



OFFICE OF THE COUNTY ATTORNEY

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MEMORANDUM

DATE: April 13, 2015

TO: John Agostinelli, Manager, Property Acquisition Division

FROM: Mitchell O. Palmer, County Attorney *MOP 4-13-15*

RE: **Underground Distribution Facilities Installation Agreement with FPL; Southeast Water Reclamation Facility Building; RLS 15-092, received April 3, 2015; CAO File No. 8003-180.**

Issue Presented:

In this "urgent" Request for Legal Services, you have solicited this Office's review of and commentary regarding a proposed Underground Distribution Facilities Installation Agreement with Florida Power & Light Company (FPL) relative to the County's forthcoming construction of a new Southeast Water Reclamation Facility Building. The upshot of agreements of this nature is that the FPL customer, when desirous of installing underground distribution facilities as opposed to overhead facilities, must not only provide FPL with an appropriate easement but must also pay the cost differential between construction of an underground system and construction of an overhead system.

Discussion:

The Contract Terms

The text of the Agreement document is acceptable, except that the letters SWERF (appearing in the fourth line of text) are foreign to me and thus would be foreign to any independent reader. I assume that these letters are intended to be a reference to the County's Southeast Water Reclamation Facility. In any event, FPL should dispense with the acronym and spell it out.

The Missing Exhibits

The Agreement document makes reference to an attached Exhibit A and an attached Exhibit B. Neither of these exhibits is attached to the document or otherwise present within your RLS packet. Please secure these exhibits and attach them. I have a word of caution, however. If

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anything within either of these exhibits is potentially at odds with the main agreement document, then further review by this Office may be necessary.

The Signature Problem

You have inquired as to the necessity for signatures on an agreement document such as this to be notarized. I am unaware of any such legal requirement.

I am disturbed, however, by the suggestion of Mr. Bernard, on behalf of FPL, that FPL need not execute the Agreement document. This is a two-party undertaking in which each party has obligations to the other. The suggestion that no one on behalf of FPL will sign the document is most unorthodox. In my 33 years of law practice, I do not recall encountering a situation where a party to a contractual undertaking propounded a contract document and then took the position that he or she was not obligated to sign the document.

For a thorough discussion of the legal niceties involved in determining who is bound by and the enforceability of a partially executed contract document, see *Skinner v. Haugseth*, 426 So. 2d 1127 (Fla. 2d DCA 1983). So as to avoid the legal quagmire experienced by the parties in that case, and regardless of how remote the possibility of FPL's non-performance might appear, signature blocks for both parties must be incorporated and both parties must sign this Agreement document.

The Outdated Payment Coupon; Advance Payment

I also note that the Payment Coupon appearing in the RLS packet is outdated. FPL needs to revise the Payment Coupon to reflect a date that is in line with the date of this undertaking.

It is apparent (and not surprising) that FPL is requesting advance payment by the County of the differential sum of \$4,658.25. While the County generally resists paying in advance for any service or product, the realities of undertakings such as this (wherein the provider utility will not "play ball" without advance payment) are typically recognized and understood by the Clerk of Court, such that paying in advance should not be problematic.

The Easement Instrument

Although you have not sought my input as to the easement instrument, I feel compelled to express the following concern. The language of the easement expressly recites that the, ". . . construction, operation and maintenance of overhead . . ." facilities is a possibility. Since the very essence of this undertaking is the County's desire for the lines to be buried, it is incongruous that the accompanying easement instrument would allow for the possibility of overhead distribution lines. I suggest that the easement instrument be modified to eliminate any reference to the possibility that overhead lines, wires, poles, guys or cables might be installed by FPL.

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Conclusion:

Upon your Division adequately addressing the above concerns, this Agreement may be presented to the Board of County Commissioners for approval and execution.

This concludes my response to the referenced "urgent" RLS.

Copies to:

Ed Hunzeker, County Administrator

Charles Bishop, Director, Property Management Department

Tom Yarger, Construction Services Project Manager, Property Management Department

Todd Boyle, Registered Surveyor, Property Management Department