

contractor will provide the Licensee with an estimate of the cost of the Make-Ready Work. The estimate shall include the increased cost of larger or stronger poles, remaining life value of poles removed, cost of removal less any salvage recovery and the expense of transferring FPL's Facilities from the old to the new poles and overhead costs, less any credit for betterment. If the Licensee still desires to make the Attachments, it shall return Exhibit A marked to so indicate, together with an advance payment for the entire estimated cost of the Make-Ready Work.

- b. Reimbursement for Make-Ready Work. When the Licensee's Attachments can be accommodated on existing poles of FPL by rearranging FPL's Facilities or attachments of others thereon, the Licensee will compensate FPL and other Licensees, attachees, or Joint Users, if any, for the full expense incurred in completing such Make-Ready or Rearrangements, as provided in Article IV.4.5 below.
- c. Additional Support. Any strengthening of poles (e.g., guying) required to accommodate the Licensee's Attachments shall be provided by and at the expense of the Licensee and to the satisfaction of FPL. The Licensee shall not set intermediate poles under or in close proximity to FPL's Facilities. The Licensee, however, may request FPL to set such intermediate poles as the Licensee may desire, and FPL shall have the option to accept or reject such request. If such request is granted, the Licensee shall reimburse FPL for all direct and overhead costs associated with installing and attaching to such pole or poles.

#### 4.2 Attachment Fees.

- a. Annual Attachment Fee. Licensee shall pay FPL an annual Attachment fee of \$22.75 per pole per year, such rate effective on January 1, 1995. The annual rate shall apply to all Attachments existing as of the effective date of that rate, regardless of the date of Attachment.
- b. Fee Adjustment. On the first day of January each year thereafter that this Agreement is in effect, the annual fee shall be adjusted in accordance with the most current pole cost data compiled by FPL. FPL shall bill annually for the total number of Attachments. Payment shall be made within forty (40) days of the date of invoice and under the terms and conditions provided in Article IV.4.6.
- c. Unauthorized Attachments. An Attachment to a FPL pole without notification of Attachment or FPL's authorization

shall be deemed to have been made on the effective date of this Agreement or the date of the last survey, whichever is later. If the unauthorized Attachment is identified by survey, the "last survey" shall mean the survey immediately prior to the survey which identified the unauthorized Attachment. FPL's acceptance of payment for unauthorized Attachments shall not constitute a waiver of any other rights or remedies under this Agreement or at law.

- d. Administration Fee. Licensee shall pay FPL a fifty dollar (\$50.00) Administrative Fee and, in addition, back license fees to the date of the last physical survey for any Attachment to FPL poles made without FPL's authorization. FPL's acceptance of the Administrative Fee or back fees or consent to waive such payment shall not constitute a waiver of any of FPL's other rights or remedies under this Agreement.

#### 4.3 Transfer and Intermediate Pole Attachment Fees.

- a. Fee. Upon completion of the Transfer or Intermediate Pole Attachment, the Licensee shall pay FPL a fee for each Attachment of Licensee made by FPL or its contractors. The fee for such work performed in the 1995 calendar year shall be \$50.00 per pole.
- b. Change in Fee. For subsequent years, the Transfer or Intermediate Pole Attachment fee will be adjusted to reflect any change in all direct and overhead costs of FPL associated with performing such work. FPL shall notify the Licensee in writing of any change in the fee for subsequent years.

#### 4.4 Rearrangement Cost.

- a. Licensee's Cost. If FPL rearranges or relocates its pole or pole line or changes the existing pole line alignment and as a consequence thereof rearranges or relocates all or part of the Licensee's System to FPL's relocated pole line, the fee for Transfer does not apply and the Licensee shall pay the entire actual cost of such Rearrangement of the Licensee's System. Payment for Rearrangement work will be made by the Licensee as stated in Articles IV.4.5 and 4.6 below.
- b. Licensee's Option to Purchase. If however, FPL gives the Licensee thirty (30) days written notice of its intent to abandon a pole line containing poles with Attachments of the Licensee, and if only the Licensee's Attachments remain on the pole and if the Licensee has obtained all necessary permits or easements from the fee

owner, the Licensee shall have the option to purchase the FPL pole from FPL.

4.5 Billing.

- a. Make-Ready Work and Rearrangement Work. Upon completion of all required work by FPL or other attachees, the Licensee shall reimburse FPL or other attachees for the actual and indirect cost incurred in transferring, rearranging or relocating said Facilities or Attachments of the Licensee or attachments of others. Payment shall be made within thirty-five (35) days of the date of invoice and under the terms and conditions provided in Article IV.4.5, below.
- b. Transfer or Intermediate Pole Work. Upon completion of the Transfer or Intermediate Pole Attachment work by FPL, FPL shall present Licensee with an invoice for \$50 times the number of Attachments. Upon completion of the Rearrangement, FPL shall furnish the Licensee with a final and complete billing of all costs incurred in the Rearrangement.
- c. Inspecting, etc. In addition, to the above changes, FPL shall bill the Licensee for actual costs incurred for inspections, surveys, expenses and other charges (excluding Attachment fees) under this Agreement, as incurred. Payment shall be made within thirty-five (35) days of the date of invoice and under the terms and conditions provided in Article IV.4.6, below.

4.6 Payment and Late Charges. The Licensee shall have twenty (20) days from the date of any invoice to object to same. Failure to provide FPL with written notice to the contrary within twenty (20) days shall constitute approval by the Licensee of the statement or invoice against which payment must be remitted in full to FPL within thirty-five (35) days of the date thereof. If payment is not mailed within thirty-five (35) days of the date of the statement or invoice, then a late payment charge shall be assessed in the amount of one (1) percent of the amount due per month calculated on a daily basis or the highest amount then permitted by Florida law.

4.7 Effect of Non-Payment. Non-payment of any invoice after ten (10) days notice of non-payment to Licensee by FPL shall constitute a default going to the essence of this Agreement and shall entitle FPL to cancel this Agreement.

ARTICLE V - REMOVAL

5.1 Notice. The Licensee, after prior written notice to FPL, may remove its Attachments from any pole or poles of FPL and shall

give FPL written notice, in the form of Exhibit C, of actual removal within fifteen (15) working days after removal. Licensee shall exercise care and take precautions to avoid damage to the FPL Facilities and to the attachments of others and shall immediately report any damage to FPL and to the owners of the damaged facilities.

- 5.2 Unauthorized Attachment. Upon notice that the use of an FPL pole is forbidden or unauthorized by state, county, or municipal authorities or upon any final administrative or judicial decision that Licensee has no right to attach to any FPL pole without consent of the real property owner, the permit covering the use of the FPL pole shall immediately terminate and Licensee shall remove all of its cables, wires, and associated support hardware from the affected FPL pole. Licensee shall hold harmless, defend and indemnify FPL against all liabilities arising from or associated with Licensee's failure to obtain the necessary permits, if any, from the owner of the real property or government authorities. The termination rights under this Agreement shall not be affected by this Section.
- 5.3 Licensee's Expense. All removals of the System from FPL poles shall be at the sole expense of the Licensee. Any corrections or Rearrangement required by FPL or others as a result of the Licensee's removal shall be at the sole expense of the Licensee.
- 5.4 Abandonment. Subject to the condition in Article IV, 4.4 (b) above, if FPL desires, or, at any time is required to abandon any pole(s), it shall give the Licensee notice in writing of its intent to do so at least thirty (30) days prior to the date on which it intends to abandon such pole(s). If at the expiration of such period, or upon removal of FPL's Facilities, whichever occurs later, the Licensee shall not have removed all of its Attachments therefrom, such pole(s) shall then become the property of the Licensee, and the Licensee shall: (i) indemnify and save harmless FPL from all obligation, liability, damages, costs, expenses or charges incurred thereafter arising from the presence or condition of such pole(s), or any Attachment(s) thereon; and (ii) pay FPL a sum equal to the then "value in place", adjusted for the cost of removal and salvage, of such abandoned pole(s), or shall pay such other equitable sum as may be agreed upon in writing between the parties.

ARTICLE VI - RESERVATION OF RIGHTS,  
LIMITATION OF LIABILITY AND INSURANCE

- 6.1 Reservation of Rights and Release by the Licensee. FPL reserves to itself, its successors and assigns, the right to maintain its poles and to operate its Facilities thereon in

such manner as will best enable it to fulfill its own service requirements and in accordance with the NESC and any applicable amendments, revisions or subsequent editions to said Code and such specifications particularly applying to FPL hereinbefore referred to. FPL shall not be liable to the Licensee for any interruption to service of Licensee or for interference with the operation of the cables, wires and appliances of the Licensee arising in any manner out of the use of FPL's poles by the Licensee, FPL, or others. The Licensee hereby releases and waives all rights against FPL for such interruptions or interference, whether same are due to or caused by the negligence of FPL.

6.2 Indemnification of FPL. Licensee shall exercise its privileges hereunder at its own sole risk and in consideration of this Agreement shall release, indemnify, protect, defend and save harmless FPL, its parent, subsidiaries, affiliates and their respective officers, directors, agents and employees (FPL Entities) from and against any and all claims and demands whatsoever including court costs and attorney's fees by reason of damage to property and injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused, in whole or in part, by Licensee's or FPL's negligence resulting in connection with or by the erection, maintenance, presence, use, transfer or removal of Attachments or the proximity of the respective cables, wires, apparatuses and appliances of the parties.

6.3 Insurance.

a. Type. Licensee prior to exercise of its rights under this Agreement shall procure and maintain through the term of this Agreement insurance which shall be amended or endorsed to include FPL, its parent, subsidiaries and affiliates and their respective officers, directors and employees as Additional Named Insureds to protect them against any and all claims, demands, actions, judgments, cost, expenses and liabilities of every nature, including attorney fees, which may result directly or indirectly under the terms of the above indemnification. The limit applying to this Agreement shall equal the highest limit applicable to any other exposure covered under the policy. The policy(ies) shall be endorsed to be primary to any insurance maintained by FPL, its parent, subsidiaries or affiliates. As a minimum, the coverages shall include the following:

i. Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and

Harbor Workers' Act, the Federal Employers' Liability Act and Jones Act. Employers' Liability Insurance shall be provided with a limit of five hundred thousand dollars (\$500,000) per accident.

- ii. Comprehensive General Liability Insurance, including Broad Form Contractual Liability, with the following minimum limits of liability; Bodily Injury Liability and Property Damage Liability - One million dollars (\$1,000,000) combined single limit and three million dollars (\$3,000,000) occurrence aggregate.
  - iii. Comprehensive Automobile Liability Insurance with the following limits of liability, which shall apply to all owned, non-owned, leased and hired automobiles used by Licensee in the performance of the Work: Bodily Injury Liability and Property Damage Liability - one million dollars (\$1,000,000) combined single limit and three million dollars (\$3,000,000) occurrence aggregate.
- b. Duration. In the event that any policy furnished by Licensee provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of this Agreement. Furthermore, for all policies furnished on a "claims made basis," Licensee's providing of such 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; if coverage is on an "occurrence" basis, such insurance shall be maintained by Licensee during the entire term of this Agreement.
- c. Form. Licensee shall procure and maintain at its own expense, the above minimum insurance coverage and shall provide evidence of the minimum insurance coverage by providing an ACORD or other Certificate of Insurance on forms and with insurance companies acceptable to the Risk Management Department of Florida Power & Light Company, before any work under the contract begins.
- d. Self-Insurance. Notwithstanding the foregoing, Licensee at its option may self-insure the above liability after providing FPL with a written statement that Licensee intends to self-insure, together with a letter of assets, financial statements and/or any other documentation reasonably necessary to satisfy FPL that Licensee has the financial capability to self-insure.

- 6.4 Contractor Indemnification. The Licensee further agrees to include the following indemnification in all contracts with contractors who perform construction or maintenance work on or around the subject Facilities:

"The Contractor hereby agrees to release, indemnify, defend, save and hold harmless \_\_\_\_\_

and Florida Power & Light Company, its parent, subsidiaries, affiliates or their respective officers, directors, or employees, (hereinafter referred to as the "Company") and other owners of equipment attached to the pole, from all claims, demands, liabilities and suits whether or not due to or caused by negligence of \_\_\_\_\_

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 one million dollars (\$1,000,000.00) for bodily injury or death of person(s) or property damage for any one occurrence. In the event Contractor is insured for liability with limits in excess of one million dollars (\$1,000,000.00) for injuries to or death of person(s) or damage to property arising out of a single occurrence, Contractor's said obligation shall extend up to but shall not exceed the limits of that insurance."

- 6.5 Contractor Insurance. The Licensee agrees to require its Contractors to obtain insurance to cover the above indemnity and to designate FPL as an additional named insured and to endorse the policy to be primary to any insurance obtained by FPL, its parent, subsidiaries or affiliates. The Licensee further agrees to verify with its Contractors that such insurance is in full force and effect.

#### ARTICLE VII - MISCELLANEOUS PROVISIONS

- 7.1 Breach. If the Licensee fails to comply with any of the provisions of this Agreement or defaults in any of its obligations under this Agreement, including but not limited to safety, violation of the NESC or FPL requirements, and failure to pay, and fails within thirty (30) days after written notice from FPL (or immediately upon notice of a safety violation) to correct such default or non-compliance, FPL may at its option terminate this Agreement in whole or part.
- 7.2 Non-waiver. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

- 7.3 Term. FPL reserves the right to terminate this Agreement at any time, upon thirty (30) days written notice to the Licensee. Individual permits issued under this Agreement may automatically expire as provided in Exhibit A attached hereto.
- 7.4 Non-exclusive Right. Nothing in this Agreement shall be construed to confer on the Licensee an exclusive right to make Attachments to FPL's poles in the area covered by this Agreement and any supplement thereto, and it is expressly understood that FPL has the unconditional right to permit any other person, firm or corporation to make Attachments to the same poles, other than any poles abandoned by FPL and purchased by Licensee, in the area covered in this Agreement and supplements thereto.
- 7.5 No Property Right. No use, however extended, of FPL's poles, under this Agreement, shall create or vest in the Licensee any ownership or property rights in said poles, but the Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel FPL to maintain any of said poles for a period longer than demanded by FPL's own service requirements. FPL reserves the right to deny the licensing of any poles to the Licensee if FPL determines such attachment will interfere with the integrity of FPL's system or service requirements, including considerations of economy and safety.
- 7.6 Assignment. The Licensee shall not assign or transfer the privileges hereby granted without the prior written consent of FPL which consent shall not be unreasonably withheld. Nothing contained herein shall prevent Licensee from assigning its rights and obligations to an affiliate, subsidiary or parent company upon reasonable notice to FPL.
- 7.7 Successors and Assigns. Subject to the provisions of Articles VII.7.5 and 7.6 above, this Agreement shall extend to and bind the successors and assigns of the parties hereto.
- 7.8 Notice under this Agreement. All notices, communications and deliveries required or permitted under this Agreement shall be in writing and shall be delivered personally, sent by facsimile transmission with facsimile transmitted confirmation of receipt, sent by overnight commercial air courier (such as Federal Express), or mailed, certified or registered, postage prepaid, return receipt requested, to the parties at the addresses or facsimile numbers hereinafter set forth:

To the Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To FPL:

Dennis M. LaBelle, Principal Engineer  
Distribution Engineering & Operations  
Florida Power & Light Company  
400 S.W. Second Avenue  
Miami, Florida 33131  
Facsimile: (305)347-7213

7.9 Validity. Should any part of any paragraph or 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 paragraph or provisions shall not be impaired.

IN WITNESS WHEREOF, the Parties have caused these presents to be duly executed the day and year first above written.

LICENSOR:  
FLORIDA POWER & LIGHT COMPANY

By 

Print Name: Dennis M. LaBelle

Title: Principal Engineer

LICENSEE: 

By 

Print Name: 

Title: 

Attest:  (Seal)



EXHIBIT A

**THIRD PARTY ATTACHMENT APPLICATION AND PERMIT**

\_\_\_\_\_  
Licensee's Name

TYPE OF APPLICATION  
( Check One )

Make-Ready

Non Make-Ready

\_\_\_\_\_, 19\_\_\_\_  
Date submitted

\_\_\_\_\_, 19\_\_\_\_  
Date received by FPL

**I. APPLICATION**

In accordance with the terms of Agreement dated \_\_\_\_\_, 19\_\_\_\_, application is hereby made for permit to make attachment to the following poles.

Location City: \_\_\_\_\_ County: \_\_\_\_\_ Florida

Pole Numbers \_\_\_\_\_ Pole Locations ( Indicate which poles require Make-Ready work ) \_\_\_\_\_

I certify that the attachments shall be in compliance with the latest edition of the National Electric Safety Code and FPL requirements.

Licensee: \_\_\_\_\_

By: \_\_\_\_\_

NAME (PRINT)

SIGNATURE

TITLE

**II. PERMIT**

Estimated Make-Ready Cost

Permit Granted \_\_\_\_\_, 19\_\_\_\_  
(Subject to your approval of Make-Ready Cost)

\$ \_\_\_\_\_ payable in advance.

Permit Denied \_\_\_\_\_, 19\_\_\_\_

Permit Number \_\_\_\_\_

Total Previous Poles \_\_\_\_\_

**FLORIDA POWER & LIGHT COMPANY**

Poles this Permit \_\_\_\_\_

By: \_\_\_\_\_

New Total Poles \_\_\_\_\_

Title: \_\_\_\_\_

**III. GENERAL CONDITIONS**

1. A "Make-Ready" permit will automatically expire if attachments are not made and completed within 60 days after notification in writing to Licensee by FPL that Make-Ready work has been completed.
2. A "Non Make-Ready" permit will automatically expire if attachments are not made and completed within 60 days after date of approval and is subject to field conditions and facilities on each pole at the time attachment is made. Licensee shall be required to bear any and all "Make-Ready" cost necessitated by previous attachments.
3. If permit is granted under Section II above, this permit automatically expires, as to the affected poles 30 days after written notice to Licensee that FPL intends to abandon a particular pole line. Within 30 days after such notice, Licensee shall either remove its Attachments from those poles or obtain all necessary permits and easements and, at the discretion of FPL, arrange to purchase such poles from FPL.

( OVER )

## EXHIBIT B NOTIFICATION OF ATTACHMENT/REMOVAL

\_\_\_\_\_   
 Attachee Name

Attachment

Removal

In accordance with the terms of Attachment Agreement dated \_\_\_\_\_, 19\_\_\_\_ please (add to) or (delete from) your records the following poles to which (attachments) or (removals) were made during this calendar month.

### Location

City \_\_\_\_\_, County \_\_\_\_\_, Florida

Pole Numbers	Date Added	Date Deleted	Permit Number	Pole Locations

### Total Attachment this Notice:

Added \_\_\_\_\_

Removed \_\_\_\_\_

Total Previous Attachments \_\_\_\_\_

Total Attachments To Date \_\_\_\_\_

Licensee: \_\_\_\_\_

By: \_\_\_\_\_   
 Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**Florida Power & Light Company**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date Received \_\_\_\_\_, 19\_\_\_\_

Notice Number: \_\_\_\_\_

# Attachment Criteria

## NON JOINT USE POLE

(no telephony)

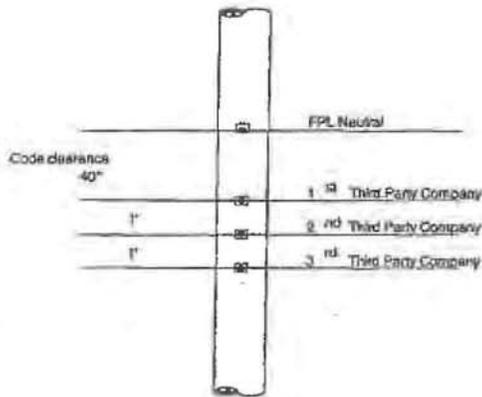


FIG. 1

1. The 1<sup>st</sup> cable attachment will be located a minimum of 40" below FPL's lowest cable attachment.
2. All additional cable attachments will be located 1" below the lowest existing Third Party cable.

## JOINT USE POLE

(power & telephony)

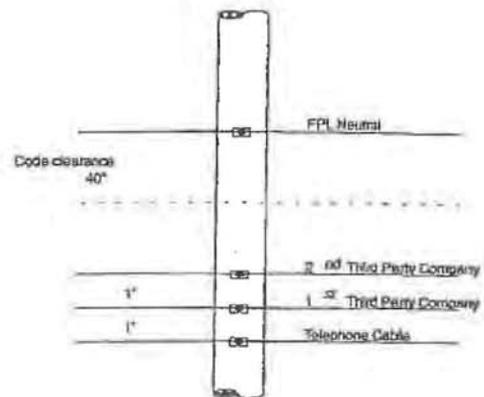


FIG. 2

1. The 1<sup>st</sup> cable attachment will be located 1" above existing joint users' highest cable attachment.
2. The 2<sup>nd</sup> cable attachment will be located 1" above the existing Third Party's cable attachment.

NOTE: No CATV cable or attachment will intrude on the 40" NESC code clearance space.

# Third Party Space Allocation

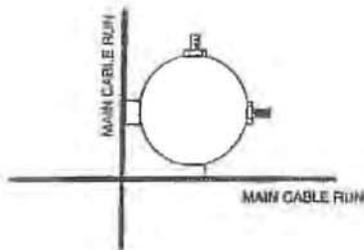


FIG. 3

## POLE ATTACHMENT LOCATION

1. All main cable attachments shall be located either on the same side of the pole as FPL's neutral or on the adjacent side.
2. No main line cable attachments shall be located on the side of the pole opposite of FPL's neutral.
3. Only 2 sides of the pole, FPL's neutral and one adjacent side, shall be occupied on any given pole.

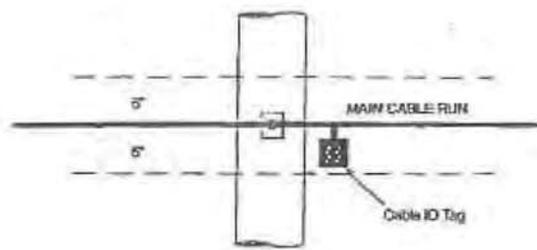


FIG. 4

## CABLE IDENTIFICATION TAG

1. Each separate Third Party cable attachment shall be identified in accordance with the FCC's Foreign Attachment Guidelines specifications.
2. Each Third Party company shall register their unique Cable ID tag with the FCC's Joint Use Subcommittee.
3. A Cable ID Tag will be installed at every 1st, 5th and last remaining pole attachment.
4. Cable ID Tag can be attached either to the cable or the attachment hardware.

# **Reply Exhibit 4**

PUBLIC VERSION

ATTACHMENT AGREEMENT  
BETWEEN  
FLORIDA POWER & LIGHT COMPANY  
And



TABLE OF CONTENTS

ARTICLE I - DEFINITIONS ..... 1

1.1 Attachment ..... 1

1.2 Betterment..... 2

1.3 Facility or Facilities ..... 2

1.4 Intermediate Pole Attachment..... 2

1.5 Licensee..... 2

1.6 Make-Ready Work..... 2

1.7 Pole.....3

1.8 Pole Capacity ..... 3

1.9 Rearrangement ..... 3

1.10 System or Licensee's System..... 3

1.11 Transfer..... 3

1.12 Transmission Tower ..... 3

1.13 Unauthorized Attachment ..... 3

ARTICLE II - RIGHT TO ATTACH..... 4

2.1 Permission to Attach to FPL Distribution Poles. .... 4

2.2 Permission to Attach to FPL Towers and Transmission Poles ..... 4

2.3 Inspection..... 5

2.4 Reservation of Distribution Pole Space by Florida Power & Light Company ..... 5

2.5 Reservation of Distribution Pole Capacity by Florida Power & Light Company ..... 6

2.6 Florida Power & Light Company Permit ..... 6



PUBLIC VERSION

ARTICLE III - ATTACHMENT AND MAINTENANCE ..... 7

3.1 Standards for Attachments of OPGW and Wirelines to Transmissions Poles ..... 7

3.2 Attachments to Distribution Poles and Transmission Poles with Distribution Underbuilt ..... 7

3.3 Licensee's Duty to Warn..... 7

3.4 Standards for Attachments to Distribution Poles and Transmission Poles with Distribution Underbuilt ..... 7

3.5 Rearrangement, Transfer and Intermediate Pole Attachment of Licensee's System on Distribution Poles and Transmission Poles with Distribution Underbuilt. .... 9

3.6 Rearrangement, Transfer and Intermediate Pole Attachment of Licensee's System on Transmission Towers and Poles without Distribution Underbuilt. .... 10

3.7 Licensee's Permits ..... 11

ARTICLE IV - MAKE-READY COSTS, ATTACHMENT AND OTHER FEES AND BILLING ..... 11

4.1 Make-Ready Costs for New Attachments ..... 11

4.2 Attachment Fees ..... 12

4.3 Transfer and Intermediate Pole Attachment Fees ..... 13

4.4 Rearrangement at Licensee's Cost For Distribution and Transmission Poles with Distribution Underbuilt..... 14

4.5 Rearrangement at Licensee's Cost For Towers and Transmission Poles without Distribution Underbuilt..... 14

4.6 Billing ..... 14

4.7 Payment and Late Charges..... 15

4.8 Effect of Non-Payment..... 15

ARTICLE V - REMOVAL ..... 16

5.1 Notice by Licensee ..... 16

5.2 Immediate Removal..... 16



PUBLIC VERSION

5.3 Licensee's Expense..... 16

5.4 Abandonment..... 16

ARTICLE VI - RESERVATION OF RIGHTS, LIMITATION OF LIABILITY AND INSURANCE ..... 17

6.1 Reservation of Rights and Release by the Licensee ..... 17

6.2 No Consequential Damages ..... 17

6.3 Indemnification of FPL ..... 17

6.4 Insurance. .... 18

6.5 Contractor Indemnification..... 19

6.6 Contractor Insurance..... 20

ARTICLE VII - MISCELLANEOUS PROVISIONS ..... 20

7.1 Breach..... 20

7.2 Non-waiver..... 20

7.3 Term..... 20

7.4 Non-exclusive Right..... 20

7.5 No Property Right ..... 21

7.6 Assignment..... 21

7.7 Notice under this Agreement..... 21

7.8 Severability..... 22

7.9 Applicable Law ..... 22

Exhibit A Identification of Attachments Existing as of the Date of this Agreement

Exhibit B Attachment Application and Permit

Exhibit C Notification of Attachment/Removal



ATTACHMENT AGREEMENT BETWEEN  
FLORIDA POWER & LIGHT COMPANY and  
[REDACTED]

THIS AGREEMENT, effective this 1st day of January, 2000, between **FLORIDA POWER & LIGHT COMPANY**, a corporation organized and existing under the laws of Florida with a main office at 9250 West Flagler Street, Miami, Florida 33174 (hereinafter referred to as "FPL") and [REDACTED] a limited liability company with an address of [REDACTED] (hereinafter referred to as "Licensee")

WITNESSETH:

WHEREAS the Licensee owns fiber optic fibers (hereinafter referred to "Licensee's Fibers") within certain FPL overhead ground wire ("OPGW") and owns all-dielectric self-supporting cable or other wirelines used for telecommunications ("Licensee's Wirelines"), collectively referred to as "Licensee's System"; and

WHEREAS FPL is willing to permit, to the extent it may lawfully do so, the attachment of Licensee's System to FPL's Poles or Towers as set forth below and where, in FPL's judgment, such use will not interfere with FPL's own system integrity or service requirements, including considerations of economy and safety; and

WHEREAS FPL and Licensee desire that Licensee fairly compensate FPL for attachment of FPL OPGW containing Licensee's Fibers to FPL electric Poles or Towers and desire to set terms and conditions for attachment of Licensee's Wirelines to FPL Poles or Towers;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties covenant and agree as follows:

ARTICLE I - DEFINITIONS

- 1.1 Attachment is the physical attachment of the Licensee's System consisting of the Licensee's Fibers within the FPL OPGW by means of the FPL OPGW attachment or Licensee's Wirelines and the supporting hardware required to attach the Licensee's System to the FPL Pole or Tower. Any cable or wire overlashed by a [REDACTED]

third party to Licensee's Wireline attachment to a third party's attachment is considered a separate attachment to that same Pole. No overlashing of the OPGW or overhead ground wire ("OPGW") is permitted. All other equipment and hardware required to operate Licensee's System are excluded from this Agreement and will not be allowed on FPL Poles.

- 1.2 Betterment is any increase in service capacity of the Replacement FPL Facilities over the service capacity of the FPL Facilities prior to Rearrangement which is not attributable to Licensee's construction, and any upgrading of a Replacement FPL Facility above FPL's current minimum standard design and construction practices that normally would be used on projects financed solely by FPL. Betterment does not include: (a) any increase in service capacity required by federal, state or local law which applies to FPL Facilities as of the date of construction of the Replacement FPL Facilities; (b) any increase in service capacity resulting solely from the replacement of devices or materials which at the time of construction of the Replacement FPL Facility are no longer manufactured, processed, or installed and used by FPL in projects financed entirely by FPL, (c) any upgrading of a Replacement FPL Facility requested by the Licensee, (d) any upgrading of a Replacement FPL Facility required by any agency responsible for regulation of FPL Facilities, (e) any upgrading of the Replacement FPL Facility which is necessitated by the Licensee's construction, if the replacement is the same as that used by FPL on FPL's own projects, or (f) any upgrading that will result in a reduction in the overall project cost.
- 1.3 Facility or Facilities is wireline equipment used by FPL in the distribution or transmission of electric power, including, but not limited to, Poles, Towers, wires, cables or other appurtenances, and associated equipment.
- 1.4 Intermediate Pole Attachment is the initial Attachment of Licensee's System to a new intermediate Pole installed by FPL within an existing Pole line in order to accommodate the service requirements of FPL or other Joint Users or licensees.
- 1.5 Licensee is FPL FiberNet, LLC and is a telecommunications company certified by the Florida Public Service Commission.
- 1.6 Make-Ready Work is the work associated with the Rearrangement or replacement of FPL Facilities and the facilities of other licensees or licensees attached pursuant to a joint use agreement (hereinafter "Joint Users") to the FPL Facilities that is required for the attachment of the System on the FPL Facilities in compliance with the National Electrical Safety Code ("NESC") and additional requirements of FPL.

## PUBLIC VERSION

This work includes but is not limited to inspections, engineering and drafting time, permits and construction.

- 1.7 Pole is a long slender, usually cylindrical, piece of wood, concrete or steel, connected to, or part of, a single foundation embedded in the ground that serves as a single structural member supporting the FPL electric wirelines.
- 1.8 Pole Capacity is the maximum allowable stress, strain or force the Pole can be subjected to, as determined by FPL's standards and the guidelines within the National Electrical Safety Code ("NESC").
- 1.9 Rearrangement is any activity or work, after the initial Make-Ready Work, which is necessary when there is a change in the FPL Facilities or FPL service requirements or to ensure that Licensee's Attachments do not adversely affect FPL's Facilities or service or that of Joint Users. "Rearrangement" includes but is not limited to transfer, relocation, adjustment, modification, conversion, permanent or temporary support, protection, design or redesign, abandonment, and removal or reconstruction of Licensee's System.
- 1.10 System or Licensee's System is Licensee's fiber optical fibers within the FPL OPGW and Licensee's all-dielectric self-supporting cable or other wirelines and supporting hardware which Licensee desires to attach to the FPL Poles or Towers.
- 1.11 Transfer is one activity included within the term Rearrangement and is associated only with Pole or Tower replacements. Transfer is limited to the work of removing the Licensee's System from the FPL Pole or Tower and re-attaching the System to a replacement FPL Pole or Tower within the existing FPL Pole alignment at the same time that FPL transfers or relocates FPL Facilities from one FPL Pole or Tower to another.
- 1.12 Transmission Tower is an FPL structure, supporting one or more of FPL's electric transmission lines, which is constructed of multiple wood, concrete or steel structural members that are attached to or are a part of multiple foundations embedded in the ground.
- 1.13 Unauthorized Attachment is an Attachment to an FPL Pole or Tower without notification of Attachment or FPL's authorization. For purposes of payment of the Unauthorized Attachment Fee, an Unauthorized Attachment shall be deemed to have been made on the effective date of this Agreement or the date of the last

survey, whichever is later. Nothing within this definition shall be interpreted as permitting continued Attachment of an Unauthorized Attachment.

ARTICLE II - RIGHT TO ATTACH

- 2.1 Permission to Attach to FPL Distribution Poles.
- a. Distribution Poles. The Licensee may attach its System to existing or future FPL distribution Poles. The Licensee may not attach its System to FPL distribution Poles which are used for street lighting purposes.
  - b. Tension Limit. No Attachment will be permitted which results in more than 200 lbs. of ungyed tension on any given FPL distribution Pole.
  - c. Pole Height Limit. No Attachment will be permitted which requires FPL to install a new distribution Pole over forty-five feet (45') and FPL will not perform Make-Ready Work for the purpose of installing such a Pole. Provided however, Licensee may apply for a permit to attach to an FPL distribution Pole which is over forty-five feet (45') in height if such Pole was installed to meet FPL's own service requirements.
- 2.2 Permission to Attach to FPL Towers and Transmission Poles.
- a. Attachment. The Licensee may attach Licensee's System to existing or future FPL Poles or Towers as set forth herein; provided however, Licensee shall not perform any work on Licensee's System which is attached to FPL Towers or transmission Poles without distribution underbuilt. All such work, including Attachments, maintenance, Rearrangement or Removal of Licensee's System shall be performed by FPL at Licensee's expense. FPL's responsibilities and compensation for performing attachment related work on Licensee's System shall be set forth in a separate service agreement.
  - b. OPGW. FPL shall own the OPGW containing Licensee's Fibers for all existing and future attachments of OPGW. FPL's OPGW containing Licensee's fibers may be attached to FPL's Transmission Towers or Poles only by FPL or by FPL contractors under the direction of FPL.
  - c. Wirelines. Licensee may attach its Wirelines to FPL Poles or Towers as provided herein. Wireline attachments to transmission Poles with

distribution underbuilt shall be permitted only in the communication space below distribution or in the Distribution Reserved Pole Space as defined in section 2.4 of this Agreement. In applying for such Attachments made after the date of this Agreement, Licensee shall follow the procedures in the FPL Permit Application Process Manual for Wireline Attachments to Transmission Towers or Poles. Attachments existing as of the date of this Agreement shall be deemed to be in compliance. Licensee's Attachments existing as of the date of this Agreement are identified in Exhibit A attached hereto.

- 2.3 Inspection. Prior to applying for permission to attach to any FPL distribution Pole or transmission Pole with distribution underbuilt, the Licensee shall inspect the Poles to which it wishes to attach and shall prepare a windloading study and calculations according to FPL requirements specified in FPL's Permit Application Process Manual, which may be modified from time to time to reflect current industry standards. If any FPL Pole requires modification or is inadequate to support Licensee's Attachments in accordance with the specifications in Article III below, the Licensee will request Make-Ready Work by indicating the necessary changes on Exhibit B. Attachments to other Transmission Towers or Poles will be handled as set forth in a separate service agreement between FPL and the Licensee.
- 2.4 Reservation of Distribution Pole Space by Florida Power & Light Company. FPL reserves the top eleven (11) feet of the distribution Pole for its Facilities. A Licensee may attach in that space under the following conditions. One, Licensee must acknowledge it is attaching in reserved space. Two, Licensee shall vacate said space within sixty (60) days when FPL notifies in writing that it is reclaiming the space. Three, if the Licensee requests FPL to increase the capacity of the Pole in order to stay attached, FPL, in the sole judgement of FPL, will determine if the increase is possible based on reasons of safety, reliability, generally applicable engineering purposes and FPL's ability to maintain the requested facility. Four, Licensee must notify FPL in time for construction to be completed within the above referenced sixty (60) day time period, pay FPL the Make-Ready Cost prior to construction and assume responsibility for reimbursing other Licensees forced to relocate or modify their facilities on the same pole. Five, if any facilities are not removed from the reserved space after sixty (60) days, FPL may, at its sole option, remove or relocate said facilities at the expense of the Licensee. Wireline attachments to transmission Poles with distribution underbuilt shall be permitted only in the communication space below distribution or in the Distribution Reserved Pole Space as defined above. Attachments to other Transmission