

CITY/COUNTY RIGHT-OF-WAY
AGREEMENT FOR UNDERGROUND FACILITIES

THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2018, by and between the City of Delray Beach, a Florida municipal corporation (“**Local Government**”), with an address of 100 N.W. 1st Avenue, Delray Beach, Florida 33444, and Florida Power & Light Company, a Florida corporation (“**FPL**”), with an address of 700 Universe Boulevard, Juno Beach, Florida 33408.

WHEREAS, Local Government has requested that FPL install certain FPL electric utility facilities above ground electric, cable, conduits and other facilities (collectively, the “**Facilities**”) upon, across and/or under that certain dedicated right-of-way running along the East side of Lot 10, Block 101, Town of Linton (now Delray Beach) (previously owned by Delray Beach 4th & 5th Avenue LLC), and has further requested that certain of the Facilities be placed in certain of its road rights-of-way (“**Local Government ROW**”) and/or certain road rights-of-way owned by or under the jurisdiction of other agencies (“**Other ROW**”). Local Government ROW and Other ROW may be referred to collectively as “**ROW**”; and

WHEREAS, the Local Government has agreed to pay FPL the cost of such installation of the Facilities as required by FPL’s electric tariff and the Florida Administrative Code and has or will enter into a separate installation agreement with FPL;

WHEREAS, FPL would not have agreed to such installation but for receipt of this Agreement; and

WHEREAS, FPL is willing, subject to the terms and conditions set forth in this Agreement, FPL’s electric tariff and the Florida Administrative Code, to place the Facilities in 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:

1. **Recitals.** The foregoing recitals are true and correct, and are hereby incorporated by reference into this Agreement.

2. **Conditions Precedent to Placement of 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;
- (iii) Local Government hereby authorizes the use of the ROW by FPL for the purposes stated herein.

- (b) All applicable permits for FPL to install, construct, or maintain Facilities in ROW must be issued on a timely basis by the appropriate agency.
- (c) Local Government agrees to provide, at its expense, a legal description that is acceptable to FPL of the ROW to be occupied by the Facilities at a time before FPL initiates the design of the Facilities. Said legal description shall be made part of this Agreement and attached as Exhibit "A".
- (d) FPL agrees to identify and document all existing FPL underground facilities within the ROW that will not be included under this Agreement. Local Government shall reimburse FPL's reasonable costs and expenses to deliver said documentation. Said documentation shall be made part of this Agreement and attached as Exhibit "B".
- (e) The design and location of the Facilities to which Local Government has agreed are in compliance with all operational and safety guidelines, codes and standards,

3. **Relocation and Rearrangement of FPL Facilities.** If the Local Government or other agency with control over the Local Government ROW or Other ROW, for any reason whatsoever, requires that FPL relocate or rearrange, in whole or in part, any Facilities (as they are to exist as a result of this Agreement, or as they may later be modified, upgraded, or otherwise altered) from or within the Local Government ROW or Other ROW, the Local Government, notwithstanding any language to the contrary in any applicable permit or franchise agreement, and prior to any such relocation by FPL, shall provide FPL with a substitute location, satisfactory to FPL, obtain any easements that may be necessary, and shall pay FPL for the costs of any such relocation, adjustment or rearrangement, now or in the future. Local Government shall reimburse FPL for all costs to locate, expose, protect or support the Facilities, whether underground or above ground, in the event of future construction or excavation in close proximity to the Facilities, when such services are required by Local Government or other agency with control over the Local Government ROW or Other ROW. 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 Facilities in Local Government ROW and, to the extent reasonably practicable, in Other ROW .

Nothing herein shall preclude Local Government from obtaining reimbursement for any and all costs requiring FPL to relocate or rearrange any of its Facilities from that entity which initiated the requirement for the relocation or rearrangement of the Facilities, excluding only other agencies which own or have jurisdiction over the ROW; provided, however, Local Government's seeking of such reimbursement shall in no way relieve Local Government from its payment obligations to FPL hereunder.

4. **Abandonment or Sale of Local Government ROW.** If the Local Government desires to subsequently abandon or discontinue use of the Local Government ROW, and ownership of the land is transferred to a private party, the Local Government, as a condition of and prior to any such sale, abandonment, or vacation, shall grant FPL an easement satisfactory to FPL for the Facilities then existing within the ROW or require the transferee to so grant FPL an easement satisfactory to FPL at the time of transfer. If ownership of the Local Government ROW is transferred to another public entity, that public entity shall take the ROW subject to the terms and conditions of this Agreement.

5. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Facilities placed in the ROW.

6. **Title and Ownership of Underground Facilities.** Title and ownership of Facilities installed by FPL as a result of this Agreement shall, at all times, remain the property of FPL.

7. **Conversion Outside ROW.** In the event that the FPL Facilities are not, for any reason other than the sole error of FPL or its contractors, constructed within the ROW, Local Government shall grant or secure, at Local Government's sole cost and expense, new easements or ROW grants for the benefit of FPL for the placement of the Facilities in these areas, and shall secure subordinations of any mortgages affecting these tracts to the interest of FPL.

8. **Agreement Subject to FPL's Electric Tariff.** 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 of the Florida Public Service Commission, as may be revised, amended or supplemented from time to time.

9. **Venue; Waiver of Jury Trial.** This Agreement shall be enforceable in Palm Beach County, 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 Palm Beach County, Florida. By entering into this Agreement, FPL and the 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.

10. **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.

11. **Assignment.** The Local Government shall not assign this Agreement without the written consent of FPL

12. **Recording.** 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. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.

13. **Conflict Between Terms of Permit or Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government and FPL, the terms of this Agreement shall control.

14. **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:

City of Delray Beach c/o City Manager
100 NW 1st Ave.
Delray Beach, FL 33444

With copies to:

City Attorney
200 NW 1st Ave.
City of Delray Beach, FL 33444

As to FPL:

FPL
700 Universe Blvd.
Juno Beach, FL 33408
Attn: FPL, Legal Department

15. **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.

[Signatures appear on following pages]

IN WITNESS WHEREOF, Florida Power & Light Company and Local Government have executed this Agreement on the date first set forth above.

For **LOCAL GOVERNMENT:**

CITY OF DELRAY BEACH,
a Florida municipal corporation

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

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 **FPL**

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)