

**1. ACTION REQUESTED/PURPOSE:**

Authorize Chair, on behalf of the BOCC, to 1) execute and approve recording of the "Memorandum of Right-of-Way Consent Agreement" between Lee County and Florida Power & Light Company for Lee County's Gateway Wastewater Treatment Expansion project (CIP 7000) and the Airport Sewer Transmission Line (CIP 7131); and, 2) also, execute the Right-of-Way Consent Agreement (which will not be recorded).

**2. FUNDING SOURCE:** No funds required.

**3. WHAT ACTION ACCOMPLISHES:**

Allows Lee County to construct and maintain a sewer force main and dry retention area inside the FPL easement.

**4. MANAGEMENT RECOMMENDATION:** Approval.

**5. Departmental Category:** 10 - Utilities **CIOC** **6. Meeting Date:** JUN 05 2007

<b>7. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>8. Requirement/Purpose: (specify)</b>		<b>9. Request Initiated:</b>	
	<input type="checkbox"/> Statute	<input type="checkbox"/>	<b>Commissioner</b>	
	<input type="checkbox"/> Ordinance	<input type="checkbox"/>	<b>Department</b>	<b>Public Works</b>
	<input type="checkbox"/> Admin. Code	<input type="checkbox"/>	<b>Division</b>	<b>Utilities</b>
	<input checked="" type="checkbox"/> Other	<b>Approval</b>	<b>By: Douglas L. Meurer, P.E., Director</b> 5/21/07	

**10. Background:**

Florida Power & Light Company (FPL) requested execution of the Memorandum of Right-of-Way Consent Agreement and Right-of-Way Consent Agreement. Execution of the agreements allows Lee County to construct and maintain a sewer force main and dry retention area inside the FPL easement for the Gateway Wastewater Treatment Plant expansion and the Airport Sewer Transmission Line projects.

Funds are available for document recording fees in Account No. OD5360748700.504930.

**Attachments:** Recorder's Office Sheet  
Memorandum of Right-of-Way Consent Agreement (1) - for Recording  
Right-of-Way Consent Agreement (2) - NOT to be recorded

**11. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Res.	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>J. Lavender</i> Date: 5-22-07	N/A Date:	N/A Date:	Date:	<i>S. Coovert</i> Date: 5/22/07	<i>RK</i> 5/23	<i>MP</i> 5/23/07	<i>14</i> 5/23/07	<i>J. Lavender</i> Date: 5-22-07	

**12. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *PK*  
5/23 9:10  
23 MP.  
COUNTY ADMIN FORWARDED TO: *PK*  
5/23/07  
11:30 AM

Rec. by CoAtty  
Date: 5/22/07  
Time: 3:25pm  
Forwarded To:

*Admin*  
5/22/07 5pm

**TO: RECORDERS OFFICE**

**PLEASE PUT MY NAME ON THE ATTENTION LINE:**

**Sue Gulledge**

**CHARGE TO: LEE COUNTY UTILITIES -  
LCU 500283**

**ACCOUNT NO. OD5360748700.504930**

**THANK YOU.**

**FOR UTILITIES USE ONLY:**

**BLUE SHEET NO. 20070737-UTL**

**PROJECT NAME: GATEWAY WWP EXPANSION**

**AGREEMENT NAME: FP & L "MEMORANDUM OF  
RIGHT-OF-WAY CONSENT  
AGREEMENT"**

**TYPING BY: Sue Gulledge**

This Instrument Prepared By:  
Mark Zweg CRE/AOW  
Florida Power & Light Company  
P.O. BOX 1119  
Sarasota, FL 34230

THIS SPACE RESERVED FOR RECORDING

LCU 500283

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**MEMORANDUM OF RIGHT-OF-WAY CONSENT AGREEMENT**

THIS MEMORANDUM OF RIGHT-OF-WAY CONSENT AGREEMENT dated this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between LEE COUNTY, FLORIDA, a political subdivision and charter county of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof (hereinafter referred to as "Licensee"), and FLORIDA POWER & LIGHT COMPANY, a Florida corporation (hereinafter referred to as "Company").

**WITNESSETH:**

WHEREAS, on the \_\_ day of \_\_\_\_\_, 2007, Company and Licensee entered into a written Right-of-Way Consent Agreement, hereinafter referred to as the "Agreement" related to certain property situated in the County of Lee, State of Florida as more particularly set forth in said Agreement and described in Exhibit "A" attached hereto and made a part hereof and hereinafter referred to as the "Lands", and

WHEREAS, the parties are desirous of placing their interest therein as a matter of public record.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the parties intending to be legally bound thereby, the parties hereto agree as follows:

1. The property described in Exhibit "A" is subject to a right-of-way in favor of Company recorded in OR Book 258, at Page 378, OR Book 728, at Page 113, OR Book 743 at Page 661, OR Book 1524 at Page 134, and OR Book 1606 at Page 1275, of the Public Records of Lee County, Florida.

2. The Agreement provides, among other things, Licensee's right to construct and maintain certain improvements upon the Lands including, but not limited to a sewer forcemain and dry retention area, subject to certain conditions and restrictions.

3. The Agreement is assignable to purchasers of all or a portion of the Lands provided that the purchasers assume the obligations under the Agreement and specifically acknowledge and agree that the use of the property and improvements to be placed on the property are strictly limited to those depicted on a certain plan of improvement and are otherwise subject to the terms of the Agreement.



Approved and accepted for and on behalf of Lee County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Chair

APPROVED AS TO FORM

BY: \_\_\_\_\_  
Office of the County Attorney  
Scott S. Covert, Esquire

This Instrument Prepared By:  
Mark Zwiag CRE/AOW  
Florida Power & Light Company  
P.O. BOX 1119  
Sarasota, FL 34230

Line No: 5C, 8A      Parcel No: 5C-5,6,7 8A-2B,2A  
Line Name: Collier Orange River 230kv #1,#2, Andy town-Orange River 500kv, Alico-Orange River 230kv  
Structure No.: 122M1/122M1A/122M2/275M3-5/275M3A/A275M3,3A,4A/IZ406,407  
Section, Township, Range: 17-45-26

### **RIGHT-OF-WAY CONSENT AGREEMENT**

FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is P.O. Box 14000, Juno Beach, Florida 33408-0420, Attn: Corporate Real Estate Department, hereinafter referred to as "Company", hereby consents to Lee County, a political subdivision and charter county of the State of Florida, whose mailing address is P.O. Box 398, Ft. Myers, FL33902-0398, hereinafter referred to as "Licensee", using an area within Company's right-of-way granted by that certain agreement recorded in OR Book 258, at Page 378, OR Book 728, at Page 113, OR book 743 at Page 661, OR book 1524 at Page 134, and OR book 1606, at Page 1275, of the Public Records of Lee County, Florida. The said area within Company's right-of-way, hereinafter referred to as "Lands". The use of the Lands by Licensee, shall be solely for the purpose of a sewer forcemain marked with 6ft above ground markers at both sides of the Lands, and a dry retention area as shown on the plans and specifications submitted by Licensee, attached hereto as Exhibit "A".

In consideration for Company's consent and for the other mutual covenants set forth below, and for Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. 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.

2. Licensee understands and agrees that the use of the Lands pursuant to this Agreement is subordinate to the rights and interest of Company in and to the Lands and agrees to notify its employees, agents, and contractors accordingly. Company specifically reserves the right to maintain its facilities located on the Lands; to 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. Licensee understands that in the exercise of such rights and interest, Company from time-to-time may require Licensee, to relocate, alter, or remove its facilities and equipment, including parking spaces and areas, and other improvements made by Licensee pursuant to this Agreement which interfere with or prevent Company, in its opinion, from properly and safely constructing, improving, and maintaining its facilities. Licensee agrees to relocate, alter, or remove said facilities, equipment, parking spaces and areas, and other improvements within thirty (30) days of 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; provided however, should Licensee, for any reason, fail to make such relocation, alteration, or removal, Company retains the right to enter upon the Lands and make said relocation, alteration, or removal of Licensee's facilities, equipment, parking spaces and areas, and other improvements and Licensee hereby agrees to reimburse Company for all of its costs and expense incurred in connection therewith upon demand.

3. 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 the provisions of this Agreement.

4. 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 existing grade 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 forty (40) foot wide setback, twenty (20) feet on each side, from Company's facilities.

5. Trees, shrubs, and other foliage planted or to be planted upon the Lands by Licensee are not to exceed, at maturity, a height of fourteen (14) feet above existing grade. Licensee hereby agrees to maintain the height of all vegetation on the Lands at a height not to exceed fourteen (14) feet above existing grade.

6. Outdoor lighting installed or to be installed upon the Lands by Licensee are not to exceed a height of fourteen (14) feet above existing grade and all poles or standards supporting light fixtures are to be of a non-metallic material.

7. Sprinkler systems installed or to be installed by Licensee upon the Lands are to be constructed of a non-metallic material and sprinkler heads are to be set so the spray height does not exceed fourteen (14) feet above existing grade 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 one (1) foot below existing road grade.

8. 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.



9. 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.

10. 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 other persons resulting from Company's use of the Lands for its purposes.

11. Notwithstanding any provision contained herein, 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.

12. To the extent provided for in section 768.28, Florida Statutes, Licensee agrees it will exercise its privileges hereunder at its own sole risk and agrees to indemnify and save harmless Company, its parent, subsidiaries, affiliates, and their respective officers, directors, agents and employees (hereinafter referred to as FPL Entities), from all liability, loss, cost, and expense, including attorneys' fees, 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 whether or not due to or caused by the negligence of FPL Entities, arising out of or in connection with the herein described purposes by Licensee, its contractors, agents, or employees; and Licensee agrees 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.

13. Licensee shall, during the period of this Agreement, maintain at its sole expense a liability policy with minimum limits of \$1,000,000 for bodily injury or death of person(s) and \$1,000,000 for property damage arising out of a single occurrence. Said policy shall be endorsed to insure against obligations assumed by Licensee in the indemnity (Paragraph 12). A certificate of insurance shall be furnished to Company evidencing that said policy of insurance is in force and will not be cancelled or materially changed so as to affect the interests of FPL Entities until ten (10) days written notice has been furnished to Company. Upon request, copies of policies will be furnished to Company. 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.

14. 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, unless earlier terminated upon ninety ( 90 ) days written notice by Company to Licensee, or at the option of Company, immediately upon Licensee failing to comply with or to abide by any or all of the provisions contained herein.

15. The use granted herein as shown on Exhibit "A" shall be under construction by Licensee within 3 years of the effective date of this Agreement and the construction shall be diligently pursued to completion. Licensee shall give Company ten (10) days prior written notice of its commencement of construction. "Under construction" is the continuous physical activity of placing the foundation or continuation of construction above the foundation of any structure or improvement permitted hereunder. Under construction does not include application for or obtaining a building permit, a site plan approval or zoning approval from the appropriate local government agency having jurisdiction over the activity, purchasing construction materials, placing such construction materials on the site, clearing or grading the site (if permitted) in anticipation of construction, site surveying, landscaping work or reactivating



construction after substantially all construction activity has remained stopped for a period of two (2) months or more. Licensee acknowledges that failure to have the use under construction within the one (1) year time period will result in immediate termination of this Agreement in accordance with Paragraph 14 herein for failing to comply with the provisions contained herein unless Licensor grants a written extension for a mutually agreed upon time. Any request for an extension of time shall be submitted in writing by Licensee no later than thirty (30) days prior to the expiration of the one (1) year period for the project to be under construction.


16. 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.

17. 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. In the event of any litigation arising out of enforcement of this Consent Agreement, the prevailing party in such litigation shall be entitled to recovery of all costs, including reasonable attorneys' fees.

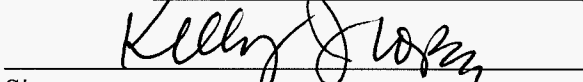
18. Licensee may assign its rights and obligations under this Agreement to a solvent party upon prior written consent of the company, which consent shall not be unreasonably withheld.

The parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Witnesses:

  
Signature: \_\_\_\_\_

Print Name: MARC ZWIEFER

  
Signature: \_\_\_\_\_

Print Name: KELLY J LOPEZ

**FLORIDA POWER & LIGHT COMPANY**

By:   
Its: Real Estate Project Manager

Print Name: MARK L. DYKES

(Acknowledgements Continued on Next Page)

Approved and accepted for and behalf of Lee County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2007.

(Official Seal)

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Chair

APPROVED AS TO LEGAL FORM

BY: \_\_\_\_\_  
Lee County Attorneys Office