

RESOLUTION NO. 2007- 357

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF AN AGREEMENT FOR UNDERGROUND CONVERSIONS IN CONNECTION WITH THE VILANO TOWN CENTER AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, St. Johns County (hereinafter "County") has requested that Florida Power & Light Company (hereinafter "FPL") convert certain overhead electrical distribution facilities located within the boundaries of the Vilano Town Center to underground facilities; and

WHEREAS, County has further requested that certain underground facilities be placed in certain rights-of-way owned by County; and

WHEREAS, FPL is willing to place certain underground facilities within the rights-of-way as requested by County providing the County enter into the Agreement for Underground Conversions, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, with FPL; and

WHEREAS, County has agreed to enter into said Agreement for the purposes mentioned above.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are incorporated into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The Agreement for Underground Conversions is hereby approved and the County Administrator is authorized to execute the Agreement on behalf of the County.

Section 3. The Clerk is instructed to send the original agreement to FPL c/o Linda Clark, 303 Hastings Road, St. Augustine, Florida 32084.

PASSED AND ADOPTED this 13th day of November, 2007.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: Ben Rich
Ben Rich, Chairman

ATTEST: Cheryl Strickland, Clerk

By: Pam Halterman
Deputy Clerk

RENDITION DATE 11/15/07

**CITY/COUNTY RIGHT-OF-WAY
AGREEMENT FOR UNDERGROUND CONVERSIONS**

THIS AGREEMENT (the "Agreement") is made and entered into this 5th day of October, 2007 by and between St. Johns County ("Local Government"), a Florida municipal corporation or county with an address of 4020 Lewis Speedway and Florida Power & Light Company ("**FPL**"), a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, Local Government has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the "Conversion"): Vilano Town Center - N/O Ferrol ST & S/O AIA Bridge
defined on FPL Record Drawings
3R 822800 3S 82206
3R 822801
3R 822802
3R 822803
3R 822804
3R 822805

(collectively, the "**Existing Overhead Facilities**") to underground facilities, including transformers, switch cabinets and other appurtenant facilities some of which may be installed above ground (collectively, the "**Underground Facilities**") and has further requested that certain of the Underground Facilities be placed in certain of its road rights-of-way ("**Local Government ROW**") and/or certain road rights-of-way owned by or under the jurisdiction of other agencies ("**Other ROW**"). Local Government ROW and Other ROW may be referred to collectively as "**ROW**"; and

WHEREAS, the Local Government has agreed to pay FPL the cost of such Conversion as required by FPL's electric tariff and Section 25-6.115 of the Florida Administrative Code and has or will enter into a separate Underground Facilities Conversion Agreement with FPL; and

WHEREAS, FPL is willing, subject to the terms and conditions set forth in this Agreement, FPL's electric tariff and Section 25-6.115 of the Florida Administrative Code, to place certain of the Underground Facilities in the ROW.

NOW THEREFORE, in recognition of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, intending to be legally bound hereby, the parties covenant and agree as follows:

1. The foregoing recitals are true and correct, and are hereby incorporated by reference into this Agreement.

2. Conditions Precedent to Placement of Underground Facilities in ROW

- (a) Local Government covenants, represents and warrants that:
- (i) Local Government has full legal right and authority to enter into this Agreement;
 - (ii) Local Government has full legal right and authority to take all actions and measures necessary to fulfill Local Government's obligations under this Agreement;
 - (iii) Local Government hereby authorizes the use of the ROW by FPL for the purposes stated herein.
- (b) All applicable permits for FPL to install, construct, or maintain Underground Facilities in ROW must be issued on a timely basis by the appropriate agency.
- (c) The design and location of the Underground Facilities to which Local Government has agreed are in compliance with all operational and safety guidelines, codes and standards,
- (d) Local Government agrees to provide, at its expense, a legal description that is acceptable to FPL of the ROW to be occupied by the Underground Facilities at a time before FPL initiates the design of the Underground Facilities. Said legal description shall be made part of this Agreement and attached as Exhibit "A".
- (e) FPL agrees to identify and document all existing FPL underground facilities within the ROW that will not be included under this Agreement. Local Government shall reimburse FPL's reasonable costs and expenses to deliver said documentation. Said documentation shall be made part of this Agreement and attached as Exhibit "B".

3. Relocation and Rearrangement of FPL Facilities. If the Local Government or other agency with control over the Local Government ROW or Other ROW, for any reason whatsoever, requires that FPL relocate or rearrange, in whole or in part, any Underground Facilities (as they are to exist as a result of this Conversion, or as they may later be modified, upgraded, or otherwise altered) from or within the Local Government ROW or Other ROW, the Local Government, notwithstanding any language to the contrary in any applicable permit or franchise agreement, and prior to any such relocation by FPL, shall provide FPL with a substitute location, satisfactory to FPL, obtain any easements that may be necessary, and shall pay FPL for the costs of any such relocation, adjustment or rearrangement, now or in the future. Local Government shall reimburse FPL for all costs to locate, expose, protect or support the Underground Facilities, whether underground or above ground, in the event of future construction or excavation in close proximity to the Underground Facilities, when such services are required by Local Government or other agency with control over the Local Government ROW or Other ROW. Local Government shall use its best efforts in any design and construction of its future road improvement projects to avoid or mitigate the necessity of relocating or adjusting the Underground Facilities in Local Government ROW and, to the extent reasonably practicable, in Other ROW.

4. **Abandonment or Sale of Local Government ROW.** If the Local Government desires to subsequently abandon or discontinue use of the Local Government ROW, and ownership of the land is transferred to a private party, the Local Government, as a condition of and prior to any such sale, abandonment, or vacation, shall grant FPL an easement satisfactory to FPL for the Underground Facilities then existing within the ROW or require the transferee to so grant FPL an easement satisfactory to FPL at the time of transfer. If ownership of the Local Government ROW is transferred to another public entity, that public entity shall take the ROW subject to the terms and conditions of this Agreement.

5. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities placed in the ROW.

6. **Title and Ownership of Underground Facilities.** Title and ownership of Underground Facilities installed by FPL as a result of this Agreement shall, at all times, remain the property of FPL.

7. **Conversion Outside ROW.** In the event that the FPL Underground Facilities are not, for any reason other than the sole error of FPL or its contractors, constructed within the ROW, Local Government shall grant or secure, at Local Government's sole cost and expense, new easements or ROW grants for the benefit of FPL for the placement of the Underground Facilities in these areas, and shall secure subordinations of any mortgages affecting these tracts to the interest of FPL.

8. **Agreement Subject to FPL's Electric Tariff.** This Agreement is subject to FPL's electric tariff, including but not limited to the general rules and regulations for electric service and the rules of the Florida Public Service Commission, as may be revised, amended or supplemented from time to time.

9. **Venue; Waiver of Jury Trial.** This Agreement shall be enforceable in St. Johns County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in St. Johns County, Florida. By entering into this Agreement, FPL and the Local Government expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Florida.

10. **Attorney Fees.** In the event it becomes necessary for either party to institute or defend legal proceedings as a result of the failure of the other party to comply with the terms, covenants, or provisions of this Agreement, each party in such litigation shall bear its own cost and expenses incurred and extended in connection therewith, including, but not limited to attorneys' fees and court costs through all trial and appellate levels.

11. **Assignment.** The Local Government shall not assign this Agreement without the written consent of FPL

12. **Recording.** This Agreement shall be adopted by the Local Government and maintained in the official records of Local Government for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.

13. **Conflict Between Terms of Permit or Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government and FPL, the terms of this Agreement shall control.

14. **Notice.** Any notice, instruction or other communication to be given to either party hereunder shall be in writing and shall be hand delivered, telecopied, sent by Federal Express or a comparable overnight service or by U. S. registered or certified mail, with return receipt requested and postage prepaid to each party at their respective addresses set forth below:

As to Local Government:
St. Johns County

Michael D. Wanchick, County Administrator
4020 Lewis Speedway
St. Augustine, Florida 32084

With copies to:

As to FPL:

Florida Power & Light Company
Linda Clark
303 Hasings Road
St. Augustine, Florida 32084

IN WITNESS WHEREOF, Florida Power & Light Company and Local Government have executed this Agreement on the date first set forth above.

For **LOCAL GOVERNMENT:**

By: _____
(signature)

Name: Michael D. Wanchick
(print or type)

Title: County Administrator
(print or type)

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Approved as to Terms and Conditions: _____
(signature/title)

Approved as to Form and Legal Sufficiency: _____
(signature/title)

For **FLORIDA POWER & LIGHT COMPANY**

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)