

## PERFORMANCE GUARANTY AGREEMENT

This Performance Guaranty Agreement ("Agreement:") is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (hereinafter called the "Customer"), located at \_\_\_\_\_ in \_\_\_\_\_, Florida, and Tampa Electric Company, a corporation organized and existing under the laws of the State of Florida (hereinafter called the "Company").

### WITNESSETH:

**Whereas,** in connection with the property located at \_\_\_\_\_ in \_\_\_\_\_, Florida ("Premises"), the Customer has requested that the Company install electric infrastructure ("Facilities") described in Exhibit A in order to provide electric service to the Premises;

**Whereas,** the Customer's estimate of the electric power need of the Premises will require an expansion of the Company's present electric system and, due to the speculative nature of the Customer's facilities, the company believes that the Customer's projected load may not initially materialize and/or may decrease or disappear within five years following the requested service date of \_\_\_\_\_ ("In-Service Date") for the proposed system expansion; and

**Whereas,** the Company may not fully recover its investment in such infrastructure expansion should the Customer's projected load not be in existence at a sufficient level for at least four years duration, thereby placing the burden for those costs on Company's other customers; and

**Whereas,** the Customer is willing to provide assurance that the Company will recover its investment in the expansion of the Company's electric system based on the Customer's projections in the event that sufficient revenue from service to the Premises is not realized within five years following the requested service date;

**Now, therefore,** in recognition of the foregoing premises and in consideration of the covenants and promises set forth herein below, the Company and the Customer do hereby agree as follows:

### ARTICLE 1 – DEFINITIONS

- 1.1 "Base Revenue" is the portion of electric revenue received by the Company for electric service to the Premises consisting only of applicable base demand charges, base non-fuel energy charges and facilities rental charges, if applicable. Base Revenue excludes, without limitation, capacity, customer, energy conservation, environmental, and fuel and purchased power recovery charges, franchise fees, and taxes.
- 1.2 "Baseline Base Revenue" equals the Base Revenue, if any, received for electric service at the Premises for the twelve-month period prior to the In-Service Date. If electric service has existed for less than twelve months prior to the In-Service Date, the Baseline Base Revenue will be calculated by averaging the monthly Base Revenue for those months that the electric service has existed prior to the In-Service Date and multiplying that average monthly Base Revenue by twelve. If no electric service has been provided at the Premises prior to the In-Service Date, the Baseline Base Revenue shall be zero. If

the requested expanded electric service to the Premises will be measured by new metering, separate and apart from any metering of existing service to the Premises, there shall be no need to calculate Baseline Base Revenue and the Incremental Base Revenue shall be all Base Revenue received for electric service measured by the new metering during the Performance Guarantee Period.

- 1.3 “Incremental Base Revenue” is Base Revenue received during the Performance Guaranty Period for electric service rendered to the Premises in excess of Baseline Base Revenue.
- 1.4 “Performance Guaranty Period” is the period of time commencing with the In-service Date, and ending on the fifth anniversary of the In-Service Date (“Expiration Date”).
- 1.5 “Performance Guaranty Amount” is the dollar amount calculated in 2.2 below.

## **ARTICLE II - PERFORMANCE GUARANTEE AMOUNT**

- 2.1 For purposes of this Agreement, Incremental Base Revenue shall equal the amount remaining after any applicable previously calculated Baseline Base Revenue is subtracted from the total Base Revenue received by the Company from the Customer for electric service to the Premises during the Performance Guarantee Period.
- 2.2 The Performance Guaranty Amount is the cost, as determined by the Company, of the required system expansion less Customer’s Contribution in Aid of Construction (“CIAC”) multiplied by a factor of 1.53. The Customer agrees to provide Company a Performance Guaranty Amount in the amount specified in the table below prior to Company installing the Facilities necessary to provide the electric service to serve the Premises.

<b>Calculation of Performance Guaranty Amount</b>	
A. Cost of Facilities	
B. Customer CIAC	
C. Remaining Cost (A – B)	
D. Present Value Factor	1.53
E. Performance Guaranty Amount (C * D)	

- 2.3 The Performance Guaranty Amount does not constitute or serve in lieu of CIAC. Nothing in this Agreement shall be construed as relieving the Customer from the obligation to pay or prohibiting the Company from collecting from Customer a CIAC for underground service pursuant to the Company’s applicable tariff.
- 2.4 The Customer shall provide the above-specified Performance Guaranty Amount to Company prior to Company beginning construction of the Facilities.
- 2.5 The facilities to be installed to serve the Premises, together with their estimated costs, are shown on Exhibit A of this Agreement.

### **ARTICLE III - PAYMENT and REFUND**

- 3.1** If the Incremental Base Revenue collected from the Customer by the end of the Performance Guaranty Period, or upon default of this Agreement, is less than the Performance Guaranty Amount, Customer shall pay to Company the Performance Guaranty Amount, less the amount of Incremental Base Revenue previously collected from the Customer.
- 3.2** At the Customer's option, the Performance Guaranty Amount may be posted with Company in cash, or may be secured either by a surety bond or irrevocable bank letter of credit in a form acceptable to Company. At the Company's option, different forms of security may be accepted, including a parent guarantee or another form acceptable to the Company.
- 3.3** If at the end or at any time during the Performance Guaranty Period, Incremental Base Revenue collected equals or exceeds the Performance Guaranty Amount and Customer secured the Performance Guaranty Amount through a surety bond, or irrevocable letter of credit, such bond or letter of credit shall be released or exonerated from all past, present, and future liabilities associated with this Agreement. Customer shall have the right to reduce the face value of the surety bond or letter of credit on an annual basis to reflect the difference between the Performance Guaranty Amount and the Incremental Base Revenue collected in the previous 12-month period. If at the end of the Performance Guaranty Period the Incremental Base Revenue does not equal or exceed the Performance Guaranty Amount, the Company shall have the right to draw down the surety bond or letter of credit by the difference between the Incremental Base Revenue and the Performance Guaranty Amount. The Company will accept payment for any such difference in cash from Customer in lieu of drawing down the surety bond or letter of credit provided that Customer pays within sixty days of the Performance Guaranty ending or upon default of this Agreement.
- 3.4** If the Customer elects to post the Performance Guaranty Amount in cash, the Company agrees to reduce the Performance Guaranty Amount cash balance by the amount of the previous twelve-month's Incremental Base Revenue collected and provide an annual bill credit or refund check to the Customer in an amount equal to such prior twelve months of Incremental Base Revenue collections, until such time as the Performance Guaranty cash balance is depleted. If at the end of the Performance Guaranty Period the Incremental Base Revenue previously collected from the Customer does not equal or exceed the Performance Guaranty Amount, the Company shall have the right to permanently retain the remaining cash balance of the Performance Guaranty Amount.
- 3.5** In the event that Company's construction of the Facilities shown on Exhibit "A" commences but is not completed due to a change in Customer's plans or other circumstances related to the Premises that are not within Company's control, or if twelve months following the effective date of this Agreement Company has been unable to complete the requested installation and commence service due to changes or delays in Customer's schedule or plans or as the result of a lack of cooperation by the Customer, the Company shall be immediately entitled to an amount of the Performance Guaranty equal to Company's construction expenditures incurred in connection with this Agreement. Thereafter, the Company may elect to terminate this Agreement and, in the event of such termination by the Company, the balance, if any, of the Performance

Guaranty not required to cover the Company's expenditures incurred in connection with this Agreement will be refunded if Customer posted a cash Performance Guaranty.

#### **ARTICLE IV - TERM OF AGREEMENT**

The term of this Agreement shall commence on the above written In-Service Date and end on the earlier of the Expiration Date, or on the date Incremental Base Revenue collected from the Customer equals the Performance Guaranty, whichever is earlier, unless terminated earlier pursuant to Section 3.1 or Section 3.5.

#### **ARTICLE V - FINAL SETTLEMENT**

Upon the termination or expiration of this Agreement, any portion of the Performance Guaranty Amount not previously refunded or otherwise eligible for refund under the terms of this Agreement shall be retained by Company and any remaining balance of the Performance Guaranty Amount that is subject to a letter of credit or surety bond shall become immediately due and payable.

#### **ARTICLE VI - TITLE AND OWNERSHIP**

Title to and complete ownership and control over the Facilities shall at all times remain with Company and Company shall have the right to use the same for the purpose of serving other customers.

#### **ARTICLE VII - ENTIRE AGREEMENT**

This Agreement supersedes all previous agreements, or representations, whether written or oral, between company and Customer, made with respect to the matters herein contained, and when duly executed constitutes the entire agreement between the parties hereto.

#### **ARTICLE VIII - HEIRS, SUCCESSORS, AND ASSIGNS**

This Agreement shall inure to the benefits of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto, but Customer shall not assign this Agreement without first having obtained the written consent of Company, such consent not to be unreasonably withheld.

#### **ARTICLE IX - SUBJECT TO FPSC RULES**

This Agreement is subject to the Rules and Orders of the Florida Public Service Commission and to Tampa Electric Company's Electric Tariff including, but not limited to the General Rules and Regulations for Electric Service (collectively "Regulations"), as such Regulations are now written, or as they may be hereafter revised, amended or supplemented, and at Company's request, Customer agrees to conform this Agreement to such provisions, or enter into a new Agreement reflecting such provisions. This Agreement shall not be used in lieu of applicable requirements set forth in the Regulations pertaining to contributions in aid of construction, advances or deposits.

**In Witness Whereof**, Customer and Company hereby have caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted by:

\_\_\_\_\_  
Customer (Print/Type Name of Organization)

TAMPA ELECTRIC COMPANY

By: \_\_\_\_\_  
Signature (Authorized Representative)

By: \_\_\_\_\_  
Signature (Authorized Representative)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**FACILITIES TO BE INSTALLED TO SERVE THE PREMISES**

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