

RESOLUTION NO. 2020-130

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE ELECTRIC VEHICLE CHARGING STATION AGREEMENT BETWEEN THE CITY AND FLORIDA POWER & LIGHT COMPANY (FPL) PROVIDING FOR THE INSTALLATION AND MAINTENANCE OF ELECTRIC VEHICLE CHARGING STATIONS ON VARIOUS CITY PROPERTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Coconut Creek was approached by Florida Power & Light Company (hereinafter "FPL") to enhance City-owned property through the installation of Electric Vehicle charging stations (hereafter "EV" charging stations); and

WHEREAS, in keeping with its overall mission of sustainability and energy efficiency, the City desires to include the "conspicuous display of green" to charge electric vehicles on City-owned property; and

WHEREAS, the agreement, attached hereto and made a part hereof as "Exhibit 1," provides for use of EV charging stations at no cost to the City for a term of seven (7) years. The City is responsible for the cost of the electricity to power the chargers; and

WHEREAS, the City Commission finds and determines that the agreement with FPL serves the City's purposes and overall goals and will enhance the value of the City's property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution. The Electric Vehicle Charging Station Agreement, "Exhibit 1," attached hereto and incorporated herein, is made a specific part of this resolution.

Section 2: That the City Commission has reviewed and hereby approves the attached agreement between the City and FPL for EV charging stations and authorizes the City Manager, or designee, to execute the agreement.

Section 3: That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this resolution are hereby repealed to the extent of such conflict.

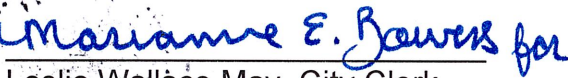
Section 4: That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.

Section 5: That this resolution shall be in full force and effect immediately upon its adoption.

Adopted this 25th day of June, 2020.


Louis Sarbone, Mayor

Attest:


Leslie Wallace May, City Clerk

Sarbone	<u>Aye</u>
Rydell	<u>Aye</u>
Tooley	<u>Aye</u>
Belvedere	<u>Aye</u>
Welch	<u>Aye</u>

ELECTRIC VEHICLE CHARGING EQUIPMENT AGREEMENT

This ELECTRIC VEHICLE CHARGING EQUIPMENT AGREEMENT ("Agreement") is made this ___ day of _____, 20___, by and between _____ ("Host"), with a location at _____ (the "Property") and Florida Power & Light Company, a Florida corporation ("Company"), with an address at 700 Universe Blvd CEA/JB, Juno Beach, FL, 33408. Host and Company are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Company desires to install and own electric vehicle charging and related equipment, including electrical power inverters, interconnection equipment, electrical wiring, underground conduit, wire and cable management systems, charging stations, electric meters, metering and switch cabinets, and power distribution boxes (the "Equipment") on the Property and Host desires to have the Equipment installed and agrees to permit Company to utilize the Property upon the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Use. During the Term, Host agrees that Company may use the Property for the purposes of, and has the sole right (at Company's cost and in Company's sole discretion) of, constructing, installing, operating, inspecting, maintaining, repairing, enlarging, modifying, removing (at any time), testing and replacing the Equipment and any additional equipment required to dispense electricity to charge electric vehicles, together with the following rights: (a) the right of ingress and egress 24 hours-a-day, 7 days a week; (b) the right, at Company's sole cost and expense, to paint/strip and to install signage (in either case, in a manner substantially similar to the form attached hereto as Exhibit B) on and around the Equipment; and (c) Company's quiet enjoyment of the Property needed for purposes of this Agreement shall not be disturbed. The location of the Equipment is as described in Exhibit A.

2. Term. Subject to this Section 2, the initial term of this Agreement shall terminate on the seventh (7th) anniversary of the date on which commissioning for the Equipment was completed (the "Initial Term"), and unless terminated earlier as herein provided, shall automatically renew on a year-to-year basis after the Initial Term until the tenth (10th) anniversary of the date on which commissioning for the Equipment was completed (each year, a "Renewal Term," and each Renewal Term together with the Initial Term, the "Term"). If either Party elects not to renew this Agreement for a Renewal Term, then such Party must give a written notice of termination to the other Party at least 90 days prior to the expiration of the then-current Initial Term or Renewal Term, as applicable. In the event such notice is delivered, no further automatic extensions shall occur and this Agreement shall terminate at the end of the then-existing Initial Term or Renewal Term, as applicable. The Company may terminate this Agreement at any time and for any reason by giving 30 days' prior written notice to Host.

3. Cooperation. In general, the Parties agree to cooperate to achieve the purposes and intent of this Agreement. Host shall cooperate as necessary with Company (at no cost to Host) in Company's efforts to obtain all permits, licenses and approvals necessary for the installation and operation of the Equipment. Company will not permit any lien against the Property arising from the installation or operation of the Equipment. Company shall (i) pay any personal property tax which is attributable to the Equipment, and (ii) be the sole recipient and beneficiary of any and all such federal and/or state tax credits, and other financial incentives arising from the installation and/or operation of the Equipment. If Company determines it to be necessary or desirable, the Company may record

a memorandum of agreement in the public records of the county in which the Property is located and Host shall sign such memorandum of agreement (if needed). The right to access and use of Host's electrical system(s) includes for purposes of powering Company's computer equipment used in monitoring the electricity dispensed from the Equipment and record system data to evaluate charging behavior. Host understands and acknowledges that Company and/or its contractors will gather data and information from the Equipment with respect to vehicle charging activity, vehicle usage and technical performance of the vehicle and Equipment. Company shall own all rights to such data and information. Host acknowledges that such data and information will be used and disclosed by Company and third parties for the purpose of understanding and evaluating the impact of electric vehicles on transit systems and the electric power grid, for use in regulatory reporting, industry forums, case studies or other similar activities, in accordance with applicable laws and regulations. The Host will share information requested by the Company (including, but not limited to, baseline data requests, electric vehicle information and user surveys).

4. Payment of Electricity. Host is responsible for paying all consumption costs for electricity dispensed from the Equipment at the rate paid by Host based on the Host's then-current Company-tariffed rate.

5. Charge for Use of Equipment. Host agrees that users of the Equipment will not be charged for using the Equipment.

6. Interference. During the Term, Host shall not interfere, or cause or permit to be caused any interference, with the Equipment. For purposes of this Agreement, "Interfere" and "Interference" shall mean interference with Company's use, operation, access, maintenance or repair of the Equipment including: (a) subject any portion of the Equipment to any lien or encumbrance unless the holder thereof delivers a non-disturbance agreement; and (b) sale, transfer, assignment, lease or sublease any portion of the Property other than subject to Host's rights hereunder.

7. Insurance. Each Party will maintain at all times during the Term, the following insurance: (a) commercial general liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage; (b) business automobile liability insurance with limits of One Million Dollars (\$1,000,000) for bodily injury and property damage; and (c) workers' compensation insurance in compliance with Florida statutes. Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum A.M.

Best financial rating of "A- VII". Each Party has the right to meet the insurance designated in this section through any combination of self-insurance, primary or excess coverage. If either Party elects to self-insure, then, promptly after the Effective Date of this Agreement, such Party shall deliver to the other Party a letter of self-insurance executed by a principal analyst or manager level employee. Each Party, for itself and its respective insurers, waives any right to assert any claim against the other Party to the extent such claim is covered by the waiving Party's insurance. Each Party shall waive all rights of subrogation of its respective insurers.

8. Indemnification. Each Party (the "Indemnifying Party") shall indemnify the other Party (the "Indemnified Party") from and against all losses, claims, damages or expenses, including attorneys' fees, incurred by the Indemnified Party in connection with any claims for personal injury or death to persons and damage to property (including environmental damage) arising under this Agreement during the Term, to the extent arising from the negligence or willful misconduct of the Indemnifying Party, its agents, employees, representatives, contractors, affiliates or sub-contractors. Subject to the next sentence, neither Company nor Host shall be liable to the other for consequential, special, exemplary, punitive, indirect or incidental losses or damages or for any loss of use, cost of capital, loss of goodwill, lost revenues or loss of profit, nor shall any parent, subsidiary, affiliate or employee of either Party have any liability under this Agreement, and Company and Host each hereby releases the other and each of such persons and entities from any such liability. The foregoing exclusion shall not be construed to limit recovery under any indemnity or defense obligation of Host under this Agreement related to third party claims. In no event shall the aggregate damages payable by a Party hereunder for any reason whatsoever exceed Three Hundred Thousand U.S. Dollars (\$300,000.00). Notwithstanding the foregoing, this Section 8 shall not be construed or interpreted as a waiver of Host's sovereign immunity and the limits established in Section 768.28, Florida Statutes. This section shall survive the expiration or earlier termination of this Agreement.

9. Equipment to Remain Personal Property of Company and Relocation of Equipment. The Equipment is and will remain the property of Company, its successors or assigns, regardless of its use or manner of attachment to the Property. Host agrees to execute such further documentation as is reasonably necessary to ensure that the Equipment does not constitute, and is not deemed to be, a fixture attached to the Property. During the Term, Host may request, in writing, that Company move the Equipment to another location on the Property. If Company approves such relocation, in its commercially reasonable discretion, Company shall, at the Host's cost and expense, relocate such Equipment on terms mutually agreed upon by the Parties.

10. Representations. Each Party represents and warrants to and covenants with the other Party that: (a) such Party has full right, power and authority to execute this Agreement and that this Agreement shall bind and benefit the Parties and their respective successors and assigns; and (b) such Party's execution and performance of this Agreement will not violate any laws, ordinances, covenants or other agreement binding on such Party. Additionally, Host represents and warrants to Company that it has good and unencumbered title to the Property either free and clear of any liens, mortgages or other encumbrances, or if any lien, mortgage or other encumbrance exists, then such lien, mortgage or other encumbrance

(or any environmental restriction) will not prevent the performance of this Agreement or burden or encumber the Equipment.

11. Default. An "Event of Default" means that a Party fails to fully perform any of its covenants under this Agreement within sixty (60) calendar days after such defaulting Party receives written notice of such default from the non-defaulting Party; provided, however, if such default cannot reasonably be cured within such sixty (60) day time period, defaulting Party shall not be deemed in default hereunder if defaulting Party has commenced to cure such default within said sixty (60) day time period and thereafter continues with diligence to complete the cure of such default.

12. Remedies. Upon an Event of Default as set forth in Section 11, non-defaulting Party may (i) perform, or cause to be performed, on behalf and at the expense of defaulting Party, any or all of the undertakings or obligations as to which defaulting Party remains in default, in which event defaulting Party will reimburse non-defaulting Party for such actual reasonable costs and expenses, within forty-five (45) days following receipt of invoice and supporting documentation; (ii) exercise any remedy that such non-defaulting Party may have at law or in equity and (iii) terminate this Agreement upon 30 days' prior written notice if the defaulting Party has not cured such default by the expiration of such 30-day period. Notwithstanding the preceding sentence, Host may not perform any right or obligation of Company under Section 1 or take any other action that relocates or physically alters any of the Equipment.

13. Assignment. Neither Party shall assign this Agreement or any interest herein without the prior written consent of the other Party; provided, that the Parties acknowledge that the Equipment may be covered by Company's utility financing structure.

14. Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying Party, or officer, agent or attorney of the notifying Party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or by overnight express mail, or on the third (3rd) business day after posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Host: To the address set forth in the Preamble above.

To Company: To the VP of Development at the address set forth in the Preamble above with an e-mail copy to FPLEvolution@fpi.com.

15. No Guarantees or Warranties. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE PARTIES ACKNOWLEDGE THAT COMPANY IS NOT PROVIDING ANY GUARANTEES (INCLUDING GUARANTEES OF PERFORMANCE) OR WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), UNDER THIS AGREEMENT.

16. Additional Equipment. In the event Host desires to have installed on the Property any additional electric vehicle charging and related equipment, the Host shall notify Company, in writing, of such desire and Company shall, within 30 days after the receipt of such notice, notify the Host in writing of the terms and conditions pursuant to which Company is willing to so install such additional equipment. If the Parties cannot agree on the terms and conditions for installing such additional equipment within 60 days after the Host's receipt of Company's terms and conditions, then the Host may engage a third-party to so install such additional equipment; provided, however, the Host shall use commercially reasonable efforts to share (or cause such third party to share) data and information from such additional equipment with respect to vehicle charging activity, vehicle usage and technical performance of the vehicle and such additional equipment.

17. Removal or Sale at End of Term. Within ninety (90) days after the expiration of the Term, Company shall, in its sole discretion, either (a) remove all charging stations installed by Company at the at the Property under this Agreement or (b) agree to sell such charging stations to Host on terms and conditions mutually agreed upon by the Parties.

18. Miscellaneous.

(a) **Compliance with Laws.** Each Party shall perform its obligations under this Agreement in accordance with all applicable codes, laws, rules, regulations, orders and ordinances of federal, state, regional, local and municipal governmental agencies.

(b) **Amendment.** No modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a Party unless in writing signed by that Party.

(c) **Governing Law; Waiver of Jury Trial.** This Agreement shall be subject to and governed by the laws of the State of Florida, without regard to its conflict of laws principles. The Parties agree that any action or proceeding arising out of or related in any way to this Agreement shall be brought solely in a court of competent jurisdiction in the State of Florida. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(d) **Severability; Counterparts, Publicity.** Should any provision of this Agreement be held, in a final and un-appealable decision, to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling. This Agreement may be executed in counterparts, which together shall constitute a single instrument. Neither Party shall issue any press release or otherwise publicize the existence or the terms

of this Agreement without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed; provided that general advertising that refers to a "partnering" (or other terminology of similar import) of either Party with the other Party for the purposes of any of the transactions contemplated hereby, but does not expressly reference this Agreement or disclose any of the terms hereof, shall not be subject to the provisions of this subsection. Filings required by applicable law for any regulatory authority shall, by itself, not be deemed to violate the preceding sentence.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

Host: City of Coconut Creek By: <u>Karen M Brooks</u> Name: Karen M. Brooks Title: City Manager ATTEST: <u>Marianne E. Bowers</u> Leslie Wallace May, City Clerk	Company (Florida Power & Light Company): By: _____ Name: Pam Rauch Title: Vice President, External Affairs and Economic Development
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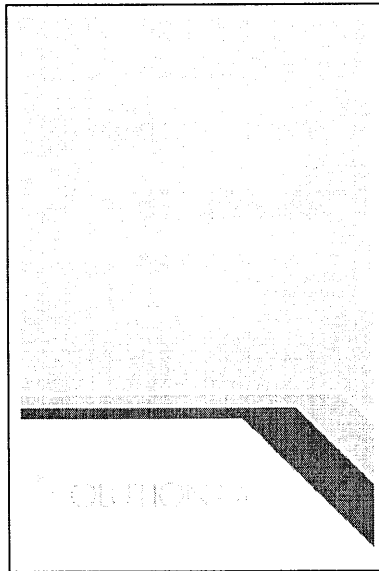
Marianne E. Bowers, Deputy City Clerk
 Approved as to Legal Form:
Terrill C. Pyburn
 Terrill C. Pyburn, City Attorney

Exhibit A-- Location of Equipment

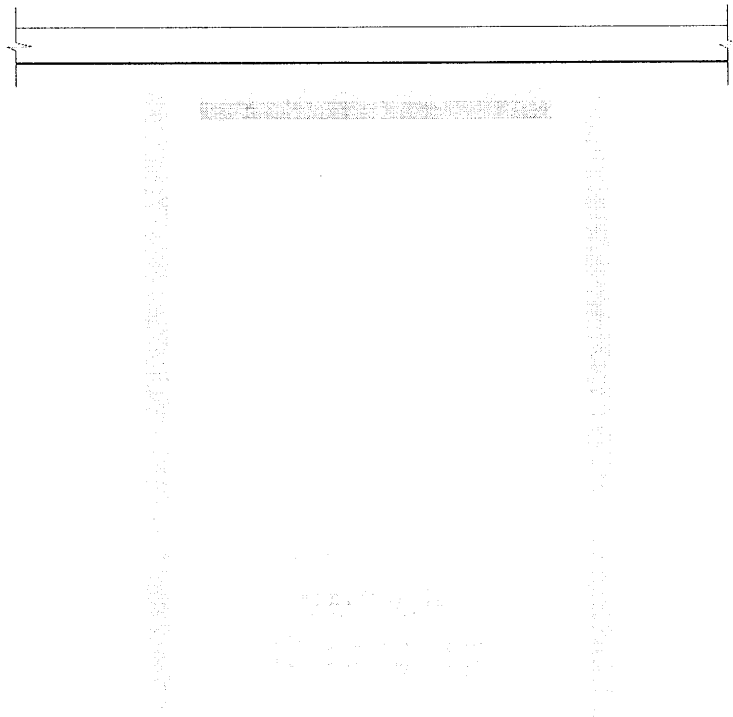
Property Address: [_____].

Number of Spaces: Up to [___] spaces.

Exhibit B—Form of Signage



Parking Stall Signage (~12" x ~18")



Parking Stall Striping