

**FACILITIES RELOCATION AGREEMENT
(FPL – TRANSMISSION)**

THIS FACILITIES RELOCATION AGREEMENT (“**Agreement**”) is made and entered into this _____ day of _____, 2019, by and between Manatee County, a political subdivision of the State of Florida (hereinafter called the “**Applicant**”), and FLORIDA POWER & LIGHT COMPANY, a Florida corporation (hereinafter called “**FPL**”).

WITNESSETH:

WHEREAS the Applicant intends to construct certain road improvements and will require the relocation of certain incompatible and conflicting portions of FPL’s Facilities (as defined in Article 1.2 below); and

WHEREAS FPL will incur costs in the relocation of FPL’s existing and proposed Facilities which costs would not have occurred but for the Applicant’s construction.

NOW THEREFORE, in consideration of the mutual promises of the Applicant and FPL and other good and valuable consideration, the parties agree that FPL shall relocate the FPL Facilities, and the Applicant shall reimburse FPL for the actual cost of such relocation as follows:

ARTICLE 1 – DEFINITIONS

For the purposes of this Agreement the following terms, whether used in the singular or plural, shall have the meanings set forth below when used with initial capitalization:

- 1.1 Received, Receives and Receipt shall be deemed to be the day that something was hand-delivered or transmitted by facsimile, or if mailed, five (5) days from the date of postmark.
- 1.2 FPL’s Facility or Facilities shall be, but shall not be limited to, any structure consisting of manholes, conduits, poles, wires, cables, substations, system protection equipment or other appurtenances, and associated equipment, and used by FPL in connection with the transmission and/or distribution of electric power.
- 1.2 Relocation and/or Relocate includes the terms “rearrange” and “rearrangement” and is the work performed by FPL under this Agreement and any activity made necessary by Applicant’s construction which conflicts with or affects FPL, its Facilities, or service. Relocations shall include, but shall not be limited to, permanent or temporary support, protection, relocation, rearrangement, design, redesign, abandonment or reconstruction of the FPL Facilities and all other work required to provide continuity of service to FPL’s customers which is a result of a conflict.

- 1.4 Replacement FPL Facility is any facility which will be constructed under the terms of this Agreement as a consequence of Relocation of an FPL Facility or portion thereof.

ARTICLE II - IDENTIFICATION OF CONFLICTS

- 2.1 Known Conflicts. The Applicant shall reimburse FPL for costs associated with the Relocation of the FPL Facilities more particularly described and located on property described in Exhibit A attached hereto and incorporated herein (“**Property**”).
- 2.2 Other Conflicts. The identification of any other conflicting facilities of FPL requiring Relocation shall be undertaken by FPL pursuant to a subsequent written agreement between FPL and the Applicant.

ARTICLE III - DESIGN AND CONSTRUCTION OF REPLACEMENT FACILITIES

- 3.1 Design Standards. Engineering design standards and material specified shall meet FPL’s Current Design Standards. In addition, the design of Relocations will be in conformity with all laws and regulations.
- 3.2 Construction Standards. Materials and construction procedures shall meet FPL’s Current Construction Standards. In addition, Relocations or Replacement FPL Facilities will be accomplished in conformance with all laws, codes and regulations.

ARTICLE IV - REPLACEMENT RIGHT-OF-WAY

- 4.1 Replacement Right-of-Way. The Applicant shall provide FPL with replacement rights-of-way in one of the following manners:
- (a) The Applicant shall reimburse FPL for costs associated with the identification and acquisition of replacement rights-of-way, including, but not limited to, FPL’s attorney fees for costs in prosecuting or in connection with any condemnation actions for the acquisition of necessary rights-of-way.
 - (b) The Applicant shall convey or grant to FPL replacement rights-of-way sufficient to permit FPL to accomplish Relocations of the FPL Facilities and to operate and maintain the Replacement FPL Facilities in accordance with FPL’s customary practices. Such conveyances or grants of replacement rights-of-way shall be accomplished at no cost to FPL and in a form and substance satisfactory to FPL.
- 4.2 Location of Replacement Right-of-Way. The location of the aforesaid replacement rights-of-way are generally set forth in Exhibit B attached hereto and shall be within

the Property where conflicts are identified due to this project.

ARTICLE V - COST ESTIMATES, CREDITS AND BILLING

5.1 Full Cost. The Applicant shall pay FPL for the full cost of Relocation of the FPL Facilities. The work to be performed by FPL will be in accordance with the construction drawings attached hereto as Exhibit B.

5.2 Cost Estimate. The Applicant shall be responsible for the total cost of the project. The estimated cost to Relocate the FPL Facilities is as below:

Relocation: \$1,947,722.84. This cost estimate is set out in detail in Exhibit C attached hereto.

Engineering deposit received: \$344,000.00.

Balance due: \$1,603,722.84. Applicant to send check for this amount to FPL along with two signed copies of this Agreement.

The Applicant understands and agrees that the amount set forth in Exhibit C is an estimate only. The Applicant shall be responsible for the total cost of the project. The cost for the Relocation portion shall not exceed 120% of a valid Relocation cost estimate based upon an actual labor bid, except as provided herein.

5.3 Duration of Cost Estimate.

The cost estimate in Article 5.2 above (including the estimate attached as Exhibit C and any subsequent estimate) is valid only for the time period which is:

(a) Beginning on August 2, 2019, and ending on October 31, 2019, or in the case of any subsequent estimate ninety (90) days from the date the estimate is Received by Applicant; or

(b) Subject to the terms and conditions set forth in Article 5.4 below.

5.4 Re-estimates, Scope of Work Changes.

5.4.1 Pre-construction. If the construction of the Relocation of the FPL Facilities has not commenced within one hundred eighty (180) days of the date that the latest cost estimate is Received by Applicant, or if the Applicant requests a change in the Relocation scope of work on any individual work order prior to any construction, the estimate is invalid. A new estimate is required. FPL shall provide a re-estimate of the work prior to commencement of the Relocation by FPL. The Applicant shall agree in writing to pay the re-estimated cost and shall be responsible for the full cost of Relocation, not to exceed 120% of the re-estimate.

5.4.2 After Start of Construction. If after the start of construction any of the following occurs: (a) Applicant requests a change in the Relocation scope of work of FPL Facilities; (b) FPL determines that there is a need for a change in the Relocation scope of work and such change causes the reimbursable cost of the project to change by 20% or more; or (c) there is an increase in costs due to unknown or unforeseen physical conditions at the site which differ materially from those originally encountered; FPL shall provide the Applicant with a new estimate as soon as practicable and the Applicant shall pay any increased costs in the revised estimate to FPL within thirty (30) days after Receipt of the revised estimate.

5.5 Credits.

5.5.1 The Applicant shall receive a credit for the payment of any non-refundable deposit required for the design, engineering, and estimating of the Relocation of FPL Facilities (as shown in Article 5.2 above).

5.5.2 Provided the Relocation is performed, Applicant shall receive a credit for payment made to FPL for a detailed cost estimate, if this Agreement has been entered into on or before October 31, 2019.

5.5.3 The Applicant shall receive no credit for payment for an estimate, and such payment shall not be refunded: (a) if the Applicant has not executed this Agreement on or before October 31, 2019, (b) if a subsequent estimate is required and not paid within thirty (30) days of the date Applicant Receives the estimate; or (c) if the Applicant terminates the Agreement.

5.5.4 Any estimate provided to the Applicant after the initial, detailed estimate shall be done at additional cost and expense to Applicant. Applicant's payment for estimates shall be credited or retained by FPL as provided above.

5.6 Billing and Payment. Prior to the commencement of any Relocation of FPL Facilities under this Agreement, the Applicant shall pay in advance the full estimated cost of such Relocation per Articles 5.2 and 5.4.2 above.

5.7 Final Bill. Upon completion of the work, FPL shall at the earliest date practicable furnish to the Applicant a final billing of all outstanding costs, including any overhead costs, incurred in connection with performance of Relocation of the FPL Facilities less any prepaid credits for additional cost estimates. The Applicant shall have thirty (30) days from the date of an invoice to approve and pay the invoice. Failure to provide FPL with written notice to the contrary within the thirty (30) day period shall constitute approval by the Applicant of the invoice against which payment must be remitted in full to FPL within thirty (30) days of the date of the invoice. If payment by the Applicant is not postmarked within thirty (30) days of

the date of the invoice, then a late payment charge shall be assessed in the amount of one and one-half percent (1½%) of the amount of the billing per month, charged on a daily basis or highest interest allowable under law.

5.8 Refund and Effect of Termination.

5.8.1 Consistent with the terms of this Agreement, FPL shall refund to the Applicant any amounts which the Applicant has paid to FPL beyond the full cost of Relocation including any overhead costs.

5.8.2 In the event that this Agreement is terminated due to the cancellation or indefinite suspension of work in furtherance of the Applicant's construction, the Applicant shall be responsible for the costs of Relocation already incurred, including but not limited to all engineering, design, equipment, and materials cost, labor costs, and if any, the costs of replacement facilities already installed, necessary to place FPL's Facilities into a permanent condition suitable to provide continuous, reliable electric service to the public in accordance with all applicable laws, regulations and FPL's usual practices as set forth in Article 3 above. Nothing in Article 5.8.2 shall be construed to modify or abrogate FPL's legal duty to mitigate damages.

ARTICLE VI – INSPECTIONS

6.0 Inspections. All cost records and accounts of FPL directly related to the work performed under this Agreement shall be subject to inspection by the Applicant for a period of one (1) year from the completion date of all work performed under this Agreement. Such inspections shall be performed by the Applicant and in accordance with the following considerations:

- (a) The Applicant shall provide FPL with thirty (30) days written notice requesting an inspection,
- (b) The specific time of inspection must be mutually agreed to,
- (c) Information required for inspection purposes shall be accounts and records kept by FPL directly related to Relocation and reimbursable costs,
- (d) The Applicant may request only information reasonably required by it concerning Relocation and such request for information shall be in writing and shall include the purpose of the inspection,
- (e) FPL shall make available the requested information at its offices during normal business hours, Monday through Friday,
- (f) The Applicant shall bear any costs associated with any inspections,

including FPL costs, if any, and

- (g) Information available under this Agreement shall not be used in violation of any law or regulation. FPL shall quote a deposit amount when such a request for inspection is made which the Applicant shall pay in advance.

ARTICLE VII - GENERAL CONDITIONS

- 7.1 Benefit of Agreement; Assignment. The provisions of this Agreement shall inure to the benefit of and bind the successors and assigns of the parties to this Agreement but shall not inure to the benefit of any third party or other person. This Agreement shall not be assigned by either party except upon Receipt of the prior written permission of the other party. Such permission shall not be unreasonably withheld.
- 7.2 Nonwaiver. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter. Waiver by either party of a breach of the same provision or any other provision shall not constitute a waiver of the provision itself.
- 7.3 Limitations of Liability. Neither party shall be liable in contract, in tort (including negligence), or otherwise to the other party for any incidental or consequential loss or damage whatsoever including but not limited to loss of profits or revenue on work not performed, for loss of use or underutilization of the party's facilities, or loss of use of revenues or loss of anticipated profits resulting from either party's performance, nonperformance, or delay in performance of its obligations under this Agreement.
- 7.4 Indemnification. To the extent permitted by and in accordance with Section 768.28, Florida Statutes, the Applicant shall indemnify, defend and hold harmless FPL, its parent, subsidiaries or affiliates and their respective officers, directors and employees (collectively "**FPL Entities**") from and against any liabilities whatsoever, occasioned wholly or in part by the negligence of the Applicant, its contractors, subcontractors or employees, including attorney fees, for injury to or death of person(s) and property damage arising or resulting in connection with any activity associated with work or service under this Agreement. If the liability arises out of a claim made by an employee of the Applicant, its contractors or assigns, the Applicant shall indemnify FPL Entities, to the extent permitted by and in accordance with Section 768.28, Florida Statutes, unless such damage or liability is due to or caused by the sole negligence of FPL Entities. Neither Applicant nor any of its officers, agents, employees, contractors, or subcontractors will be liable for the gross negligence of FPL or any of FPL's officers, agents, or employees.
- 7.5 Insurance. FPL and the Applicant shall both obtain and maintain the following insurance coverage during the term of this Agreement. The Applicant and FPL

may satisfy its insurance obligations through its self-insurance, and/or program in accordance with Section 768.28, Florida Statutes, through the purchase of excess insurance, or through a combination of both.

- (a) Commercial general liability coverage must be afforded under a per occurrence policy form in limits not less than:
 - \$ 1,000,000 single limit per occurrence;
 - \$ 2,000,000 aggregate per occurrence;
 - \$ 1,000,000 products/completed operations aggregate;
 - \$ 1,000,000 personal and advertising injury liability;
 - \$ 50,000 fire damage liability;
 - \$ 5,000 medical expense; and
 - \$ 1,000,000 third party property damage.This policy shall contain severability of interests' provisions.

- (b) Automobile liability coverage must be afforded under a per occurrence policy form including coverage for all owned, hired and non-owned vehicles in limits no less than:
 - \$1,000,000 bodily injury and property damage combined single limit each accident, or \$500,000 bodily injury and \$500,000 property damage;
 - \$10,000 personal injury protection (no fault);
 - \$500,000 hired and non-owned liability; and
 - \$10,000 medical payments.

- (c) Workers' compensation and employer's liability insurance coverage limits of not less than:
 - Statutory workers' compensation coverage to apply to all employees in compliance with the laws and statutes of the State of Florida and federal government. If any operations are to be undertaken on or about navigable waters, coverage must be included for the Longshore and Harbor Workers' Compensation Act and the Jones Act;
 - \$100,000 each accident;
 - \$100,000 disease each employee; and
 - \$500,000 disease policy limit.

Should FPL or the Applicant retain "leased employees" as defined by Section 627.192, Florida Statutes, for any part of the project or service, the employee leasing agency shall provide evidence of workers' compensation coverage and employer's liability coverage for all personnel on the worksite and in compliance with the above requirements.

General and auto liability policies shall be endorsed to name the other party as an additional insured. For the Applicant, additional

insured status and endorsement shall read as: "Manatee County, a political subdivision of the State of Florida" and for FPL, additional insured status and endorsement shall read as: "Florida Power & Light Company."

Within fifteen (15) days following a request from the other party, FPL or the Applicant shall furnish to the other party either a Certificate of Insurance using an industry accepted form, signed by the issuer, with applicable endorsements evidencing the insurance set forth above, or a Letter of Self-Insurance signed by the Risk Manager, and if applicable in accordance with Section 768.28, Florida Statutes.

Each party shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change, or reduction in coverage of any insurance policy to the Risk Manager and shall include the Agreement title with all notices.

Each party shall cause such insurance to be primary to, and not contributory with, any insurance coverage maintained by the other party, with such insurance covering the operations under this Agreement, and coverage shall contain no special limitation(s) on the scope of protection afforded to the other party, its officials, or employees.

Parties shall waive all subrogation rights against the other party for all losses or damages which occur during the Agreement period or arising out of the project or services under this Agreement, whether suit is brought during the Agreement period or not.

All required insurance policies shall be written with a carrier having a minimum A.M. Best rating of A- (or equivalent rating by another accredited organization) or better and written by an insurance company licensed to issue policies in the State of Florida.

It is each parties' responsibility to ensure that its agents, representatives, and subcontractors comply with the insurance requirements set forth herein. FPL and the Applicant shall include its agents, representatives, and subcontractors working on the project or at the worksite as insured under its policies or shall furnish separate certificates and endorsements for each of its agents, representatives, and subcontractors working on the project or at the worksite. All coverages for agents, representatives, and subcontractors shall be subject to all the requirements set forth.

Failure of either party to request evidence from the other party of insurance coverage shall not be construed as a waiver of the obligation to provide and maintain the insurance coverage set forth.

FPL understands and agrees that the Applicant does not waive its immunity, and nothing herein shall be interpreted as a waiver of the Applicant's rights, including the limitations of waiver of immunity, as set forth in Section 768.28, Florida Statutes, or any other statutes, and the Applicant expressly reserves these rights to the full extent allowed by law.

- 7.6 Contractor Indemnification. The Applicant further agrees to include the following indemnification in all contracts between the Applicant and its general contractors who perform or are responsible for construction or maintenance work on or around the subject FPL Facilities:

“The Contractor hereby agrees to release, indemnify, defend, save and hold harmless the Applicant and FPL, its parent, subsidiaries, affiliates or their respective officers, directors, or employees, from all claims, demands, liabilities and suits unless caused by the sole negligence of the Applicant or FPL for bodily injuries or death to person(s) or damage to property resulting in connection with the performance of the described work by Contractor, its subcontractor, agents or employees. This indemnification shall extend up to but shall not exceed the sum of \$1,000,000 for bodily injury or death of person(s) or property damage combined single limit and \$3,000,000 occurrence aggregate. In the event the Contractor is insured for liability with limits in excess of these amounts, Contractor's said obligation shall extend up to but shall not exceed the limits of that insurance. Contractor's costs of defending Applicant and FPL, including attorneys' fees are excluded from and are in addition to the aforesaid limitation of liability for injury, death and property damage.”

- 7.7 Contractor Insurance and Notice. The Applicant agrees to require its contractors to obtain insurance to cover the above indemnity and further agrees to verify with its contractors that such insurance is in full force and effect. The Applicant shall provide FPL Group Inc.'s Risk Management Department with notice of the name and address of Applicant's contractors as specified in Article 7.6 above, prior to the commencement of the Relocation of FPL Facilities by FPL.
- 7.8 Modification or Termination of Agreement. This Agreement may be modified, amended, or terminated at any time by written agreement of the parties authorized and executed with the same formality as this Agreement.
- 7.9 Effect of Headings. The headings set forth herein are for convenience only and shall not be deemed to modify or affect the rights and obligations of the parties to this Agreement.

7.10 FPL Consent to Relocations. FPL agrees to the Relocation of the FPL Facilities to the extent necessary to eliminate conflicts with the Applicant's construction in accordance with the terms and conditions of this Agreement. The Applicant, at no expense to FPL, shall make all necessary arrangements and agreements with any person or entity which has facilities attached to the FPL poles for the relocation of those facilities.

7.11 Delegation of Power and Duties Notice. The following persons are designated as the authorized representatives of the parties for the purposes of this Agreement and all notices or other communications to either party by the other shall be made in writing and addressed as follows:

To the Applicant: County Engineer
Manatee County Government
Public Works Department
1022 26th Avenue East
Bradenton, Florida 34208

With copies to: Project Manager
44th Avenue East; 45th Street East to 44th Avenue Plaza
East; 6086960
Manatee County Government
Public Works Department
1022 26th Avenue East
Bradenton, Florida 34208

and

County Attorney
Manatee County Government
Office of the County Attorney
Post Office Box 1000
Bradenton, Florida 34206

To FPL: Rafael Diaz
Transmission Relocation Engineer
Florida Power & Light Company
700 Universe Boulevard, TS4/JW
Juno Beach, Florida 33408

7.12 Notification of FPL Facilities, Form 360. Applicant acknowledges that high voltage electric lines are located in the area of Applicant's project and agrees to warn its employees, agents, contractors and invitees, new and experienced alike, of the danger of holding on to or touching a cable or other piece of equipment that is located or working close to any overhead power line and to use all safety and

precautionary measures when working under or near FPL's Facilities. Applicant acknowledges and agrees that it has read and will comply with the Notification of FPL Facilities attached hereto as Exhibit D. Applicant shall sign and return two (2) copies of the attached Notification of FPL Facilities along with two (2) signed copies of this Agreement.

7.13 Force Majeure.

- (a) Neither party shall be liable or responsible for any delay in the performance of, or the ability to perform, any duty or obligation required by this Agreement in the event of a force majeure occurrence. Such occurrence shall include, but shall not be limited to acts of civil or military authority (including courts or administrative agencies), acts of God, war, riot, or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics, fires, unusually severe floods or weather (anywhere in the United States where FPL utility workers and contractors support restoration), strikes, lockouts or other labor disputes or difficulties. The obligation of either party to pay money in a timely manner is absolute and shall not be subject to the force majeure provisions. Force majeure as used herein means, without limitation, any cause or event not reasonably within the control of FPL or the Applicant.
- (b) In the event of any delay resulting from a force majeure circumstance, the time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effect of such delays.
- (c) In the event of any delay or nonperformance caused by a force majeure circumstance, the party affected shall promptly notify the other in writing.

7.14 Severability. In the event that any of the provisions or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Applicant and FPL shall negotiate an equitable adjustment in the affected provisions of this Agreement. The validity and enforceability of the remaining independent provisions shall not be affected.

7.15 Effective Date. This Agreement shall become effective upon execution by the parties and shall continue in effect until completion of all Relocation work by FPL unless otherwise provided herein or earlier termination in accordance with this Agreement.

7.16 Complete Agreement. This Agreement shall be signed by the authorized representatives of both parties and constitutes the final written expression of all the terms of the agreement between the parties and is a complete and exclusive

statement of those terms. Any and all prior or contemporaneous course of dealing, representations, promises, warranties or statements by the parties or their agents, employees, or representatives that differ in any way from the terms of this written Agreement shall be given no force or effect.

IN WITNESS WHEREOF, the parties have executed this Agreement, to be effective as of the date first above written.

APPLICANT:
**MANATEE COUNTY, a political
subdivision of the State of Florida**

By: its Board of County Commissioners

By: _____
Chairperson

Date: _____

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk

FPL:
FLORIDA POWER & LIGHT COMPANY:

By: _____
Title: Ronald D. Critelli Jr.
Sr. Director Engineering &
Technical Services

Date: _____