

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE PURCHASE OF UTILITY RELOCATION SERVICES FROM FLORIDA POWER AND LIGHT (FPL), AS A SOLE SOURCE PURCHASE PURSUANT TO SECTION 2.367(d) OF THE MIAMI BEACH CITY CODE, FOR THE RELOCATION OF OVERHEAD TRANSMISSION LINES AND ASSOCIATED POWER POLES AT THE EXISTING CITY OWNED PARKING LOT (P92), ALLOWING FOR MORE DESIGN FLEXIBILITY AND EFFICIENCY AT THE FUTURE 72ND STREET COMMUNITY COMPLEX, LOCATED BETWEEN 72 STREET AND 73 STREET, AND BETWEEN COLLINS AVENUE AND HARDING AVENUE, IN THE AMOUNT OF \$849,765.13, WITH PREVIOUSLY APPROPRIATED FUNDING, AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE FACILITIES RELOCATION AGREEMENT, AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE THE FACILITIES RELOCATION AGREEMENT WITH FPL.

WHEREAS, on July 31, 2019, the Mayor and City Commission, via Resolution 2019-30933, directed staff to proceed with a feasibility study and to begin the preparation of the Design Criteria Package for the 72nd Street Community Center Project (the "Project"), located at 263-299 72nd Street, the site that is currently used as City Parking Lot 92; and

WHEREAS, the Administration and the design criteria professional for the Project, Desman, Inc. (the "Design Criteria Professional"), have met with the Project's stakeholders to discuss and refine Project requirements; and

WHEREAS, existing overhead FPL transmission lines currently bi-sect the site, supported by utility poles located within the parking lot; and

WHEREAS, the feasibility study reviewed options for relocating the transmission lines, and determined that a relocation of the power lines would provide the eventual design-builder with more design flexibility in the location of the structures, and may lead to increased efficiency and creativity of design; and

WHEREAS, City staff met with FPL to discuss the relocation of the FPL transmission lines, and FPL provided a non-binding preliminary estimate with two (2) options; and

WHEREAS, the first option assumed a commitment by the City after November 1, 2019, at a cost of \$1,583,600, with the FPL construction work taking place in 2021; and

WHEREAS, the second option assumed a commitment prior to November 1, 2019, the estimated cost for this option at \$1,028,600, saving the City \$555,000 through reductions in FPL planned system hardening, with FPL construction commencing in September 2020; and

WHEREAS, in addition, FPL had provided an alternative which proposed undergrounding the overhead lines, but FPL cannot, at this time, provide a budget or construction timeline, as it would require additional engineering; however, FPL estimated that the underground alternative has a cost range of ten to fifteen times greater than the non-binding cost options for above ground relocation; and

WHEREAS, the Administration ultimately decided to proceed with the second option identified above, with an estimated cost of \$1,028,600, resulting in savings in the estimated amount of \$555,000 through reductions in FPL planned system hardening, with FPL's construction commencing in September 2020; and

WHEREAS, subsequent to the Administration's initial meetings with FPL, and FPL's preparation of a non-binding cost estimate, the City Commission, on October 16, 2019, approved Resolution 2019-31048, authorizing the sole source purchase for the preparation of a detailed Design and Binding Estimate, by FPL, for the relocation of the overhead transmission lines and associated power poles, in the amount of \$154,180.00; and

WHEREAS, City staff has met with FPL on several occasions, including during the exploratory (soft dig) site investigation work, and had multiple conversations regarding the proposed transmission power pole location and routing of the overhead power lines; and

WHEREAS, the overhead transmission lines and associated power poles will be rerouted, generally along the property line, in a westerly direction from its current location along 72nd Street then north on Harding Avenue to 73rd Street, then east along 73rd Street and tying into the existing lines in the alleyway on the north side of 73rd Street; and

WHEREAS, FPL has completed their due diligence, engineering and design, and has provided the Administration with a Facilities Relocation Agreement; and

WHEREAS, the Facilities Relocation Agreement provides a detailed cost proposal for the relocation of the overhead transmission lines and associated power poles in the amount of \$849,765.13; and

WHEREAS, FPL requires the execution of the Facilities Relocation Agreement and payment by July 1, 2020, prior to commencing the work, and the work is scheduled to be completed by the end of this year;

WHEREAS, the Administration recommends authorizing the City Attorney and the City Manager to finalize the Facilities Relocation Agreement with FPL in the amount of \$849,765.13, with previously appropriated funding, and further recommends authorizing the execution of the Facilities Relocation Agreement.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby authorizes the purchase of utility relocation services from Florida Power and Light (FPL), as a sole source purchase pursuant to Section 2.367(d) of the Miami Beach City Code, for the relocation of overhead transmission lines and associated power poles at the existing City owned Parking Lot (P92), allowing for more design flexibility and efficiency at the future 72nd Street Community Complex, located between 72 Street and 73 Street, and between Collins Avenue and Harding Avenue, in the amount of \$849,765.13, with previously appropriated funding, and authorizing the City Manager and City Attorney to finalize the Facilities Relocation Agreement with FPL, and further authorizing the City Manager and City Clerk to Execute the Facilities Relocation Agreement with FPL.

PASSED and ADOPTED this ____ day of _____, 2020.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

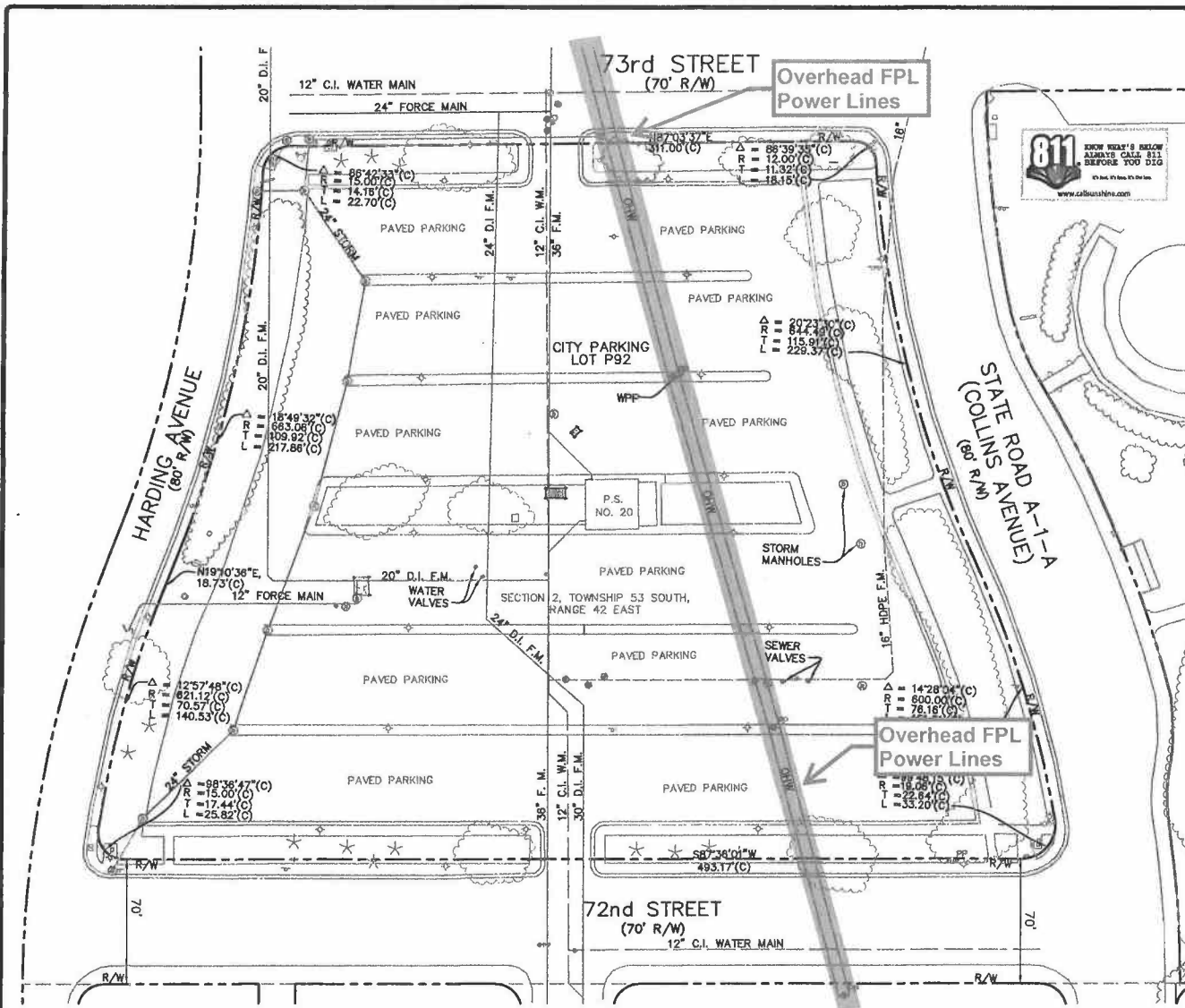
**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Rafael Granado

City Attorney

5/6/20

Date



LOCATION SKETCH



LOCATION SKETCH

NOT TO SCALE

LEGEND & ABBREVIATIONS:

ASPH.	ASPHALT	L	ARC LENGTH
BM	BENCH MARK	MH	MANHOLE
BW	BACK OF SIDEWALK	OHW	OVERHEAD WIRES
CB	CATCH BASIN	PCC	POINT OF COMPOUND CURVATURE
CBS	CONCRETE BLOCK STRUCTURE	P	PROPERTY LINE
C&G	CURB AND GUTTER	POB	POINT OF BEGINNING
C.I.	CAST IRON	POC	POINT OF COMMENCEMENT
C.L.	CENTER LINE	PP	POWER POLE
CL	CLEARANCE	PRC	POINT OF REVERSE CURVE
CLF	CHAIN LINK FENCE	PT	POINT OF TANGENCY
CM	CONCRETE CURB	R	RADIUS
CONC.	CONCRETE	R/W	RIGHT-OF-WAY
D.I.	DUCTILE IRON	T.B.M.	TEMPORARY BENCH MARK
FD IP	FOUND IRON PIPE	TC	TOP OF CURB
F.M.	FORCE MAIN	W.M.	WATER MAIN
H.D.P.E.	HIGH DENSITY POLYETHYLENE	W.A.	WATER MAIN
○	HATCH INDICATES GRASS AREA	∠	CENTRAL ANGLE
		△	DEMOTES EXISTING ELEVATION

SURVEYORS NOTES:

- ELEVATIONS IF SHOWN HEREON ARE RELATIVE TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88) AND ARE BASED UPON RTK GPS LOCATIONS USING TOPCON HIPER II RECEIVER WITH A TOPCON TESA DATA COLLECTOR.
- THIS IS NOT A BOUNDARY SURVEY. RIGHT OF WAY/BOUNDARY LINES SHOWN HEREON ARE BASED UPON A BOUNDARY SURVEY OF NORTH SHORE PARK, PREPARED BY POS&J (JOB#01-775.00) FOR THE CITY OF MIAMI BEACH.
- THIS "RECORD" SURVEY HAS BEEN PERFORMED TO MAP THE LOCATION OF CITY UTILITIES AND OVERHEAD WIRES WITHIN AND/OR CROSSING PARKING LOT P92.
- COORDINATES (NORTHING AND EASTING) AND/OR BEARINGS IF DEPICTED ON THIS SURVEY MAP OR IN THE CAD FORMAT ARE BASED UPON THE FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA EAST ZONE, RELATIVE TO THE NORTH AMERICAN DATUM (NAD) 1983/2011 ADJUSTMENT. (GPS) MEASUREMENTS WERE CONDUCTED IN THE FIELD TO ACQUIRE LOCATIONS OF IMPROVEMENTS AND ARE REFERENCED TO: THE FLORIDA DEPARTMENT OF TRANSPORTATION, FLORIDA PERMANENT REFERENCE NETWORK (FPRN), BASED ON THE FOLLOWING CONTINUOUSLY OPERATING REFERENCE STATIONS: MIAMI BEACH (FLMB) AND DISTRICT 8 (FLDB).
- UNDERGROUND UTILITIES OTHER THAN THOSE SHOWN AND STATED HEREON HAVE NOT BEEN LOCATED.
- DATE OF SURVEY/DATA ACQUISITION IS APRIL 07, 2017.

CERTIFICATION:

I HEREBY CERTIFY THAT THIS "RECORD" SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS SURVEYED AND DRAWN UNDER MY DIRECTION, AND THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA STATE BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 65-17 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

04-11-17

DATE OF SIGNATURE:

BRIAN T. BELLINO, P.S.M.
CITY SURVEYOR MANAGER
FLORIDA LICENSE NO. 9973

"RECORD SURVEY"

SCALE: 1"=60' (11/17)

MIAMI BEACH
PUBLIC WORKS DEPARTMENT
1700 CONVENTION CENTER DRIVE, MIAMI BEACH, FL 33139

NEIGHBORHOOD: NO. 4 - NORTH SHORE
TITLE: "RECORD SURVEY" FOR PARKING LOT P92

CITY MANAGER: JIMMY L. MORALES
DIRECTOR: ERIC T. CARPENTER, P.E.
CITY ENGINEER: BRUCE A. MOWRY, P.D., P.E.

ENGINEER OF RECORD:
DESIGN ENGINEER:
DRAWN BY: T.F.
CHECKER: B.T.B.
SCALE: AS SHOWN

ACCEPTED BY:
BRIAN T. BELLINO, P.S.M.
CITY SURVEYOR MANAGER

5	
4	
3	
2	
1	

NO. DATE REVISION

APPD. BY

File Name: CMB PARKING LOT P92 btb.dwg
Survey Reference:
Field Book: N/A Page: N/A Work Order: N/A
Date: 04/11/17 Sheet: 1 of 1 Drawing: ANSI D-Survey

Attachment A



April 24, 2020

Mr. David Martinez, P.E.
 Director of Capital Improvement Projects
 City of Miami Beach, CIP
 1701 Meridian Ave CMB CIP Office 3rd Floor
 Miami Beach, FL

RE: **Proposed Relocation of Transmission Facilities:
 INDIAN CREEK-NORMANDY BEACH 69kV 17B17 to 17B20**

Dear Mr. Martinez,

We at FPL appreciate the opportunity to work with you on the aforementioned transmission relocation project. The cost estimates for the electric service you have requested is completed and the amount has been determined as follows:

	Cost
Transmission relocation	+\$836,620.94
Additional 20% contingency	+\$167,324.19
Engineering deposit received	- \$154,180.00
Remaining Balance Due	+\$849,765.13

Please note, as discussed with your staff during our project follow up meetings, the scope of work includes only transmission facilities and the City of Miami Beach needs to coordinate all related distribution work with our distribution department.

The relocation amount quoted above is valid from the date of this letter for a period of three (3) months. To facilitate our ability to meet your desired construction schedule, secure the material for the project and schedule the work with our construction department, we would appreciate receiving your payment and the execution of the replacement easement by 07/01/2020.

Sincerely,

A handwritten signature in black ink, appearing to be "RC" or similar initials, written in a cursive style.

Roberto Cruz, P.E.
 Transmission Engineering Lead
 Office: 561.904.3662

Florida Power & Light Company

700 Universe Boulevard, TS4/JW, Juno Beach, FL 33408

Project Description

Dedicated Feeder - Substation work

Summary Estimate of Cost

Project Level

Project Name:

CUS SOUTH

Work Order List (max 6) T09999-009-0988-001

Line No	Salvage	Removal	Item	Item Cost	Total
6			(A) ENGINEERING		
7			Labor		
8			* Additives of Labor		
9			Transportation		
10			Applied Engineering	\$60,000.00	
11			Contractor & Misc. Expenses		
12			* Additives of Contractor/Misc. Expenses		
13			Sub-total	<u>\$60,000.00</u>	<u>\$60,000.00</u>
14					
15			(B) LAND & LAND RIGHTS (RIGHT OF WAY)		
16			Labor		
17			* Additives of Labor		
18			Transportation Expenses		
19			Purchase and/or Easements		
20			Contractor & Misc. Expenses		
21			* Additives of Contractor & Misc. Expenses		
22			Sub-total		
23					
24			(C) CONSTRUCTION		
25			Labor	\$29,324.99	
26			* Additives of Labor		
27			Transportation Expenses	\$14,544.49	
28			Material	\$163,862.68	
29			* Stores Loading	\$16,424.12	
30			Contractor & Misc. Expenses	\$394,825.32	
31			* Additives of Contractor & Misc. Expenses		
32			Sub-total	<u>\$618,981.60</u>	<u>\$618,981.60</u>
33					
34			(D) OTHER - MAINTENANCE		
35			Labor		
36			* Additives of Labor		
37			Transportation Expenses		
38			Material		
39			* Stores Handling		
40			Contractor & Misc. Expenses		
41			* Additives of Contractor & Misc. Expenses		
42			Sub-total		
43					
44			(E) ADMINISTRATIVE & GENERAL COSTS		
45			Administrative & General Costs	\$157,639.34	
46			Sub-total	<u>\$157,639.34</u>	<u>\$157,639.34</u>
47					
48	\$0.00	\$0.00	GRAND TOTAL	\$836,620.94	\$836,620.94
49	TOTAL INSTALLATION AND MAINTENANCE COST				<u>\$836,620.94</u>
50	TOTAL REMOVAL COST				\$0.00
51	SALVAGE () LESS SALVAGE ADJUSTMENT (FACILITIES NOT REPLACED)				<u>\$0.00</u>
52	SUB-TOTAL				<u>\$836,620.94</u>
53	CREDIT ###.###% (FROM AGREEMENT)				<u>\$0.00</u>
54	NET REPLACEMENT COST (Sum lines 52 and 53)				<u>\$836,620.94</u>

* Handling, Tax & Insurance and Pension & Welfare at Approved Rates

Engineer: _____

Submitted By: _____

Michael Foley

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

THIS FACILITIES RELOCATION AGREEMENT (“**Agreement**”) is made and entered into this 24th day of April, 2020, by and between the City of Miami Beach CIP (“**Applicant**”), with address at 1701 Meridian Avenue CMB CIP Office, 3rd Floor, Miami Beach, FL 33139 and FLORIDA POWER & LIGHT COMPANY, a Florida corporation (“**FPL**”), with its principal place of business at 700 Universe Boulevard, Juno Beach, Florida 33408. Applicant and FPL are sometimes hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, Applicant intends to construct the 72nd Street Municipal Complex and will require the relocation of certain incompatible and conflicting portions of FPL's facilities and equipment; and

WHEREAS FPL will incur costs in the relocation of such FPL's facilities and equipment, which costs would not have occurred but for Applicant's construction.

NOW THEREFORE, in consideration of the mutual promises of Applicant and FPL, and other good and valuable consideration, the receipt of sufficiency of which is hereby acknowledged by the Parties, the Parties agree that FPL shall relocate the FPL facilities and equipment and 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 capitalization:

- 1.1 Date Cost Estimate Received means the day that the cost estimate was hand-delivered or transmitted by facsimile, or if mailed, five (5) days from the date of postmark.
- 1.2 FPL Facilities means, 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.
- 1.3 Relocation and/or Relocate means the work performed by FPL under this Agreement and any activity made necessary by Applicant's construction which conflicts with or affects FPL, any FPL Facilities, or service, including any work associated with the Transmission Line Clearance. Relocation 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 Facilities means any FPL Facilities which will be constructed under the terms of this Agreement as a consequence of Relocation of any FPL Facilities or portion thereof.
- 1.5 Transmission Line Clearance (FPL Facilities de-energization) means a de-energization of FPL Facilities following a review performed by an FPL system operator to ensure the FPL Facilities de-energization does not compromise FPL's power system reliability.

ARTICLE II - IDENTIFICATION OF CONFLICTS

- 2.1 Known Conflicts. Applicant shall reimburse FPL for costs associated with the Relocation of the FPL Facilities more particularly described and located on the real property described on Exhibit A attached hereto and incorporated herein by this reference (“**Property**”).

2.2 Other Conflicts. The identification of any other conflicting FPL Facilities requiring Relocation shall be undertaken by FPL pursuant to a subsequent written agreement between FPL and Applicant.

ARTICLE III - DESIGN AND CONSTRUCTION OF REPLACEMENT FPL FACILITIES

3.1 Design Standards. Engineering design standards and material specified shall meet FPL's current design standards. In addition, the design of the Relocation will be in conformity with all laws, codes and regulations.

3.2 Construction Standards. Materials and construction procedures shall meet FPL's current construction standards. In addition, any Relocation 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. Applicant shall provide FPL with replacement rights-of-way in one of the following manners:

(a) Applicant shall reimburse FPL for all 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) Applicant shall convey or grant to FPL replacement rights-of-way sufficient to permit FPL to accomplish Relocation 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 form and substance satisfactory to FPL in its sole discretion.

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 the Relocation.

ARTICLE V - COST ESTIMATES, CREDITS AND BILLING

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

5.2 Cost Estimate. Applicant shall be responsible for paying FPL 120% of the total cost estimate for the Relocation prior to FPL commencing any work hereunder. The estimated cost to Relocate the FPL Facilities is as below:

Relocation: \$836,620.94. This cost estimate is set out in detail in Exhibit C attached hereto.

Additional 20% of the cost estimate: \$167,324.19.

Engineering deposit received: \$154,180.00.

Balance due: \$849,765.13.

Applicant to provide payment in full for this amount to FPL along with two (2) signed copies of this Agreement.

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

5.3 Duration of Cost Estimate.

The cost estimate referenced in Section 5.2 above is valid for ninety (90) days from the date the cost estimate is delivered to Applicant (this includes the cost estimate attached as Exhibit C and any subsequent cost estimate), subject to the terms and conditions set forth in Section 5.4 below.

5.4 Re-estimates, Scope of Work Changes, Transmission Line Clearance Cancellation.

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 was delivered to Applicant, or if Applicant requests a change in the Relocation scope of work on any individual work order prior to FPL commencing any Relocation work construction, such cost estimate is invalid and a new cost estimate shall be required, whereupon FPL shall provide a re-estimate of the Relocation work prior to commencement of the Relocation by FPL. Applicant must 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, except as expressly set forth otherwise herein.

5.4.2 After Start of Construction. If after FPL starts Relocation 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 Relocation 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 Applicant with a new cost estimate as soon as practicable, and Applicant shall pay any increased costs in the revised cost estimate, plus 20% thereof, to FPL within thirty (30) days after receipt of the revised cost estimate.

5.4.3 Transmission Line Clearance Availability and/or Cancellation. Applicant understands and agrees that the Relocation requires the de-energization of FPL Facilities in order to perform the Relocation work hereunder. In the event the FPL system operator considers the FPL power system is at risk, then FPL, in FPL's sole discretion, may cancel, limit and/or reschedule the approved FPL Facilities de-energization at any time, whereupon Applicant, at Applicant's sole cost and expense, shall be responsible for the entire cost: (i) to compensate the line contractor at its stand by rate for a minimum of eight (8) crew hours per day for each day; and/or (ii) to demobilize its crew, until the new date the Transmission Line Clearance has been obtained and the FPL Facilities have been de-energized. Such transmission line clearance cancellation costs (or restriction for limited hours or night work) shall will be added to the total cost of the Relocation to be paid by Applicant, and shall not be subject to the limits set forth in Sections 5.4.1 and 5.4.2 above.

5.5 Credits.

5.5.1 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 set forth above in Section 5.2).

5.5.2 Applicant shall receive a credit for payment made to FPL hereunder, if payment is received by FPL prior to issuing a detailed cost estimate and if this Agreement has been entered into within ninety (90) days of the date that estimate was delivered to Applicant and the Relocation performed.

5.5.3 Applicant shall receive no credit for payment hereunder, and such payment shall not be refunded: (a) if Applicant has not executed this Agreement within ninety (90) days of the date a detailed cost estimate was received by Applicant, (b) if a subsequent cost estimate is required and not paid, plus an additional 20% of any increased cost thereof, within thirty (30) days of the date Applicant receives the new cost estimate; or (c) if Applicant terminates this Agreement.

5.5.4 Any cost estimate provided to Applicant after the initial detailed cost estimate shall be done at additional cost and expense to Applicant. Applicant's payment for cost 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, Applicant shall pay in advance the full estimated cost of such Relocation per Sections 5.2 and 5.4.2 and 5.4.3 above.
- 5.7 Final Bill. Upon completion of the Relocation, FPL shall at the earliest date practicable furnish to 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. 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 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 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 Applicant any amounts which 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 Applicant's construction, 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 FPL Facilities already installed, necessary to place any FPL 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 III herein. Nothing in this section 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 Relocation work performed under this Agreement shall be subject to inspection by Applicant for a period of one (1) year from the completion date of all Relocation work performed under this Agreement. Such inspections shall be performed by Applicant and in accordance with the following considerations:
- (a) 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) 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) 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 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 Non-waiver. 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. 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 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 Applicant, its contractors or assigns, Applicant shall indemnify FPL Entities whether or not the damage or liability is due to or caused by the sole negligence of FPL Entities. Applicant's obligation to protect, defend and hold FPL Entities free and unharmed against such liabilities shall extend up to, but shall not exceed the sum of \$3,000,000 combined single limit for injuries to or death of person(s) or damage to existing property arising out of a single occurrence, except in the event Applicant is insured for liability with limits in excess of \$3,000,000 combined single limit for injuries to or death of person(s) or property arising out of a single occurrence, Applicant's said obligations shall extend up to but shall not exceed the limits of that insurance. Applicant's costs of defending FPL Entities, including Applicant's attorneys' fees, are excluded from and are in addition to the aforesaid limitation of liability for injury, death and property damage.
- 7.5 Insurance. If Applicant utilizes its own personnel in the construction or maintenance work around the FPL Facilities, Applicant shall furnish FPL with evidence of insurance maintained by Applicant insuring FPL Entities from liabilities assumed under the above indemnification. Said insurance shall contain a broad form contractual endorsement or, alternatively, Applicant shall cause FPL, its parent, subsidiaries and affiliates and their respective officers, directors and employees to be named as additional named insured on Applicant's comprehensive general liability policy. Such liability coverage shall be primary to any liability coverage maintained by or on behalf of FPL up to the \$3,000,000 limit of liability.

In the event that the policy is on a "claims made" basis, the retroactive date of the policy shall be the effective date of this Agreement or such other date as to protect the interest of FPL and the coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort (currently, five years). If coverage is on an "occurrence" basis, such insurance shall be maintained by Applicant during the entire term of this Agreement. The policy shall not be canceled or materially altered without at least thirty (30) days written notice to FPL.

Applicant shall provide FPL with evidence of such liability insurance coverage on the standard insurance industry form (ACORD) without modification. A copy of the policy shall be made available for inspection by FPL upon reasonable request.

- 7.6 Contractor Indemnification. Applicant further agrees to include the following indemnification in all contracts between 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 Applicant and FPL, its parent, subsidiaries, affiliates or their respective officers, directors, or employees, from all claims, demands, liabilities and suits whether or not due to or caused by negligence of 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 \$3,000,000.00 for bodily injury or death of person(s) or property damage combined single limit and \$5,000,000 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. 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. Applicant shall provide FPL's Risk Management Department with notice of the name and address of Applicant's contractors as specified in Section 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 Applicant's construction in accordance with the terms and conditions of this Agreement. 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 Applicant: _____
(Name and Title)

With Copies to: _____

To FPL: Jose Coto
General Manager of Engineering
Florida Power & Light Company
700 Universe Boulevard, TS3/JW
Juno Beach, FL 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 Facilities. Applicant acknowledges and agrees that he has read and will comply with the Notification of FPL Facilities attached hereto. 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 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, 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.

[Signatures appear on following page.]

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

APPLICANT:

FLORIDA POWER & LIGHT COMPANY:

By: _____

Title: _____

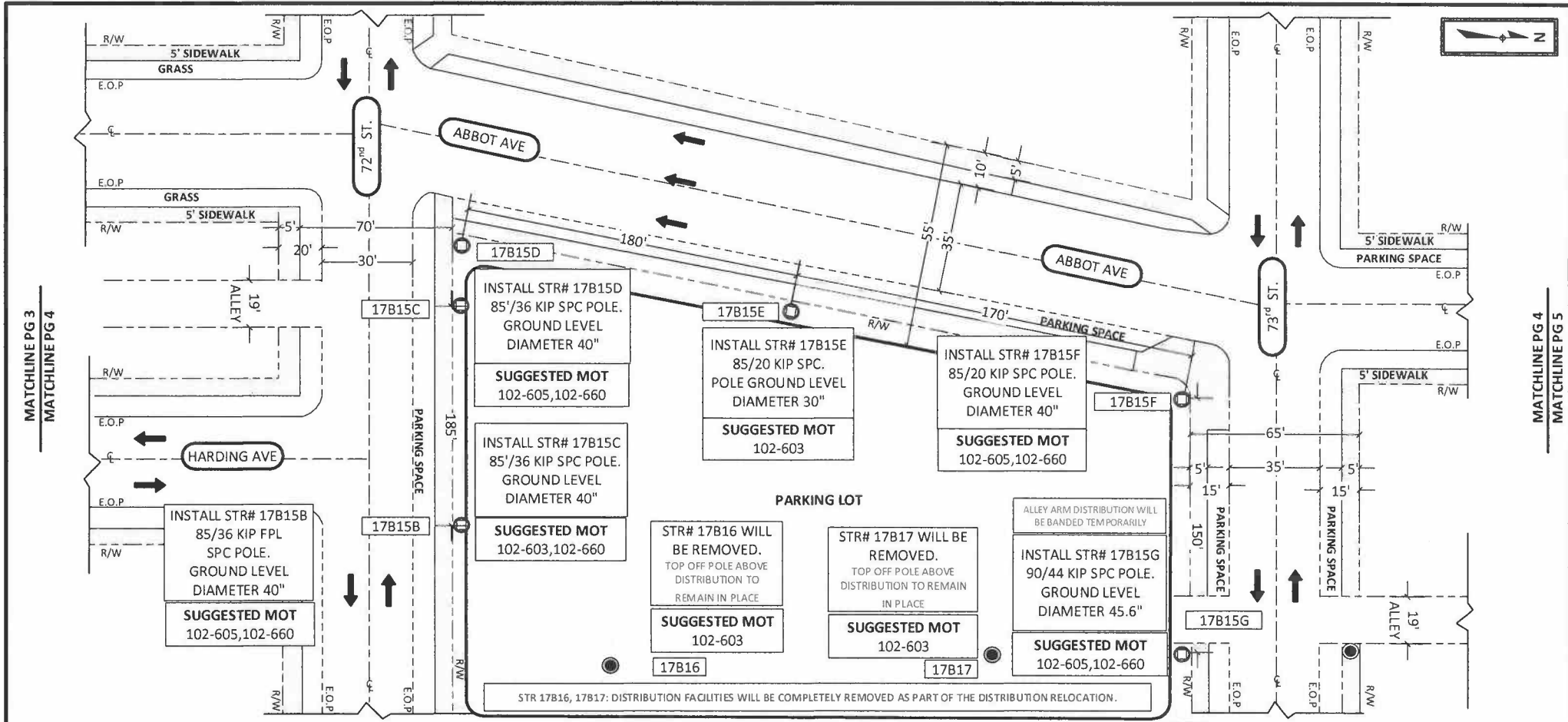
Date: _____

Attest: _____ (Seal) Title

By: Jose Coto.

Title: General Manager of Engineering

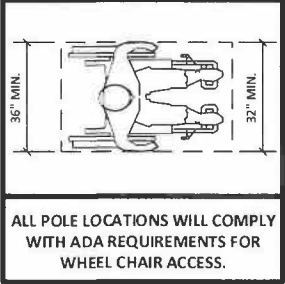
Date: _____



NOTE: ALL STUB POLES, SPAN GUYS AND ANCHORS TO BE REMOVED WHERE APPLICABLE.

NOTE: UNDERGROUND UTILITIES WILL BE LOCATED PRIOR TO CONSTRUCTION

LEGEND	
R/W	RIGHT-OF-WAY
E.O.P.	EDGE OF PAVEMENT
C	CENTER LINE
○	PROPOSED TX SPUN CONCRETE POLE
●	EXISTING TX SPUN CONCRETE POLE
■	EXISTING TX CONCRETE POLE
●	EXISTING TX WOOD POLE
⊕	ANCHOR
—S—	SPAN GUY WIRE
---	CENTER LINE OF ROAD
↔	TRANSMISSION LINE
←→	NEW CONDUCTOR LINE
●	EXISTING DISTRIBUTION WOOD POLE



LOCATION/CITY: MIAMI BEACH						FPL	IO#: T0000022308	
PERMIT REQ'D	CITY R/W	COUNTY R/W	FDEP	FDOT	FAA	COUNTY: MIAMI-DADE		
	SFWM	RR XING	DR DIST.	ACOE	DERM	LINE NAME: INDIAN CREEK-NORMANDY BEACH 69 KV		
						SECTION NAME:		
<input checked="" type="checkbox"/> 69KV <input type="checkbox"/> 115KV <input type="checkbox"/> 138KV <input type="checkbox"/> 230KV <input type="checkbox"/> 500KV <input type="checkbox"/> CONTAMINATION						SCOPE: REPLACE 12 WOOD STR WITH SINGLE SPC POLES REMOVE 2 STRS INSTALL 7 NEW STRS SPC POLES		
						ENG. ROBERTO CRUZ		DATE: 3/13/2020
						SCALE: N.T.S.		DWG # 1 OF 1

MATCHLINE PG 3
MATCHLINE PG 4

MATCHLINE PG 4
MATCHLINE PG 5