

RESOLUTION NO. 14-87

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A LICENSE AGREEMENT, IN SUBSTANTIALLY THE FORM PROVIDED, WITH FLORIDA POWER AND LIGHT FOR THE USE OF THE EASTERN PORTION OF THE PROPERTY IDENTIFIED BY FOLIO NUMBER 35-3017-001-0360 TO SERVE AS A STORMWATER RETENTION AREA FOR THE EXPANSION OF THE POLICE/PUBLIC WORKS FACILITY, IN AN ANNUAL AMOUNT OF \$64,191.00, ADJUSTED ANNUALLY BASED ON THE CONSUMER PRICE INDEX; PROVIDING FOR THE TRANSFER OF FUNDS REQUIRED FOR THE REQUIRED PAYMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral (the "City") is working on the design of the Police/Public Works Facility Expansion and will be constructing within the existing stormwater retention area on the subject property;

WHEREAS, in an effort to maximize parking and adhere to the stringent drainage requirements of the area, the City intends to provide a stormwater retention area on the eastern portion of the adjacent Florida Power and Light ("FPL") property, identified by folio number 35-3017-001-0360 (the "Property"); and

WHEREAS, FPL is willing to allow the City to use the Property in the manner contemplated pursuant to a license agreement, in substantially the form attached hereto as Exhibit "A", which is incorporated herein and made a part hereof by this reference (the "License Agreement"), for an amount not to exceed \$64,191.00 for the first year and then adjusted every year thereafter by the consumer price index; and

WHEREAS, the payment will be funded from the Public Works Rental and Leases Account No. 001.80005.500440 with a transfer of \$64,191.00 from the Public Works Capital Outlay – Building Account Number 001.80005.500620 that has a current balance of \$1,639,475.00; and

WHEREAS, the Mayor and City Council find that the entering into this License Agreement with FPL in order to make the improvements to the Police/Public Works Facility are in the best interest of the community.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Approval. The City Manager is hereby authorized to further negotiate, and to enter into a license agreement, in substantially the form attached as Exhibit "A", subject to final approval by the City Attorney as to form and legal sufficiency, with FPL for the use of the Property, to serve as stormwater retention area, at an annual cost not to exceed \$64,191.00 for the first year and then adjusted every year thereafter in accordance with the consumer price index.

Section 3. Transfer of Funds Approved. The transfer of funds in an amount not to exceed \$64,191.00 from the Public Works Capital Outlay – Building Account Number 001.80005.500620 to the Public Works Rental and Leases Account No. 001.80005.500440 is hereby approved.

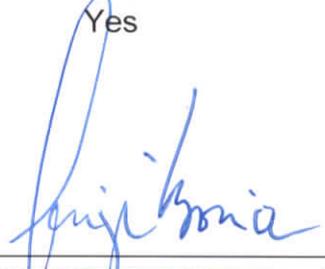
Section 4. Implementation. The City Manager and the City Attorney are hereby authorized to take such actions as may be necessary to implement the provisions of this Resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing resolution was offered by Councilmember Ruiz who moved its adoption. The motion was seconded by Councilmember Rodriguez and upon being put to a vote, the vote was as follows

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Bettina Rodriguez Aguilera	Yes
Councilwoman Sandra Ruiz	Yes

PASSED and ADOPTED this 11 day of June, 2014



LUIGI BORIA, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



WEISS, SEROTA, HELFMAN, PASTORIZA
COLE AND BONISKE
CITY ATTORNEY

EXHIBIT “A”

LICENSE AGREEMENT

(FPL License # _____)

THIS LICENSE AGREEMENT (“License”) is made this ____ day of _____, _____ (“Effective Date”) by and between Florida Power & Light Company (“Licensor”), a Florida corporation, whose mailing address is 700 Universe Blvd., CRE/JB, Juno Beach, Florida 33408-0420, and _____ (“Licensee”), a/an _____, whose mailing address is _____.

WITNESSETH

WHEREAS, Licensor is the owner of title in fee simple to real property located in _____ County, Florida (“Licensed Premises”) which is more particularly shown and described upon **Exhibit A**, attached hereto and incorporated herein by this reference; and

WHEREAS, Licensee desires to occupy and use the Licensed Premises as stated herein; and

NOW, THEREFORE, in consideration of the mutual benefits, covenants, agreements and promises contained in this License, Licensor hereby grants to Licensee and Licensee hereby accepts from Licensor, this non-exclusive License to occupy and use the Licensed Premises upon the following terms, conditions and provisions:

TERMS, CONDITIONS, AND PROVISIONS

1. **Use.** Licensee may use the Licensed Premises solely for _____, but not for any other purpose. Licensee shall obtain at its sole expense, all applicable federal, state, and local permits required in connection with Licensee's allowed use of the Licensed Premises and provide to Licensor, copies of each such permit.

2. **Term.** This License is for a term of _____ beginning upon the ____ day of _____, _____ and ending upon the ____ day of _____, _____ (“Term”) unless earlier terminated or revoked as provided by this License, or extended by mutual agreement of Licensor and Licensee.

3. **Fee.** During the Term, Licensee shall pay Fee to Licensor in lawful currency of the United States of America in the amount of _____ dollars and _____ cents (\$_____) plus sales tax if applicable, in the form of a regular bank check, cashier's check, or money order.

4. **Licensor's Rights.** Licensor is the owner of fee simple title to the Licensed Premises and Licensee agrees to never claim any interest or estate of any kind or extent whatsoever to or in the Licensed Premises by virtue of this License or the occupancy or use hereunder. Licensee's use of the Licensed Premises shall always be subordinate to Licensor's rights to and in the Licensed Premises. Licensor reserves the right to enter upon the Licensed Premises at any time and Licensee shall notify its employees, agents, contractors, subcontractors, licensees, and invitees accordingly. Licensor, its employees and contractors are not and shall not be responsible or liable for any injury, damage or loss to Licensee resulting from Licensor's use and/or Licensee's use of the Licensed Premises. Licensor may at its sole discretion, install and/or permit others to install facilities upon, over and/or under the surface of the Licensed Premises.

5. **Conditions and Restrictions On Use.**

(a) Licensee shall at its sole cost and expense, comply with all laws, rules, and regulations of all governmental authorities having jurisdiction over the Licensed Premises or use of the Licensed Premises. Licensee shall employ agricultural and other land management practices standard in the county and/or counties in which the Licensed Premises is located according to the purpose for which this License is granted and for the protection of the Licensed Premises. Licensee shall not designate or use the Licensed Premises to satisfy or comply with any minimum required parking code. Licensee shall not within the Licensed Premises, construct or erect any permanent or temporary building, structure, fixture, fence, shelter, attachment or improvement without prior written permission from Licensor. All work to be performed by Licensee upon the Licensed Premises shall be in accordance with detailed plans and specifications to be prepared by Licensee and submitted to Licensor for written approval thereof. Licensee shall not commence any such work until plans and specifications have been approved by Licensor.

Licensee shall pay directly on its own behalf for all costs associated with construction and maintenance of all improvements and facilities that it constructs, operates and maintains upon the Licensed Premises. All fences, gates, lighting systems and irrigation systems installed by Licensee shall be electrically grounded according to Licensor's specifications. Licensee shall not cause or allow any waste of the Licensed Premises and shall not remove soil, import soil or alter the existing surface elevation of the Licensed Premises without first obtaining written permission of Licensor. Licensee shall pay for all utility and other services furnished to or for Licensee upon the Licensed Premises. Licensee shall remove trash, rodents, insects and vermin from the Licensed Premises as necessary.

(b) Licensee shall not use the Licensed Premises in any manner which, in the sole opinion of Licensor, might interfere with Licensor's use of the Licensed Premises or might cause a hazardous condition to exist. Licensee acknowledges that electrical equipment and appurtenances including, but not limited to utility poles, overhead and underground wires, cables, circuits, insulators, transformers, guy wires, and guy wire anchors (collectively "**Licensor Facilities**"), are installed or may be installed over, upon and under the surface of the Licensed Premises by Licensor and by others and are conductors of high-voltage electricity. Licensee understands that contact with or disturbance of any of these Licensor Facilities may cause a condition hazardous to persons and/or property. Licensee shall exercise extraordinary precautions to prevent injury or damage to persons and/or property that could result from contact with or disturbance of Licensor Facilities. Licensee shall notify its employees, agents, contractors, subcontractors, licensees and invitees of the existence of Licensor Facilities when working in the vicinity of the Licensed Facilities.

(c) Licensee shall not install any improvements within twenty-five (25) feet of Licensor Facilities, unless Licensee first obtains prior written approval from Licensor. Licensee shall not cause or allow anything to exceed fourteen (14) feet in height above the surface of the Licensed Premises, nor allow any equipment capable of extending greater than fourteen (14) feet above the surface of the Licensed Premises to be brought upon the Licensed Premises, except that this provision shall not apply to equipment and items brought onto the Licensed Premises by Licensor or Licensor's employees, agents, and contractors. Licensee shall utilize effective dust control measures to prevent contamination of high-voltage circuit insulators. In each and every location where an electrical circuit exists above the ground surface of the Licensed Premises, Licensee shall not allow to be planted or rooted in the ground within less than fifty (50) lateral feet of such circuit, any type of vegetation that is capable of growing to a height of fourteen (14) feet or more above the ground surface. Licensee may, anywhere upon the Licensed Premises, grow any type of vegetation that is planted and rooted in a pot or container where the volume capacity of the pot or container does not exceed twenty-five (25) gallons and where no part of the pot or container exists below the surface of the ground that touches the pot or container. Vegetation planted and rooted in a pot or container shall not be allowed at any time to exceed a height of fourteen (14) feet above the ground surface of the Licensed Premises. Licensor shall have the right, but no form of obligation, to inspect the Licensed Premises to determine if Licensee is in compliance with all terms, conditions and provisions of this License.

6. Environmental.

(a) Licensee agrees that no hazardous substance, as the term is defined in Section 101 (14) of the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**") (42 USC Section 9601 [14]), petroleum products, liquids or flammables shall be placed upon, under, transported across, or stored upon the Licensed Premises, which restricts, impairs, interferes with, or hinders the use of the Licensed Premises by Licensor or the exercise by Licensor of any of its rights thereto.

(b) After the Effective Date, Licensee may perform a Phase I and/or Phase II environmental site assessment as per ASTM criteria to investigate the existing environmental condition of the Licensed Premises that is the subject of this License. The performance or the failure to perform an environmental site assessment does not relieve the Licensee from compliance with any other provision of this section. Licensee shall maintain copies of any local, state or federal permits, licenses or other authorizations required for any and all of its activities on the Licensed Premises and present copies of such permits, licenses or other authorizations to Licensor and to any local, state and federal governmental agency official that requests to see the same.

(c) Licensee shall not create or contribute to any Environmental Contamination, Unauthorized or Unpermitted Wetland Impacts, Unpermitted Groundwater Wells, Illegal Use of Ground or Surface Waters or any Other

Environmental Impacts, (collectively, referred to as “**Environmental Conditions**”) as a result of its use of the Licensed Premises.

(1) Environmental Contamination is defined as any spilling or discharge of any chemical constituent by the Licensee to the environment that results in any pollution, seepage or contamination of the groundwater, surface water, soil, or any other environmental media, on or from the Licensed Premises, above the federal, state or local regulatory levels; including, (a) for groundwater: Chapters 62-777, Table I, 62-520, or 62-550 of the Florida Administrative Code (“**FAC**”); (b) for surface waters: Chapters 62-777, Table I, or 62-302 of the FAC; and (c) for soils: Chapters 62-777, FAC, Table II; or above natural background levels.

(2) Wetland Impacts are defined as activities impacting areas defined as “**wetland**” under the following: (a) federal law (for example, Section 404 of the Clean Water Act); (b) federal rules (for example, curFee approved Army Corps of Engineers (“**ACOE**”) Delineation Manual); (c) federal guidance; (d) state law (for example, Section 373.019(22), Florida Statutes); (e) state rules (for example, Chapter 62-340, FAC); (f) state guidance; (g) case law as formulated that further explains wetland jurisdictional criteria; or (h) local law (for example, Miami-Dade County Ordinances; (i) local guidance; or (j) local policy. Unauthorized or Unpermitted Wetland Impacts shall mean the failure to obtain all required federal, state and local permits to impact the wetland or undertaking any action or activity in violation of any such permits. Some examples of permits needed to impact the wetland are the Miami-Dade County Department of Environmental Resources Management Permits, the State of Florida Department of Environmental Protection or Water Management District Permits, and the Federal ACOE Permits.

(3) Unpermitted Groundwater Wells means the installation or the use of an existing groundwater well without obtaining the appropriate state and local permits for the well installation and/or well pumping for use of groundwater or surface water in the area.

(4) Illegal Use of Ground or Surface Waters means the withdrawal or use of either ground water or surface water without obtaining any required consumptive use or water use permits from the South Florida Water Management District (“**SFWMD**”) or in violation of any consumptive use or water use permit issued by the SFWMD.

(5) Other Environmental Impacts, include, but are not limited to; failure to apply pesticides consistent with labeling instructions; failure to dispose of pesticide containers as per label instructions; failure to have licensed and trained personnel applying pesticides; failure to properly manage pesticide mix/load sites to avoid pesticide release to soils or surface waters in quantities or concentrations other than that specified on the label application instructions; or any violations of Federal Insecticide, Fungicide, and Rodenticide Act, or its state law equivalent; or any violations of the Florida Department of Agriculture and Consumer Services rules or Best Management Practices for the activities contemplated by this License.

(d) If the Licensee causes any Environmental Conditions to occur because of the performance of activities contemplated by this License, Licensee shall notify Licensor immediately upon discovery. Licensee acknowledges that the failure to deliver such notification may cause Licensor to file a damage claim against Licensee and confers to Licensor the right to terminate this License as set forth in Section 8. Within seventy-two (72) hours of discovering such Environmental Conditions, Licensee shall, at its sole cost and expense, correct such condition or situation; provided that the Licensor retains the right to enter upon the Licensed Premises and correct any such condition or situation at any time. Any release notifications required to be submitted to federal, state or local regulatory agencies, because of the actions of Licensee pursuant to this License or any other notifications based on Environmental Conditions, shall be coordinated with Licensor.

(e) If the Licensee, or its employees, contractors, subcontractors or anyone else working at the direction of the Licensee causes Environmental Conditions on the Licensed Premises, or causes contamination that originates on the Licensed Premises, the Licensee, on its own behalf and on behalf of its shareholders, officers, directors, employees, servants, agents, and affiliates, shall and hereby does forever hold harmless, indemnify, and release Licensor, and its shareholders, officers, directors, employees, servants, agents and affiliates (collectively “**Licensor Entities**”) of and from all claims, demands, costs, loss of services, compensation, actions or investigations on account of or in any way growing out of the Environmental Conditions, and from any and all known and unknown, foreseen and unforeseen damages, and the consequences thereof, resulting from the Environmental Conditions, including but not limited to, restoration of the site to the condition existing prior to the Environmental Conditions.

7. **Right to Cure.** Licensor, at its sole discretion, may remove or cause to be removed by it or by its employees, agents, contractors, subcontractors, licensees, and invitees, all objects, materials, debris, or structures that could create a condition hazardous to persons or property or interfere with Licensor's use of its Licensed Premises or with Licensor Facilities. All costs expended by Licensor pursuant to this section which are caused by Licensee, its employees, agents, contractors, subcontractors, licensees, and invitees, are and shall be the sole obligation of Licensee, who shall reimburse Licensor upon demand. If any of Licensee's activities or Licensee's use of the Licensed Premises results in an interruption of electric utility service, then Licensee shall reimburse Licensor for all costs related to each such interruption, including, but not limited to Licensor's lost revenue and costs to restore electric utility service.

8. **Termination.** Licensor may terminate this License at any time and for any reason by giving Licensee at least ninety (90) days written notice of such termination and in such case, Licensor shall refund to Licensee, advance Fee paid by Licensee to Licensor for the period of time, if any, that Licensee is unable to use the Licensed Premises due to Licensor's early termination. Licensee may terminate this License at any time and for any reason by giving Licensor at least ninety (90) days written notice of such termination; however in such case, Licensee shall not be entitled to a refund of advance Fee paid for any period of time that Licensee does not actually use the Licensed Premises as a result of Licensee's early termination of this License. Licensor may immediately terminate this License at any time if Licensor, in its sole discretion, determines that Licensee and/or its employees, agents, contractors, subcontractors, licensees, or invitees have violated and/or failed to comply with any term, condition or provision of this License, and in such event, all advance Fee and/or other payments paid by Licensee to Licensor hereunder shall be retained by Licensor as liquidated damages, it being understood and agreed that the damages incurred by Licensor if Licensee fails to perform hereunder may not be ascertained with mathematical precision as of the Effective Date. This License shall become terminated automatically upon the death or dissolution of the Licensee or if Licensee shall become insolvent or bankrupt.

9. **Surrender.** Upon termination or expiration of this License, Licensee shall vacate and leave the Licensed Premises in as good a condition as existed prior to the Effective Date. No later than five (5) calendar days following the date upon which this License becomes expired, terminated or revoked, Licensee shall remove all personal property and improvements placed upon the Licensed Premises by Licensee and shall repair and restore and save Licensor harmless from all damage caused by such removal. If all such personal property and improvements placed upon the Licensed Premises by Licensee are not so removed by Licensee within the above prescribed five (5) day period, then Licensor shall have the right to take possession of and appropriate unto itself, without any payment or offset thereof, any personal property and improvements placed upon the Licensed Premises by Licensee or any other entity acting on behalf, and/or Licensor shall have the right to effect removal of such personal property and improvements at Licensee's sole cost and expense, the amount of which Licensee agrees to reimburse to Licensor immediately upon Licensor's demand.

10. **No Encumbrances.** Licensee expressly covenants and agrees that the Licensed Premises shall not be subject to any encumbrance by any mortgage, lien, financial instrument or other agreement outside of or in addition to this License, nor shall the Licensed Premises be liable to satisfy any indebtedness that may result from Licensee's operation or activity.

11. **Indemnity.** Licensee shall exercise its privileges herein at its sole risk and agrees to indemnify and save harmless Licensor and Licensor Entities, from all liability, loss, cost, and expense, including attorneys' fees, which may be sustained by Licensor Entities, to any person, natural or artificial, by reason of the death of or injury to any person or damage to any property, whether or not due to or caused by the negligence of Licensor Entities, arising from or in connection with the use of the Licensed Premises by Licensee, and its employees, agents, contractors, subcontractors, licensees, and invitees. Licensee agrees to defend, at its sole cost and expense, but at no cost and expense to Licensor Entities, any and all suits or actions instituted against Licensor Entities for the imposition of such liability, loss, cost, and expense arising from the use of the Licensed Premises by Licensee and its employees, agents, contractors, subcontractors, licensees, and invitees.

12. Insurance. During the Term, Licensee shall maintain, at its sole cost and expense, a liability policy with minimum limits of \$3,000,000.00 for bodily injury or death of a person(s) arising out of each single occurrence; and \$3,000,000.00 for property damage arising out of each single occurrence; and workers compensation coverage as mandated by the applicable laws of the State of Florida. Said policy shall be endorsed to insure against obligations assumed by Licensee in the indemnity herein. A certificate of insurance shall be furnished to Licensor evidencing that said policy of insurance is in force and will not be cancelled or materially changed so as to affect the interests of Licensor Entities until ten (10) days advance written notice has been furnished to Licensor. Upon request, copies of said policy will be furnished to Licensor.

13. No Transfer. Licensee shall not, without the prior written consent of Licensor, allow any other entity or party to occupy or use the Licensed Premises or in any way transfer, assign, lease, sublease, license, sublicense or in any other manner, convey this License to any entity or party not specifically named herein by Licensor as a party to this License. Licensee shall not hypothecate this License, nor enter into any license, concession agreement, mortgage, contract or other agreement which conflicts with or is contradictory to the terms and provisions of this License.

14. Holding Over. If Licensee continues to occupy and/or use the Licensed Premises, or any part thereof, after expiration, termination or revocation of this License, then no tenancy, ownership or other legal interest in the Licensed Premises to the benefit of Licensee shall result therefrom, but such holding over shall be an unlawful detainer and all parties occupying and/or using the Licensed Premises shall be subject to immediate eviction and removal, and Licensee shall upon demand pay to Licensor, as liquidated damages, a sum equal to double the rate of Fee as set forth in Section 3 for and during any and all period(s) which Licensee and/or its employees, agents, contractors, subcontractors, licensees, and invitees fail to vacate the Licensed Premises after the date upon which this License becomes expired, terminated, or revoked.

15. Waiver of Jury Trial. Licensee knowingly, voluntarily and intentionally waives any and all right(s) it may have to a trial by jury with respect to any litigation based upon, or arising from, under, or in connection with this License, or any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether oral or written) or action of Licensee. In any and all litigation arising out of or in connection with enforcement of the terms, conditions or provisions of this License, the prevailing party in such litigation shall be entitled to recovery of each and all of its costs, including reasonable attorneys' fees.

16. Applicable Law and Venue. This License, including each and all of its terms, conditions and provisions, is governed by and interpreted according to the laws of the State of Florida. All legal matters arising out of, or in connection with this License are and shall be subject to a court of competent jurisdiction within the State of Florida. If any term, condition or provision, or any part thereof, is found by a Florida court to be unlawful, void or unenforceable, then that term, condition, provision or part thereof shall be deemed severable and will not affect the validity and enforceability of any of the remaining terms, conditions and provisions of this License.

17. Time and Entire Agreement: Time is of the essence, and no extension of time shall be deemed granted unless made in writing and executed by both Licensor and Licensee. This instrument constitutes the entire agreement between the parties hereto and relative to the License, and any agreement or representation which is not expressly set forth herein and covered hereby is null and void. All amendments, modifications, changes, alterations and supplements to this License must be in writing and executed by both Licensor and Licensee in order to be deemed valid and enforceable. If Licensor fails or elects to not enforce Licensee's breach of any term, condition or provision of this License, then Licensor's failure or election to not enforce Licensee's breach shall not be deemed a waiver of Licensor's right to enforce one or more subsequent breaches of the same or any other term, condition or provision of this License.

18. Notices. All notices associated with and related to this License shall be deemed to have been served upon the date and time received by Licensor or Licensee at the addresses set forth in the Preamble by: government postal service, private delivery service or by electronic email. Either party may, at any time, designate in writing a substitute address for the address first written above, and thereafter notices shall be directed to such substituted address.

19. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, Licensor and Licensee have caused this License to be signed and executed effective as of the Effective Date.

Witnesses for Licensor:

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

Licensor:

Florida Power & Light Company,
a Florida corporation

By: _____

Name: _____

Title: _____

Witnesses for Licensee:

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

Licensee:

By: _____

Name: _____

Title: _____