

**ORDINANCE NO. 18-\_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF CUTLER BAY,  
FLORIDA GRANTING TO FLORIDA POWER & LIGHT  
COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-  
EXCLUSIVE ELECTRIC FRANCHISE, IMPOSING  
PROVISIONS AND CONDITIONS RELATING THERETO;  
PROVIDING FOR MONTHLY PAYMENT OF A  
FRANCHISE FEE TO THE TOWN; PROVIDING FOR  
SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE  
DATE.**

**WHEREAS**, the Town Council of the Town of Cutler Bay (the “Town”) recognizes that the Town and its citizens need and desire the continued benefits of electric service; and

**WHEREAS**, the provision of such electric service requires substantial investments of capital and other resources in order to construct, maintain, and operate facilities essential to the provision of such service in addition to costly administrative functions, and the Town does not desire to undertake to provide such services at this time; and

**WHEREAS**, Florida Power & Light Company (“FPL”) is a public utility that has the demonstrated ability to supply such services; and

**WHEREAS**, there is currently in effect a franchise agreement between Miami-Dade County (“County”) and FPL, the terms of which are set forth in County Ordinance 89-81, passed and adopted on July 25, 1989, which grants a thirty (30) year non-exclusive electric franchise to FPL to utilize public rights of way throughout the unincorporated and incorporated areas of the County, in return for FPL paying the County certain franchise fees, among other things as expressly provided herein (“Current Franchise Agreement”); and

**WHEREAS**, on November 15, 2007, pursuant to Resolution No. 07-34, the Town entered into an Interlocal Agreement with the County for payment to the Town of that portion of the franchise fees remitted by FPL to the County for rights to utilize public rights of way located within the Town; and

**WHEREAS**, FPL and the Town desire to enter into a new franchise agreement (“New Franchise Agreement”) providing for the payment of fees to the Town in exchange for the nonexclusive right and privilege of supplying electricity and other services within the Town free of competition from the Town, pursuant to certain terms and conditions; and

**WHEREAS**, Section 4.3 of the Town Charter provides that where the Town Council grants, renews or extends a franchise, an Ordinance must be adopted; and

**WHEREAS**, the Town Council deems it to be in the public interest to enter into this agreement addressing certain rights and responsibilities of the Parties as they relate to the use of the public rights-of-way within the Town's jurisdiction.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA:**

**Section 1. Incorporation of Recitals.** The above-stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Grant of Electric Utility Franchise; Term of Franchise.** There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called "FPL"), for the period of thirty (30) years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "Franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "Public Rights-Of-Way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Town of Cutler Bay, Florida, and its governmental successors by operation of law, if any, (hereinafter called the "Town"), in accordance with FPL's customary practices, and practices prescribed herein, with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, underground conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of FPL's operations (herein called "Facilities"), for the purpose of supplying electricity and other related services to the Town and its successors, the inhabitants thereof, and persons beyond the limits thereof.

**Section 3. Facilities Requirements.**

- a) FPL's Facilities shall be installed, constructed, erected, located or relocated so as to not unreasonably interfere with the convenient, safe, continuous use or the maintenance, improvement, extension or expansion of any public "road" as defined under the Florida Transportation Code, nor unreasonably interfere with traffic over the Public Rights-Of-Way, nor unreasonably interfere with reasonable egress from and ingress to abutting property.

- b)** To minimize conflicts with the standards set forth in subsection (a) above, the location, relocation, installation, construction, or erection of all facilities shall be made as representatives of the Town may prescribe in accordance with the Town's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said Public Rights-Of-Way; provided, however, that such rules or regulations (i) shall be for a valid municipal purpose; (ii) shall not prohibit the exercise of FPL's right to use said Public Rights-Of-Way for reasons other than unreasonable interference with traffic or transit; (iii) shall not unreasonably interfere with FPL's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers; and (iv) shall not require the relocation of any of FPL's Facilities installed before or after the effective date hereof in Public Rights-Of-Way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed Facilities to unreasonably interfere with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of any such public "road," or unless such relocation is required by state or federal law.
- c)** Such rules and regulations shall recognize that FPL's above-grade Facilities installed after the effective date hereof should be installed near the outer boundaries of the Public Right-Of-Way to the extent possible.
- d)** When any portion of a Public Right-Of-Way is excavated, damaged, or impaired by FPL (or any of FPL's agents, contractors, or subcontractors) because of the installation, inspection, or repair of any of FPL's Facilities, the portion of the Public Right-Of-Way so excavated, damaged, or impaired shall, within a reasonable time after such excavation, damage, or impairment, be restored by FPL at its expense to a condition at least equal to its original condition before such damage.
- e)** The Town shall not be liable to FPL for any cost or expense in connection with any relocation of FPL's Facilities required under this New Franchise Agreement, except, however, FPL shall be entitled to reimbursement of its costs from others.

- f) FPL shall comply with the Town's valid code and permit requirements and regulations, including those relating to rights-of-way. Except as expressly provided, nothing herein shall limit or alter the Town's existing rights with respect to the use or management of its rights-of-way. Any changes in law on utility easements shall not affect this New Franchise Agreement.

**Section 4. Indemnification of the Town.** The acceptance of this New Franchise Agreement shall be deemed an agreement on the part of FPL to the following: (a) that FPL will defend, indemnify and save the Town harmless from any and all damages, claims, liability, losses and causes of action of any kind or nature arising out of an error, omission, or negligent act of FPL, its contractors or any of their agents, representatives, employees, or assigns, or anyone else acting by or through them, and arising out of or concerning the construction, operation or maintenance of its Facilities hereunder; and (b) that FPL will pay all damages, claims, liabilities and losses of any kind or nature whatsoever, in connection therewith, including the Town's attorney's fees and costs in the defense of any action in law or equity brought against the Town, including appellate fees and costs and fees and costs incurred to recover attorney's fees and costs from FPL, arising from the error, omission, or negligent act of FPL, its contractors or any of their agents, representatives, employees, or assigns, or anyone else acting by or through them, and arising out of or concerning the construction, operation or maintenance of its Facilities hereunder.

**Section 5. Rates, Rules and Regulations of FPL.** All rates and rules and regulations established by FPL from time to time shall be subject to such regulation as may be provided by law.

**Section 6. Franchise Fee; Calculation; Payment.**

- a) Notwithstanding any other provision in this New Franchise Agreement, as a consideration for this Franchise, FPL shall pay to the Town, commencing ninety (90) days after the effective date hereof, and each month thereafter for the remainder of the term of this Franchise, an amount which, when added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Town against FPL's property, business or operations and those of its electric service subsidiaries during FPL's monthly billing period ending sixty (60) days prior to each such payment, will equal six (6.0%) percent of FPL's billed revenues (less actual write-offs) from the sale of electrical energy to residential,

commercial and industrial customers (as such customers are defined by FPL's tariff) within the Town's boundaries for the monthly billing period ending sixty (60) days prior to each such payment, and in no event shall payments for the rights and privileges granted herein exceed 6.0 percent of such revenues for any monthly billing period of FPL (except as expressly provided in this New Franchise Agreement). For purposes of this section, the term "write-offs" refers to uncollectable billed revenues from the sale of electrical energy to residential, commercial, and industrial customers within the Town's boundaries.

- b) The Town understands and agrees that such revenues as described in the preceding paragraph are limited to the precise revenues described therein, and that such revenues do not include by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes) so long as not done as a circumvention hereof; (e) Late Payment Charges; (f) Field Collection Charges; (g) other service charges.
- c) **Increased Benefits Clause.** If during the term of this New Franchise Agreement, FPL enters into a franchise agreement with any other municipality located in Miami-Dade County or Broward, County Florida, or with Miami-Dade County itself or with Broward County itself, each such municipality or county referred to herein as an "Other Governmental Entity," where the number of FPL's active electrical customers is equal to or less than the number of FPL's active electrical customers within the Town's boundaries, the terms of which provide for the payment of franchise fees by FPL at a rate greater than six (6.0%) percent of FPL's residential, commercial and industrial revenues (as such customers are defined by FPL's tariff), under the same terms and conditions as specified in Section 6(a) hereof, FPL, upon written request of the Town, shall negotiate and enter into a new franchise agreement with the Town in which the percentage to be used in calculating monthly payments under Section 6(a) hereof shall be no

greater than that percentage which FPL has agreed to use as a basis for the calculation of payments to any such Other Governmental Entity, provided, however, that if the franchise with such Other Governmental Entity contains additional benefits given to FPL in exchange for the increased franchise rate, which such additional benefits are not contained in this New Franchise Agreement, such new franchise agreement shall include those additional or reasonably equivalent benefits to FPL. Subject to all limitations, terms and conditions specified in the preceding sentence, the Town shall have the sole discretion to determine the percentage to be used in calculating monthly payments, and FPL shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement.

**Section 7. Non-Competition by Town.** As a further consideration, during the term of this franchise or any extension thereof, the Town agrees: (a) not to engage in the distribution and/or sale, in competition with FPL, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer presently served by FPL within the Town's limits; and (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate FPL to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies). Nothing specified herein shall prohibit the Town from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act, as may be amended from time to time. The Town may, if permitted by law, (i) generate electric capacity and/or energy at any facility owned or leased by the Town for storage or utilization at that facility or other Town-owned or leased facilities as chosen by the Town, and (ii) use renewable energy sources to generate electric capacity and/or energy for use in demonstration projects or at Town facilities, including but not limited to, Town Hall, and (iii) sell electric capacity and/or energy to FPL or other wholesale purchasers in compliance with applicable tariffs, and/or federal or state laws, rules and regulations controlling such transactions. The term "retail customer," for purposes of this section shall not include the Town itself. Nothing herein shall prohibit the Town, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have FPL transmit and/or distribute to any facility(ies) of the Town electric capacity and/or electric

energy purchased by the Town from any other person; provided, however, that before the Town elects to purchase electric capacity and/or electric energy from any other person, the Town shall notify FPL. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Town's facilities to be served under the offer. FPL shall thereafter have ninety (90) days to evaluate the offer and, if FPL offers rates, terms and conditions which are equal to or better than those offered by the other person, the Town shall be obligated to continue to purchase from FPL electric capacity and/or electric energy to serve the previously identified facilities of the Town for a term no shorter than that offered by the other person. If FPL does not agree to rates, terms and conditions which are equal to or better than the other person's offer, all of the remaining terms and conditions of this Franchise shall remain in effect.

**Section 8. Competitive Disadvantage; FPL's Rights.** If the Town grants a right, privilege or franchise to any other person to construct, operate or maintain electric light and power facilities within any part of the Town's boundaries in which FPL may lawfully serve or compete on terms and conditions which FPL reasonably determines are more favorable than the terms and conditions contained herein, FPL may at any time thereafter terminate this Franchise if such terms and conditions are not remedied within the time period provided hereafter. FPL shall give the Town at least one hundred eighty (180) days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for FPL herein, advise the Town of such terms and conditions that it considers more favorable and the objective basis or bases of the claimed competitive disadvantage. The Town shall then have ninety (90) days in which to correct or otherwise remedy the terms and conditions complained of by FPL, and the Town and FPL agree to negotiate in good faith toward a mutually acceptable resolution of FPL's claims during this 90-day period. If FPL reasonably determines that such terms or conditions are not remedied by the Town within said time period, and if no mutually acceptable resolution is reached by FPL and the Town through negotiation, FPL may terminate this Franchise agreement by delivering written notice to the Town's Clerk, Town's Manager, and Town's Attorney, and termination shall be effective ninety (90) days from the date of delivery of such notice. Nothing contained herein shall be construed as constraining the Town's rights to legally challenge at any time FPL's determination leading to termination under this Section.

**Section 9. Legislative or Regulatory Action.** If as a consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the Town's boundaries to a customer then being served by FPL, or to any new applicant for electric service within any part of the Town's boundaries in which FPL may lawfully serve, and FPL reasonably determines that its obligations hereunder, or otherwise resulting from this Franchise in respect to rates and service, place it at a material competitive disadvantage with respect to such other person, FPL may, at any time after the taking of such action, terminate this Franchise if such competitive disadvantage is not remedied as provided hereafter. Such competitive disadvantage can be remedied by either of the following methods: (i) if the Town either cannot legally, or does not, charge a franchise fee to other electricity supplier(s), then the Town can remedy the disadvantage by reducing FPL's franchise fee rate to zero; or (ii) if the Town is able to charge, and does charge, such other electricity supplier(s) a franchise fee at a rate less than the 6.0% rate calculated as provided in Section 6 of this Agreement, then the Town can remedy the disadvantage by reducing FPL's franchise fee rate to the same rate, with the same applicability and calculation methodology, as applies to such other electricity supplier(s). If the Town does not implement either of the foregoing solutions, FPL may terminate the Agreement, in accordance with the following process: FPL shall give the Town at least one hundred eighty (180) days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for FPL herein, advise the Town of the consequences of such action which resulted in the competitive disadvantage and the objective basis or bases of the claimed competitive disadvantage, and the Town and FPL agree to negotiate in good faith toward a mutually acceptable resolution of FPL's claimed disadvantage during this 180-day period. If such competitive disadvantage is, in the reasonable determination of FPL, not remedied by the Town within said time period, and if no mutually acceptable resolution of the matter is reached through negotiation, FPL may terminate this franchise agreement by delivering written notice to the Town's Clerk and termination shall take effect ninety (90) days from the date of delivery of such notice. Nothing contained herein shall be construed as constraining the Town's rights to legally challenge at any time FPL's determination of competitive disadvantage leading to termination under this section.

**Section 10. FPL's Failure to Comply.** Failure on the part of FPL to comply in any material respect with any of the provisions of this Franchise shall be grounds for forfeiture, but no such



forfeiture shall take effect if the reasonableness or propriety thereof is protested by FPL until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction within Miami-Dade County, Florida that FPL has failed to comply in a material respect with any of the provisions of this Franchise, and FPL shall have six (6) months after such final determination to make good the default before a forfeiture shall result with the right of the Town at its discretion to grant such additional time to FPL for compliance as necessities in the case require.

**Section 11. Town's Failure to Comply.** Failure on the part of the Town to comply in material respect with any of the provisions of this ordinance, including, but not limited to: (a) denying FPL use of Public Rights-Of-Way for reasons other than as set forth in Section 3 of this New Franchise Agreement; (b) imposing conditions for use of Public Rights-Of-Way contrary to Federal or Florida law or the express terms and conditions of this Franchise; (c) unreasonable delay in issuing FPL a use permit, if any, to construct its Facilities in Public Rights-Of-Way, shall constitute breach of this Franchise. FPL shall notify the Town of any such breach in writing sent by United States Certified Mail, return receipt requested, or via a nationally recognized overnight courier service, and the Town shall then remedy such breach within ninety (90) days and if it is not a breach that can be remedied within ninety (90) days, then as soon as practicable. Should the breach not be timely remedied, FPL shall be entitled to seek a remedy available under law or equity from a court of competent jurisdiction, including the remedy of obtaining judicial relief that permits the withholding of franchise fees. The Parties recognize and agree that nothing in this New Franchise Agreement constitutes or shall be deemed to constitute a waiver of either party's delegated sovereign right of condemnation and that either party, in its sole discretion, may exercise such right.

**Section 12. Audit and Inspection.** The Town may, at its expense, upon reasonable notice and within ninety (90) days after each anniversary date of this Franchise, examine FPL's records relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at FPL's office where such records are maintained. Records not prepared by FPL in the ordinary course of business or as required herein may be provided at the Town's expense and as the Town and FPL may agree in writing. Information identifying FPL's customers by name or their electric consumption shall not be taken from FPL's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase

payment to the Town, shall be reported to FPL. The Town's examination of the records of FPL in accordance with this Section shall not be conducted by any third party employed or retained by the Town whose fee, in whole or part, for conducting such audit is contingent on findings of the audit. At the Town's request no more than once annually, FPL will provide to the Town an electronic version of a billing list of all FPL customer addresses within the incorporated areas of the Town. The Town will respect FPL's confidential documents. The Town will be given access to confidential documents while on FPL premises, but shall not remove those confidential documents from FPL premises unless expressly authorized to do so by FPL. Information relative to this audit and likely to be deemed confidential by FPL includes, but is not limited to, nonpublic customer or customer account information, nonpublic policies and procedures, and any other nonpublic information that gives FPL an opportunity to gain an advantage over its competitors.

**Section 13. Severability.** The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect by a court of competent jurisdiction (after the expiration of all rights of appeal), such finding or adjudication shall not affect the validity of the remaining provisions for a period of ninety (90) days, during which, the Parties will negotiate in good faith to amend this New Franchise Agreement so as to restore to the maximum extent permissible, the original economic bargain embodied in this ordinance. If an agreement to amend the ordinance is not reached at the end of such ninety (90) day period, this entire ordinance shall become null and void and of no further force or effect.

**Section 14.** The Town acknowledges it is fully informed concerning the existing franchise granted by Miami-Dade County, Florida, to FPL, and accepted by FPL as set out in Ordinance No. 60-16 adopted on May 3, 1960, and subsequently renewed and accepted by FPL as set out in Ordinance No. 89-81 adopted on September 5, 1989 by the Board of County Commissioners of Miami-Dade County, Florida, and as adopted by the Town on November 15, 2007 in an interlocal agreement with Miami-Dade County ("Existing Agreement"). The Town agrees to indemnify and hold FPL harmless against any and all liability, loss, cost, damage and expense incurred by FPL in respect to any claim asserted by Miami-Dade County against FPL arising out of the franchise set out in the above referenced ordinances for the recovery of any sums of money paid by FPL to Town under the terms of this New Franchise Agreement. FPL

acknowledges and the Town hereby relies on then Dade County Resolution No. R-709-78 adopted on June 20, 1978 in the granting of this Franchise.

**Section 15. Definitions.** As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

**Section 16. Repeal.** All ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**Section 17. Effective Date.** As a condition precedent to the taking effect of this Ordinance, FPL shall file its acceptance hereof with the Town's Clerk within thirty (30) days of adoption of this Ordinance. The effective date of this Ordinance shall be when the Current Agreement terminates by the expiration of time or on the effective date of a new franchise agreement between Miami-Dade County and FPL, whichever occurs first.

**Section 18. Pre-Suit Dispute Resolution.** The Parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the Parties agree that they will meet at the senior management level in an attempt to resolve any disputes within thirty (30) days of notification of the dispute.

**Section 19. Governing Laws.** This New Franchise Agreement shall be governed and construed by the applicable laws of the Federal Government, State of Florida, Miami-Dade County, and the Codes and Ordinances of the Town.

**Section 20. Venue.** In the event that any legal proceeding is brought to enforce the terms of this New Franchise Agreement, it shall be brought by either party hereto in Miami-Dade County, Florida, or, if a federal claim, in the U.S. District Court in and for the Southern District of Florida, Miami Division.

**Section 21. Entire Agreement.** This New Franchise Agreement is intended to constitute the sole and entire agreement between the Town and FPL with respect to the subject matter hereof and correctly sets forth the rights, duties, and obligations of each of the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect, and this agreement supersedes all prior drafts and verbal or written agreements, commitments, or understandings, which shall not be used to vary or contradict the expressed terms

herein. Both parties have been represented by counsel of their choosing with regard to this New Franchise Agreement.

**Section 22. Modification.** It is further understood that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written documents executed with the same formality and of equal dignity herewith, and approved by the Town Council.

**Section 23. Notice.** Except in exigent circumstances, and except as may otherwise be specifically provided for in this Franchise, all notices by either party shall be made by United States Certified Mail, return receipt requested, or via a nationally recognized overnight courier service. Any notice given by facsimile or email is deemed to be supplementary, and does not alone constitute notice hereunder. All notices shall be addressed as follows:

To the Town:

Town Manager  
Town Hall  
10720 Caribbean Boulevard, Suite 105  
Cutler Bay, FL 33189

To FPL:

Vice President, External Affairs  
700 Universe Boulevard  
Juno Beach, FL 33408

Copy to:

Town Attorney  
Weiss Serota Helfman  
Cole & Bierman, P.L  
2525 Ponce de Leon Boulevard  
Suite 700  
Coral Gables, FL 33134

Copy to:

General Counsel  
700 Universe Boulevard  
Juno Beach, FL 33408

Any changes to the above shall be in writing and provided to the other party as soon as practicable.

**Section 24. Compliance with Federal, State and Local Laws.** The Town and FPL agree to comply with and observe all applicable Federal, State and valid and non-preempted local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

**Section 25. Nondiscrimination.** FPL represents and warrants to the Town that FPL does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with FPL's performance under this Franchise on account of race, color, sex, religion, age, handicap, marital status or national origin. FPL further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or

national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Franchise.

**Section 26. Approval of Agreement.** Execution of this Ordinance by the Town Mayor, the Town Attorney, and the Town Clerk shall constitute evidence of the New Franchise Agreement's approval after public hearing by the Town Council.

**Section 27. Attorney's Fees and Costs.** In the event either the Town or FPL must initiate litigation to enforce this New Franchise Agreement, the prevailing party shall be entitled to an award of all reasonable attorney's fees and costs, at all levels of litigation, including trials and appeals, including but not limited to fees for litigating entitlement to and amount of attorney's fees.

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PASSED on first reading this 26<sup>th</sup> day of September, 2018.

PASSED and ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
PEGGY R. BELL  
Mayor

ATTEST:

\_\_\_\_\_  
DEBRA E. EASTMAN, MMC  
Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF CUTLER BAY:

\_\_\_\_\_  
WEISS SEROTA HELFMAN  
COLE & BIERMAN, P.L.  
Town Attorney

First Reading  
Moved By: Vice Mayor Loyzelle  
Seconded By: Council Member Mixon

Second Reading  
Moved By: \_\_\_\_\_  
Seconded By: \_\_\_\_\_

FINAL VOTE AT ADOPTION:

Mayor Peggy R. Bell	_____
Vice Mayor Sue Ellen Loyzelle	_____
Council Member Mary Ann Mixon	_____
Council Member Michael P. Callahan	_____
Council Member Roger Coriat	_____