

MEMORANDUM OF UNDERSTANDING AS TO MUTUAL ASSISTANCE

This Memorandum of Understanding as to Mutual Assistance ("MOU") sets forth the terms and conditions to which the City of Tallahassee (the "City") and Gulf Power Company ("Gulf Power") agree to be bound on all occasions when either party requests and receives ("Requesting Party") or provides ("Responding Party") Emergency Assistance (as such term is defined below) from or to the other pursuant to this MOU, subject to the below provisions.

The parties hereto desire to establish and implement a process whereby each party may receive and provide temporary assistance in the form of personnel and equipment and other resources, mutually agreed to by the parties, to aid in restoring and/or maintaining electric utility service when such service has been disrupted by acts of the elements, unexpected and emergency equipment malfunctions, accidents, sabotage, or any other occurrence for which emergency assistance is deemed to be necessary or advisable ("Emergency Assistance"). It is the intent of the parties to provide Emergency Assistance for the general benefit of the residents, businesses and industries served by a Requesting Party in times of emergency. The Emergency Assistance contemplated in this MOU will be provided on a not-for-profit basis by the Responding Party. The parties contemplate that the Emergency Assistance to be provided under this MOU will be infrequent and of a limited duration. By Responding Party entering into, or providing temporary assistance under, this MOU, In consideration of the foregoing, each party hereby agrees as follows:

I. MUTUAL ASSISTANCE

A. When providing Emergency Assistance to or receiving Emergency Assistance from another party, the parties will adhere to the written governing principles to govern Emergency Assistance arrangements between the parties (the "Principles") that are in effect as of the date of a specific request for Emergency Assistance, unless otherwise agreed to in writing by each party. The Principles are attached hereto as Exhibit A.

B. With respect to each Emergency Assistance event, the Requesting Party agrees that it will reimburse the Responding Party for all reasonable costs and expenses incurred by the Responding Party in providing Emergency Assistance as provided under the Principles, unless otherwise agreed to in writing by each party; provided, however, that the Responding Party must maintain auditable records in a manner consistent with the Principles.

C. Each party may withdraw from this MOU at any time. In such an event, the withdrawing party should provide written notice to:

To the City:

Tony Guillen, T&D Manager
City of Tallahassee - Electric Utility
2602 Jackson Bluff Road
Tallahassee, FL 32304

To Gulf Power Company:

Paul Talley, Project Services Manager
Gulf Power Company
One Energy Place
Pensacola, FL 32520

II. LABOR AND EQUIPMENT

A. Responding Party will provide only personnel who are qualified by the necessary education, training, and experience to perform the particular tasks assigned (e.g., persons experienced in appropriate utility overhead or underground electrical construction and maintenance). Responding Party is responsible for training its personnel and for ensuring they have the technical qualifications necessary to provide Emergency Assistance.

B. Responding Party will make all reasonable efforts to ensure that any and all equipment furnished by Responding Party and used in connection with its provision of Emergency Assistance is appropriate in Responding Party's judgment for the work performed.

III. COMPLIANCE AND CONFIDENTIAL INFORMATION

A. The personnel of the party providing or receiving Emergency Assistance under this Agreement are expected to conduct themselves in a professional and responsible manner. The parties adhere to a drug and alcohol free workplace policy and agree that all Emergency Assistance under this MOU must be performed by personnel who are drug- and alcohol-free.

B. The parties agree that any business or technical information or data (whether oral, written, electronic, or otherwise and including a trade secret) of or about the other party or its affiliates (the "Disclosing Party") that is valuable (and not generally known or readily available to third parties) and that is transmitted to the other party (the "Receiving Party") during the term of this MOU or during negotiations concerning this MOU ("Confidential Information") will be deemed proprietary and confidential and of both tangible and intangible value to the owner. Receiving Party must not retain, disclose, or use any Confidential Information without Disclosing Party's prior written consent. Receiving Party will take all efforts necessary to protect and prevent any unauthorized use or disclosure and further agrees to cooperate with Disclosing Party's reasonable confidentiality requirements. Receiving Party will notify immediately Disclosing Party of any unauthorized disclosure or use of any Confidential Information of which Receiving Party becomes aware.

C. The Parties acknowledge that the City is a governmental entity subject to the Florida Public Records Law (Chapter 119, Florida Statutes). The Parties further acknowledge that some, or all, of the materials or information provided by Gulf Power to the City will be considered a "public record" which the City, by law, is obligated to disclose upon request of any person for inspection and copying, unless the public record or the information is otherwise specifically exempt by statute. Should Gulf Power provide City with any materials which it believes, in good faith, contain information which would be exempt from disclosure or copying under Florida law, Gulf Power shall indicate that belief by typing or printing, in bold letters, the phrase "Exempt from Disclosure" both on the initial page and on the face of each affected page of such material and shall submit to City both a complete and a redacted version of such material. Should any person request to examine or copy any material so designated, City will produce for that person only the redacted version of the affected material or page(s) thereof. If the person requests to examine or copy the complete version of the affected material or page(s), City shall notify Gulf Power of that request, and Gulf Power, within thirty-six (36) hours of receiving such notification, shall either permit or refuse to permit such disclosure or copying. If Gulf Power refuses to permit disclosure or copying, Gulf Power agrees to, and shall, hold harmless and indemnify City for all expenses, costs, damages, and penalties of any kind whatsoever which may be incurred by City, or assessed or awarded against City, in regard to City's refusal to permit disclosure or copying of such material. If litigation is filed in relation to such request and Gulf Power is not initially named as a party, Gulf Power shall promptly seek to intervene as a defendant in such litigation to

defend its claim regarding the confidentiality of such material. This provision shall constitute City's sole obligation with regard to maintaining confidentiality of material or documents, of any kind, or any other information provided by Gulf Power.

D. The parties agree that the actual or threatened disclosure or unauthorized use of Confidential Information would cause irreparable harm to Disclosing Party and that Disclosing Party will be entitled, without prejudice or limit to any other remedy, to obtain injunctive relief to prevent unauthorized disclosure or use of Confidential Information. The Parties agree that: (i) the reasonable and necessary time for protecting Confidential Information will be the earlier of three years after termination of this MOU or three years after Disclosing Party withdraws from this MOU; and (ii) Confidential Information that constitutes a trade secret will be protected for the maximum period allowed by law. At Disclosing Party's request, or upon termination of this MOU, Receiving Party will, upon request, (1) return all Confidential Information to Disclosing Party or (2) destroy all Confidential Information and certify such destruction to Disclosing Party.

IV. INSURANCE

A. During the term of this MOU and for one year thereafter, each party will obtain and maintain, at its expense, the insurance coverage required in this Insurance section. Such coverage shall be self-insured or placed with financially reputable insurers rated "A" or better by A.M. Best and licensed to do business in all jurisdictions where any work is performed under this MOU.

B. Upon request, each party shall provide a certificate of insurance or evidence of self-insurance to the other, evidencing the following required insurance:

- (1) Workers' Compensation insurance in the form of and in the maximum amount provided for under any workers' compensation or similar law in the jurisdiction where any Responding Party is located, and Employer's Liability coverage with a limit of One Million Dollars (\$1,000,000) per accident.
- (2) Commercial General Liability or equivalent coverage, including coverage for Contractual Liability and Products/Completed Operations Liability, with limit of One Million Dollars (\$1,000,000) combined single limit per occurrence.
- (3) Business Auto Insurance or equivalent coverage covering the ownership, maintenance, or use of any owned, non-owned, or hired automobile with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence.
- (4) All liability insurance provided hereunder shall provide that:
 - (a) Each Responding Party, its officers, agents, employees, and volunteers are added as additional insureds on a primary non-contributory basis to the Requesting Party's Commercial General Liability and Business Auto insurance policies identified above.
 - (b) It includes an insurer's waiver of rights of subrogation in favor of the other party, and its employees and agents.
 - (c) It contains a severability of interest clause.

C. Nothing contained herein limits either party's liability to the other party to the limits of insurance certified or carried.

D. Regardless of any other MOU provision and regardless of availability under applicable law, no party will be liable under this MOU for lost profits or other consequential, special, indirect, treble, exemplary, incidental, or punitive damages under any circumstance.

E. The parties understand that each may be self-insured for the identified insurance requirements in Section IV.B.(1) through (4). However, the parties agree that such acceptance does not diminish the responsibilities to each other that would otherwise be covered by insurance if they were not self-insured.

V. INVOICING

A. All invoicing for Emergency Assistance rendered hereunder shall be performed consistent with the Principles. The parties shall submit reasonably detailed invoices that include the contract number and any applicable purchase order numbers, the type of service provided, the date of such service, and a breakdown of costs incurred for personnel, equipment, and materials. The parties are not required to submit a specific form as its invoice, but all invoices shall include the information requested above. Invoices that request reimbursement of expendable materials shall be supported by documentation. Responding Party should submit its "preliminary invoice" to Requesting Party within 90 calendar days from date released by the Requesting Party. Responding Party will provide any available supporting documentation at the time the preliminary invoice is submitted. Requesting Party should receive final invoice within 90 calendar days from invoice date of preliminary invoice and any supplemental supporting documentation.

B. Invoices shall be sent to the applicable party's accounts payable department via e-mail or regular mail as provided below:

To the City:

Tony Guillen
T&D Manager
City of Tallahassee -
Electric Utility
2602 Jackson Bluff Road
Tallahassee, FL 32304

To Gulf Power Company:

Paul Talley
Project Services Manager
Gulf Power Company
One Energy Place
Pensacola, FL 32520

VI. GENERAL TERMS AND CONDITIONS

A. This MOU shall be for an initial term of five (5) years from the last date of execution set forth on the signature page below. Upon expiration of the initial term and each renewal term, the term of the MOU shall automatically be renewed for a subsequent five (5) year period without any action or notice required by or to parties, unless otherwise modified by both parties in

writing. Provided, however, that this MOU may be terminated by any party as set forth in Section I.C above.

B. Any party may elect not to provide services under this MOU at its own discretion. The parties understand and acknowledge that they may be parties to other mutual assistance agreements, and that those other mutual assistance agreements may take precedence or priority over the Emergency Assistance requested under this MOU. Nothing in this MOU is intended to provide priority to a party in the event of any emergency.

C. Any party may, in execution of the terms of this MOU, involve other emergency response organizations through mutual-aid agreements, automatic-aid agreements, or subcontracts, or any applicable mutual-aid and emergency/disaster assistance statutes available at law. If such other parties are used, they shall be under such party's control and, for purposes of this MOU, shall be considered units of such party.

D. The parties agree that their requirements to hold harmless and defend a Responding Party shall be governed by the terms of the Principles.

IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below by their respective signatures.

GULF POWER COMPANY

Jim Fletcher
Signature

Jim Fletcher
Printed Name

Vice President
Title

9/6/16
Date

CITY OF TALLAHASSEE

Robert E. McGarrah
Signature

Robert E. McGarrah
Printed Name

General Manager - Electric
Title

9/1/16
Date

Attest:

By: Sharon A. Jordan
Sharon A. Jordan, Assistant Secretary

EXHIBIT A

PRINCIPLES APPLICABLE TO MOU AS TO MUTUAL ASSISTANCE

1. Safety of personnel and the public is the preeminent objective and responsibility of all involved parties throughout the emergency response. Responding Party's safety rules and work procedures shall apply to all work done by its personnel. Unless mutually agreed otherwise, the Requesting Party's switching and tagging rules should be followed to ensure consistent and safe operation. The Requesting Party shall provide to the Responding Party written guidelines as to the switching and tagging procedures utilized by the Requesting Party. The Requesting Party shall provide to the Responding Party a sufficient supply of switching/blocking tags suitable for use on the Requesting Party's facilities and equipment. Any questions or concerns arising about any safety rules and/or procedures should be brought to the proper level of management for prompt resolution between management of the Requesting Party and Responding Party.
2. To the extent possible, the parties should reach a mutual understanding and agreement in advance on the anticipated length – in general – of the Emergency Assistance period. For extended assistance periods, the parties should agree on the process for replacing, or providing extra rest for, the Responding Party's personnel. It is understood and agreed that if, in the Responding Party's judgment, such action becomes necessary, the decision to terminate the assistance and recall personnel and equipment lies solely with the Responding Party. The Requesting Party will take the necessary action to return such personnel and equipment promptly.
3. The Emergency Assistance period shall commence when personnel and/or equipment expenses are initially incurred by the Responding Party in response to the Requesting Party's needs. (This would include any request for the Responding Party to prepare its employees and/or equipment for transport to the Requesting Party's location but to await further instructions before departing). The Emergency Assistance period shall terminate when such employees and/or equipment have returned to the Responding Party, and shall include any mandated DOT rest time or union contracted rest time resulting from the assistance provided and reasonable time required to prepare the equipment for return to normal activities (e.g. cleaning off trucks, restocking minor materials, etc.).
4. Employees of Responding Party shall at all times during the Emergency Assistance period continue to be employees of Responding Party and shall not be deemed employees of Requesting Party for any purpose. Responding Party shall be an independent contractor of Requesting Party and wages, hours, and other terms and conditions of employment of Responding Party shall remain applicable to its employees during the Emergency Assistance period.
5. It is the intent of the parties, to the fullest extent authorized by law, that the Responding Party (as the direct employer of the Responding Party's employees) and the Requesting Party (as the party responsible for reimbursing workers compensation benefits under Paragraph 12 below) both be entitled to worker's compensation immunity in the event a Responding Party's employee suffers injury or death during the course of any activities contemplated in the MOU. Accordingly, the MOU shall be implemented and interpreted in such a manner as will provide, to the fullest extent possible, workers' compensation immunity to a Requesting Party in the event a Responding Party's direct employee suffers a work-related injury or death during the course of any activities contemplated in the MOU in the Requesting Party's state. Nothing in this paragraph, however, shall in any way affect or

negate the Requesting Party's indemnity and/or reimbursement obligations to the Responding Party as set forth in these Principles.

6. Responding Party shall make available, upon request, a reasonable number of supervisors in addition to crew leads. Requesting Party shall provide all assignments for work to be done by Responding Party's crews to Responding Party's supervisors; or, when Responding Party's crews are to work in widely separate areas, to such of Responding Party's crew lead as may be designated for the purpose by Responding Party's supervisors.
7. Unless otherwise agreed by the parties, Requesting Party shall be responsible for supplying and/or coordinating support functions such as lodging, meals, materials, etc. As an exception to this, the Responding Party shall normally be responsible for arranging lodging and meals en route to the Requesting Party's service area and for the return trip home. The cost for these in-transit expenses will be covered by the Requesting Party, consistent with Paragraph 9 below.
8. Requesting Party may indicate to Responding Party the type and size of trucks and other equipment desired, as well as the number of job function of personnel requested, but the extent to which Responding Party makes available such equipment and personnel shall be at Responding Party's sole discretion.
9. Requesting Party shall reimburse Responding Party for all reasonable costs and expenses incurred by Responding Party as a result of furnishing Emergency Assistance. Responding Party shall furnish documentation of expenses to Requesting Party. Such costs and expenses shall include, but not be limited to, the following:
 - a. Employee wages and salaries (including those of Responding Party's contractors) for paid time spent in Requesting Party's service area, paid time during travel to and from such service area, and stand-by time and preparation time when notified to do so by Requesting Party, plus Responding Party's standard payable additives to cover all employee benefits and allowances for vacation, sick leave, holiday pay, social and retirement benefits, all payroll taxes, workers' compensation, employer's liability insurance, and other contingencies and benefits imposed by applicable law or regulation;
 - b. Personnel travel and living expenses (meals, lodging, and reasonable incidentals). This shall not include hotel related expenses other than lodging, unless agreed to by Requesting Party prior to their occurrence. For example, phone calls made from rooms, room service, in-room movies, mini bar usage, etc. should not be incurred.;
 - c. Replacement cost of materials and supplies expended or furnished;
 - d. Repair or replacement cost of equipment damaged, lost or stolen;
 - e. Charges, at rates internally used by Responding Party, for the use of transportation equipment and other equipment requested;
 - f. Administrative and general costs, which are properly allocable to the Emergency Assistance to the extent such costs are not chargeable pursuant to the foregoing subsections.
10. Responding Party shall keep all time sheets and work records pertaining to Responding Party's personnel furnishing Emergency Assistance for a period of time consistent with its normal document retention practices.

11. Requesting Party shall pay all undisputed costs and expenses of Responding Party within sixty (60) days after receiving a final invoice therefor. Specifics as to invoicing by Responding Party shall be as set forth in Section V of this MOU.
12. Requesting Party shall indemnify, hold harmless and defend the Responding Party from and against any and all liability for loss, damage, cost, or expense that Responding Party may incur by reason of bodily injury, including death, to any person or persons, including employees, or by reason of damage to or destruction of any property, including the loss of use thereof, that result from furnishing Emergency Assistance and whether or not due in whole or in part to any act, omission, or negligence of Responding Party except to the extent that such death or injury to person, or damage to property, is caused by the willful or wanton misconduct and/or gross negligence of the Responding Party. Where payments are made by the Responding Party under a workers' compensation or disability benefits law or any similar law for bodily injury or death resulting from furnishing Emergency Assistance, Requesting Party shall reimburse the Responding Party for such payments, except to the extent that such bodily injury or death is caused by the willful or wanton misconduct and/or gross negligence of the Responding Party.
13. In the event any claim or demand is made, or lawsuit or action is filed, against Responding Party alleging liability for which Requesting Party shall indemnify and hold harmless Responding Party under these Principles, Responding Party shall promptly notify Requesting Party thereof, and Requesting Party, at its sole cost and expense, shall settle, compromise, or defend the same in such manner as it, in its sole discretion, deems necessary or prudent. Responding Party shall cooperate with Requesting Party's reasonable efforts to investigate, defend, and settle the claim or lawsuit or action.