

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

Nathaniel L. Doliner
Carlton Fields
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, Florida 33607-5780

20-7)

For Recording Purposes Only

ELECTRICAL UTILITY EASEMENT AGREEMENT

THIS ELECTRICAL UTILITY EASEMENT AGREEMENT (this "Agreement") is made as of the 17th day of December, 2018 (the "Effective Date") by and between THE CITY OF VERO BEACH, FLORIDA, a Florida municipal corporation (herein called "City"), with an address of 1053 20th Place, Vero Beach, FL 32960, and FLORIDA POWER & LIGHT COMPANY, a Florida corporation (herein called "FPL"), with an address of 700 Universe Boulevard, Juno Beach, FL 33408.

As of the Effective Date, City has sold, assigned and conveyed certain electric utility assets of City to FPL, as contemplated under that certain Asset Purchase and Sale Agreement, dated October 24, 2017, by and between City and FPL (the "Asset Purchase and Sale Agreement"). Pursuant to the Asset Sale and Purchase Agreement, FPL will begin to operate the Vero Beach Electric Utility (the "Vero Beach Electric Utility" means the electric utility system of electricity transmission and distribution owned or operated by FPL providing retail electric service to City of Vero Beach's former electric utility customers on and after the Effective Date). Certain existing electrical transmission and distribution poles and overhead lines which are a part of the Vero Beach Electric Utility (collectively, the "Electrical Facilities") are located on the real property located in Indian River County, Florida more particularly described in the attached Exhibit "A" (the "Easement Area"), which Easement Area is depicted in the attached Exhibit "B".

FPL needs an easement for the Electrical Facilities in order to provide electric service to former electric utility customers of the City. As a result, the grant of an electric utility easement for the Electrical Facilities is for public purposes. In consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, City grants and gives to FPL, its affiliates, licensees, agents, successors, and assigns, a non-exclusive easement forever for the construction, operation and maintenance of, the Electrical Facilities (which shall include cables, conduits, appurtenant equipment, and appurtenant above-ground equipment) to be installed from time to time, with the right to reconstruct, improve, add to, enlarge, change the voltage as well as the size of, and remove such Electrical Facilities or any of them within the Easement Area; together with the right of ingress and egress to the Easement Area at all times (subject to any rules or regulations of City relating to entry onto City's adjacent property); the right to clear the land and keep it cleared of all trees,

undergrowth and other obstructions within the Easement Area; the right to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the Easement Area, which might interfere with or fall upon the Electrical Facilities; and further grants, to the fullest extent City has the power to grant, if at all, a right of access to the Easement Area, over, along, and across the roads, streets or highways adjoining or through said Easement Area.

City may use the Easement Area for any purpose provided such purpose does not create an unreasonable interference with the use and enjoyment by FPL of the easement rights granted herein.

FPL shall have the sole responsibility for and responsibility to maintain, at its expense, the Easement Area, including any landscaping, and any of FPL's property thereon, including the Electrical Facilities.

The term of this Agreement (the "Term") begins on the Effective Date and continues perpetually, unless terminated as described in this Agreement. FPL may terminate this Agreement without charge or penalty by giving notice to City. If FPL abandons the Easement Area or ceases to use the Easement Area as an actively functioning electric line for the transmission or distribution of electric power, and such abandonment or cessation of use continues for a period of not less than two (2) consecutive years, then this Agreement shall be deemed terminated. In the event of such termination, City and FPL shall promptly execute a Notice of Easement Termination, in form and substance that is mutually agreeable, reciting the termination of this Agreement and removing this Agreement as an encumbrance on the Easement Area, which shall be recorded in the Public Records. In addition, within six (6) months after termination of this Agreement, FPL shall, at its sole cost and expense, remove all Electrical Facilities from the Easement Area and during such time FPL shall be deemed to be occupying the Easement Area as a licensee and FPL will continue to be subject to and comply with all of the provisions of this Agreement. FPL's obligations to remove the Electrical Facilities from the Easement Area include the obligation to remove any and all fixtures and any and all improvements that may exist on, over or under the Easement Area, owned or installed by or for FPL, such as, but not limited to, lines, structures, poles, concrete slabs, footers, reinforcements, walls, gates and fences.

FPL agrees as follows:

(a) FPL will rely exclusively upon its own investigation into the title relating to the Easement Area and City makes no warranty of title relating to the Easement Area. FPL's easement interest in the Easement Area pursuant to this Agreement is made subject to the Permitted Encumbrances (as defined in the Asset Purchase and Sale Agreement). In addition and notwithstanding anything in this Agreement to the contrary, in the event that the State of Florida, any agency thereof, or any court of competent jurisdiction determines that the grant of the easements set forth in this Agreement is contrary to the public purposes requirements of the grant of the Easement Area to the City, then the grant of any easement set forth in this Agreement shall be deemed void ab initio and the parties will meet at a mutually convenient time and place to develop an alternative strategy to meet the need to use the Electrical Facilities for electric service to electric utility customers.

(b) Except as specifically provided in this Agreement, FPL acknowledges and agrees that City has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, as to, concerning or with respect to, the Easement Area and that the rights granted with respect to the Easement Area provided for in this Agreement are made on an “as is” condition and basis and with all faults. Without in any way limiting the generality of the foregoing, the grant of easement rights contemplated hereby is without any warranty other than City’s express representations and warranties in this Agreement; and City and City’s elected and appointed officials, officers, directors, employees, and affiliates (collectively the “City’s Related Parties”) have made no, and expressly and specifically disclaim, and FPL accepts that City and the City’s Related Parties have disclaimed, any and all representations, guaranties or warranties, express or implied, or arising by operation of law (except for the representations and warranties, if any, expressly made by City in this Agreement), of or relating to: (i) the use, expenses, operation, characteristics or condition of the Easement Area or any portion thereof, including, without limitation, warranties of suitability, habitability, merchantability, design or fitness for any specific or particular purpose, or good and workmanlike construction; (ii) the environmental condition of the Easement Area, or contamination by hazardous materials, or the compliance of any portion of the Easement Area with any or all Environmental Laws; or (iii) the soil conditions, drainage, flooding characteristics, accessibility or other conditions existing in, on or under any portion of the Easement Area. FPL acknowledges and agrees that it is not relying on any representations or statements (oral or written) which may have been made or may be made by City or any of the City’s Related Parties (except for City’s representations and warranties expressly set forth in this Agreement), and is relying solely upon FPL’s or FPL’s representatives’ own physical inspection of the Easement Area and other investigations by FPL or FPL’s representatives.

(c) FPL recognizes and hereby expressly and fully assumes all risks, known and unknown, that arise or might arise incidental to or in any way connected with the condition or use of the Easement Area or access to the Easement Area. This assumption of risk by FPL is made for and on behalf of FPL and FPL’s successors, and permitted assigns.

(d) FPL agrees to indemnify, defend and hold harmless City and City’s Related Parties against any and all claims, including costs and expenses, of any kind or nature, including, without limitation, costs of investigation, attorneys’ fees, paralegal fees, experts’ fees and costs through regulatory proceedings, trial and review or appeal, including but not limited to claims for personal injury, death of persons and property damage, or other liability to the extent arising from FPL’s use, improvement, operation, condition or maintenance of the Easement Area, provided however that this indemnity shall not apply to the negligence or willful misconduct of the City and/or the City’s Related Parties as determined by a court of competent jurisdiction.

(e) FPL’s obligations under this Agreement shall survive the termination of this Agreement.

[SIGNATURE PAGES TO FOLLOW]

City of Vero Beach Execution Pages

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned have caused this Agreement to be executed as of the Effective Date.

CITY:

ATTEST:

CITY OF VERO BEACH

Tammy K. Bursick
City Clerk

By: _____
Harry Howle
Mayor

[SEAL]

WITNESSES:

Print
name: _____

Print
name: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of December 2018 by **Harry Howle, as Mayor**, and attested by **Tammy K. Bursick, as City Clerk**, of the City of Vero Beach, Florida. They are both known to me.

NOTARY PUBLIC

Print name:

Commission No.

[SEAL]

My Commission Expires:

ADMINISTRATIVE REVIEW
(For Internal Use Only–Sec. 2-77 COVB Code)

Approved as to form and legal sufficiency:

Approved as conforming to
municipal policy:

Wayne R. Coment
City Attorney

James R. O'Connor
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

Ted Fletcher
Director of Electric Utility Operations

Cynthia D. Lawson
Director of Finance

Florida Power & Light Company Execution Page

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned have caused this Agreement to be executed as of the Effective Date specified in this Lease.

WITNESSES:

FPL:

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

Print
name: _____

By: _____
Name: Sam Forrest
Title: Vice President,
Energy Marketing & Trading

Print
name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of December, 2018, by Sam Forrest, Vice President, Energy Marketing & Trading of **FLORIDA POWER & LIGHT COMPANY**, a Florida corporation, who [] is personally known to me or [] has produced _____ as identification.

Seal:

Notary Public, State of Florida at Large
Print Name: _____
Notary Commission No.: _____
My Commission Expires: _____

EXHIBIT A – LEGAL DESCRIPTION OF EASEMENT AREA

Property Description
Electric Easement #2018-EG-243
November 20, 2018

**EXHIBIT "A"
PROPERTY DESCRIPTION
ELECTRIC EASEMENT #2018-EG-243
PARCEL #33-40-06-00000-0040-00005.0**

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Government Lot 4, Section 06, Township 33 South, Range 40 East, and being more particularly bounded and described as follows:

A 10 foot wide electric easement lying 5 foot on each side of the following described centerlines:

Commencing at the southwest corner of Government Lot 4, Section 06, Township 33 South, Range 40 East,

Thence South 89°42'07" East along the south line of Government Lot 4 for a distance of 876.05 feet to an intersection with the east right of way of Indian River Boulevard, said point also being the southwest corner of the City's Waste Water Treatment Plant Property;

Thence North 00°12'21" West along the east right of way of Indian River Boulevard for a distance of 100.00 feet to a point on the centerline of said electric easement;

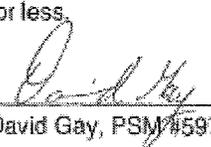
Thence South 89°42'07" East and parallel with the south line of Government Lot 4 for a distance of 1094.58 feet to a Point "A";

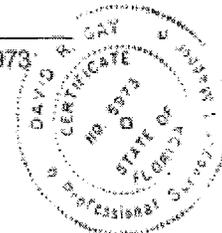
Thence from Point "A", continue South 89°42'07" East and parallel with the south line of Government Lot 4 for a distance of 45.00 feet plus or minus to the mean high water line of the Indian River and Point of Terminus;

Thence returning to Point "A", run South 00°17'53" west and perpendicular to the south line of Government Lot 4 for a distance of 40.00 feet to a Point of Terminus;

Note: Side lines of said easement are to be shortened or prolonged to meet at angle points, right of way lines and mean high water lines.

Said easement containing 11,746 square feet more or less.


David Gay, PSM #5973



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EXHIBIT B – SKETCH OF EASEMENT AREA

