

## **AGREEMENT FOR THE LOCATION OF CERTAIN UNDERGROUND FACILITIES**

**THIS AGREEMENT FOR LOCATION OF CERTAIN UNDERGROUND FACILITIES** (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ by and between the City of Coral Gables, Florida, a municipal corporation (“Local Government”), with an address of 405 Biltmore Way, Coral Gables, Florida, 33134, and Florida Power & Light Company, a Florida corporation (“FPL”), with an address of 700 Universe Boulevard, Juno Beach, FL, 33408-0429.

### **RECITALS**

**WHEREAS**, Local Government has jurisdiction over those certain streets and rights-of-way located within the incorporated limits of Local Government in accordance with provisions of State law (collectively, “ROW”);

**WHEREAS**, the ROW is held by Local Government for the benefit and general use of the public for functions including, but not limited to, vehicular and pedestrian travel and land access, and installation and maintenance of various public utilities and for conveyance, treatment, and disposal of stormwater all as set forth in State law;

**WHEREAS**, FPL intends to convert certain overhead electric distribution facilities located within the Local Government boundaries to underground facilities, including transformers, switch cabinets and other appurtenant facilities some of which may be installed above ground (collectively, the “Underground Facilities”) pursuant to FPL’s Storm Protection Plan as approved by the Florida Public Service Commission, as may be amended from time-to-time, Section 366.96, Florida Statutes, and Rule 25.6.303, Florida Administrative Code (“Conversion”);

**WHEREAS**, as a part of such Conversion, FPL seeks to install and place the Underground Facilities within and on the ROW;

**WHEREAS**, FPL has the right to occupy and use the ROW under Section 337.401, Florida Statutes, and pursuant to a Franchise Agreement between Local Government and FPL dated [DATE] (“Franchise Agreement”), which is incorporated herein; and

**WHEREAS**, FPL is permitted to install and place the Underground Facilities within and on and occupy the ROW subject to State law and the Franchise Agreement; and

**WHEREAS**, Local Government is authorized to prescribe and enforce reasonable rules or regulations on the placing and maintaining of Underground Facilities across, on, or within the right-of-way; and

**WHEREAS**, Local Government and FPL shall mutually agree to the location of certain Underground Facilities within and on the ROW.

**NOW THEREFORE**, in recognition of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, intending to be legally bound hereby, the parties covenant and agree as follows:

#### AGREEMENT

1. The foregoing recitals are true and correct, form a material part of this Agreement upon which the parties relied, and are hereby incorporated by reference into this Agreement.
2. FPL shall install and place the Underground Facilities within and on, and occupy and use the ROW as identified in Exhibit “A” attached to this Agreement.
3. Local Government and FPL hereby agree to the location of certain Underground Facilities within and on the ROW as identified in Exhibit “B” attached to this Agreement.
4. Conditions Precedent to Placement of Underground Facilities in ROW:
  - (a) Local Government covenants, represents and warrants that:
    - (i) Local Government has full legal right and authority to enter into this Agreement;
    - (ii) Local Government has full legal right and authority to take all actions and measures necessary to fulfill Local Government’s obligations under this Agreement;
  - (b) All applicable permits and approvals necessary for FPL to install, construct, or maintain Underground Facilities within or on ROW shall, upon receipt of such requests from FPL, be issued on a timely basis by the appropriate agency.
  - (c) FPL warrants that the design of the Underground Facilities that are the subject of this Agreement will be in full compliance with all applicable operational and safety guidelines, codes and standards. FPL shall identify and select the most design-appropriate location for the facilities within the ROW. Said ROW locations shall be identified by FPL and provided to the applicable agencies in the submission of applicable permits.
5. Relocation and Rearrangement of FPL Facilities.

- (a) Local Government shall use its best efforts in any design and construction of its future road improvement projects to avoid or mitigate the necessity of relocating or adjusting the Underground Facilities to be located within or on the ROW.
  - (b) If Local Government or other agency with control over the ROW, for any reason whatsoever, requires FPL relocate or rearrange, in whole or in part, any Underground Facilities (as they are to exist as a result of this Conversion, or as they may later be modified, upgraded, or otherwise altered) from or within the ROW, Local Government and FPL agree to collaborate and work together to identify and secure a substitute replacement location satisfactory to FPL. Local Government and FPL agree to undertake best efforts to avoid and minimize any such relocation costs to the greatest extent practicable.
- 6. Abandonment or Sale of Local Government ROW. If Local Government desires to subsequently abandon or discontinue use of the ROW and ownership of the land is transferred to a private party, Local Government agrees that as a condition of and prior to any such sale, abandonment, or vacation it shall grant FPL an easement satisfactory to FPL for the Underground Facilities then existing within or on the ROW or cause the transferee of the ROW to so grant FPL an easement satisfactory to FPL at the time of transfer. If ownership of the ROW is transferred to another public entity, Local Government agrees that any such transfer shall be conditioned on the requirement that public entity shall take the ROW subject to the terms and conditions of this Agreement.
- 7. Term. This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities placed in the ROW.
- 8. Title and Ownership of Underground Facilities. Title and ownership of Underground Facilities installed by FPL that are the subject of this Agreement shall, at all times, remain the property of FPL.
- 9. Agreement Subject to FPL's Electric Tariff and Applicable Rules and Orders. This Agreement is subject to FPL's electric tariff, including but not limited to the general rules and regulations for electric service, and the rules and orders of the Florida Public Service Commission.
- 10. Venue and Waiver of Jury Trial. This Agreement shall be enforceable in Miami-Dade, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, FPL and Local Government expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Florida.

11. Attorney Fees. In the event it becomes necessary for either party to institute or defend legal proceedings as a result of the failure of the other party to comply with the terms, covenants, or provisions of this Agreement, each party in such litigation shall bear its own cost and expenses incurred and extended in connection therewith, including, but not limited to attorneys' fees and court costs through all trial and appellate levels.
12. Assignment. Local Government shall not assign this Agreement without the written consent of FPL
13. Adoption and Retention. This Agreement shall be adopted by the Local Government and maintained in the official records of Local Government for the duration of the term of this Agreement.
14. Conflict between Terms of Permit or Franchise Agreement. In the event of a conflict between (i) the terms of this Agreement and (ii) any easement, permit or Franchise Agreement entered into by Local Government and FPL, the terms of the easement, permit, or Franchise Agreement shall control.
15. Notice. Any notice, instruction, or other communication to be given to either party hereunder shall be in writing and shall be hand delivered, telecopied, sent by Federal Express or a comparable overnight service or by U. S. registered or certified mail, with return receipt requested and postage prepaid to each party at their respective addresses set forth below:

As to Local Government:

Coral Gables City Manager  
405 Biltmore Way, 1<sup>st</sup> Floor  
Coral Gables, Florida 33134

With copy to:

Coral Gables City Attorney  
405 Biltmore Way, 2<sup>nd</sup> Floor  
Coral Gables, Florida 33134

As to FPL:

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16. Authority. The person signing this Agreement is duly authorized to execute this Agreement and represents that he or she was duly authorized to do so on the date he or she executed this Agreement.
17. Multiple Originals; Execution of Agreement. This Agreement may be executed in multiple original counterparts, each of which when taken together constitute one and the same instrument. The delivery of this Agreement by facsimile or electronic mail will be considered delivery of an original signed Agreement.

[Signatures appear on following pages]

IN WITNESS WHEREOF, Florida Power & Light Company and the City of Coral Gables have executed this Agreement on the date first set forth above.

For **LOCAL GOVERNMENT:**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print or type)

Title: \_\_\_\_\_  
(print or type)

Approved as to Terms and Conditions: \_\_\_\_\_  
(signature/title)

Approved as to Form and Legal Sufficiency: \_\_\_\_\_  
(signature/title)

For **FLORIDA POWER & LIGHT COMPANY**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print or type)

Title: \_\_\_\_\_  
(print or type)