

AN ORDINANCE GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS AN ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, AND PROVIDING FOR MONTHLY PAYMENTS TO THE CITY.

WHEREAS, heretofore the Town of West Miami, Florida, now the City of West Miami, Florida, by Ordinance No. 74 enacted May 21, 1951, effective June 20, 1951, granted to Florida Power & Light Company an electric franchise for a period of thirty (30) years; and,

WHEREAS, said franchise is nearing expiration; and,

WHEREAS, the parties desire to renew said franchise upon the terms hereinafter recited; and,

WHEREAS, the parties in the renewal of their franchise are relying upon Resolution R-709-78 passed by the Metropolitan Dade County Board of Commissioners June 20, 1978;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUCIL OF THE CITY OF WEST MIAMI, FLORIDA:

Section 1. That there is hereby granted to Florida Power & Light Company (herein called the "Grantee"), its successors and assigns, the non-exclusive right, privilege or franchise to construct, maintain and operate in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places in the City of West Miami, Florida (herein called the "Grantor"), and its successors, in accordance with established practice with respect to electrical construction and maintenance, for the period of thirty (30) years from the date of acceptance hereof, electric light and power facilities (including conduits, poles, wires and transmission lines, and, for its own use, telephone and telegraph lines) for the purpose of supplying electricity to Grantor, and its successors, and inhabitants thereof, and persons and corporations beyond the limits thereof.

Section 2. As a condition precedent to the taking effect of this grant, Grantee shall have filed its acceptance hereof with the Grantor's Clerk within thirty (30) days hereof.

Section 3. That the facilities shall be so located or relocated and so erected as to interfere as little as possible with traffic over said streets,

alleys, bridges and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of Grantor may designate for the purpose, but not so as unreasonably to interfere with the proper operation of Grantee's facilities and service. That when any portion of a street is excavated by Grantee in the location or relocation of any of its facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation.

Section 4. That Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee, to indemnify Grantor and hold it harmless against any and all liability, loss, cost, damage or expense, which may accrue to Grantor by reason of the neglect, default or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5. That all rates and rules and regulations established by Grantee from time to time shall at all time be reasonable and Grantee's rates for electricity shall at all time be subject to such regulation as may be provided by law.

Section 6. That no later than sixty (60) days after the first anniversary date of this grant and no later than sixty (60) days after each succeeding anniversary date of this grant, the Grantee, its successors and assigns, shall have paid to the Grantor and its successors an amount which added to the amount of all taxes as assessed, levied, or imposed (without regard to any discount for early payment or any interest or penalty for late payment), licenses, and other impositions levied or imposed by the Grantor upon the Grantee's electric property, business, or operations, and those of Grantee's electric subsidiaries for the preceding tax year, will equal 6% of Grantee's revenues from the sale of electrical energy to residential, commercial and industrial customers within the corporate limits of the Grantor

for the twelve (12) fiscal months preceding the applicable anniversary date.

Section 7. Payment of the amount to be paid to Grantor by Grantee under the terms of Section 6 hereof shall be made in advance by estimated monthly installments commencing ninety (90) days after the effective date of this grant. Each estimated monthly installment shall be calculated on the basis of ninety percent (90%) of Grantee's revenues (as defined in Section 6) for the monthly billing period ending sixty (60) days prior to each scheduled monthly payment. The final installment for each fiscal year of this grant shall be adjusted to reflect any underpayment or overpayment resulting from estimated monthly installments made for said fiscal year.

Section 8. As a further consideration of this franchise, said Grantor agrees not to engage in the business of distributing and selling electricity during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns.

Section 9. That failure on the part of Grantee to comply in any substantial respect with any of the provisions of this ordinance, shall be grounds for a forfeiture of this grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by Grantee until a court of competent jurisdiction (with right of appeal in either party) shall have found that Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six (6) months after the final determination of the question, to make good the default before a forfeiture shall result with the right in Grantor at its discretion to grant such additional time to Grantee for compliance as necessities in the case require.

Section 10. Grantor acknowledges it is fully informed concerning the existing franchise granted by Dade County, Florida, to the Grantee herein, and accepted by the Grantee, as set out in Ordinance No. 60-16 adopted on May 3, 1960 by the Board of County Commissioners of Dade County, Florida. Grantor agrees to indemnify and hold Grantee harmless against any and all liability, loss, cost, damage and expense incurred by Grantee in respect to any claim asserted by Dade County against Grantee arising out of the franchise set out in said Ordinance No. 60-16 for recovery of any sums of money paid by Grantee

to Grantor under the terms of this subsequent franchise agreement.

Section 11. Should any section or provision of this ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or any part hereof, other than the part declared to be invalid.

Section 12. That all ordinances and parts or ordinances in conflict herewith be and the same are hereby repealed.

Section 13. This ordinance shall take effect on the date upon which Grantee files its acceptance.

Section 14. By reason of the content of this ordinance it is the intent of the council that same not be included in the code of the City of West Miami, Florida.

PASSED: First Reading this 1st day of November , 1978.

PASSED: Final Reading this 22nd day of November , 1978.

*Valerie C. Hurley*  
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President, City Council

ATTEST:

*Eileen Cox Campbell*  
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City Clerk

APPROVED:

*Edmund Cooper*  
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Mayor