

Structure No.: A117D4
Section, Township, Range: 2-3, 36S, 39E
Easement No.: c0180001b
Parcel ID: **3302-704-0004-000-5**
(Maintained by County Appraiser)

RIGHT-OF-WAY CONSENT AGREEMENT
(Governmental Entity)

This Right-of-Way Consent Agreement (“**Agreement**”) is dated this ___ day of _____2020, by and between Florida Power & Light Company, a Florida corporation (“**Company**”), with a mailing address at P.O. Box 14000, Juno Beach, Florida 33408-0420, Attn: Corporate Real Estate Department, and the City of Port St. Lucie, a political subdivision of the State of Florida (“**Licensee**”), whose mailing address is 121 S.W. Port St. Lucie Boulevard, Port St. Lucie, Florida 34984.

In consideration for Company’s consent hereunder and for the other mutual covenants set forth below, and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, the parties hereto agree as follows:

1. Company is the current holder of that certain right-of-way granted under that certain instrument recorded in Official Record Book 206, at Page 2302, in the Public Records of St. Lucie County, Florida (“**Easement**”).

2. Company hereby consents to Licensee using those certain portions of the real property located within the Easement as more particularly depicted and described on attached Exhibit A (“**Lands**”) solely for the purpose of installing and maintaining one (1) twenty-four inch (24”) polyvinyl chloride pipe for potable water purposes and one (1) two inch (2”) fiber optic cable conduit (the “**Project**”) in accordance with the approved plans and specifications attached hereto as Exhibit B.

3. Licensee agrees to obtain all necessary rights from the owners of the Lands in the event Licensee does not own said Lands; to obtain any and all applicable federal, state, and local permits required in connection with Licensee's use of the Lands; and at all times, to comply with all requirements of all federal, state, and local laws, ordinances, rules and regulations applicable or pertaining to the use of the Lands by Licensee pursuant to this Agreement.

4. Licensee understands that Company has a right and interest in and to these Lands under the Easement. Licensee understands that Company may maintain its facilities located on these Lands; make improvements; add additional facilities; maintain, construct or alter roads; maintain any facilities, devices, or improvements on the Lands which aid in or are necessary to Company’s business or operations; and the right to enter upon the Lands at all times for such purposes. Company, however, shall not unreasonably or unnecessarily interfere with Licensee’s granted use of the Lands hereunder.

5. Licensee and Company shall coordinate any activities that may from time-to-time require Licensee to relocate, alter, or remove its facilities and equipment, and other improvements made by Licensee pursuant to this Agreement which interfere with or prevent Company from properly and safely constructing, improving, and maintaining its facilities. Licensee agrees to relocate, alter, or remove said facilities, equipment and other improvements within a reasonable period of time after receiving notice from Company to do so. Such relocation, alteration, or removal will be made at the sole cost and expense of Licensee and at no cost and expense to Company. Company shall be obligated to make all efforts to minimize any activities that would involve such interference with Licensee’s use of the area.

6. Licensee agrees that it will not use the Lands in any manner which, in the opinion of Company, may tend to interfere with Company's use of the Lands or may tend to cause a hazardous condition to exist. Licensee agrees that no hazardous substance, as the term is defined in Section 101 (14) of the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”) (42 USC Section 9601 [14]), petroleum products, liquids or flammables shall be placed on, under, transported across or stored on the Lands, which restricts, impairs, interferes with, or hinders the use of the Lands by Company or the exercise by Company of any of its rights thereto. Licensee agrees further that in the event it should create a hazardous condition, then upon notification by Company, Licensee shall, within seventy-two (72) hours, at its sole cost and expense, correct such condition or situation; provided however that the Company retains the right to enter upon the Lands and correct any such condition or situation at any time. and, by its execution hereof, Licensee hereby agrees to indemnify and hold harmless Company from all loss, damage or injury resulting from Licensee's failure to comply with this provision.

7. Licensee hereby agrees and covenants to prohibit its agents, employees, and contractors from using any tools, equipment, or machinery on the Lands capable of extending greater than fourteen (14) feet above the proposed finished grade of the Project as shown in Exhibit B, and further agrees that no dynamite or other explosives shall be used within the Lands and that no alteration of the existing terrain, including the use of the Lands by Licensee as provided herein, shall be made which will result in preventing Company access to its facilities located within said Lands. Unless otherwise provided herein, Licensee agrees to maintain a one hundred and fifty (150) foot wide area, clear of any activities, with a lineal measurement of seventy-five (75) feet on each side of the centerline of Company's existing and planned facilities.

8. Licensee understands and agrees that the planting of trees, shrubs, and other foliage capable of exceeding fourteen (14) feet in height at full maturity is not permitted within Company's Lands.

9. Outdoor lighting installed or to be installed upon the Lands by Licensee are not to exceed a height of fourteen (14) feet above the proposed finished grade of the Project as shown in Exhibit B and metallic luminaries will be allowed by Company, as long as the poles are concrete and the standard supporting light fixtures are grounded.

10. Sprinkler systems installed or to be installed by Licensee upon the Lands are to be set so the spray height does not exceed fourteen (14) feet above the proposed finished grade of the Project as shown in Exhibit B and does not make contact with any Company's facilities. Aboveground systems shall not be installed within or across Company patrol or finger roads, and underground systems crossing said patrol and finger roads are to be buried at a minimum depth of three (3) feet below existing road grade.

11. Licensee agrees to warn its employees, agents, contractors and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by Company within the Lands are of high voltage electricity and agrees to use all safety and precautionary measures when working under or near Company's facilities. Licensee hereby acknowledges the receipt of the required execution of Form 360, a copy of which is attached hereto as Exhibit C, prior to the commencement of construction within the Lands.

12. Licensee agrees, at all times, to maintain and keep the Lands clean and free of debris. Except as provided herein, Licensee further understands and agrees that certain uses of the Lands are specifically prohibited; such uses include but are not limited to recreational purposes, hunting and camping, and Licensee agrees to notify its employees, agents, contractors, and invitees accordingly.

13. The use of the Lands by Licensee shall be at the sole risk and expense of Licensee, and Company is specifically relieved of any responsibility for damage or loss to Licensee or Licensee's agents, employees or contractors resulting from Company's use of the Lands for its purpose.

14. Licensee and Company shall coordinate any future activities and use of the Lands that may require Company to relocate, rearrange or change its facilities. Licensee agrees to reimburse Company for all cost and expense for any damage to Company's facilities resulting from Licensee's use of the Lands and agrees that if, in the opinion of Company, it becomes necessary as a result of Licensee's use of the Lands for Company to relocate, rearrange or change any of its facilities, to promptly reimburse Company for all cost and expense involved with such relocation, rearrangement or change. Company shall make all efforts to minimize any activities that result in the relocation, rearrangement or change of its facilities.

15. Licensee agrees it will exercise its privileges hereunder at its own sole risk and agrees subject to the limitations contained in Section 768.28, Florida Statutes, if applicable, to indemnify and save harmless Company, its parent, subsidiaries, affiliates, and their respective officers, directors, agents and employees (collectively, the "**FPL Entities**"), from all liability, loss, cost, and expense, including attorneys' and paralegals' fees and court costs at all trial and appellate levels, which may be sustained by FPL Entities to any person, natural or artificial, by reason of the death of or injury to any person or damage to any property, arising out of or in connection with the herein described purposes by Licensee, its contractors, agents, or employees, unless solely caused by Company's gross negligence; and Licensee agrees subject to the limitations contained in Section 768.28, Florida Statutes, if applicable, to defend at its sole cost and expense and at no cost and expense to FPL Entities any and all suits or action instituted against FPL Entities, for the imposition of such liability, loss, cost and expense. It is the intent of the parties that Licensee shall not be liable pursuant to this indemnification provision to pay a claim or judgment by any one person or entity for loss, cost, or expense, including attorneys' and paralegals' fees and court costs at all trial and appellate levels for any amount in excess of \$200,000, or any claim or judgment, which when totaled with all other claims or judgments arising out of the same incident or occurrence, exceeds the sum of \$300,000 and that the foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, if applicable.

16. Licensee shall cause each of Licensee's contractors and subcontractors performing work in connection with the project during the period of this Agreement, to procure and maintain at such contractors' and subcontractors' sole expense, the following minimum insurance, with insurers with a rated "A-, VII" or higher by A.M. Best's Key Rating Guide (i) General Liability insurance with limits of \$1,000,000 for bodily injury or death of person(s) and property damage per occurrence, which shall insure against obligations assumed by Licensee in indemnity provision set forth in Section 15 above, (ii) Workers' Compensation Insurance for statutory obligations imposed by applicable laws, (iii) Employers' Liability Insurance with limits of \$1,000,000 for bodily injury per accident, by disease per policy and disease per employee and, (iv) Automobile Liability Insurance which shall apply to all owned, non-owned, leased and hired automobiles with limits of \$1,000,000 combined single limit. Except for the Workers' Compensation Insurance, Company shall be designated as an additional insured on Licensee's contractors' and subcontractors' insurance policies required to be maintained under this Agreement. Licensee shall require its contractors and subcontractors to name Company as an additional insured and provide for a waiver or subrogation in favor of Company. Upon Company's request, Licensee shall provide evidence of the required insurance coverage in the form of an ACORD certificate to Company evidencing that said policy of insurance is in force and will not be cancelled or non-renewed so as to affect the interests of Company until thirty (30) days written notice has been furnished to Company. Upon request, copies of Licensee's contractors' and subcontractors' policies will be furnished to Company by Licensee. Licensee understands and agrees that the use of the Lands for the purposes described herein is expressly contingent upon acceptance and compliance with the provisions contained herein.

Licensee shall be responsible for causing Licensee's contractors and subcontractors to manage and administer all insurance policies required hereunder, including the payment of all deductibles and self-insured retention amounts, the filing of all claims and the taking of all necessary and proper steps to collect any proceeds on behalf of the relevant insured person or entity. Licensee shall at all times keep

Company informed of the filing and progress of any claim. If Licensee's contractors or subcontractors shall fail to perform these responsibilities, Company may take such action as it determines appropriate under the circumstances. In the event Licensee's contractors or subcontractors collects proceeds on behalf of other persons or entities, it shall ensure that these are paid directly from the insurers to the relevant person or entity and, in the event that it receives any such proceeds, it shall, unless otherwise directed by Company, pay such proceed to such party forthwith and prior thereto, hold the same in trust for the recipient.

Nothing in this Section shall be deemed to limit Licensee's liability under this Agreement regardless of the insurance coverages required hereunder. No limitation of liability provided to Licensee under this Agreement is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable to Company under coverage required to be carried by Licensee under this Agreement, it being the intent of the parties that the full amount of insurance coverage bargained for be actually available notwithstanding any limitation of liability contained in this Agreement, if any. Company assumes no responsibility for the solvency of any insurer or the failure of any insurer to settle any claim. In the event that the Licensee self-insures, Licensee shall provide Company with a letter of self-insurance in form and substance satisfactory to Company's Risk Management Department. Licensee's contractors and sub-contractors may not self-insure. This Section shall survive the expiration or earlier termination of this Agreement.

17. This Agreement will become effective upon execution by Company and Licensee and will remain in full force and effect until completion of Licensee's use of the Lands pursuant to this Agreement. Additionally, at the option of the Company, in the event that Licensee fails to (a) pay any sum required to be paid by Licensee on its part hereunder; or (b) perform any obligation required by Licensee on its part to be performed pursuant hereto, then Company may provide Licensee with written notice thereof ("**Notice of Licensee Default**"). In the case of a failure to: (a) pay any such sum, Licensee shall pay said sum within twenty (20) business days from the date of receipt of said Notice of Licensee Default; or (b) perform any such obligation, Licensee shall perform said obligation within thirty (30) days, provided, however, if said obligation is of such a nature that it could not reasonably be performed within thirty (30) days, then Licensee shall: (i) promptly institute necessary cure efforts and give Company notice of the actions to be taken by Licensee; and (ii) thereafter diligently pursue said efforts for a period of up to sixty (60) days after the date of receipt of said Notice of Licensee Default. If Licensee fails to cure any such matter within the time period set forth above after receipt of the Notice of Licensee Default, then it shall constitute a "**Licensee Event of Default**" hereunder. In the event of such Licensee Event of Default, Company shall have the right to terminate this Agreement.

18. The term "Licensee" shall be construed as embracing such number and gender as the character of the party or parties require(s) and the obligations contained herein shall be absolute and primary and shall be complete and binding as to each, including its successors and assigns, upon this Agreement being executed by Licensee and subject to no conditions precedent or otherwise.

19. Should any provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired.

20. This Agreement constitutes the entire Agreement between the parties relative to the transaction contemplated herein and neither this Agreement nor any term or provision hereof may be changed or waived except by an instrument in writing and executed by both Licensee and Company.

21. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida.

22. This Agreement may be executed simultaneously or in counterparts, each of which together shall constitute one and the same agreement.

23. This Agreement shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Licensee and Company have contributed substantially and materially in the negotiation and preparation of this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits, schedules, addendums or amendments hereto.

24. COMPANY AND LICENSEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE NOW AND FOREVERMORE, EACH AND ALL OF THEIR RIGHT(S) THAT EITHER PARTY HAS NOW OR MAY HAVE AT A FUTURE TIME TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION UNDER, BASED UPON, ARISING FROM, ASSOCIATED OR CONNECTED WITH, OR RELATED TO THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) OR ACTION OF OR BY COMPANY AND/OR LICENSEE. ANY PARTY HERETO MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY.

25. Licensee may assign its rights and obligations under this Agreement to a solvent party upon prior written consent of Company.

26. Licensee agrees that any review or approval by Company of the plans and/or specifications submitted by Licensee attached hereto as Exhibit B, the approval of the identity of any contractors, subcontractors and materialmen, or the delivery by Company of any construction specifications to Licensee, is solely for the purpose of processing this Agreement, and without any representation or warranty whatsoever to Licensee with respect to the adequacy, correctness or efficiency thereof or otherwise and it is understood that such Company's approval does not absolve Licensee of any liability hereunder. Further, Licensee, in connection with the construction, maintenance and/or removal of improvements depicted on Exhibit B to this Agreement, agrees to observe and fully comply with all construction, operation and maintenance standards, as well as all applicable laws, rules and regulations of the United States, the State of Florida, and all agencies and political subdivisions thereof, including without limitation, the National Electrical Safety Code and the Occupational Safety & Health Administration regulations, standards, rules, registers, directives or interpretations.

[Signatures appear on following page.]

The parties have executed this Agreement this _____ day of _____, 20__.

Witnesses:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

Witnesses:

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

COMPANY:

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: _____
Its: _____
Print Name: _____

LICENSEE:

CITY OF PORT ST. LUCIE,
a political subdivision of the State of Florida

By: _____
Its: _____
Print Name: _____