

**MEMORANDUM OF AGREEMENT BETWEEN BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA AND
FLORIDA POWER & LIGHT COMPANY FOR RELOCATION OF FLORIDA POWER &
LIGHT COMPANY'S ELECTRICAL TRANSMISSION RIGHT-OF-WAY CORRIDOR
LOCATED IN OR ADJACENT TO THE EVERGLADES NATIONAL PARK
EXPANSION AREA**

This Memorandum of Agreement ("**Agreement**") is entered into by and between Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("**TIITF**"), an agency of the State of Florida, acting through the State of Florida Department of Environmental Protection ("**DEP**") and Florida Power & Light Company, a Florida corporation (hereinafter "**FPL**"), to relocate a portion of an existing FPL electrical transmission right-of-way corridor for the benefit of Everglades National Park ("**ENP**") and the Comprehensive Everglades Restoration Program ("**CERP**") and Modified Waters Delivery Project. TIITF and FPL are sometimes individually referred to herein as a "**Party**", and collectively as the "**Parties**".

I. Recitals

- 1.1 The Everglades National Park Protection and Expansion Act of 1989, 16 U.S.C. § 410r-5 *et seq.* expanded the boundaries of the ENP to include approximately 109,600 acres south of the Tamiami Trail, and through that Act and additional legislation authorized the United States (i.e., National Park Service, the "**NPS**") to acquire lands within the designated area ("**ENP Expansion Area**"). The purposes of the expansion of ENP include the preservation of the outstanding natural features of ENP, enhancement and restoration of the ecological values, natural hydrologic conditions, and public enjoyment of such area by adding the area commonly known as the Northeast Shark River Slough and the East Everglades, and assurance that the park can maintain the natural abundance, diversity, and ecological integrity of the ecosystem. NPS and the United States Army Corps of Engineers ("**ACOE**") are further authorized by 16 U.S.C. § 410r-8 to acquire lands in addition to the designated 109,600 acres for the purposes of the construction of Modified Water Deliveries to ENP.
- 1.2 FPL is a utility in the State of Florida and responsible for supplying safe, reliable electrical power to the citizens of Florida. It owns, and has owned since the 1960's and early 1970's, a 330' to 370' wide right-of-way corridor of property through what has become the ENP Expansion Area, and in additional areas authorized for acquisition by NPS and ACOE (collectively, the "**FPL Property**"). The FPL Property is approximately 7.4 miles in length approximating 320 acres.
- 1.3 FPL asserts that the FPL Property is a vital portion of a contiguous forty (40) mile corridor essential for the placement of critical infrastructure necessary for the transmission of high voltage electrical power for the benefit of the citizens of South Florida ("**FPL Corridor**").

- 1.4 NPS asserts that utilization of the present FPL Property for an electrical transmission corridor which would bisect a portion of the ENP Expansion Area may be contrary to the intended purposes of the ENP Expansion Area.
- 1.5 NPS, FPL, TIITF and the South Florida Water Management District (“**SFWMD**”) have identified lands at the eastern edge of the ENP Expansion Area and on and adjacent to the SFWMD L-30/31N levee and levee right-of-way [collectively the “**Proposed Replacement Corridor**”], more suitable for a portion of the FPL Corridor from the perspective of avoidance, minimization and mitigation where the impacts of prospective construction, and operation of an electrical transmission corridor will be substantially less on ENP, including the ENP Expansion Area, and better facilitate ENP’s restoration as shown on the attached **Exhibit “A”** which is made a part hereof. This identification of lands suitable for the relocation of a portion of the FPL Corridor will include an assessment of relative environmental impacts associated with expected use of said lands for construction, operation and maintenance of an electrical transmission corridor.
- 1.6 In order to facilitate the implementation of the Modified Water Delivery Project, CERP and to assist ENP, TIITF and FPL have agreed to amend the legal description of FPL’s existing easement from TIITF north of Tamiami Trail that is recorded in Official Records Book 7600, Page 850, Public Records of Miami-Dade County, Florida (the “**FPL Easement**”), in order to relocate that portion of FPL Corridor north of Tamiami Trail to the area on and adjacent to the lands more commonly known as the L-30/31N levee right-of-way as shown on the attached **Exhibit “A”**. TIITF and FPL have also agreed to amend the FPL Easement to include additional TIITF lands in the FPL Easement that FPL requires for non-native vegetation and fire management that is a maximum of ninety (90) feet in width, and for FPL to access its new corridor as also shown on the attached **Exhibit “A”**. The TIITF lands that will be subject to the realigned electrical transmission right-of-way easement over, upon, across and adjacent to the L-30/31N levee right-of-way, the non-native vegetation and fire management easement and access easement are collectively referred to herein as the “**Replacement Lands**.” As part of an amendment to the FPL Easement, FPL will agree to release the TIITF lands currently subject to the FPL Easement from the encumbrance of the FPL Easement (“**Existing Lands**”).
- 1.7 Following DEP’s approval of the legal descriptions and surveys of the Replacement Lands , enactment of federal legislation ratifying the Contingent Agreement between FPL and the United States Department of the Interior and simultaneously with the NPS-FPL land exchange closing (unless such time is extended, in writing, by the Parties), TIITF will grant FPL the easement interests in the Replacement Lands that will become part of the FPL Easement subject to the terms and conditions of this Agreement and the Parties will execute an amendment to FPL Easement to add the Replacement Lands to the FPL Easement and to release the Existing Lands from the FPL Easement

(“**Amendment to FPL Easement**”). The Amendment to FPL Easement will be in substantially the form of the attached **Exhibit “B”** which is made a part hereof. FPL shall pay all costs associated with the recording of the Amendment to FPL Easement in the public records of Miami-Dade County, Florida. In addition, subject to TIITF’s approval at a regularly scheduled meeting, TIITF will release all exiting TIITF reservations, use restrictions, reverters and rights to construct improvements within the Proposed Replacement Corridor and other TIITF encumbrances that would prevent FPL from using the Replacement Lands for an electrical transmission corridor. Although subsection 18-2.020(5), Florida Administrative Code, provides that there shall be no consideration for the release of reserved interests for road rights-of-way or canal rights-of-way, it provides that consideration for the release of all other deed restrictions or reverters shall be based upon negotiation. As a result, FPL shall compensate TIITF for TIITF’s release of use restrictions and reverters as negotiated and mutually agreed upon by the Parties. In no event shall the compensation paid by FPL to TIITF for release of deed restrictions or reverters exceed the market value of the rights released by TIITF (which will be a percentage of the current market value of the underlying fee-owned property as determined by the appraisal). TIITF also agrees to work with FPL to secure a release or subordination of other governmental and private rights encumbering the Proposed Replacement Corridor.

- 1.8 The Parties recognize and intend that in addition to this Agreement and the FPL/NPS Contingent Agreement, a separate but complementary agreement may be negotiated and executed involving SFWMD, a state agency and ACOE.

II. Undertakings of the Parties

- 2.1 Subject to the provisions of Section 1.7 of this Agreement, and upon TIITF’s approval and the Parties’ execution of this Agreement, the Parties agree to execute the Amendment to FPL Easement.
- 2.2 Prior to the execution of the Amendment to FPL Easement (or termination of this Agreement by its terms), the Parties agree not to alienate, encumber, or otherwise effect a material change in the management of the Replacement Lands.
- 2.3 FPL and TIITF agree to support the terms of this Agreement. The Parties mutually agree that they will not seek to alter the terms of this Agreement, or pursue legislation which will have the effect of altering the terms of this Agreement, without first obtaining the concurrence of the other Party to this Agreement to any such alteration, and will keep the other Party to this Agreement fully and timely informed of any efforts in which they are involved or of which they are aware, individually or collectively, to make or obtain such alteration.

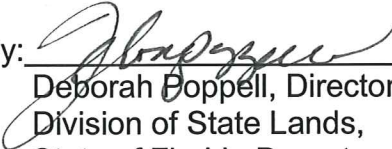
- 2.4 Notwithstanding any other provision of this Agreement, if the Congress enacts authorizing, ratifying or confirming legislation which amends or alters any of the terms of the FPL/NPS Contingent Agreement in the absence of specific written concurrence of FPL to such amendment or alteration, FPL shall have the right, within ninety (90) days of the enactment of such legislation, to terminate this Agreement without any further obligation hereunder by written notice delivered to TIITF, and neither Party shall have any further obligations to the other under this Agreement.
- 2.5 The obligations and rights of the Parties under this Agreement shall be effective and binding upon the Parties upon execution of this Agreement.
- 2.6 The Parties agree that appraisals will be secured in order to determine the appraised values of both the Existing Lands and the Replacement Lands. Appraiser selection for these appraisal services will be in accordance with Chapter 18-1, Florida Administrative Code. FPL shall pay the costs of the appraisal services. If the DEP approved appraised value of the Replacement Lands exceeds the DEP approved appraised value of the Existing Lands, it is understood and agreed that immediately upon the Parties' execution of the Amendment to the FPL Easement TIITF shall be compensated for the difference by FPL or its designee in a form of consideration that is acceptable to TIITF.
- 2.7 In the event that the Amendment to FPL Easement is set aside because of a final and non-appealable order of a court of competent jurisdiction, the Parties shall return to their status and rights prior to the execution of this Agreement and the Parties agree to take whatever actions and execute whatever documents are necessary to restore the status quo ante the exchange.
- 2.8 In the event that federal legislation approving, ratifying and confirming the FPL/NPS Contingent Agreement is not enacted into law, this Agreement shall be null and void in all respects and the Parties shall return to their status and rights prior to the execution of this Agreement.
- 2.9 Any failure by any Party to this Agreement to object to or to seek a remedy of any violation by another Party of any provision of this Agreement shall not be deemed a waiver of or estop any future right to object to or to seek a remedy of a subsequent violation, whether the later violation is of the same or another provision of this Agreement.
- 2.10 Nothing in this Agreement shall be construed as creating any rights of enforcement by any person or entity that is not a party to this Agreement.
- 2.11 For the purposes of expediting execution of this Agreement, it may be signed in separate counterparts, which, when all have so signed, shall be deemed a single agreement.

2.12 The Parties agree that this Agreement may be amended by mutual consent of all the Parties hereto.

2.13 The Parties agree that clerical and typographical errors contained herein may be corrected upon notice to the other Party. Unless an error is deemed substantive or a proposed correction is otherwise objected to by any Party within sixty (60) days by written notice, correction may be made without formal ratification by the Parties.

The Parties have caused this Agreement to be executed on the day and year last written below.

TIITF:
BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND OF THE STATE OF FLORIDA

By: 
Deborah Poppell, Director,
Division of State Lands,
State of Florida Department of
Environmental Protection, as
agent for and on behalf of the
Board of Trustees of the Internal
Improvement Trust Fund of the
State of Florida

Date: 8/28/08

FPL:
FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: 
Terry L. Hicks
V.P. Corporate Real Estate

(Corporate Seal)

Date: 8-22-08

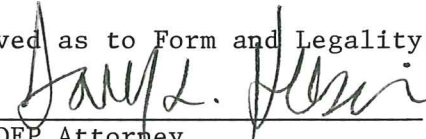
Approved as to Form and Legality:
By: 
DEP Attorney

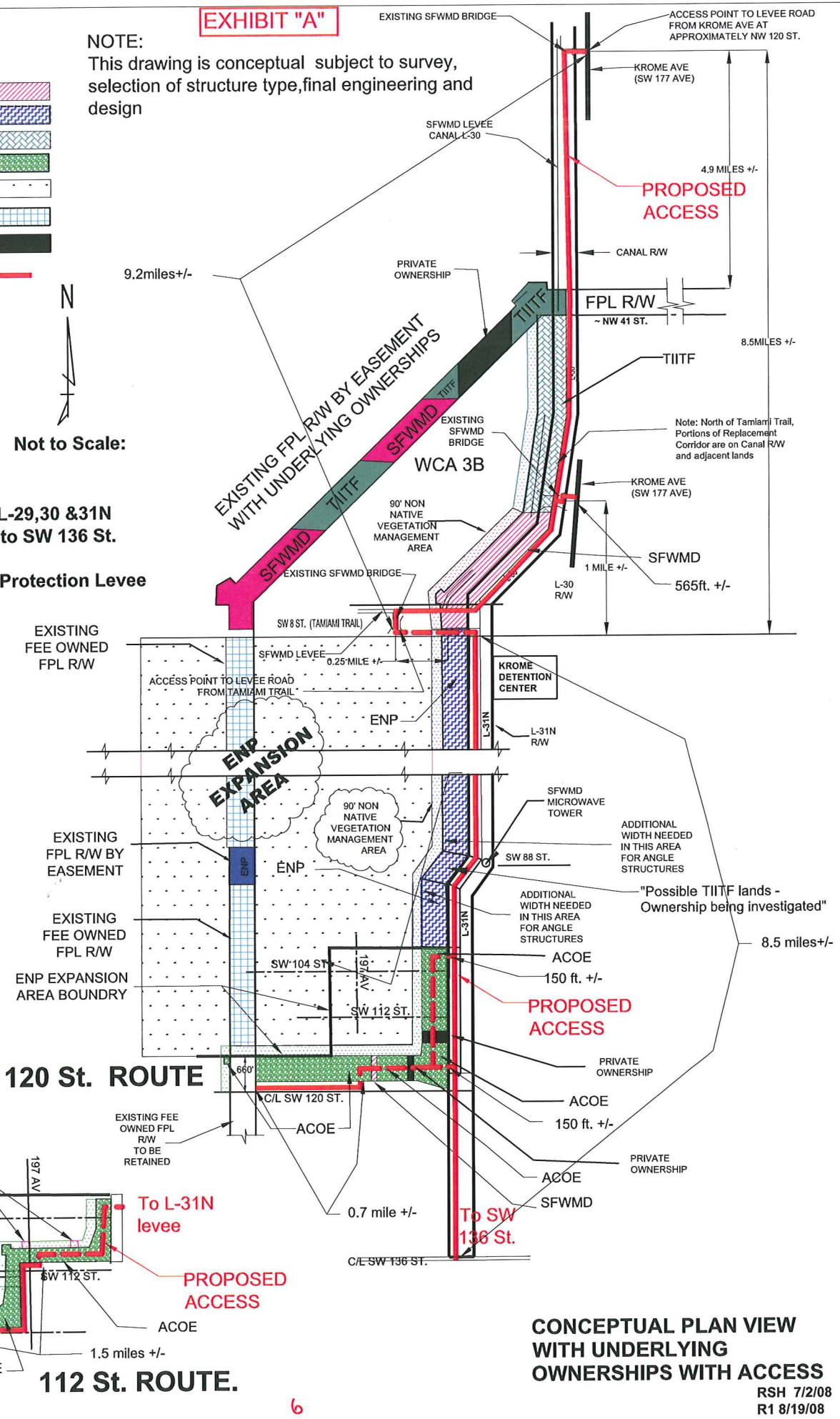
EXHIBIT "A"

NOTE:
This drawing is conceptual, subject to survey, selection of structure type, final engineering and design

- LEGEND**
- Replacement Corridor from SFWMD
 - Replacement Corridor from ENP
 - Replacement Corridor from TIITF
 - Replacement Corridor from ACOE
 - ENP Expansion Area
 - FPL Property (330'-370' wide R/W)
 - Private ownership
- REQUIRED ACCESS**

Not to Scale:

Notes:
Access along SFWMD L-29,30 &31N Levees from NW 41 St. to SW 136 St.
Access along 8.5 SMA Protection Levee



CONCEPTUAL PLAN VIEW WITH UNDERLYING OWNERSHIPS WITH ACCESS
RSH 7/2/08
R1 8/19/08

Exhibit "B"

Amendment to Easement

Prepared by, and Return to Following Recording:

AMENDMENT TO EASEMENT AGREEMENT

This Amendment to Easement Agreement ("**Amendment**") is made, dated and effective the _____ day of _____, 2008 by and between the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("**Grantor**") and FLORIDA POWER & LIGHT COMPANY, a Florida corporation ("**Grantee**").

WHEREAS, Grantor and Grantee entered into that certain Easement Agreement No. 25278 dated February 9, 1972, and recorded in Official Records Book 7600, Page 850, Public Records of Miami-Dade County, Florida (the "**Easement**"), wherein Grantor granted to Grantee, its successors and assigns, a nonexclusive easement for a right of way to be used for the construction, operation and maintenance of one or more overhead electric transmission and distribution lines (including wires, poles, "H" frame structures, tower, cables, conduits, anchors, guys, telephone and telegraph lines and appurtenant equipment) for the transmission of electricity, over, upon and across the lands described therein; and

WHEREAS, the parties wish to replace that portion of the lands described in the Easement which is more particularly described in **Exhibit "A"** to this Amendment with the lands described in **Exhibit "B"** to this Amendment, and to release the lands described in **Exhibit "A"** to this Amendment from the encumbrance of the Easement; and

WHEREAS, the parties also wish to modify the Easement to include a non-native vegetation management easement over, upon and across the lands more particularly described in **Exhibit "C"** to this Amendment, and an access easement over, upon and across the lands more particularly described in **Exhibit "D"** to this Amendment.

NOW THEREFORE, for One Dollar (\$1.00) in hand paid by Grantee to Grantor and other consideration the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. **Electrical Transmission Right-of-Way Easement.** The legal description set forth on **Exhibit "A"** to this Amendment is hereby deleted and replaced with the legal description set forth in **Exhibit "B"** to this Amendment, which exhibit is incorporated herein by reference and made a part hereof ("**Electrical Transmission Right of Way Easement Area**").

2. **Vegetation Management Easement.** The Easement is hereby amended to include the following Section II, immediately before the beginning of the only new paragraph found on page 2 (recorded page 851) of the Easement:

“Section II. Vegetation Management. Grantor hereby also grants and gives to Grantee, its employees, licensees, contractors, subcontractors, agents, successors, and assigns a nonexclusive easement for the purpose of removing fire prone exotics including but not limited to Melaleuca and Australian pine, over, upon and across parcels of land, each being ninety (90) feet in width, and more particularly described on the attached **Exhibit “C”** to this Amendment, which **Exhibit “C”** is incorporated herein by reference and made a part hereof (**“Vegetation Management Easement Area”**).

Grantee understands that herbicides applied within the Vegetation Management Easement Area shall only be those registered by the U.S. Environmental Protection Agency and which have state approval. Herbicide application rates and concentrations will be in accordance with label directions and will be carried out by a licensed applicator, meeting all federal, state and local regulations. Herbicide applications shall be selectively applied to targeted vegetation. Broadcast application of herbicide shall not be used within the Vegetation Management Easement Area unless the effects on non-targeted vegetation are minimized.

Grantee agrees to secure any and all applicable federal, state, and local permits required in connection with FPL's use of the Vegetation Management Easement Area; 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 Vegetation Management Easement Area by FPL.

Grantor reserves the right to maintain, construct or alter roads which are located on the Vegetation Management Easement Area and are necessary to Grantor's operations, and in doing so, agrees that it shall not temporarily or permanently impede Grantee's access over the Vegetation Management Easement Area.

Grantee agrees that it will not use the Vegetation Management Easement Area in any manner which will interfere with Grantor's use of the Vegetation Management Easement Area or cause a hazardous condition to exist. Grantee 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 stored on the Vegetation Management Easement Area. Grantee agrees further that in the event it should create a hazardous condition on the Vegetation Management Easement Area, then upon notification by Grantor, Grantee shall, within seventy-two (72) hours, at its sole cost and expense, correct such condition or situation.

Grantee must repair any damage to the Vegetation Management Easement Area resulting from Grantee's use thereof under this Easement as amended. If Grantee fails to repair the Vegetation Management Easement Area resulting from Grantee's use within thirty (30) days from the date of Grantor's written notice to Grantee of such damage (or within such time as agreed upon in writing by Grantor and Grantee), Grantor may, at its sole option, repair the

Vegetation Management Easement Area caused by Grantee's activities at Grantee's sole cost and expense. In the event that Grantor exercises its rights of repair, Grantor shall submit a written demand for such costs and expenses to Grantee, and Grantee shall pay the indicated cost of any such repair or maintenance within forty-five (45) days of the date of demand of the same from Grantor. If Grantee fails to pay such costs in the timeframe provided in this paragraph, then any such unpaid amounts shall bear interest at the highest rate permitted by applicable law (the "Default Rate")."

3. **Access Easement.** The Easement is hereby amended to include the following new Section III which will immediately follow Section II as set forth in Paragraph 2 of this Amendment:

“Section III. Access. Grantor, does hereby grant and give to Grantee, its agents, employees, contractors, subcontractors, invitees, successors and assigns, a nonexclusive access easement over, upon and across the Grantor's property more particularly identified on the attached **Exhibit “D”** to this Amendment (the **“Access Easement Area”**), which **Exhibit “D”** is incorporated herein by reference and made a part hereof, for ingress and egress by Grantee and its agents, employees, contractors, subcontractors, invitees, successors and assigns, on foot and by motor vehicle, including trucks and heavy equipment and with materials, to and from Grantee's facilities within the Electrical Transmission Right-of-Way Easement Area. This Easement is granted with all rights necessary and convenient for the full use and enjoyment of the Access Easement Area for the purposes described herein, including without limitation the right of Grantee to use any existing or future road on the Access Easement Area, and the right of Grantee to install, maintain, improve or modify fences/gates (with Grantee promptly providing Grantor with keys to all such fences/gates), ramps, roads and bridges to allow for safe access for personnel, vehicles, materials and equipment, subject to Grantor's advance review and written approval, which may not be unreasonably withheld, conditioned or delayed, of any Grantee proposal to install, improve, or modify fences/gates, ramps, roads, or bridges.”

4. The Easement is hereby amended to include the following paragraph after the 3rd full paragraph found on page 3 (recorded page 852):

“All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee) (i) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, (ii) one (1) business day after having been deposited with an expedited, overnight courier service addressed to the party to whom notice is intended to be given at the address set forth below:

To TIITF:
Board of Trustees of the Internal Improvement Trust Fund of the State of Florida
State of Florida Department of Environmental Protection
Division of State Lands
Bureau of Public Land Administration
3900 Commonwealth Blvd.

Mail Station 130
Tallahassee, Florida 32399-3000
Attention: Bureau Chief
Telephone: (850) 245-2720

To FPL:

V.P. Corporate Real Estate
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
Telephone: (561) 691-2123

with a copy to:
Law Department
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 334084-0420
Telephone: 561-304-5261”

5. The Easement is hereby amended to include the following paragraph which will immediately follow the paragraph as set forth in Paragraph 4 of this Amendment:

“As a condition precedent to entry on, over, upon or across any of the easement areas described herein by Grantee or its contactors, subcontractors, agents, representatives, licensees, or invitees, Grantee shall require such Grantee contactors, subcontractors, agents, representatives, licensees, and invitees to provide to the Grantor with the same protection and insurance coverages required by and afforded to the Grantee. Grantee shall also require that the Grantor be named as an additional insured on all such insurance and said liability insurance shall be primary to any liability or property insurance carried by Grantor.”

6. **Partial Release of Easement.** The Easement is hereby amended to include the following new Section IV which will immediately follow the paragraph set forth in Paragraph 5 of this Amendment:

“**Section IV. Partial Release.** Grantee, the owner and holder of the Easement, for and in consideration of certain benefits accruing to it, does hereby release unto the Grantor any right, title, or interest of Grantee under the Easement as lies within the property described on the attached **Exhibit “A”** to this Amendment which is incorporated herein by reference and made a part hereof (“**Property**”), and hereby agrees that from and after the date hereof the Property shall be freed of said Easement and the rights and privileges granted therein and any other right, title or interest of FPL in the Property. **This release applies only to the Property and in no way affects other lands now or hereafter covered by the Easement.**”

Signed, sealed and delivered
presence of:

Grantee:
FLORIDA POWER & LIGHT
COMPANY, a Florida corporation

Signature
Print Name: _____

By: _____
Terry L. Hicks
V.P. Corporate Real Estate

(Corporate Seal)

Signature:
Print Name: _____

ACKNOWLEDGMENT

STATE OF FLORIDA)
)ss:
COUNTY OF PALM BEACH)

On this ____ day of _____, 2008, before me, the undersigned
notary public, personally appeared Terry L. Hicks, Vice President of Corporate Real Estate of
FLORIDA POWER & LIGHT COMPANY, a Florida corporation, on behalf of the corporation.
He is personally known to me or produced a driver's license as identification.

Notary Public, State of Florida

Print/Type Notary Name

Commission Number:
Commission Expires:

Exhibit "A"
Existing Easement Area

A 330 foot wide strip of land running through Conservation Area 3B in Section 24, East 3/8 of the North 1/2 of Section 25, West 1/2 of Section 35, NW 1/4 of the NW1/4 of Section 36, situate in Township 53 South, Range 38 East, and Government Lot 2 and Government Lot 3 lying between Township 53 South and Township 54 South in Range 38 East, comprising 70.7 acres more or less; said lands situate, lying and being in Miami-Dade County, Florida and particularly shown and illustrated on FPL Co. drawing E-57533.

Exhibit "B"
Replacement Easement Area

[Legal description to be provided following survey]

Exhibit "C"
Vegetation Management Easement Area

[Legal description to be provided following survey]

Exhibit "D"
Access Easement

[Legal description to be provided following survey]