

City Of Leesburg Florida
CFW-33 to CFW-27
ETS #20090084

This document prepared by: R. Alexander Glenn
Return to: Progress Energy Florida, Inc.
Attn: Real Estate Document Center
3300 Exchange Place, NPIR
Lake Mary, FL 32746

UNDERGROUND PIPELINE RIGHT-OF-WAY UTILIZATION AGREEMENT

THIS AGREEMENT, between FLORIDA POWER CORPORATION, a Florida corporation, d/b/a PROGRESS ENERGY FLORIDA, INC., with its principal office located at 3300 Exchange Place, Lake Mary, Florida 32746, ("PEF" herein) and **City of Leesburg ("APPLICANT"** herein), a Florida Municipal Corporation, organized and existing under laws of the State of **Florida**, and duly authorized to transact business in the State of Florida and maintaining its principal office for the conduct of business in the State of Florida at **223 South Fifth Street, Leesburg, Florida 34748**.

WITNESSETH

WHEREAS, PEF owns, operates and maintains electric transmission and distribution lines and related facilities in the State of Florida on both easements and fee owned properties held by PEF ("Properties" herein); and

WHEREAS, APPLICANT intends to construct, operate and maintain an underground PVC force main and a PVC reclaimed water pipeline ("Pipeline" herein) in **Lake County, Florida** and desires to construct, operate and maintain a portion of such Pipeline facilities for a single PVC **twelve inch (12")** diameter and a single PVC eight inch (8") water Pipeline from **CFW-33 to CFW-37** and on electric transmission and distribution line easements and fee owned properties held by PEF as more specifically described in **EXHIBIT "A"**; and

WHEREAS, the Pipeline includes, but is not limited to, line pipe, cathodic protection system, above ground items necessary for operating, maintaining and identifying the location of the Pipeline, pipeline markers and other appurtenances necessary for a single PVC **twelve inch (12")** diameter and a single PVC eight inch (8") water Pipeline located in the **S 1/2 of SE 1/4 less right of way for SR33 of Section 22, Township 20 S, Range 24 East; NW corner of N 1/2 of NW 1/4 of Section 26, Township 20 S, Range 24 East; beginning at the SE corner of the North 1900 feet of NW 1/4 of Section 25, Township 20 S, Range 24 East and the West boundary of the North 1800 feet of South 2090 feet of W 1/4 of NE 1/4 of Section 25, Township 20 South, Range 24 East, Lake County, Florida**, being generally located between PEF Structure numbers **CFW-33 to CFW-37**; and

WHEREAS, PEF is willing to permit, to the extent that it may do so lawfully, **APPLICANT** to construct, operate, inspect, maintain, repair, remove and replace the Pipeline in the area described in attached **EXHIBIT "A"** ("Pipeline Utilization Area" herein);

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, PEF and **APPLICANT** do hereby agree as follows:

1. **PERMISSION TO USE RIGHT OF WAY**. PEF, to the extent that it may do so lawfully, hereby grants

to **APPLICANT** permission to access, construct, operate, inspect, maintain, repair, remove, and replace the Pipeline in the Pipeline Utilization Area shown on **EXHIBIT "A"** attached hereto and by this reference incorporated herein and made a part hereof. PEF will have the right to review for compatibility with PEF's use of PEF's properties **APPLICANT's** proposed use of the Pipeline Utilization Area or other adjacent PEF properties and approve any and all parts, installations or facilities of the Pipeline located on PEF property including the Pipeline Utilization Area prior to and after the installation of the Pipeline, which approval shall not be unreasonably withheld. Construction of venting and blow off valves in PEF's properties is strictly prohibited.

The permission to use the Pipeline Utilization Area includes permission to use adjacent portions of PEF's properties identified by PEF as temporary workspace and for ingress and egress to the Pipeline Utilization Area as necessary for construction, maintenance, repair and replacement of the Pipeline during the term of this Agreement, ("Approved Temporary Workspace" herein). In the event that **APPLICANT's** facilities interfere with PEF's present or future use of the Pipeline Utilization Area, **APPLICANT** agrees to relocate its facilities within the Pipeline Utilization Area at its sole cost and expense. PEF agrees to coordinate the timing of such relocation of **APPLICANT's** facilities so such relocation will not unreasonably interfere with **APPLICANT's** operation of its facilities.

In exchange for this permission, **APPLICANT** agrees to strictly comply with all the terms and conditions of this Agreement and its attachments (as may be amended), which includes the Progress Energy Florida Inc. Non-Metallic Pipeline Collocation Guidelines dated July 28, 2003, described in **EXHIBIT "B"** attached hereto and by this reference incorporated herein and made a part hereof.

APPLICANT agrees to post clearly visible hazard notification warning signs within the Pipeline Utilization Area which state "PEF transmission rights of way contain high voltage power lines. Extreme caution must be used when working in the right of way."

APPLICANT acknowledges that the use of PEF's properties herein granted by PEF is non-exclusive. PEF and others so authorized by PEF may occupy, traverse or otherwise utilize any portion of PEF's properties, including that portion designated herein as the Pipeline Utilization Area, provided that PEF and/or others authorized by PEF to utilize such PEF properties will comply with all applicable laws, rules and regulations and will not unreasonably interfere with **APPLICANT's** occupation and utilization of the Pipeline Utilization Area.

- 2. TERM AND CONSIDERATION.** This Agreement will become effective upon its execution by the parties, delivery of a fully executed copy to **APPLICANT**, and payment by **APPLICANT** to PEF of the sum of **\$10.00 and other good and valuable consideration**. Payment is due prior to execution by PEF of this Agreement. All other fees or reimbursements due under the terms of this Agreement will be due within thirty (30) days of receipt of invoice by the responsible Party. Unless terminated in accordance with any of the terms of this Agreement, this Agreement will continue in effect in perpetuity.

APPLICANT agrees to reimburse PEF for all expenses associated with (i) the relocation of any PEF facilities necessitated by **APPLICANT's** utilization of PEF's properties which are the subject of this Agreement, and (ii) all costs associated with any PEF safety inspectors or crews PEF deems reasonably necessary during the construction, operation, or maintenance of the Pipeline.

In further consideration of PEF's permission to use this Pipeline Utilization Area, **APPLICANT** agrees to give preferential consideration to any proposed PEF use of **APPLICANT's** existing or future right of way where required by PEF to fulfill PEF's own service requirements. Any such permission by **APPLICANT** to PEF will be granted under substantially similar terms and conditions as are provided herein or otherwise as mutually agreed.

3. **REQUIRED PERMITS, LICENSES OR EASEMENTS.** **APPLICANT** acknowledges that PEF's transmission line easements and fee owned properties contain property or lands in which persons other than PEF may own or control an interest over which PEF may not have lawful authority to permit the construction and maintenance of the Pipeline insofar as the rights of such persons are concerned. **APPLICANT** will secure and maintain legally sufficient easements, permits, or licenses from all owners of property upon which the Pipeline Utilization Area or Approved Temporary Construction Area may be located as necessary to construct, operate, and maintain the Pipeline. Upon reasonable request by PEF, **APPLICANT** will provide to PEF copies of any and all such easements, permits, or licenses authorizing **APPLICANT's** use of the Pipeline Utilization Area.

APPLICANT will comply with all applicable federal, state and local laws, rules and regulations with respect to the use of any of PEF's properties. **APPLICANT** will secure and maintain all permits, licenses and/or approvals from all federal, state and local entities or agencies necessary to the construction, operation and maintenance of the Pipeline. PEF agrees to cooperate with **APPLICANT** in any application process for such necessary permits, licenses and/or approvals.

4. **DAMAGE AND REPORTS.** Each party will exercise all reasonable precautions to avoid damage to PEF's properties, the Pipeline and the facilities of PEF and of others located on PEF's properties. **APPLICANT** or PEF, will make an immediate report to other Party's nearest local office of the occurrence of any such damage to PEF's or **APPLICANT's** facilities. **APPLICANT** hereby agrees to reimburse PEF for all expenses incurred in making repairs to PEF facilities or properties for any and all loss on account of any such damage arising out of or resulting from the construction, operation, inspection, maintenance, repair, removal, and replacement of the Pipeline, except when caused by the sole negligence of PEF, its employees, agents, contractors, representatives or other persons engaged in PEF's activities. PEF hereby agrees to reimburse **APPLICANT** for all expenses incurred in making repairs to **APPLICANT's** facilities or properties for any and all loss on account of any such damage arising out of or resulting from the construction, operation, inspection, maintenance, repair, removal, and replacement of the PEF facilities located on PEF's properties described by this Agreement, except when caused by the sole negligence of **APPLICANT**, its employees, agents, contractors, representatives or other persons engaged in **APPLICANT's** activities.

APPLICANT will assume the sole duty, responsibility and obligation to restore the entire disturbed area within PEF's properties used by **APPLICANT**, including PEF's patrol roads and the berms existing on PEF's properties, to a condition reasonably as good as that which existed prior to **APPLICANT's** disturbance of the area. Nothing herein contained will be construed to compel PEF to maintain PEF's properties except as needed for PEF's own service requirements.

5. **INSPECTION.** That PEF shall have the right, at any time to inspect the Pipeline Utilization Area and **APPLICANT's** activities thereon. Provided, however, **APPLICANT** and its contractors expressly acknowledge and agree that any such inspection shall be solely for the benefit of PEF. **APPLICANT** and its contractors expressly acknowledge and agree that PEF shall have no legal duty to any persons or entities to provide a safe place for **APPLICANT** to conduct its activities on the Pipeline Utilization Area or to provide a safe place to work or to provide any warnings of any kind. **APPLICANT** and its contractors shall continuously inspect and review site conditions on the Pipeline Utilization Area and work procedures to assure the Pipeline Utilization Area is a safe place to work.

Upon completion of construction by **APPLICANT**, PEF shall continue to inspect, at the **APPLICANT's** expense, the Pipeline Utilization Area for a period up to ninety (90) calendar days. Should the approved PEF inspector find a deviation or deficiency, **APPLICANT** shall correct any such deviation or deficiency within a reasonable time period and pay the full cost of correcting said deviation or deficiency.

6. **LIMITATIONS OF LIABILITY.** PEF reserves to itself, its successors and assigns, the right to construct,

maintain, renew and operate its facilities over, under and upon all properties held by PEF in such manner as to enable it to fulfill PEF's own service requirements. However, PEF will accomplish such activities in a manner that will not interfere with the safe operation of the Pipeline. Similarly, **APPLICANT** will not interfere with the safe operation of PEF's facilities. Neither **APPLICANT** nor PEF will be liable to the other Party for any temporary interruption of services which may be caused by the presence, operation, maintenance, breakdown or alterations of, or additions to, the lines and facilities of either PEF or **APPLICANT**. PEF and **APPLICANT** specifically release any claims against the other Party for any consequential damages, which result from **APPLICANT's** or PEF's use of PEF's properties.

7. INDEMNIFICATION AND INSURANCE.

- A. As to any claims arising on PEF's properties occasioned or caused by any third party damaging the Pipeline or any of **APPLICANT's** operations thereon, **APPLICANT** expressly and specifically assumes all risks and agrees to indemnify and hold PEF, its directors, officers, employees, agents, contractors, representatives and other persons engaged in PEF's activities harmless from and against any and all claims, costs, expenses, damages, actions and causes of action, including without limitation reasonable attorney fees, resulting directly or indirectly, in whole or in part, from such damage to the Pipeline or any of **APPLICANT'S** operations thereon, except when directly caused by the sole negligence of PEF, its employees, agents, contractors, representatives or other persons engaged in PEF's activities up to a total limit of five million dollars (\$5,000,000). **APPLICANT** agrees to report such incidents to PEF immediately. Furthermore, to the extent permitted by §768.28, Fla. Stat. (2008) as it may hereafter be amended, but not in excess of the limited waiver of sovereign immunity set forth therein, **APPLICANT** will indemnify, protect and save harmless PEF, its directors, officers, employees, agents, contractors, representatives and other persons engaged in PEF's activities from and against any and all claims and demands for damages to property, and injury or death to persons, including payments made under any Worker's Compensation law or under any plan for employee's disability or death benefits, which may arise out of or be caused by third party actions affecting the construction, maintenance, presence, use, removal or abandonment of the Pipeline or by the proximity of the Pipeline to facilities of PEF or of others using PEF's properties, or caused by any act or acts of **APPLICANT** or its agents on or in the vicinity of PEF's facilities, and for any and all costs or expenses (including without limitation reasonable attorney's fees) incurred by PEF by reason of any such claim or demand, except when directly caused by the sole negligence of PEF, its employees, agents, contractors, representatives or other person engaged in PEF's activities.
- B. Other than the above stated indemnification, **APPLICANT** (up to but not in excess of the statutory waiver of sovereign immunity set forth in §768.28 as aforesaid) and PEF, will each be responsible for their respective operations on PEF's properties and will each indemnify and hold the other harmless from such respective operations, except to the extent of the negligence attributable to either in a court of law or as may be agreed upon between the Parties. In no event shall PEF or **APPLICANT** be responsible or liable for any consequential damages arising from the other's operations on PEF's properties.
- C. **APPLICANT** will secure and maintain and will require all of its contractors to secure and maintain all insurance required herein and in **EXHIBIT "B"** to this agreement in a form and amount acceptable to PEF in the exercise of its commercially reasonable discretion, insuring against all risks to all persons or entities which may sustain property damage or personal injury as a result of the combined acts and omissions of the **APPLICANT**, its contractors, or PEF which may be related in any way to **APPLICANT's** use of the Pipeline Utilization Area. **APPLICANT** and its contractors will have the insurance policies mentioned endorsed by their insurance carrier to provide blanket contractual coverage expressly with respect to the above, to full limits of and for the liabilities insured under said policies, provided that as to any policy obtained by **APPLICANT** under which **APPLICANT** is the primary insured party, PEF's status as an additional insured party shall be subject to the limitations on the

statutory waiver of sovereign immunity set forth in §768.28, Fla. Stat. (2008). Prior to commencing initial construction activities within the Pipeline Utilization Area **APPLICANT** will furnish PEF with a completed certificate of insurance, in duplicate, on an Acord form or equivalent suitable to PEF evidencing insurance coverage of the liability assumed above.

APPLICANT may also satisfy this requirement by providing to PEF a Certificate of Self-Insurance in a form and amount acceptable to PEF in PEF's sole discretion, or other form of security to which **APPLICANT** and PEF mutually agree.

8. **TERMINATION.** If **APPLICANT** materially fails to comply with any of the provisions of this Agreement or defaults in any of its obligations hereunder, and fails within sixty (60) days after written notice from PEF to correct such default or non-compliance, PEF may at its option correct any such defective performance hereunder and invoice **APPLICANT** for all expenses incurred by PEF in such correction, or terminate this Agreement. In the event that **APPLICANT** has notified PEF in writing that correction of such default or non-compliance cannot reasonably be accomplished within such sixty (60) day period, and **APPLICANT** demonstrates to PEF's reasonable satisfaction that **APPLICANT** is diligently completing correction of such default or non-compliance, PEF may extend such sixty (60) day period.

Upon termination of this Agreement, and after approval authority to abandon the Pipeline and related facilities has been granted by all regulatory agencies, **APPLICANT**, at **APPLICANT's** sole expense, will cease use of and remove the Pipeline from PEF's properties in a manner consistent with all applicable federal, state and local laws and regulations. Concurrently with said removal **APPLICANT**, at **APPLICANT's** sole expense, will restore the affected portion of PEF's properties to a condition reasonably identical to that which existed prior to **APPLICANT's** utilization of PEF's properties. If **APPLICANT** fails to remove the Pipeline and/or restore PEF's properties, then PEF will have the right to remove all or portions of such Pipeline and/or restore PEF's properties at **APPLICANT's** expense and without any liability for such removal or restoration. In the event that PEF terminates this Agreement under this Section, **APPLICANT** will not be entitled to any refund of any amounts paid or due to PEF by **APPLICANT** pursuant to this Agreement.

9. **NON-WAIVER OF TERMS.** 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 will be and remain at all times in full force and effect.
10. **OTHER PERMITEES.** Nothing herein will be construed to affect in any manner any rights or privileges previously conferred by PEF, by contract or otherwise, to others to use the PEF owned properties described by this Agreement, and PEF will have the right to continue and extend such rights and privileges. Upon request by **APPLICANT**, PEF will provide copies of all such contracts and arrangements. The privileges herein granted will at all times be subject to such existing contracts and arrangements, including any renewals or extensions thereof. The privileges herein granted will be non-exclusive, and PEF shall have the right in PEF's sole discretion to grant privileges of any sort to any person, firm or corporation, provided such grant will not unreasonably interfere with **APPLICANT's** utilization of PEF's properties or **APPLICANT's** safe operation and maintenance of the Pipeline under this Agreement.
11. **ASSIGNABILITY.** **APPLICANT** will not assign, transfer or sublet the privileges hereby granted without the prior consent in writing from PEF, which consent will not be unreasonably withheld. Transfer of this Agreement to any **APPLICANT** affiliate, including any partnership in which **APPLICANT** or its parent company has a majority interest, with the financial and legal ability to satisfy the terms and conditions of this Agreement will not be deemed an assignment hereunder. Any **APPLICANT** affiliate or partnership receiving such a transfer of rights must accept all terms and conditions of the Agreement and notify PEF of such transfer and acceptance in writing.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, by their respective officers thereunto duly authorized on the dates indicated below:

**FLORIDA POWER CORPORATION d/b/a
PROGRESS ENERGY FLORIDA, INC.**

Name of Corporation

Rodney N. Hutcherson

Rodney N. Hutcherson

Manager, Southern Transmission Area Maintenance

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Julie M. Glisson
Signature of First Witness

Julie M. Glisson
Print or Type Name of First Witness

Stuart G. Register
Signature of Second Witness

STUART G. REGISTER
Print or Type Name of Second Witness

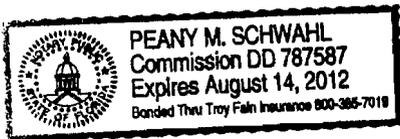
Grantor(s) mailing address:

Real Estate Document Center
3300 Exchange Place, NP1R
Lake Mary, FL 32746

State of Florida)
County of Pinellas) ss
Orange

The foregoing Agreement was acknowledged before me this 31st day of August, 2009, by Rodney N. Hutcherson, Manager Transmission Maintenance of FLORIDA POWER CORPORATION, a Florida corporation, d/b/a PROGRESS ENERGY FLORIDA, INC., on behalf of the corporation. He personally appeared before me at the time of notarization, and is personally known to me.

NOTARY SEAL



Peany M. Schwahl
Name:
Notary Public
Serial Number: DD787587
My Commission Expires: Aug. 14, 2012

CITY OF LEESBURG

Name of Corporation

Name: Lewis Puckett

Title: Mayor

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Grantor(s) mailing address:

Signature of First Witness

Print or Type Name of First Witness

Signature of Second Witness

Print or Type Name of Second Witness

State of _____)
County of _____) ss

The foregoing Agreement was acknowledged before me this _____ day of _____, 2008, by _____ who is/are personally known to me or who has/have produced _____ as identification and who did/did not take an oath.

NOTARY SEAL

Name:
Notary Public
Serial Number:
My Commission Expires:

EXHIBIT "A"

**TO THAT CERTAIN UNDERGROUND PIPELINE
RIGHT-OF-WAY UTILIZATION AGREEMENT**

BETWEEN

**FLORIDA POWER CORPORATION d/b/a
PROGRESS ENERGY FLORIDA, INC.**

AND

CITY OF LEESBURG

DATED

April, 2009

See drawings numbered G-001,002,002,004,G-501,502,503, C-001,002, C-101,102,103,104,105, C-401,301,501, C-003,004,106,107,108,109,110,302,303,402,502, Sheet 1-28, for Turnpike/Plantation Force Main & Reclaimed Water Main, City of Leesburg.

attached hereto and by this reference incorporated herein and made a part hereof.

PLANS ARE FOR REFERENCE ONLY – NOT TO BE RECORDED

S P E C I F I C R E Q U I R E M E N T S

for
**PLANTATION FORCE MAIN & RECLAIMED
WATER MAIN
CITY OF LEESBURG**

1. That other than PE's facilities, no overhead wires, poles, light standards, dumpsters, signs, trees, buildings, structures or obstacles shall be located, constructed or installed within the right-of-way easement strip without written approval by PE.
2. This area contains high voltage power lines. Extreme caution must be used when working within the Utilization Area.
3. That a clear, level and easily passable thirty-foot (30') wide maintenance road be provided with no shrubs or trees planted in maintenance roadway.
4. The parties acknowledge that in the event Applicant intends to create homeowners' association, which will at some point take operation and control of portions of the improvements being constructed by Applicant. Applicant shall have the right to transfer the effectiveness and rights granted under this Agreement to said homeowners' association at which time the rights, privileges and responsibilities contained herein shall inure to the benefit and the burden of said homeowners' association. Provided, however, such transfer shall only be effective upon Florida Power's receipt of written notice by the Home Owner's Association of its acceptance of the transfer including acknowledging its acceptance of all obligations and responsibilities of applicant under the Agreement.
5. That APPLICANT acknowledges that PE has not approved or permitted any conservation easements to be granted or dedicated within PE's right-of-way easement strip and PE shall not be bound by the dedication of any conservation easements within said right-of-way easement strip pursuant to the recording of the plat of The Plantation Subdivision in the public records of Lake County.
6. Florida Power Corporation d/b/a Progress Energy Florida, Inc.'s right-of-way shall not be used to satisfy wetland mitigation requirements.
7. A PE approved Inspector will be assigned to verify that construction of the improvement(s) within PE's easement strip is in compliance with the terms and conditions of the Agreement and the approved Development Plan, which is shown herein as **Exhibit "A"**. The Inspector shall be present and on site at all times during construction. All costs of PE's Inspector are to be paid by

EXHIBIT "B"

the APPLICANT. PE's Inspector shall be notified fourteen (14) days prior to the commencement of construction within PE's right-of-way. The APPLICANT's Construction Manager (or designated representative) will make reports to PE's Inspector regarding any damages to PE's property, private property or other public facilities. APPLICANT agrees to pay all expenses incurred in connection with the repair of such damages.

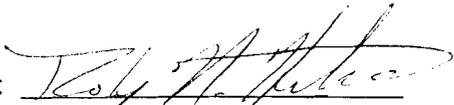
8. Prior to any work commencing in the transmission right of way, APPLICANT or APPLICANT'S designee, shall attend an on site safety meeting with PE's Environmental, Health and Safety Inspector, Kenneth W. Baker (863-678-4488). It shall be the APPLICANT's responsibility to coordinate with PE's Environmental, Health and Safety Inspector and schedule the safety meeting. Applicant shall be obligated to perform any safety procedure or standard as determined by the Inspector.
9. Applicant acknowledges that it is planning on granting an easement to Lake County ("County") for right-of-way purposes encumbering the same property encumbered by PE's easement. Applicant acknowledges and agrees that PE's rights under its easement are prior in time to and superior to any rights granted to said County and that the County's rights under said easement shall be subordinate to PE's rights under its easement. Nothing herein is or shall be deemed to constitute a consent or joinder by PE to said easement to the County or a waiver of PE's rights under its easement, which easement remains in full force and effect.
10. That all sidewalks, driveways and roadways placed within PE's right-of-easement strip shall be designed to be driven over and constructed to Florida Department of Transportation Roadway Design Standards for vehicles weighing in excess of 100 tons.
11. That all excavations for APPLICANT's utilization shall be a minimum of fifty feet (50') from the nearest edge of PE's transmission structure and a minimum of thirty feet (30') from guying.
12. That the near edge of APPLICANT's roadway shall be a minimum distance of **thirty (30)** feet from any PE structure or guying.
13. That pole protection will be provided for Structure No. **CFW-33 to CFW-37** because the utilization is located within twenty-five feet (25') of this structure. APPLICANT shall provide and install traffic barriers as specified by PE's field representative.
14. That no landscaping, other than sod, shall be planted within the right-of-way easement strip.
15. That any shrubbery planted by APPLICANT within the right-of-way easement strip shall be approved prior to construction commencing.
16. That PE shall not be liable for damages to any landscaping resulting from operations necessary to maintain PE's facilities.
17. That any sprinkler system which may be installed by APPLICANT within the right-of-way easement strip shall spray no closer than twenty-five feet (25') from the nearest edge of PE's structures or guying and to a maximum height of ten feet (10').

18. That any and all piping and/or culverts (cables) installed by APPLICANT within PE's right-of-way easement strip shall have sufficient earth cover (minimum of 36") to prevent breakage due to the operation of PE's vehicles and heavy equipment within the easement strip.
19. That no below ground grade drainage or facilities be installed by APPLICANT within the right-of-way easement strip without PE's approval.
20. That APPLICANT agrees to furnish and install permanent markers showing the location of the underground facilities within the right-of-way easement strip. Said markers shall be the APPLICANT's responsibility.
21. That APPLICANT agrees that no refueling operations take place within the easement area.
22. That no parking or storage shall occur within Fifty feet (50') of PE's structures.
23. That all parked vehicles within the right-of-way easement strip shall be motor vehicles of an operative and transient nature; mobile homes, office trailers or carriers of explosive materials are prohibited.
24. That all tops of banks of ponds if allowed will be in the outer five (5) foot of the right-of-way easement strip and side slopes shall be no steeper than 12-feet horizontal to 1-foot vertical (12:1).
25. That APPLICANT agrees to put up a sign on a pole or on the fence around the ponds stating this pond is owned and maintained by APPLICANT and giving a phone number to call for maintenance concerns.
26. That APPLICANT shall notify PE's representative for Transmission Underground (i.e., Paul T. White or his designated alternate, telephone 727 893-9240, St. Petersburg) at least forty-eight (48) hours prior to APPLICANT's performing any excavation within PE's right-of-way easement strip in order that PE may arrange for an authorized representative to be on site to assist in establishing the existing location of PE's underground cable(s) and to observe all excavation activities in proximity to said cable(s) within PE's easement strip.
27. That APPLICANT shall not install cathodic protective devices without first notifying PE's Material Technology Engineer (i.e., Alvan L. Hite or his designated alternate, telephone 904/563-4552, Crystal River).
28. That APPLICANT understands that work must commence within twelve (12) months from the date of this signed Agreement or the Agreement becomes null and void.

APPROVED BY:
CITY OF LEESBURG

APPROVED BY
TRANSMISSION LINE ENGINEERING

Signature: _____

Signature:  _____

Name: _____

Date: _____

Name: Rodney N Hutcherson

Date: Aug. 31, 2009

EXHIBIT "B"

**FLORIDA POWER CORPORATION d/b/a PROGRESS ENERGY FLORIDA, INC.
PIPELINE COLLOCATION GUIDELINES**

1. **OBJECTIVE**

The purpose of these guidelines is to identify minimum safety requirements for potential collocation of non-metallic Pipeline facilities within PEF's properties. The Pipeline and related facilities in question must consist of **100% non-metallic pipe** (thus excluding Pipelines with metallic liners or reinforced concrete components), with no exposed metallic appurtenances (such as valve handles). All design and construction approval must be secured through PEF's Transmission Right of Way Use Program/Licensed Encroachment process.

2. **LOCATION GUIDELINES**

- A. No excavation is allowed within fifty (50) feet of transmission structures or foundations including all guy wires, anchors and other attachments. Exceptions are possible with prior written approval from PEF, if proper support of the structures is maintained through use of sheet piling or other appropriate support methods.
- B. Parallel installation of pipelines directly under the conductors is prohibited. A minimum of twenty (20) feet of separation must be maintained from the Pipeline to the nearest conductor.
- C. On PEF properties where there are two (2) or more circuits, no Pipelines shall be permitted to be located between the transmission lines (circuits) and structures.
- D. Pipelines shall not conflict with PEF's future expansion plans on PEF's properties.
- E. No above ground appurtenances, including manholes, are permitted within fifty (50) feet of PEF's structures and associated grounding systems without PEF's prior written approval. Aboveground appurtenances should be located as far away as practical from these structures.
- F. Transitions of the Pipeline within PEF's properties from one side to the other are prohibited without prior review and written approval by PEF.
- G. The centerline of the Pipeline must be installed five (5) feet from the outer edge of PEF's properties. Exceptions are possible with prior review and written approval by PEF.
- H. Venting valves and blow off valves shall be placed outside and not within PEF's properties and shall be vented away from any potential ignition sources.
- I. **APPLICANT** shall furnish, install and maintain permanent markers showing the location of the underground Pipeline(s). Any and all piping installed by APLICANT shall have sufficient earth cover to prevent breakage due to PEF's trucks and heavy equipment. PEF's trucks and heavy equipment commonly exceed gross vehicle weights of 200,000 pounds or 100 tons.

- J. **APPLICANT** shall provide a clear, level and easily passable thirty (30) foot wide maintenance road along the entire length of the Pipeline Utilization Area. Fences within the Pipeline Utilization Area are prohibited without prior written approval by PEF. If permission is granted and if a fence is metallic, then PEF may require that calculations be performed and submitted to PEF to ascertain that fence voltages are not excessive during both normal and abnormal power line operating conditions.

3. **DESIGN GUIDELINES**

- A. PEF's properties shall not be used to satisfy wetland mitigation requirements.

4. **CONSTRUCTION GUIDELINES**

- A. All of **APPLICANT's** operations, activities and equipment used within PEF's properties beneath or in proximity to any of PEF's facilities shall at all times be in strict compliance with the applicable provisions of the following:
 - National Electrical Safety Code - NESC
 - National Association of Corrosion Engineers - NACE - Standard RP-01-77
 - Occupational Safety and Health Administration - OSHA
 - Federal State and Local Requirements
 - US D.O.T. Pipeline Safety Regulations - Part 192 or 195 as applicable.
- B. All requirements to de-energize, reroute, cover or mark any power line must be submitted in writing to PEF, Attn: Encroachment Agent/Transmission Line Engineering, 3300 Exchange Place, Lake Mary Florida, 32746, before any work is commenced on the project or on any involved spread. PEF shall not be required to process any requests in less than fifteen (15) days, excluding weekends. If a request is pending, no work shall proceed until the request is processed and approved by PEF. All costs associated with the request shall be borne by **APPLICANT**. The Encroachment Agent shall have sole jurisdiction to receive and grant such requests. It is specifically acknowledged that PEF employees from other Departments are not authorized to receive and determine such requests.
- C. **APPLICANT** must notify all personnel working on PEF's properties that under fault conditions, touching a power line structure, standing near it, or touching a grounding metallic piece of equipment located near it could constitute a hazard if adequate safety precautions are not taken.
- D. **APPLICANT** shall secure all necessary permits or licenses from Federal, State or Local Government and must provide copies to PEF prior to construction.
- E. An **APPLICANT's** electrical safety inspector is required on each spread until installation is complete. **APPLICANT** shall institute a safety program to inform and train its workers on how to work near electrical facilities. Clearly visible hazard notification warning signs shall be posted within the Pipeline Utilization Area which state "PEF transmission rights of way contain high voltage power lines. Extreme caution must be used when working in the right of way."
- F. If 15V between a metallic structure or piece of equipment and earth or between two (2) metallic structures or pieces of equipment are exceeded during construction, then adequate protection or procedures must be utilized by **APPLICANT** including, but not limited to,

temporary gradient control mats or grids that extend beyond the work area or bonding between the metallic surfaces in question

- G. All metallic structures must be grounded and rubber tire vehicles will be grounded by straps and by rod, if stationary. No refueling operations shall take place within PEF's properties.
- H. Work must cease during high winds, storms and pre-arranged switching.
- I. No equipment shall ever be operated in proximity to power lines where the equipment, including any boom or extension thereof, shall have the capability of violating any clearance distance set forth in any applicable codes, including the NESC, NEC, or OSHA. Lift equipment shall comply with NESC clearances.
- J. **APPLICANT** shall not use, store, dispose, treat or generate any hazardous substances in PEF's properties.
- K. Ground elevation must not be changed more than two (2) feet from existing grade. **APPLICANT** is responsible for restoration of the Pipeline Utilization Area to equal or better condition that existed prior to construction.
- L. A PEF Construction Inspector will be assigned to verify the terms of this Agreement and to coordinate requirements by PEF to adjust and modify facilities to allow construction of the Pipeline. PEF's Construction Inspector shall be present and on site at all times during construction. **APPLICANT** agrees to pay all costs of PEF's Construction Inspector. PEF's Construction Inspector shall be notified fourteen (14) days prior to the commencement of construction within PEF's properties and within five (5) days when any Pipeline is charged or pressure tested during construction. **APPLICANT's** Construction Manager (or designated representative) will make reports to PEF's Construction Inspector regarding any damages to PEF's property, private property or other public facilities. **APPLICANT** agrees to pay all expenses incurred in connection with the repair of such damages.
- M. That based upon **APPLICANT's** estimate of the number of days that the **APPLICANT** will be performing construction activities within PEF's easement, PEF has provided **APPLICANT** and **APPLICANT** has accepted, a binding cost estimate of PEF's costs to perform Inspection Services in the amount of \$75.00 per hour which sum the **APPLICANT** must pay to PEF for Inspection Services under this Agreement. Payment is due upon execution of the Agreement. The parties hereto acknowledge that the binding cost estimate is based upon estimates of the time that **APPLICANT** reasonably believes it will be performing construction activities within the Pipeline Utilization Area and that the actual time may be more or less. Within thirty (30) days following completion of the **APPLICANT's** construction activities, PEF shall furnish to **APPLICANT** an itemized statement signed by an authorized representative of PEF setting forth the actual final inspection costs. The sum of the final actual cost of the Inspection Services is the final price to be paid hereunder by **APPLICANT** to PEF. If the sum of all payments theretofore made by **APPLICANT** for the Inspection Services is less than the final price, **APPLICANT** shall pay the remaining balance to PEF within thirty (30) days after presentment of the final statement by PEF. If the sum of such payments made by **APPLICANT** for the Inspection Services is greater than the final

price, PEF shall refund the difference to **APPLICANT** within thirty (30) days after the presentment of the final statement. If **APPLICANT** objects to any of the amounts reflected in the final statement, **APPLICANT** shall provide PEF with written notice of same, stating in detail the objections **APPLICANT** has to the final statement. **APPLICANT** shall provide that written notice within fourteen (14) calendar days of receiving the final statement. All items in the final statement not expressly objected to by **APPLICANT** in writing within said fourteen (14) day period shall be deemed accepted by **APPLICANT** as being final and binding, without any further right to challenge or appeal such items. If **APPLICANT** fails to pay any amount owed PEF hereunder when due, such past due amount shall accrue interest at the rate of eighteen percent (18%) per annum or the maximum legal rate, whichever is lower. Further, if **APPLICANT** fails to make any undisputed payment owed PEF hereunder within five (5) business days of receiving written notice from PEF that such payment is past due, PEF may suspend performance of all or any portion of the construction activities until such past due amounts have been paid in full. Any such suspension shall be deemed an **APPLICANT** delay and **APPLICANT** shall be liable for all costs and damages incurred by PEF.

- N. As a safeguard in respect of the above, **APPLICANT** shall carry Workers' Compensation Insurance in the minimum amounts required by statute and shall carry policies of insurance acceptable to PEF with respect to (a) General Liability not less than \$5,000,000 combined single limit and (b) Pollution Liability not less than \$5,000,000 combined single limit and (c) Automobile Liability not less than \$1,000,000 combined single limit. **APPLICANT** shall have the insurance policies mentioned in (a), (b) and (c) above, respectively, endorsed by its insurance carrier to provide blanket contractual coverage, expressly with respect to this section, to the full limits of and for the liabilities insured under said policies; and prior to the commencement of any construction of **APPLICANT**'s facilities hereunder, the **APPLICANT** shall furnish PEF with a certificate of insurance, in duplicate, on an Acord form or equivalent acceptable to PEF, completed by the **APPLICANT**'s insurance carrier showing **APPLICANT** carries the requisite insurance and that the specified policies insure the liability assumed by the **APPLICANT** under this section. Effective on initial construction activities, and in five (5) year increments thereafter, the aforementioned insurance coverage shall be adjusted by adding to the coverage amounts of the previous five (5) year period, the increase (if any) of the CPI - All Urban Consumers as reported by the Bureau of Labor Statistics for the previous five (5) year period (or in the event the Index is discontinued, an equivalent cost of living index of some other appropriate governmental agency elected by PEF).
- O. **APPLICANT** is hereby advised that the generation, transmission and/or distribution of electrical energy involves the handling of a natural force which, when uncontrolled, is inherently hazardous to life and property. **APPLICANT** is further hereby advised that, due to the nature of the work to be performed pursuant to these guidelines, other hazardous or dangerous conditions (not necessarily related to the inherent danger of electricity) may also be involved in the work. Accordingly, prior to the commencement of any work, **APPLICANT** shall inspect the job site specifically to ascertain the actual and potential existence and extent of any hazardous or dangerous conditions, and instruct its employees and contractors with respect to said conditions and the safety measures to be taken in connection therewith; and, during the course of the work, **APPLICANT** shall take all such measures as may be deemed necessary or advisable to protect and safeguard the person and property of **APPLICANT**

and the general public against all hazardous or dangerous conditions as the same arise.

5. **OPERATION/POST CONSTRUCTION**

- A. In addition to the foregoing requirements, **APPLICANT** shall comply with the requirements of "Subpart B - Reporting Accidents and Safety-Related Conditions" of the United States Department of Transportation Pipeline Safety Regulations Part 192/195 (Transportation of Hazardous Liquids by Pipeline, 49 CFR), as appropriate and shall promptly provide to PEF a duplicate copy of all correspondence or other notification made to the US DOT pursuant to incidents as they may occur on lands utilized by this Agreement.
- B. **APPLICANT** further hereby agrees that if any member of the public, or any employee of the **APPLICANT** or **APPLICANT's** agents, contractors, representatives or other persons engaging in **APPLICANT's** activities upon PEF's properties, or if any property including PEF's or the public is injured in the course of work being performed under the provisions of this Agreement, **APPLICANT** shall first notify PEF's Northern Transmission Area Maintenance Engineer at (800) 700-8744 and if unable to reach, contact PEF's Claims Department at (727) 826-4373 during regular business hours from 8 a.m. to 5 p.m., Monday through Friday, or (727) 826-4001 at night, weekends or holidays. Such notification shall be made immediately upon knowledge, in person or by telephone and promptly confirmed in writing within twenty-four (24) hours and shall include all pertinent data such as name of injured party, location of accident, description of accident, nature of injuries, names of witnesses, disposition of injured or deceased person.
- C. PEF's Northern Transmission Area Maintenance Engineer at (800) 700-8744 shall be notified within fifteen (15) days when any Pipeline is to be charged or pressure tested during maintenance of the Pipeline and/or or post-construction activities. **APPLICANT's** Construction Manager (or his designated representative) will make reports to PEF's Transmission Maintenance Engineer regarding any damages to PEF's properties, private property or other public facilities which occurs during any maintenance or post-construction activities. **APPLICANT** agrees to pay all expenses incurred in connection with the repair of such damages.
- D. **APPLICANT** may at any time remove any or its entire Pipeline from PEF's properties, provided that **APPLICANT** gives PEF written notice a minimum of thirty (30) days in advance of the planned removal. PEF shall not be obligated to refund any amounts received from **APPLICANT**. Should it be necessary, in the sole judgment of PEF, for the Pipeline to be relocated or removed, PEF shall notify **APPLICANT** of the changes which PEF deems necessary, and **APPLICANT** agrees to make such changes, at **APPLICANT's** sole expense. PEF shall exercise its best efforts to identify alternative space on PEF's properties for the equipment and facilities of **APPLICANT** that will comply with clearance and separation standards and satisfy safety requirements of applicable codes and government regulations, and that will reasonably accommodate **APPLICANT's** purposes under this Agreement. **APPLICANT** agrees to complete any partial relocation of any of its Pipeline(s) within thirty (30) days of notification from PEF, unless **APPLICANT** determines that such partial relocation cannot reasonably be accomplished within the said thirty (30) days, in which case **APPLICANT** shall provide to PEF for review and approval a schedule for the timely accomplishment of such partial relocation, consistent with any necessary permitting, right of way acquisition and/or mobilization of resources to make such partial relocation. **APPLICANT** further agrees to

complete any major relocation or removal of the Pipeline or portions thereof within ninety (90) days of notification from PEF, unless **APPLICANT** determines that such major relocation cannot reasonably be accomplished within ninety (90) days, in which case **APPLICANT** shall provide to PEF for review and approval a schedule for the timely accomplishment of such major relocation, consistent with any necessary permitting, right of way acquisition and/or mobilization of resources to make such major relocation. In the event it should be necessary for **APPLICANT** to remove or relocate any portion of the Pipeline from PEF's properties as required pursuant to this paragraph, the parties agree to exercise their best efforts to resolve the conflict in a timely manner, provided, however; that such removal or relocation does not exceed one-hundred and eighty (180) days.

- E. Requests for modifications of existing or proposed facilities or for the placement of future Pipeline(s) within in PEF's properties shall be submitted in writing to PEF's Northern Florida Transmission Area Encroachment Agent. Future Pipelines shall require a minimum of a twenty-five (25) foot separation. Exceptions may be permitted with prior written approval by PEF's Encroachment Agent.

- F. Notification of completion of construction on the designated Pipeline Utilization Area must be made to PEF's Northern Florida Transmission Area Encroachment Agent (800) 700-8744 within thirty (30) days of completion. Within one-hundred and eighty (180) days of completion, **APPLICANT** shall provide to PEF three (3) complete sets of As-Built Drawings, sealed by a registered surveyor, noting the location of the **APPLICANT**'s facilities and PEF's nearest structures.