5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Provide NAMES OR ACRONYMS ONLY if a regulated company.

B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)

1. Parties and their representatives (if any):


2. Interested persons and their representatives (if any):


6. Check one:

Documentation is attached.

Documentation will be provided with recommendation.

DOCUMENT NUMBER-DAT



JAMES A. MCGEE  
ASSOCIATE GENERAL COUNSEL  
PROGRESS ENERGY SERVICE COMPANY, LLC

January 10, 2005

Ms. Connie S. Kummer  
Division of Economic Regulation  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

05 JAN 11 AM 6:35  
DIVISION OF  
ECONOMIC REGULATION  
FLORIDA PUBLIC SERVICE  
COMMISSION

Re: Standard form underground conversion contract.

Dear Ms. Kummer:

This letter requests administrative approval of the enclosed standard form contract for the underground conversion of Progress Energy Florida's existing overhead distribution facilities. Tariff Sheet Nos. 7.040 through 7.046 have been assigned to the contract.

The standard form contract is intended to implement Section 12.05, Part XII, *Underground Electric Distribution Facility Charges*, of Tariff Section No. IV, the Company's General Rules and Regulations Governing Electric Service. Tariff Section 12.05, entitled "Construction Contract," states in subsection (1) as follows:


Upon acceptance by the Applicant of the binding cost estimate, the Applicant shall execute a contract with the Company to perform the construction of the underground distribution facilities.

The contract was initially prepared to address underground conversion projects to be undertaken by two municipalities within Progress Energy's service territory. Execution of the contracts has been postponed until the standard form is approved. Your timely consideration of this request will enable these projects to proceed on schedule.

Because the standard form contract is supplementary to, and for the implementation of, tariff Part XII and Section 12.05 that have been previously approved by the Commission, I believe Staff administrative approval is appropriate and consistent with regular Commission practice. However, if you should determine that formal Commission action is required, I would appreciate your forwarding this request to the Clerk's office for docketing.

Thank you for your consideration of this matter. Please feel free to contact me if you should have any questions.

Very truly yours,



James A. McGee

JAM/scc  
Enclosures

cc: Mr. David Wheeler



**JAMES A. MCGEE**  
ASSOCIATE GENERAL COUNSEL  
PROGRESS ENERGY SERVICE COMPANY, LLC

January 12, 2005

Ms. Connie S. Kummer  
Division of Economic Regulation  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Standard form underground conversion contract.

Dear Ms. Kummer:

My letter to you dated January 10, 2005 requested administrative approval of a standard form contract for the underground conversion of Progress Energy Florida's existing overhead distribution facilities. I was informed yesterday by our project contracts group that several relatively minor revisions had been omitted from the underground conversion contract enclosed with my letter.

Accordingly, I have enclosed with this letter the revised standard form contract that includes the prior omissions. As an aid in the event you have already reviewed the earlier contract, I have also enclosed the revised contract in redline format to more readily identify the revisions.

Thank you for your assistance in rectifying this matter, and I apologize for any inconvenience it may have caused.

Very truly yours,



James A. McGee

JAM/scc  
Enclosures

cc: Mr. David Wheeler

**UNDERGROUND CONVERSION AGREEMENT**

**THIS UNDERGROUND CONVERSION AGREEMENT** (hereinafter referred to as the "Agreement") entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between Florida Power Corporation d/b/a Progress Energy Florida, Inc. (hereinafter referred to as "Progress Energy") and the \_\_\_\_\_ (hereinafter referred to as the "Applicant"). Progress Energy and the Applicant shall be referred to individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Applicant desires to have Progress Energy relocate its existing overhead distribution lines, utility communications systems, and related facilities to underground locations; and

**WHEREAS**, Progress Energy is willing to relocate the overhead distribution lines, utility communications systems and related facilities to underground locations at the Applicant's sole cost and expense and as provided herein.

**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, Progress Energy and the Applicant hereby agree as follows:

**ARTICLE 1. RECITALS**

The foregoing recitals are true and correct and are incorporated herein by reference.

**ARTICLE 2. SCOPE OF THE AGREEMENT**

A. The scope of this Agreement pertains to the conversion of overhead distribution facilities specified by the Applicant to underground distribution facilities.

B. Within one hundred twenty (120) days of the execution of this Agreement, the Applicant shall grant and convey, or caused to be granted and conveyed, to Progress Energy a ten (10) foot easement located \_\_\_\_\_, which easement must be acceptable to Progress Energy for the relocation of its overhead distribution lines, communications systems, and related facilities (hereinafter referred to as the "Facilities").

C. In the event the Applicant desires Progress Energy to relocate its Facilities in public road right-of-way in lieu of the easement specified in paragraph A of this Article, the Applicant agrees to pay Progress Energy for the cost of any subsequent relocation of Progress Energy's Facilities that may be required, in addition to the initial overhead to underground relocation of the Facilities provided for in the Agreement. The cost to be paid by the Applicant hereunder shall include, but not be limited to, the actual relocation costs incurred by Progress Energy as well as the cost to acquire any new easement.

D. The Applicant shall cooperate with Progress Energy's permitting efforts and refrain from any action that would violate the conditions of any permits and approvals from applicable governmental entities to the extent necessary to allow Progress Energy to (a) relocate its Facilities on the new easements or public road right-of-way or (b) cross any Federal, State, or local highway with the relocated Facilities.

E. The Applicant shall pay for the removal and replacement cost of all existing pavement associated with the installation of the Facilities within road right-of-way, public easements and private property.

**ISSUED BY:** Mark A. Myers, Vice President, Finance

**EFFECTIVE:**

F. Progress Energy shall not be responsible for the restoration costs and coordination and all appropriate expenses associated with the removal of all other utilities, including, but not limited to telephone and cable from Progress Energy's poles necessary for the execution of this project.

G. Progress Energy shall be responsible for relocating its Facilities to the new easement property(ies) in accordance with all applicable Federal, State and local laws, rules, ordinances, and permits.

H. The Applicant shall be responsible for and pay all restoration costs and coordination associated with the installation of facilities within the road right-of-way, public easements and private property. This restoration by the Applicant shall include, but not be limited to, all curbs, sidewalks, paved thoroughfares, other utilities, fences, sprinkler systems, patios, lawns, and landscaping.

I. The Applicant shall notify all residents who may be adversely affected by Progress Energy's performance of the work hereunder.

### **ARTICLE 3. TERM**

The Term of the Agreement shall commence upon execution of the Agreement and shall continue until terminated in accordance with the terms set forth herein.

### **ARTICLE 4. BINDING COST ESTIMATES**

A. Progress Energy has provided the Applicant with an estimate of the relocation costs of the Facilities in the amount of \_\_\_\_\_, including materials, labor, removal and restoration of pavement to the Florida Department of Transportation ("FDOT") standards, and surveying costs (hereinafter referred to as the Binding Cost Estimate).

B. The Applicant acknowledges and agrees that the Binding Cost Estimate is based on joint trenching with \_\_\_\_\_ in which Progress Energy is responsible for no more than \_\_\_ percent of all trenching and trench restoration costs for this project. If Progress Energy's share of such costs exceeds this percentage, the Binding Cost Estimate shall be adjusted accordingly.

C. The Applicant shall pay 50 percent of the Binding Cost Estimate to Progress Energy prior to the commencement of the project. Additional payments of 10 percent shall be made by the Applicant to Progress Energy every three months after the start of construction, with a final payment equal to the remaining balance made within 20 days after completion of the relocation work.

D. The Parties acknowledge that the Binding Cost Estimate is an estimation and that the actual cost of the relocation work may be more or less than the Binding Cost Estimate. No later than ninety (90) days following the completion of the relocation work, Progress Energy shall furnish to the Applicant a complete statement signed by an authorized representative of Progress Energy setting forth the actual itemized costs associated with the relocation work. If the statement indicates that the aggregate Binding Cost Estimate tendered to Progress Energy is less than the actual aggregate cost to Progress Energy of the relocation work, then the Applicant shall promptly pay to Progress Energy the difference. If, on the other hand, the statement indicates that the Binding Cost Estimate Payment tendered to Progress Energy exceeded the actual aggregate cost of the relocation work, then Progress Energy shall promptly refund the difference to the Applicant.

E. The Binding Cost Estimates includes (a) the installation, by directional bore or open trench, of all new primary and secondary cable and conduit; (b) where needed, the installation of new switchgear, pad-mounted transformers, service pedestals, pull boxes, and other related distribution equipment; (c) removal and restoration of all pavements to FDOT specifications; (d) modification of existing Progress Energy distribution facilities outside the limits of the project to allow for connection to the proposed new underground system; (e) residential overhead/underground Service Lateral conversions and (f) maintenance of traffic.

ISSUED BY: Mark A. Myers, Vice President, Finance

EFFECTIVE:

F. The Binding Cost Estimate does not include (a) residential meter base conversion costs (meter bases); (b) commercial Service Lateral overhead/underground conversion costs (service laterals); (c) commercial meter base conversion costs (meter bases); (d) decorative lighting; (e) easement acquisition; (f) restoration of landscaping; (g) overhead to underground conversion of other utilities (telephone, cable, etc.); (h) costs to relocate other overhead utilities (cable, telephone, etc.)

G. The Applicant shall have the right to audit Progress Energy's records related to the costs of the underground conversion project subject to this agreement. Such records shall include, but not be limited to, invoices and other business documents regarding the cost of material, equipment, and labor provided by Progress Energy.

#### **ARTICLE 5. WORK SCHEDULING**

A. Progress Energy shall perform the work hereunder in approximately \_\_\_\_\_ days. This schedule is contingent upon the removal of all other utilities such as cable and telephone from Progress Energy's poles.

B. Progress Energy may utilize subcontractors in the performance of the Work.

C. If the work falls behind schedule for reasons not due to the fault of Progress Energy, Progress Energy shall, to the extent necessary to meet the schedule for the work and only as directed by the Applicant, increase its labor force and/or provide overtime, extra shifts, Saturday, Sunday, and/or holiday work, and shall have each subcontractor do likewise. Upon the Applicant's written direction, the Applicant shall pay premium or shift differential costs associated with this acceleration.

#### **ARTICLE 6. CHANGES**

Progress Energy shall modify the work whenever so ordered in writing by the Applicant and such modifications shall not affect the validity of the Agreement. Modifications may involve increases or decreases in the amount of the work for which appropriate adjustment to the schedule and cost shall be made.

#### **ARTICLE 7. DIFFERING SITE CONDITIONS**

A. Progress Energy shall, before such conditions are disturbed, orally notify the Applicant of:

1. **Subsurface or latent physical conditions at the work area differing materially from those anticipated by Progress Energy; or**
2. **Previously unknown physical or other conditions at the work area of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.**

B. The Applicant shall promptly investigate the conditions and, if the Applicant finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Agreement, an equitable adjustment in the price and the time schedule shall be made.

C. The discovery of hazardous material, not specifically identified by the Applicant 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, Progress Energy shall immediately give notice to the Applicant of such discovery and stop that portion of the work affected by such materials. Any additional costs associated with the work stoppage shall be reflected in a price adjustment.

ISSUED BY: **Mark A. Myers, Vice President, Finance**

EFFECTIVE:



**ARTICLE 8. WARRANTY**

Progress Energy warrants that the work hereunder shall be performed with that degree of skill and judgment which is customarily exercised in the industry by recognized professional firms with respect to work of a similar or like nature.

**ARTICLE 9. INDEMNIFICATION**

The Parties shall indemnify and hold each other harmless from any and all claims, liabilities, obligations, direct damages, demands, losses, causes of action, costs or expenses, for injury to or death of any person and for damage to or destruction of any property directly resulting from any negligent, willful, wanton, reckless or intentional act(s) of such Party in connection with this Agreement or for the violation of any applicable federal, state, or local laws, ordinances, or regulations by, through, or as a result of such Party's employee, agent, contractor, or anyone else directly or indirectly employed by or through them, or either of them, or anyone for whose acts they may be liable. Neither Party shall be obligated to indemnify the other Party for such claims, liabilities, obligations, damages or causes of action which are a result of the negligence of such Party or such Party's employees.

**ARTICLE 10. LIMITATION OF LIABILITY**

**A.** In no event shall Progress Energy be liable for damage to property or equipment, loss of profits or revenue, loss of use, cost of capital, claims of customers of Progress Energy or residents of the 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 (including, but not limited to, negligence or strict liability), or any other legal theory.

**B.** Progress Energy's sole liability to the Applicant for any non-conforming work shall be to correct the defective work, of which immediate written notice must be promptly given by the Applicant to Progress Energy. In any event, the aggregate liability of Progress Energy to the Applicant arising out of or in connection with this Agreement shall not exceed the price paid to Progress Energy for work performed hereunder.

**ARTICLE 11. FORCE MAJEURE**

**A.** Neither Party shall be liable to the other Party for any delay or non-performance resulting from acts of God, severe weather conditions, strikes (by employees of either Party and/or their suppliers with respect hereto), war, riots, civil disorder, earthquakes, any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency, or any other condition or occurrence whatsoever beyond the Party's reasonable control. The settlement of strikes and lockouts shall be wholly within the discretion of the Party having the difficulty and nothing in this Agreement shall be construed to coerce the Party experiencing the labor trouble to settle on terms less favorable to such Party.

**B.** If the performance of this Agreement is delayed, prevented, restricted, or interfered with by reason of any Force Majeure, the Party whose performance is delayed or prevented, restricted or interfered with shall immediately notify the other Party by telephone, and also shall give written notice to the other Party within five (5) days of the event. Upon complying with said notice requirements, the Party experiencing the Force Majeure shall be excused from performance to the extent delayed or prevented. The Party whose performance is prevented or delayed shall take reasonable steps to avoid or remove such causes of non-performance and shall continue performance whenever and to the extent such causes are removed.

**C.** In the event that the Party awaiting performance obtains cover or substitute services for performance of the obligations of this Agreement affected by the Force Majeure, the Party whose performance is delayed shall not be responsible for any costs or liability related to or incurred for any such cover or substitute services or performance.

**ISSUED BY: Mark A. Myers, Vice President, Finance**

**EFFECTIVE:**



**ARTICLE 12. NOTICE**

A. Unless otherwise stated herein, any notice required hereunder must be given in writing by and to the below-designated representative of each Party within the required specified period of time prior to the occurrence of the particular event to which such notice pertains. 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:

Progress Energy:

Progress Energy Florida, Inc.

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

The Applicant:

The \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

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 14. DISPUTE RESOLUTION**

A. The Parties shall settle any dispute arising out of or relating to this Agreement through the step negotiation set forth herein prior to the initiation of any action filed with the FPSC. Good faith participation in these procedures shall be a condition precedent to the filing of any action with the FPSC. All disputes shall be resolved in accordance with the rules and regulations of the FPSC.

B. 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) 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. If the matter has not been resolved by these persons within thirty (30) days of the disputing Party's notice, or if the Parties fail to meet within ten (10) days, either Party may initiate an action with the FPSC.

**ARTICLE 15. GOVERNING LAW & 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.

ISSUED BY: Mark A. Myers, Vice President, Finance

EFFECTIVE:

**ARTICLE 16. ENTIRE AGREEMENT**

The Agreement constitutes the entire understanding between Progress Energy and the 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 17. 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 18. WAIVER**

No waiver by either Party with respect to any breach or default of any right or remedy, shall be deemed to constitute a continuing waiver of any other breach or default, or of any other right or remedy, or of any other 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 continuing 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 19. 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, regulation, ordinance, 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 20. 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 21. 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.

**ISSUED BY: Mark A. Myers, Vice President, Finance****EFFECTIVE:**

**ARTICLE 22. ACKNOWLEDGMENT**

Both Parties acknowledge that they have each provided equal effort in the preparation of the Agreement and that they should not, therefore, be construed more strongly in favor of or against either Party.

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

**FLORIDA POWER CORPORATION, D/B/A  
PROGRESS ENERGY FLORIDA, INC.**

\_\_\_\_\_  
Applicant

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
printed name

\_\_\_\_\_  
printed name

\_\_\_\_\_  
title

\_\_\_\_\_  
title

ISSUED BY: Mark A. Myers, Vice President, Finance

EFFECTIVE:

**UNDERGROUND CONVERSION AGREEMENT**

**THIS UNDERGROUND CONVERSION AGREEMENT** (hereinafter referred to as the "Agreement") entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between Florida Power Corporation d/b/a Progress Energy Florida, Inc. (hereinafter referred to as "Progress Energy") and the \_\_\_\_\_ (hereinafter referred to as the "Applicant"). Progress Energy and the Applicant shall be referred to individually as a "Party" and collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Applicant desires to have Progress Energy relocate its existing overhead distribution lines, utility communications systems, and related facilities to underground locations; and

**WHEREAS**, Progress Energy is willing to relocate the overhead distribution lines, utility communications systems and related facilities to underground locations at the Applicant's sole cost and expense and as provided herein.

**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, Progress Energy and the Applicant hereby agree as follows:

**ARTICLE 1. RECITALS**

The foregoing recitals are true and correct and are incorporated herein by reference.

**ARTICLE 2. SCOPE OF THE AGREEMENT**

A. The scope of this Agreement pertains to the conversion of overhead distribution facilities specified by the Applicant to underground distribution facilities.

A.B. Within one hundred twenty (120) days of the execution of this Agreement, the Applicant shall grant and convey, or caused to be granted and conveyed, to Progress Energy a ten (10) foot easement located \_\_\_\_\_, which easement must be acceptable to Progress Energy for the relocation of its overhead distribution lines, communications systems, and related facilities (hereinafter referred to as the "Facilities").

B.C. In the event the Applicant desires Progress Energy to relocate its Facilities in public road right-of-way in lieu of the easement specified in paragraph A of this Article, the Applicant agrees to pay Progress Energy for the cost of any subsequent relocation of Progress Energy's Facilities that may be required, in addition to the initial overhead to underground relocation of the Facilities provided for in the Agreement. The cost to be paid by the Applicant hereunder shall include, but not be limited to, the actual relocation costs incurred by Progress Energy as well as the cost to acquire any new easement.

C.D. The Applicant shall cooperate with Progress Energy's permitting efforts and refrain from any action that would violate the conditions of any permits and approvals from applicable governmental entities to the extent necessary to allow Progress Energy to (a) relocate its Facilities on the new easements or public road right-of-way or (b) cross any Federal, State, or local highway with the relocated Facilities.

D.E. The Applicant shall pay for the removal and replacement cost of all existing pavement associated with the installation of the Facilities within road right-of-way, public easements and private property.

ISSUED BY: **Mark A. Myers, Vice President, Finance**

EFFECTIVE:

~~EF.~~ The Applicant ~~Progress Energy~~ shall not be responsible for the restoration costs and coordination and all appropriate expenses associated with the removal of all other utilities, including, but not limited to telephone and cable from Progress Energy's poles necessary for the execution of this project.

~~FG.~~ Progress Energy shall be responsible for relocating its Facilities to the new easement property(ies) in accordance with all applicable Federal, State and local laws, rules, ordinances, and permits.

~~GH.~~ The Applicant shall be responsible for and pay all restoration costs and coordination associated with the installation of facilities within the road right-of-way, public easements and private property. This restoration by the Applicant shall include, but not be limited to, all curbs, sidewalks, paved thoroughfares, other utilities, fences, sprinkler systems, patios, lawns, and landscaping.

~~HJ.~~ The Applicant shall notify all residents who may be adversely affected by Progress Energy's performance of the work hereunder.

### ARTICLE 3. TERM

The Term of the Agreement shall commence upon execution of the Agreement and shall continue until terminated in accordance with the terms set forth herein.

### ARTICLE 4. BINDING COST ESTIMATES

A. Progress Energy has provided the Applicant with an estimate of the relocation costs of the Facilities in the amount of \_\_\_\_\_, including materials, labor, removal and restoration of pavement to the Florida Department of Transportation ("FDOT") standards, and surveying costs (hereinafter referred to as the Binding Cost Estimate).

B. The Applicant acknowledges and agrees that the Binding Cost Estimate is ~~contingent-based~~ on joint trenching with \_\_\_\_\_ in which Progress Energy is responsible for no more than \_\_\_ percent of all trenching and trench restoration costs for this project. If Progress Energy's share of such costs exceeds this percentage, the Binding Cost Estimate shall be adjusted accordingly.

C. The Applicant shall pay 50 percent of the Binding Cost Estimate to Progress Energy prior to the commencement of the project. Additional payments of 10 percent shall be made by the Applicant to Progress Energy every three months after the start of construction, with a final payment equal to the remaining balance made within 20 days after completion of the relocation work.

D. The Parties acknowledge that the Binding Cost Estimate is an estimation and that the actual cost of the relocation work may be more or less than the Binding Cost Estimate. No later than ninety (90) days following the completion of the relocation work, Progress Energy shall furnish to the Applicant a complete statement signed by an authorized representative of Progress Energy setting forth the actual itemized costs associated with the relocation work. If the statement indicates that the aggregate Binding Cost Estimate tendered to Progress Energy is less than the actual aggregate cost to Progress Energy of the relocation work, then the Applicant shall promptly pay to Progress Energy the difference. If, on the other hand, the statement indicates that the Binding Cost Estimate Payment tendered to Progress Energy exceeded the actual aggregate cost of the relocation work, then Progress Energy shall promptly refund the difference to the Applicant.

E. The Binding Cost Estimates includes (a) the installation, by directional bore or open trench, of all new primary and secondary cable and conduit; (b) where needed, the installation of new switchgear, pad-mounted transformers, service pedestals, pull boxes, and other related distribution equipment; (c) removal and restoration of all pavements to FDOT specifications; (d) modification of existing Progress Energy distribution facilities outside the limits of the project to allow for connection to the proposed new underground system; (e) residential overhead/underground Service Lateral conversions and (f) maintenance of traffic.

ISSUED BY: Mark A. Myers, Vice President, Finance

EFFECTIVE:

F. The Binding Cost Estimate does not include (a) residential meter base conversion costs (meter bases); (b) commercial Service Lateral overhead/underground conversion costs (service laterals); (c) commercial meter base conversion costs (meter bases); (d) decorative lighting; (e) easement acquisition; (f) restoration of landscaping; (g) overhead to underground conversion of other utilities (telephone, cable, etc.); (h) costs to relocate other overhead utilities (cable, telephone, etc.)

G. The Applicant shall have the right to audit Progress Energy's records related to the costs of the underground conversion project subject to this agreement. Such records shall include, but not be limited to, invoices and other business documents regarding the cost of material, equipment, and labor provided by Progress Energy.

#### **ARTICLE 5. WORK SCHEDULING**

A. Progress Energy shall perform the work hereunder in approximately \_\_\_\_\_ days. This schedule is contingent upon the removal of all other utilities such as cable and telephone from Progress Energy's poles.

B. Progress Energy may utilize subcontractors in the performance of the Work.

C. If the work falls behind schedule for reasons not due to the fault of Progress Energy, Progress Energy shall, to the extent necessary to meet the schedule for the work and only as directed by the Applicant, increase its labor force and/or provide overtime, extra shifts, Saturday, Sunday, and/or holiday work, and shall have each subcontractor do likewise. Upon the Applicant's written direction, the Applicant shall pay premium or shift differential costs associated with this acceleration.

#### **ARTICLE 6. CHANGES**

Progress Energy shall modify the work whenever so ordered in writing by the Applicant and such modifications shall not affect the validity of the Agreement. Modifications may involve increases or decreases in the amount of the work for which appropriate adjustment to the schedule and cost shall be made.

#### **ARTICLE 7. DIFFERING SITE CONDITIONS**

A. Progress Energy shall, before such conditions are disturbed, orally notify the Applicant of:

1. Subsurface or latent physical conditions at the work area differing materially from those anticipated by Progress Energy; or
2. Previously unknown physical or other conditions at the work area of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

B. The Applicant shall promptly investigate the conditions and, if the Applicant finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Agreement, an equitable adjustment in the price and the time schedule shall be made.

C. The discovery of hazardous material, not specifically identified by the Applicant 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, Progress Energy shall immediately give notice to the Applicant of such discovery and stop that portion of the work affected by such materials. Any additional costs associated with the work stoppage shall be reflected in a price adjustment

ISSUED BY: Mark A. Myers, Vice President, Finance

EFFECTIVE:

**ARTICLE 8. WARRANTY**

A.—Progress Energy warrants that the work hereunder shall be performed with that degree of skill and judgment which is customarily exercised in the industry by recognized professional firms with respect to work of a similar or like nature.

B.—Progress Energy further warrants that the Work performed hereunder shall be free from defects in workmanship for a period of one (1) year (the "Warranty Period").

C.—In the event the work is defective and such defects are discovered within the Warranty Period, the Applicant shall promptly notify Progress Energy. Progress Energy's exclusive obligations and the Applicant's exclusive remedy hereunder with respect to defective Work shall be for Progress Energy, at its sole expense, to correct the defective work.

~~D.—EXCEPT AS STATED HEREIN, PROGRESS ENERGY 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.~~

**ARTICLE 9. INDEMNIFICATION**

The Parties shall indemnify and hold each other harmless from any and all claims, liabilities, obligations, direct damages, demands, losses, causes of action, costs or expenses, for injury to or death of any person and for damage to or destruction of any property directly resulting from any negligent, willful, wanton, reckless or intentional act(s) of such Party in connection with this Agreement or for the violation of any applicable federal, state, or local laws, ordinances, or regulations by, through, or as a result of such Party's employee, agent, contractor, or anyone else directly or indirectly employed by or through them, or either of them, or anyone for whose acts they may be liable. Neither Party shall be obligated to indemnify the other Party for such claims, liabilities, obligations, damages or causes of action which are a result of the negligence of such Party or such Party's employees.

**ARTICLE 10. LIMITATION OF LIABILITY**

A. In no event shall Progress Energy be liable for damage to property or equipment, loss of profits or revenue, loss of use, cost of capital, claims of customers of Progress Energy or residents of the 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 (including, but not limited to, negligence or strict liability), or any other legal theory.

B. Progress Energy's sole liability to the Applicant for any non-conforming work shall be to correct the defective work, of which immediate written notice must be promptly given by the Applicant to Progress Energy. In any event, the aggregate liability of Progress Energy to the Applicant arising out of or in connection with this Agreement shall not exceed the price paid to Progress Energy for work performed hereunder.

**ARTICLE 11. FORCE MAJEURE**

A. Neither Party shall be liable to the other Party for any delay or non-performance resulting from acts of God, severe weather conditions, strikes (by employees of either Party and/or their suppliers with respect hereto), war, riots, civil disorder, earthquakes, any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency, or any other condition or occurrence whatsoever beyond the Party's reasonable control. The settlement of strikes and lockouts shall be wholly within the discretion of the Party having the difficulty and nothing in this Agreement shall be construed to coerce the Party experiencing the labor trouble to settle on terms less favorable to such Party.

ISSUED BY: Mark A. Myers, Vice President, Finance

EFFECTIVE:

B. If the performance of this Agreement is delayed, prevented, restricted, or interfered with by reason of any Force Majeure, the Party whose performance is delayed or prevented, restricted or interfered with shall immediately notify the other Party by telephone, and also shall give written notice to the other Party within five (5) days of the event. Upon complying with said notice requirements, the Party experiencing the Force Majeure shall be excused from performance to the extent delayed or prevented. The Party whose performance is prevented or delayed shall take reasonable steps to avoid or remove such causes of non-performance and shall continue performance whenever and to the extent such causes are removed.

C. In the event that the Party awaiting performance obtains cover or substitute services for performance of the obligations of this Agreement affected by the Force Majeure, the Party whose performance is delayed shall not be responsible for any costs or liability related to or incurred for any such cover or substitute services or performance.

**ARTICLE 12. NOTICE**

A. Unless otherwise stated herein, any notice required hereunder must be given in writing by and to the below-designated representative of each Party within the required specified period of time prior to the occurrence of the particular event to which such notice pertains. 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:

Progress Energy:Progress Energy Florida, Inc.  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

The Applicant:The \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

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 13. TERMINATION**

In the event either Party is unable to perform its obligations because of any Force Majeure as defined in Article 11 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.

**ARTICLE 14. DISPUTE RESOLUTION**

A. The Parties shall settle any dispute arising out of or relating to this Agreement through the step negotiation set forth herein prior to the initiation of any action filed with the FPSC. Good faith participation in these procedures shall be a condition precedent to the filing of any action with the FPSC. All disputes shall be resolved in accordance with the rules and regulations of the FPSC.

**ISSUED BY: Mark A. Myers, Vice President, Finance****EFFECTIVE:**



B. 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) 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. If the matter has not been resolved by these persons within thirty (30) days of the disputing Party's notice, or if the Parties fail to meet within ten (10) days, either Party may initiate an action with the FPSC.

**ARTICLE 15. GOVERNING LAW & 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 16. ENTIRE AGREEMENT**

The Agreement constitutes the entire understanding between Progress Energy and the 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 17. 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 18. WAIVER**

No waiver by either Party with respect to any breach or default of any right or remedy, shall be deemed to constitute a continuing waiver of any other breach or default, or of any other right or remedy, or of any other 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 continuing 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 19. 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, regulation, ordinance, 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.

ISSUED BY: **Mark A. Myers, Vice President, Finance**

EFFECTIVE:

**ARTICLE 20. 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 21. 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 22. ACKNOWLEDGMENT**

Both Parties acknowledge that they have each provided equal effort in the preparation of the Agreement and that they should not, therefore, be construed more strongly in favor of or against either Party.

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

**FLORIDA POWER CORPORATION, D/B/A  
PROGRESS ENERGY FLORIDA, INC.**

\_\_\_\_\_  
Applicant

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
printed name

\_\_\_\_\_  
printed name

\_\_\_\_\_  
title

\_\_\_\_\_  
title

ISSUED BY: Mark A. Myers, Vice President, Finance

EFFECTIVE: