

RESOLUTION NO. 2023- 422

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN ATLANTIC CITY ELECTRIC COMPANY AND THE CITY OF VINELAND FOR 0764 BUTLER-LINCOLN TRANSMISSION LINE PROJECT DESIGN AND CONSTRUCTION.

WHEREAS, Atlantic City Electric Company (ACE) owns and operates an electric transmission line which is identified as Circuit 0764 and further referred to as the Butler-Lincoln transmission line which requires maintenance including the replacement of wood transmission poles; and

WHEREAS, the City of Vineland owns electric distribution facilities attached to the poles to be replaced as part of ACE maintenance and requires design of the Vineland distribution transfers to the new poles and transfer thereto which requires expertise in the field of transmission lines; and

WHEREAS, ACE has the professional staff to undertake the design and construction of the transfer of electric transmission lines using ACE distribution standards.

WHEREAS, ACE has provided a proposal to perform said services at a cost not to exceed \$150,000.00 as attached hereto and made a part hereof; and

WHEREAS, the Director of the Municipal Utilities has recommended the execution of a Design and Construction Agreement in the form and substance as attached hereto; and

WHEREAS, the City of Vineland has certified that such services may be awarded without competitive bidding in accordance with the Local Public Contracts laws (N.J.S.A. 40A:11-1 et seq.); and

WHEREAS, the Local Public Contract Law (NJSA 40A:11-1, et seq.) requires that the Resolution authorizing the award of contract for Professional Services without competitive bidding and the contract itself must be available for public inspection; and

WHEREAS, the CFO has certified the availability of funds for the project.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Vineland as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute a Non-Fair and Open Agreement pursuant to N.J.S.A. 19:44A-20.5 with Atlantic City Electric Company for the 0764 Butler-Lincoln Transmission Line Project Design and Construction in accordance with the agreement attached hereto and made a part hereof for the City of Vineland commencing upon the execution of the agreement until the completion of the Project which is anticipated to take one year.
2. That this Professional Services Agreement is awarded without competitive bidding in accordance with NJSA 40A:11-5(1)(a) and(f) of the Local Public Contracts Law because said services to be rendered or performed are a service which requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and further by a public utility, which is the subject to the jurisdiction of the Board of Public Utilities and in for the support and maintenance of proprietary computer hardware and software.
3. That the Business Disclosure Entity Certification, the Political Contribution Disclosure Form be placed on file with the Resolution.
4. That a notice of this action shall be printed once in the Daily Journal.

Adopted:

President of Council

ATTEST:

City Clerk

**0764 BUTLER-LINCOLN TRANSMISSION LINE PROJECT
DESIGN AND CONSTRUCTION AGREEMENT**

WHEREAS, Atlantic City Electric Company (hereinafter “ACE”) owns and operates an electric transmission line which is identified as Circuit 0764 and hereinafter referred to as the Butler-Lincoln transmission line (the “Butler-Lincoln line”);

WHEREAS, ACE is performing maintenance on the Butler-Lincoln line and plans to replace certain wood transmission poles with new metal poles;

WHEREAS, Vineland Municipal Electric Utility (“VMEU”) owns electric distribution facilities attached to the above referenced wood transmission poles (the “distribution underbuild”);

WHEREAS, VMEU does not have internal construction standards developed on building distribution underbuild on metal transmission poles;

NOW, THEREFORE, in consideration of the mutual covenants of the parties, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, ACE and VMEU agree as follows:

1. Using existing ACE distribution standards, ACE will perform the design of the VMEU distribution underbuild transfers to the new metal poles and will cover the associated design/engineering costs;
2. Once the design is complete, ACE will supply a Build of Materials list (“BOM”) to VMEU and VMEU will procure the materials listed at its cost. If reasonable changes or additions are required, VMEU agrees to procure materials requested by ACE for the duration of the project as needed. VMEU will promptly procure the materials and deliver or make those materials available to ACE as and when needed. If ACE needs to procure any materials, VMEU agrees to reimburse ACE for any such costs;
3. The distribution underbuild will, at all times, remain the property of VMEU;
4. The construction and labor costs to build VMEU’s distribution underbuild are expected by ACE to be approximately \$150,000.00. ACE will contract, execute and pay the labor cost directly and ACE will then bill VMEU for those same actual labor costs and VMEU agrees to reimburse ACE for same.
5. In no event shall either ACE or VMEU be liable to the other or any other person or entity for any consequential, indirect, incidental or special damages under any cause of action arising out of or related to this Agreement, including, without limitation, loss of use of facilities, business interruption, loss of business, profits or information or other economic loss.

6. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey.

7. VMEU warrants that no promise or inducement has been made or offered for this Agreement except as herein set forth, that this Agreement is executed without reliance on any statement or representation of ACE or by any of its agents or representatives, and that the Authorized Representative of VMEU, executing this Agreement is in fact authorized to execute this Agreement on behalf of VMEU, is of legal age, and is legally competent to execute this Agreement. The Authorized Representative of VMEU further states that he/she has read this Agreement, and has reviewed it with his/her attorney, and that there is absolutely no agreement, understanding or reservation not expressly stated herein.

8. This Agreement constitutes the entire agreement with respect to the matters set forth herein, and it supersedes any and all prior oral or written agreements, commitments or understandings with respect to such matters. This Agreement is not assignable.

9. The invalidation, in whole or in part, of any word, phrase, paragraph or provision of this Agreement will not affect the remainder of such paragraph or any other paragraph of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of this _____ day of _____, 2023.

BY:

_____ [Signature]

_____ (Print Name)

_____ (Print Title)

**Authorized Representative of
Vineland Municipal Electric Utility**

_____ [Signature]

_____ (Print Name)

_____ (Print Title)

**Authorized Representative of
Atlantic City Electric Company**

AGREEMENT FOR JOINT USE OF POLES

ATLANTIC CITY ELECTRIC AND

CITY OF VINELAND ELECTRIC UTILITY

This Agreement effective May 29, 1974 made between the Atlantic City Electric Company, hereafter referred to as Owner, and the City of Vineland Electric Utility, hereafter referred to as Licensee, shall be for the purpose of entering into an attachment agreement for joint use of certain poles as specified below.

The Licensee will install two (2) 13.2 KV lines on the Owner's proposed poles along Butler Avenue in the City of Vineland. These poles are shown as poles number 2 through 11 on Atlantic City Electric Company drawing U-1607. One (1) 13.2 KV line will be installed initially and the second at a later date. The Licensee agrees to pay a total charge of \$155.00 per pole owned by Atlantic City Electric Company as specified above and used for the mounting of the Licensee's plant.

The Owner will remove and replace the Licensee's poles #VE. 5185, #VE. 1855, #VE. 1856, #VE. 1857, #VE. 1858, #VE. 1859, #VE. 1860, #VE. 1862, #VE. 1863, #VE. 1864, #VE. 1865, #VE. 1866, #VE. 1867, #VE. 5030, #VE. 5032 and #VE. 5235 located along Southwest Boulevard, City of Vineland, as shown on Atlantic City Electric Company drawing U-1607, and install on said poles a 69 KV transmission line. The Owner agrees to pay \$120.00 per pole for the initial cost of

transferring the Licensee's plant. The Owner will remove the existing poles and leave at the location for the return to storage by the Licensee.

All jointly used poles placed or replaced shall be at locations mutually agreed upon by both parties. Circuit configuration, clearances, and structural and electrical components of jointly used poles shall be approved by both parties.

Each party shall normally do the work of placing, maintaining, transferring and rearranging its own attachments. The owner will be responsible for all third party joint pole agreements.

If pole replacement is required in the future, due to deterioration, damage or road widening, the Owner agrees to replace the pole and transfer its plant. The Licensee agrees to transfer its plant and reimburse the Owner for the cost of each additional ten (10) feet of pole height required due to the underbuilt line and for one-half of the pole installation cost.

All contractors engaged by either of the parties hereto to do any work in connection with the above jointly used poles and attachments thereto, shall, as between the parties, be considered as the contractor of the party employing same.

Each party shall pay all taxes, assessments, fees or charges levied on its own plant. Taxes and assessments which are levied on poles jointly used, including guy stubs

associated therewith, shall be paid by the Owner.

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries or death to the employees of the other or for injury to the property of either party, or for injuries or death to other persons or damage to their property, arising out of the joint use of poles, guy stubs, guy anchors, and guys under this agreement or due to the proximity of the wires and fixtures of the parties hereto attached to the jointly used poles covered by this agreement, the liability for such damages as between the parties hereto, shall be as follows:

1. Each party shall be liable for all damages for such injuries or death to persons or property caused solely by its negligence or solely by its failure to comply at any time with construction standards.
2. Each party shall be liable for all damages for such injuries or death to its own employees or its property as are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.
3. Where, on account of injuries or death of the character described in the preceding paragraphs of this section, either party hereto shall make any payments to the injured employees, to their relatives or representatives in conformity with (a) the provisions of any

Workmen's Compensation Act or any Act creating a liability to the employer to pay compensation for personal injury or death to an employee by accident arising out of and in the course of the employment, whether based on negligence on part of the employer or not, or (b) any plan for employee's disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them such payment shall be construed to be damages within the terms of the preceding paragraphs number 1 and 2 and shall be paid by the parties hereto accordingly.

4. In the case of damages for such injuries or death to persons other than employees of either party, and/or damages to property not belonging to either party hereto or that are due to causes which cannot be traced to the sole negligence of one party, each party shall be liable for one-half of the damages.
5. All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case under the provisions of paragraph 4 of this section where the claimant desires to settle any such claim upon terms acceptable to one of

the parties hereto but not to the other, the party to which said terms are acceptable may at its election: If the Owner, pay to the Licensee its liability, as stated in paragraph 4, of this section, of the expense which such settlement would involve, or if the Licensee pay to the Owner its liability as stated in paragraph 4 of this section of the expense which such settlement would involve and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

6. In the adjustment between the parties hereto of any claim for damages arising hereunder, liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, disbursements and other proper charges and expenditures, but shall not include attorney's fees.
7. Where a jointly used pole has been replaced and one of the parties hereto has transferred its attachments to the new pole and has removed all of its construction from the old pole and has so notified the other party in writing, if the other party fails to transfer its attachments and remove its construction from the old pole

within sixty (60) days from the receipt of such notice from the other party it shall become solely responsible for said old pole and said attachments and shall be solely liable for injury to persons and for damage to property.

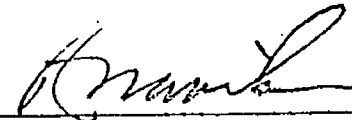
The failure of either party to enforce, insist upon, or comply with any of the terms and provisions of this agreement, or its waiver of the same in any instances or instances, shall not be construed as a general waiver or relinquishment of any such terms or provisions, but the same shall be and remain at all times in full force and effect.

This agreement may be terminated upon one (1) year's notice in writing to the other party.

ATTEST:

M. A. Meyer

ATLANTIC CITY ELECTRIC COMPANY

BY: 

ATTEST:

Carl L. Pittore

CITY OF VINELAND ELECTRIC UTILITY

BY: William H. Collins

AMENDMENT TO AGREEMENT FOR JOINT USE OF POLES

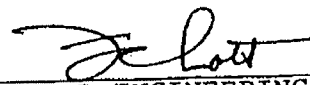
ATLANTIC CITY ELECTRIC AND CITY OF VINELAND ELECTRIC UTILITY

The Joint Pole Agreement dated effective May 29, 1974 shall be amended as follows:

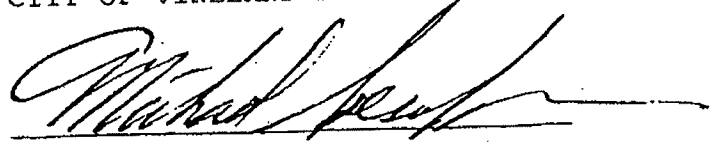
Atlantic City Electric Company shall attach one 69KV circuit (3 conductor) and two staticwires to City of Vineland Electric Utility pole number VE 7735, as shown on Atlantic City Electric Co. drawing P-2533-1.

The City of Vineland Electric Utility shall retain ownership of said pole. All other conditions of the May 29, 1974 agreement shall remain.

ATLANTIC CITY ELECTRIC COMPANY


MGR. T&D ENGINEERING

CITY OF VINELAND ELECTRIC UTILITY


General Manager of Municipal
Utilities

February 11, 1985