

REVOCABLE LICENSE AND UTILITY/ROW CROSSINGS AGREEMENT

THIS REVOCABLE LICENSE (“License”) is hereby issued as of the _____ day of _____, 2023, by THE CITY OF NORMAN, OKLAHOMA, A Municipal Corporation, (“City”), to NextEra Energy Southwest, LLC (“Licensee”).

RECITALS

WHEREFORE, Licensee wishes to install and operate aerial utility lines over City of Norman public streets and crossing public right-of-way utilized by the City and its franchisees for the placement of public utilities;

WHEREFORE, Licensee further wishes to utilize temporary construction drives and accesses within public right-of-way utilized by the City and its franchisees;

WHEREFORE, Licensee has provided detailed drawings within its application materials detailing the nature and dimension of the accesses and crossing requested;

WHEREFORE, the City and Licensee wish to enter into an agreement whereby Licensee may install and operate these aerial utility lines, as well as construct and utilize the requested temporary construction drives and accesses, within the public right-of-way subject to certain limitations and conditions.

LICENSE AND AGREEMENT

WITNESSETH, the parties hereto, for the consideration hereinafter expressed, covenant and agree as follows:

1. **Nature of Agreement:** Licensee has reviewed and executed the Application and Special Conditions, attached hereto but as modified herein, and has submitted application materials that are fully adopted and incorporated herein by reference as if set forth fully herein, and understands and agrees to abide by the terms and conditions of that Application, and as follows, with any failure to do so being grounds for revocation of this License:
 - a. No other privilege or exemption shall be granted or conferred by this License except those specifically prescribed herein and in the attached Application;
 - b. Licensee does not intend to engage in revenue-generating activities with City of Norman residents, and intends to utilize the lines within the City of Norman for the purposes of transmission only. However, in the event Licensee utilizes these facilities for any revenue generating purpose within the City of Norman, and that activity is not otherwise subject to the payment of a franchise fee to the City of Norman, which will result in retail sales or retail services to be provided within the City of Norman, Licensee shall pay to the City a fee equal to five percent (5%) of the Gross Revenues of Company and/or its affiliates (including lessees) collected from the commercial use of the facilities for each calendar year for “Agreement Services” rendered wholly within the city in lieu of a franchise tax.

Except, however, that any revenue from the leasing of these facilities, if any, is not subject to this fee. Any applicable fee shall be due and payable to the City on or before **September 1** of the following year; and

- c. This License relates to the crossing of overhead utility lines and temporary construction drives and accesses within City rights-of-way only. This Agreement does not authorize nor address the placement of poles or underground utilities, and **Licensee** is not released from, and is hereby responsible for any existing or future obligations involved in obtaining permits, placing poles or other infrastructure, or utilizing conduit space from any department of the City, utility company, or from others maintaining utilities in City streets and rights-of-way. **Licensee** shall comply with any and all applicable Ordinances of the City now in force or hereinafter enacted.

2. **Premises.** Through its application, Licensee has provided City with identification of all areas in which aerial utility lines will cross public rights-of-way and in which temporary construction drives or accesses are requested (“Premises”). Nothing in this License shall be interpreted as granting Licensee access or right to utilize any other portions of City rights-of-way, or as restricting the rights of the City or its franchisees from entering the Premises. Any attempt by Licensee to utilize other portions of City rights-of-way or to restrict the access of City or franchisees from the Premises may be grounds for revocation of this License.

3. **Notices.** Pursuant to Paragraph 7 of the Conditions referenced in Para. 1(a) herein, before work authorized by this License may take place, Licensee must obtain express approval of the City Engineer, who must be notified when any work in a new location is to begin and when it is complete for final inspection. Under no circumstances will any work be done on the Premises until this approval has been obtained. No work will take place within the Premises on Saturdays, Sundays, Holidays or after dark unless approved by the City Engineer. The City Engineer may, in their discretion, require a pre-construction conference for each location in which Licensee requests to proceed with the work contemplated by this License.

When notified to do so by the City, Licensee agrees to implement all changes to the Licensed Improvements located on or within the Premises within the City’s established time frame at Licensee’s sole expense, unless otherwise provided by applicable law.

Any notice to be given by City to Licensee hereunder shall be deemed to be properly served if deposited in the United States mail, postage prepaid, addressed to Licensee at **NextEra Energy Southwest, LLC, c/o Nick Fuhr, Project Director Development, Nick.Fuhr@nexteraenergy.com**. Any notice to be given hereunder by Licensee to City shall be deemed to be properly served if the same be deposited in the United States mail, postage prepaid addressed to: The Office of the City Clerk, P.O. Box 370, Norman, Oklahoma 73070.

4. **Licensed Work and Aerial Crossings.** City hereby permits Licensee, subject to the rights and easements hereinafter excepted and reserved and upon the terms and conditions hereinafter set forth, to utilize the Premises only for the purpose of the installation and maintenance of aerial utility lines and temporary construction accesses or drives as set forth in Licensee’s Application (“Licensed Improvements”). Subject to the terms otherwise set out herein, for purposes of operations and maintenance of the transmission line, the Licensee may access the Licensed Improvements located on Licensee’s right of way by crossing the City’s right of way. The Licensee may not make any

improvements within the Premises that are unrelated to or not necessitated by the Licensed Improvements, and the Licensed Improvements are only permitted to the extent they are compliant with the applicable Code of Ordinances for the City of Norman, Oklahoma and federal law. The Licensee may not use the Premises for any other purpose under the terms of this License and Agreement. Additionally, Licensee must satisfy the following and any failure to do so may be grounds for revocation of this License:

- a. No driveways, private roads, lanes, ditch liners, structures or surfaced areas will be cut unless approved by the City Engineer and other necessary parties;
- b. In using the Premises, and in constructing, maintaining, operating and using the Licensed Improvements thereon, Licensee shall comply with any and all requirements imposed by federal or state statutes, or by ordinances, orders, or regulations of any governmental body having jurisdiction thereover. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alteration or repair work done, or suffered or permitted to be done, by Licensee within the Premises, and City is hereby authorized to post any notices or take any other action with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of City to take any such action shall not relieve Licensee of any obligation or liability under this or any other paragraph hereof
- c. All work on City right-of-way is to be done in accordance with the current "Engineering Design Criteria" adopted by the City of Norman and hereby fully adopted herein by reference as if fully set out. At the conclusion of such work, the right-of-way must be cleaned up and left in the same or better condition than found by Licensee. Cleanup will include replacing any protective grass cover destroyed by trenching or the operating of any equipment, and correcting any other damage that may have been caused, as directed by the City Engineer;
- d. Licensee shall use the Premises exclusively for the Licensed Improvements. Prior to installation, maintenance or repair of any item comprising the Licensed Improvements, engineered plans and/or drawings must be submitted to and approved by the City of Norman Public Works Department
- e. Licensee shall keep and maintain the Premises and Licensed Improvements in such safe, sanitary and sightly condition as shall be satisfactory to City;
- f. Licensee must furnish all flagmen, lights, barricades, and warning signs deemed necessary by the Department during the construction, maintenance or repair of Licensee's Licensed Improvements, as required by applicable standards, regulations and laws, including the Manual on Uniform Traffic Control Devices;
- g. Crossings should be as nearly perpendicular as possible and any deviation approved by the City Engineer. Clearance above traffic lanes at aerial crossings shall comply with applicable safety codes but in no case be less than thirty (30) feet. The licensed improvements must be kept in good repair at all times. Where construction by licensor or their agent is unduly burdened due to the height of the licensed improvements, the

City may require de-energization or other protective measures by the Licensee to allow for reasonable construction methods;

- h. Licensee agrees to notify all utility owners who have facilities in the area encompassed by this permit. OKIE ONECALL [811] or [(800)522-6543] and the County Clerk will be notified three (3) working days prior to the beginning of any work;
- i. The Licensee agrees to comply with all applicable laws and regulations including the City of Norman Engineering Design Criteria and the Oklahoma Department of Environmental Quality (ODEQ) requirements for pollution prevention including discharges from storm water runoff on the sites identified in its Application, incorporated herein. Further the Applicant agrees to obtain any and all permits required by applicable regulations and laws;
- j. Upon completion of work necessitating any single requested temporary construction access or drive, Licensee must, within thirty (30) days' of said completion, restore the Premises as set forth herein;
- k. Where any lane closures are required for the Licensed Improvements contemplated herein, Licensee shall provide a Traffic Control plan completed by a certified traffic technician for each affected location no less than seventy-two (72) hours in advance of said requested lane closure.

5. **Fee.** Licensee shall pay to City for the use of the Premises as follows: TWO THOUSAND FOUR HUNDRED TWENTY-EIGHT AND 95/100 DOLLARS (\$2,428.95) for off-site construction, and SEVENTY-FIVE THOUSAND THREE HUNDRED TWENTY-EIGHT AND 00/100 DOLLARS (\$75,328.00) for occupation of the right-of-way, for a total of SEVENTY SEVEN THOUSAND SEVEN HUNDRED FIFTY-SIX AND 95/100 DOLLARS (\$77,756.95) payable in advance of use of right-of-way or January 1, 2024 whichever occurs first. This fee is inclusive of off-site construction fees relating to Licensee's construction of the temporary construction drives referenced herein.

6. **Vegetation, Trees or Shrubberies.** Licensee has identified certain areas in which it requests that vegetation, including trees or shrubberies, be cleared from the Premises in order to accommodate the Licensed Improvements. Licensee has provided an audit of affected vegetation, which is hereby fully incorporated within Licensee's Application and this License by reference. Licensee requests clearance of trees and shrubberies, and where temporary construction accesses and drives are indicated in Licensee's Application (and only when such drives are in use hereunder). By way of replacing the vegetation cleared to accommodate the safe operation of Licensee's project, Licensee hereby agrees to pay \$125,000.00 to the City of Norman on the same schedule as that set forth in Paragraph 5, to be placed in an account that is dedicated to the purpose of tree replacement, as directed by the Norman Parks Director. This License shall not be interpreted as placing any obligation upon the City to clear or maintain any requested tree clearances within its rights-of-way.

7. **No City Conveyance/Warranty, Licensee Responsibility.** City is granting Licensee access to its rights-of-way based on the best information currently available to City. City does not warrant its title to rights-of-way, Licensee hereby waives, releases and agrees to hold City harmless as to any portion of right-of-way addressed herein that may later be found to have title deficiencies.

Such release and waiver expressly includes any damages of any kind whatever, foreseen or unforeseen, which may accrue to Licensee or its successors as a result thereof.

Further, Licensee is solely responsible for conducting due diligence review of applicable records to determine if any public filings indicate the presence of environmental issues within the City's rights-of-way. Licensee is solely responsible for conducting the research and complying with any and all such filings, as recorded and applicable. Additionally, Licensee is solely responsible for the safety of their employees and/or contractors as it relates to their work within the City rights-of-way.

This License conveys no property interest in or to any street, alley, easement, or right-of way.

8. **Indemnity by Licensee.** Licensee shall indemnify, defend and hold harmless City against all actions or causes of action, suits, claims, liability, loss, cost, damage or expense, or whatever kind and nature, including but not limited to those arising under the Federal Employer's Liability Act, or under any Workers' Compensation Act, and any amendment to said Acts now or hereafter in effect, including attorney fees and other expenses of litigation, and including any suit instituted to enforce the obligations of this provision, which City may sustain or incur, or for which it may become liable, by reason of use of, damage to or destruction of property, including the loss of use thereof and lost profits, or by reason of injuries, including death, to any person or persons including, but not limited to, the person or property of the parties hereto and their employees (hereafter "Loss and Damage"):

- a. Arising out of, or directly or indirectly due to, any failure by Licensee to satisfy, promptly and faithfully, its obligations under this License;
- b. Arising out of, or directly or indirectly due to, any accident or other occurrence whatsoever causing injury, barring intentional acts by City or its agents, including death, to any person or persons or damage to or destruction of any property, including the loss of use thereof and lost profits, resulting from the use, occupancy or condition of the Premises and Improvements by Licensee, its employees, invitees and licensees; and
- c. Arising out of any mechanic's lien or other lien, tax, assessment or charge of any and every nature that may at any time be established against the Premises or the Improvements, or any part thereof, as a consequence, direct or indirect, of the existence of Licensee's interest under this License.

No settlement by Licensee for Loss and Damage shall affect City's right to indemnity, contribution or defense under this agreement.

9. **Licensee Insurance.** Licensee shall maintain commercial general liability insurance and Workers' Compensation Insurance (as applicable) and shall provide the City with evidence thereof, such evidence to be continually updated by Licensee upon renewal. Any commercial general liability policy shall have minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, and no less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) in coverage for damages to the property, including the Premises and Licensed Improvements. Said policy shall name the City of Norman as an additional insured for the purposes of the Premises and Licensed Improvements.

10. **Other Use of Premises.** City hereby excepts and reserves the right, to be exercised by City and by any others who have obtained or may obtain permission or authority from City so to do, (a) to operate, maintain, renew and relocate any and all existing utilities, pipe, power, and communication lines and appurtenances and other facilities of like character upon, over, or under the surface of the Premises; and (b) from time to time to construct, operate, maintain, renew and relocate such additional facilities of the same character. City shall incur no liability to Licensee for any damages to the Licensed Improvements or the Premises that may occur during the operation, maintenance, renewal, relocation of any or all existing utilities, pipes, power or communication lines, appurtenances, or facilities, and in all instances it shall remain the responsibility of Licensee to ensure that the Licensed Improvements remain compliant with the applicable Code of Ordinances for the City of Norman, Oklahoma and federal law. A superceding obligation of the City to a third party under applicable law or prior agreement may be grounds for revocation of this License, but only to the extent necessary and required by all applicable and controlling laws and regulations.

11. **City Written Consent for Assignment.** Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the written consent and approval in each instance of City, which consent will not be unreasonably withheld.

12. **Revocation or Other Termination.** This permit may be revoked for noncompliance, subject to Licensee's reasonable opportunity to cure, or as otherwise set forth herein. Within sixty (60) days of the termination or revocation of this License, by the City or otherwise, Licensee shall surrender of possession of the Premises. Licensee agrees and covenants that it will, at its own cost, remove the Licensed Improvements and perform any construction or restoration in conformance with the applicable laws and regulations, including but not limited to the Code of Ordinances of the City of Norman and Engineering Design Criteria, that is necessary to restore affected City rights-of-way to as good or better condition than that prior to installation of the Licensed Improvements. Upon failure of the Licensee's to vacate and/or perform such restoration required by this License within sixty (60) days' of any termination or revocation, the City may perform such work and pursue all available actions, damages and remedies under applicable law against Licensee.

Any termination or revocation of the License herein will not serve to terminate any other obligations of Licensee.

13. **Venue and Choice of Law.** Venue for any action brought to enforce any part of this License is proper in Cleveland County, State of Oklahoma. Oklahoma law shall apply to any such action.

14. **Covenants Binding.** All the covenants and agreements of Licensee herein contained shall be binding upon the heirs, legal representatives, successors and assigns of Licensee and shall inure to the benefit of the successors and assigns of City.

IN WITNESS WHEREOF, this License has been duly executed (including in duplicate) by the parties hereto as of the date and year first above written.

LICENSEE:

By: _____
Signer, Title

ATTEST:

Secretary

CITY:

APPROVED by the Norman City Council this _____ day of _____, 2023.

By: _____
MAYOR

ATTEST:

City Clerk

APPROVED as to legality and form this _____ day of _____, 2023.

City Attorney