

**MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES ARMY CORPS OF ENGINEERS
AND FLORIDA POWER & LIGHT COMPANY**

This Memorandum of Agreement (“MOA”) is entered into this 4th day of October, 2017, between the U.S. Army Corps of Engineers, Jacksonville District (“Corps”), 701 San Marco Boulevard, Jacksonville, Florida and Florida Power & Light Company, including affiliates and subsidiaries, (“FPL”), 700 Universe Boulevard, Juno Beach, Florida (individually “Party” and collectively “the Parties”).

RECITALS

WHEREAS, the Corps has regulatory jurisdiction over certain activities occurring in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act of 1972 as amended (“Section 404”), and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899, as amended (“Section 10”); and

WHEREAS, Section 214 of the Water Resources Development Act of 2000, as amended and codified at 33 U.S.C. 2352 (“Section 214”), authorizes the Secretary of Army, after public notice, to accept and expend funds contributed by non-federal public entities, public-utility companies, and natural gas companies to expedite permit review for projects of that entity or company with a public purpose; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214, as amended, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated September 2, 2015, has delegated responsibility to the District and Division Engineers of the Corps to accept and expend funds contributed by public utility companies to expedite the review process for Department of Army permits, subject to certain limitations; and

WHEREAS, FPL is a “public utility company” as that phrase is defined in section 1262 of the Public Utility Holding Company Act of 2005 (42 U.S.C. § 16451) and, as such, FPL may enter into this MOA; and

WHEREAS, FPL owns and/or operates facilities used for the generation, transmission, and distribution of electric energy for sale and also owns and/or operates facilities used for the distribution at retail of natural or manufactured gas for heat, light, or power, which together serve a public purpose; and

WHEREAS, FPL projects often require permits from the Corps under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 (collectively the “DA permits”); and

WHEREAS, over the last couple of years, the number of FPL projects requiring DA permits has increased substantially and FPL expects project levels to continue for the foreseeable future; and

WHEREAS, the receipt of DA permits can be the final permitting step for FPL's projects and timely issuance by the Corps is critical to successful management of FPL's public utility assets; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to review and expedite the evaluation of permits for FPL related to projects for a public purpose; and

WHEREAS, the Corps issued an initial public notice dated April 3, 2017 regarding its intent to accept and expend funds contributed by FPL; and

WHEREAS, in a memorandum dated October 2, 2017 the Corps determined that the acceptance and expenditure of funds received from FPL is appropriate, and the Corps will issue an informational public notice on October 2, 2017 regarding its determination; and

WHEREAS, it is understood and acknowledged by the Parties that the Corps expedited review of FPL's DA permit applications will be completely impartial and in accordance with all applicable Federal laws and regulations.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. – Purpose and Authorities

A. Pursuant to Section 214, this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by FPL to expedite the DA permit review process for FPL's-designated priority projects ("Priority Projects").

B. The Corps enters into this MOA pursuant to its authority under 33 U.S.C. § 2325.

C. FPL enters into this MOA pursuant to its corporate authority to enter into agreements of this type.

Article II. - Scope

A. FPL will provide funds to the Corps to expedite the evaluation of DA permit applications for Priority Projects. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from FPL will be added separately to the Corps' Regulatory budget, in accordance with 33 U.S.C. § 2352.

B. The Corps will provide staffing resources exclusively dedicated to expediting the evaluation of DA permit applications for Priority Projects and/or other programmatic efforts to support efficient decision-making related to FPL's DA permitting needs.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of DA permit applications for Priority Projects and/or other programmatic efforts to support efficient decision-making related to FPL's DA permitting needs. Corps personnel will charge their time and related expenses against the account when they perform work to either expedite DA permit applications for Priority Projects or undertake other programmatic efforts to support efficient decision-making related to FPL's DA permitting needs.

D. Funds contributed by FPL pursuant to this MOA will be expended by the Corps to defray the costs of salary, associated benefits, overhead, and travel expenses for existing or additional personnel, and other costs in order to expedite the evaluation of Priority Project permit applications. Activities that the Corps may pursue under this MOA may include, but are not limited to, the following: pre-application meetings, permit area determinations, application completeness review, jurisdictional determinations, site visits, preparation and distribution of public notices, preparation of correspondence, meetings, consultation and coordination with other agencies and consulting parties, public interest review, analysis of alternatives, compensatory mitigation proposal review, preparation of environmental assessments, preparation of permit decision documents, and permit compliance.

E. The Corps may expend funds provided by FPL to hire contractors to perform select duties for the purpose of augmenting the resources available to the Corps for expediting its review of Priority Projects. If such expenditures when combined with the costs of the Regulatory Division personnel require funding in excess of the amount available under this MOA, then said contractors will not be utilized by the Corps until and unless additional funds are provided by FPL and the Parties execute a written amendment to this MOA.

F. The Corps will not expend funds provided by FPL for costs associated with the review of the Corps' work undertaken by supervisors or other persons or elements of the Corps in the decision-making chain of command; however, if a supervisor is performing staff work and not supervisory oversight, funds may be used. The Corps will not expend funds provided by FPL to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by FPL to defray costs of activities related to permit compliance. The Corps will not expend funds provided by FPL to continue activities for FPL should a lapse in Federal appropriations result in a shutdown or furlough for the Corps Regulatory personnel. "Enforcement functions" are defined as those activities related to investigating work not authorized by the Corps but which required Corps authorization. "Permit compliance functions" are defined as Corps oversight of authorized activities.

G. If FPL's funds are expended and not replenished, the Parties will terminate the MOA in accordance with Article XI and the Corps' evaluation of any remaining DA permit applications for Priority Projects will not be expedited.

Article III. - Representatives and Notices

A. To provide for consistent and effective communication between FPL and the Corps, each Party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA.

For the purposes of this MOA, FPL's Principal Representative shall be:

Jena Mier
Environmental Services Manager
FPL
700 Universe Boulevard
Juno Beach, FL 33408
Tel: (561) 691-2209
Email: jena.mier@nee.com

For the purposes of this MOA, the Principal Representative for the Corps shall be:

Clif Payne
Chief, North Permits Branch
Regulatory Division
U.S. Army Corps of Engineers, Jacksonville District
701 San Marco Boulevard, Jacksonville, FL 32207
Tel: (904) 232-3943
E-mail: Lyal.C.Payne@usace.army.mil

B. Any notice required by the MOA to or between the Parties shall be in writing and sent to the Principal Representatives by certified mail or recognized overnight courier with proof of delivery.

C. The Principal Representative for each Party may be changed upon advance written notice to the other Party without the need to execute an amendment to this MOA.

D. This section does not prohibit or impact the ability of FPL or the Corps to communicate directly with applicable project managers and personnel regarding work on specific Priority Projects.

Article IV. – Responsibilities of the Parties

A. **FPL's Responsibilities.** FPL shall:

(1) Provide funding as provided in Article V for existing or additional Corps personnel for the purpose of expediting the review of FPL-designated Priority Projects and other programmatic efforts to support efficient decision-making related to FPL's DA permitting needs.

(2) Provide adequate information regarding FPL-designated Priority Projects, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 32 of the Nationwide Permit Program. FPL will use ENG Form 4345 to apply for DA permits. Upon request, FPL shall provide supplemental information necessary to assure the District can effectively accomplish the required review.

(3) In consultation with the Corps, establish the specific order of priority of FPL-designated Priority Projects as listed in Appendix A to this MOA. The FPL-designated Priority Projects included in Appendix A and the order of priority of those FPL-designated Priority Projects may be changed by FPL's Principal Representative without requiring an amendment to this MOA by notifying the Corps in writing in the manner provided by Article III and will be effective upon receipt thereof.

(4) To the best of its ability, ensure the participation of all essential personnel, customers, and decision makers during the DA permit evaluation process.

(5) Work closely with the Corps to adjust priorities and schedules in order to make optimal use of available staff resources.

(6) Work closely with the Corps' Principal Representative to develop an estimate of the amount of work and funding for the Corps for each fiscal year.

(7) Make a reasonable effort to provide the Corps with information on other projects with FPL involvement that may affect the Corps' workload and staff availability.

(8) Actively engage with the Corps in scoping, planning, and project development through various means, including, but not limited to, meetings, field visits, conference calls, video teleconferencing, and email.

(9) In a timely manner, respond to and resolve potential non-compliance issues to the satisfaction of the Corps.

B. The Corps Responsibilities. The Corps shall:

(1) Use the funds contributed by FPL under this MOA to defray the costs of salaries and associated benefits, relevant training, overhead, and travel expenses in order to expedite the review of FPL's DA permit applications for Priority Projects, in accordance with the terms and conditions of this MOA.

(2) Hold pre-application meetings as needed and following any pre-application meeting and/or discussions to clarify the scope of anticipated permit application review processes, provide FPL with an estimated schedule of key review timeframes (as applicable) and an estimated completion date for the permit evaluation process for each complete application submitted. FPL shall be able to comment on the estimated completion date and adjust the order or list of Priority Projects per Appendix A, or provide additional resources per Article V. If the

Corps cannot meet the estimated completion date, the Corps will timely communicate with FPL the reason and provide a new estimated completion date.

(3) Consult with FPL regarding an adjustment of priorities or establishment of relative priorities if the current or projected workload of Priority Projects and activities and other programmatic efforts exceeds the Corps' ability to provide the services specified in this MOA.

(4) Actively participate in scoping, planning, and field reviews, when requested, to identify critical issues, key decision points, and potential conflicts as early as possible. The level of participation will be determined by the project's relative priority, as identified by FPL, as well as the Corps current and projected workload of FPL DA permit applications.

(5) Provide FPL with timely information on the Corps' actions that may affect FPL projects, including any changes in law.

(6) Every six (6) months, provide FPL a report of progress made under this MOA that documents and summarizes the Corps' activities completed and funds expended during the previous six (6) months, as well as the work and funds projected for the next six (6) months, in a brief report submitted to FPL's Principal Representative.

(7) Participate in at least quarterly status meetings with FPL, as requested, to discuss progress on FPL-designated Priority Projects and upcoming priorities.

(8) Provide advice and guidance on ways to avoid and minimize project impacts to achieve better environmental outcomes and to reduce permit processing timeframes and potential delays; this includes suggestions to qualify for more streamlined permits, such as General Permits.

(9) Review application packages for completeness and notify FPL within fifteen (15) calendar days of receipt, if additional information is necessary for a complete application and clearly define information needed to issue the public notice. An application is complete when sufficient information is received to issue a public notice (see 33 C.F.R. §§ 325.1(d)(10) and 325.3(a)).

(10) Annually, or upon request by the FPL Principal Representative, obtain Corps feedback about: (a) the quality of work submitted by FPL to the Corps for review and approval; (b) FPL staff knowledge of Corps regulations, rules, and permit requirements; (c) FPL's efforts to resolve non-compliance issues; and (d) FPL's professional conduct related to communication and coordination. The feedback should also include Corps recommendations for improving working relationships with and performance of FPL staff.

Article V. – Funding

A. For DA permit evaluations for FPL-designated priority projects, FPL will provide funding for services rendered under this MOA, in advance, on an annual basis based on the Federal fiscal year. The phrase "federal fiscal year" in this MOA refers to the period beginning October 1 of each year and ending on September 30 of the following year. For example, FY 2018 is from October 1, 2017 through September 30, 2018. Funding for service rendered under

this MOA maybe provided in a lump sum payment at the beginning of the fiscal year or quarterly installments throughout the fiscal year. The annual funding for FY 2018 is \$525,000 and payment in quarterly installments shall be due beginning within sixty (60) days of the Effective Date of this MOA.

B. No later than July 31 of each subsequent year that this MOA remains in effect, the Corps and FPL shall discuss the Corps anticipated costs to be incurred for the next FY, including the Federal Government's General Schedule increases (step-increases), locality adjustments and any carry over from the prior year and determine the funding amount for the next FY. Revisions agreed to by the Parties will be incorporated into a revised budget estimate for the next FY, without necessitating a formal revision or amendment to this agreement.

C. If the Corps' actual costs for providing the agreed upon level of service will at any time during the term of the MOA exceed the amount of funds provided for that FY, the Corps will notify FPL at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. FPL will either increase the total funding amount through an amendment to this MOA or agree, in writing, to a reduced level of service.

D. Prior to the Corps incurring any expenditure to expedite review of Section 404 and Section 10 permit applications for FPL-designated Priority Projects, FPL will make a payment to the Corps of the as specified in Article V, paragraph A or the Corps' budget estimates for subsequent fiscal years as provided in Article V, paragraph B. Payments by FPL are to be made by electronic transfer in accordance with Standard Operating Procedure UFC 08 (Appendix B).

E. The District will neither accept nor expend funds under this MOA after June 10, 2024, unless Federal law extends the Corps' authority under 33 U.S.C. 2352 to accept and expend funds contributed by public-utility companies to expedite the processing of permits.

Article VI. –Impartial Decision Making

It is understood and agreed that the acceptance and expenditure of funds under this MOA will not impact impartial decision making. The evaluation of DA permit applications for FPL-designated Priority Projects will utilize the same procedures for decisions that would otherwise be required for the evaluation of Section 404 and Section 10 permit applications for similar projects or activities not carried out pursuant to this MOA. The Corps' participation in this MOA does not imply endorsement of FPL projects nor does it diminish, modify, or otherwise affect the Corps' statutory or regulatory authority.

Article VII. – Applicable Laws

All applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by the Corps regulations, guidance, policies and procedures.

Article VIII. – Dispute Resolution

The Parties agree that, in the event of a dispute between the Parties regarding implementation of this MOA (excluding any specific permit application/decisions), FPL and the Corps shall use their best efforts to expeditiously resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that in the event such measures fail to resolve the dispute, they shall proceed in accordance with applicable Federal law.

Article IX. – Public Information

Justification and explanation of FPL's programs or projects before other agencies, departments, and offices will not be the responsibility of the Corps. The Corps may provide, upon FPL's request, assistance to support justification or explanation of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding the Corps regulatory activities and will not make public statements regarding FPL projects unless otherwise part of the Corps' ordinary course of business. FPL will give the Corps, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA, however, this provision is not intended to limit FPL's ability to make public statements about FPL projects generally or in the ordinary course of business.

Article X. – Amendment, Modification and Termination

A. This MOA may be modified or amended only in writing and by mutual agreement of the Parties.

B. Either Party may terminate this MOA, without cause, upon sixty (60) days written notice to the Principal Representative of the other Parties at the addresses provided in Article VII. In the event of termination, FPL shall continue to be responsible for all costs incurred by the Corps under this agreement prior to the date of such termination.

C. Within sixty (60) days after termination, or the expiration of this MOA, the Corps shall conduct a final accounting to determine the actual costs of the work performed pursuant to this agreement. Within thirty (30) days of completion of this accounting, the Corps shall return to FPL, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), any unobligated or unexpended funds advanced in excess of the actual costs.

Article XI. - Miscellaneous

A. The following link is provided to the Regulatory Informational webpage:
<http://www.saj.usace.army.mil/Missions/Regulatory/WRDA214.aspx>

B. This MOA will not affect any pre-existing or independent relationships or obligations of the Parties.

C. This MOA and appendices constitute the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein

regarding this MOA. No waiver, consent, modification or change of terms of this MOA shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any Party to enforce any provision of this MOA shall not constitute a waiver by that Party of that or any other provision.

D. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by Federal law and regulation.

E. This MOA does not preclude the Parties from entering other inter-agency agreements relative to their respective roles and responsibilities; however, any other agreement entered into should not contradict or otherwise undermine the intent of this MOA.

Article XII. Duration and Effective Date

This MOA will become effective when signed by both FPL and the Corps. This MOA shall remain in force until June 10, 2024, unless amended or terminated prior to that date in accordance with Article X.

IN WITNESS WHEREFORE, the Parties hereto execute this MOA to the last date written below.

Date: Oct 2, 2017

BY: 
Michael Sole, Vice President
Environmental Services
FPL

Date: OCT 4, 2017

BY: 
 Jason A. Kirk, Colonel
District Engineer
U.S. Army Corps of Engineers