

COPY

**FLORIDA POWER CORPORATION  
FIBER OPTIC FACILITIES AGREEMENT**

THIS AGREEMENT (the Agreement) is entered into as of this 23<sup>rd</sup> day of ~~April~~<sup>July</sup> 1998, by and between Florida Power Corporation (FPC), a Florida Corporation, 3201 34th Street South, St. Petersburg, Florida 33711, and the City of Ocala, through its electric utility department Ocala Electric Utility (OEU or Customer), a Florida Municipal corporation, with offices at 2100 NE 30th Avenue, Ocala, Florida 34470.

WHEREAS, FPC operates or is constructing a fiber optic telecommunication system for its own use on certain of its overhead and underground electric transmission and distribution facilities in the state of Florida; and

WHEREAS, certain dark fibers within that system are not immediately required by FPC for its own use during the term of this Agreement; and

WHEREAS, OEU intends to provide a fiber optic telecommunications service and will require the availability of dark fibers as part thereof; and

WHEREAS, FPC is willing, during the term of this Agreement, to grant to OEU the use of certain dark fiber as herein provided, where such use will not interfere with FPC's own service requirements,

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein, the parties agree as follows:

1. Scope of Agreement. OEU intends to use dark fiber for its own internal use and to make it available to others to provide telecommunications services utilizing FPC dark fiber between certain points and FPC hereby agrees to provide the dark fiber in order to facilitate the service that OEU will provide. The dark fiber to be utilized by OEU is more particularly described on the *Exhibit A* attached hereto and hereby incorporated by reference.
2. Effective Date of Agreement. This Agreement shall become effective upon its execution by the parties.
3. Definitions. For purposes of this Agreement and as used herein, the terms set forth below shall be defined as follows:
  - A. *Acceptance Test* - The tests conducted on the OEU Fibers to insure that the OEU Fibers meet or exceed the fibers specifications outlined in *Exhibit C*.
  - B. *Acceptance of OEU Fibers* - As outlined in Section 4.1, OEU's written approval that the OEU Fibers have passed the Acceptance Test.
  - C. *Affiliate* - Any entity that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the entity specified as a result of ownership of more than 50 percent of the voting capital stock or voting securities of such entity or any entity which acquires all or substantially all of such entity's assets.

- D. *Cable* - FPC owned fiber optic cable incorporating the OEU Fibers and the fibers to be utilized by OEU pursuant to this Agreement.
- E. *Fiber Acceptance Date* - The date on which OEU Fibers in the Cable constituting a communication circuit between OEU service points as defined in *Exhibit A* has passed the Acceptance Test and has met the conditions of Section 4.1: Acceptance of OEU Fibers.
- F. *FPC* - Florida Power Corporation, its parent, Affiliates and subsidiaries, and their directors, officers, employees, agents, successors and permitted assigns.
- G. *FPC Fibers* - For purposes of this Agreement, all optical fibers not dedicated for OEU's use shall be considered FPC Fibers whether used by FPC or used by a third party.
- H. *FPC Make-Ready* - The installation, upgrading or replacement of overhead or underground facilities necessary to safely and properly support the Cable in accordance with the requirements of the National Electrical Safety Code (NESC). FPC Make-Ready cost shall consist of the sum of FPC's direct cost as hereinafter defined plus fifteen percent (15%). FPC's direct cost shall include all material, labor engineering and supervision, and travel and loading expenses required for the installation, upgrading or replacement of overhead or underground facilities, cost of removal less any salvage value and the expense of transferring FPC's existing facilities. FPC Make-Ready shall be mutually agreed upon as described in *Exhibit B*.
- I. *FPC Premises* - That portion of FPC occupied facilities established for OEU's use and the housing of its equipment, to accomplish that which is set out in Section 1.
- I. *NESC* - The term NESC shall mean the current edition of the *National Electrical Safety Code*, as amended or revised.
- J. *OEU* - The City of Ocala electric utility department, its parent, Affiliates and subsidiaries, and their directors, officers, employees, agents, successors and permitted assigns.
- K. *OEU Fibers* - The dark optical fibers hereunder which are to be dedicated exclusively to OEU's use as provided herein.
- L. *OEU Premises* - That portion of FPC occupied facilities dedicated to OEU's use and the housing of its equipment, to accomplish that which is set out in Section 1.
- M. *Regeneration Facility Location* - Locations where repeater equipment enclosures will be installed as outlined in *Exhibit E*.
- N. *Route Segment* - A portion of the Cable installed between two points as set forth in *Exhibit A*, further defined as:
  - 1. *Off-Network* - constructed specifically due to the requirement for connectivity between OEU's service points and the existing or planned FPC fiber optic telecommunications network.

2. On-Network - contiguous within the existing FPC fiber optic telecommunications system or to be constructed in conjunction with the planned expansion of FPC fiber optic telecommunications system.

4. Application of OEU Fibers.

- A. Beginning with the Effective Date of this Agreement, the parties may execute one or more *Exhibit A's*, which are incorporated herein by reference and which shall be governed by the terms and conditions of this Agreement. The *Exhibit A* shall specify the fiber routes to be leased, the term and price for such lease and any rights or options with respect to the specific fiber to be leased. Execution of an *Exhibit A* shall be the exclusive method by which OEU may obtain FPC's consent to OEU's use of the Cable.
- B. Upon receipt of a request for service from OEU, the parties shall consult in good faith concerning the request, giving due consideration to the then-existing and projected electric transmission and distribution and telecommunication requirements of FPC and to such other factors as they may reasonably deem relevant. Following such consultation, if FPC can accommodate the request, FPC will furnish to OEU an estimate of annual fee requirements and anticipated Fiber Acceptance Date(s) (*Exhibit A*) for OEU's review and acceptance. In addition, FPC will furnish an estimate of any FPC Make-Ready (*Exhibit B*) that is necessary in order to safely and properly install the Cable and support the Route Segment for OEU's review and acceptance.
- C. Upon receipt of OEU's acceptance of the above and payment for any FPC Make-Ready necessary and upon acceptance by FPC, all appropriate *Exhibits* shall be attached hereto and made a part hereof and FPC will exercise its best efforts to provide the OEU Fibers to OEU in accordance therewith. FPC further agrees to provide written notification to OEU upon availability of the OEU Fibers.

4.1 Acceptance of OEU Fibers. Upon completion of construction of the Cable and any FPC Make-Ready, FPC will Acceptance Test the OEU Fibers to insure that the OEU Fibers meet or exceed the Fibers specifications outlined in *Exhibit C*. In the event the OEU Fibers meet such specifications, FPC shall notify OEU in writing of the availability of the OEU Fibers (the Fiber Notice). Within 5 business days of OEU receiving the Fiber Notice, OEU shall give FPC written notice of any failure of the OEU Fibers to satisfy OEU's Acceptance Test.

If OEU gives FPC written notice of such failure, FPC shall use its best commercial efforts to promptly correct such failure, whereupon OEU and FPC shall jointly conduct another Acceptance Test. This procedure shall be repeated until all OEU Fibers meet or exceed the specifications outlined in *Exhibit C*.

In the event deficiencies continue to be identified after the third round of testing, OEU may, at its option, conditionally accept the OEU Fibers and, upon such conditional acceptance, commence payment of the fees as set forth in *Exhibit A* and according to Section 5A. FPC will correct any such deficiencies within sixty (60) days of conditional acceptance.

If OEU does not give FPC written notice of such failure within 5 business days of OEU receiving the Fiber Notice, it shall be deemed that OEU has accepted the OEU Fibers.

The day in which OEU has accepted the OEU Fibers will be considered the Fiber Acceptance Date, and fees referenced in Section 5A and specified in *Exhibit A* shall commence on this date.

5. Price and Payment.

- A. Subject to the allowances for interruptions set forth in Section 8 hereof, OEU shall pay FPC a license fee for the use of the OEU Fibers provided by FPC, said fee to commence on the actual Fiber Acceptance Date. The term and fee amount payable to FPC for the OEU Fibers shall be as shown on attached *Exhibit(s) A* or as amended. Said fees shall be payable monthly, in advance, on the first day of each month. Should the Fiber Acceptance Date be any date other than the first of the month, then that initial month's fee shall be prorated based on the actual date.
- B. Unless a payment is disputed in good faith, if for any reason OEU is delinquent in the payment of any amounts due to FPC under this Agreement for more than thirty (30) days, after written notice of the past due amount OEU shall pay interest on such unpaid amount from the date such payment is due until such payment is made. The interest rate shall be the lesser of 18% per annum or the maximum permitted by law.
- C. Upon execution of this Agreement, OEU will advance FPC a non-refundable (except as provided in Section 12.1(B)) amount equal to three month's license fee for each *Exhibit A* approved by FPC and accepted by OEU in accordance with Section 4 of this Agreement. The advance shall be considered as prepayment toward OEU's first year obligation in the initial term under Section 5A.
- D. Rates applicable to any renewal term shall be specified on the attached *Exhibit D*.

5.1 First Right of Refusal and Option to Lease Additional Dark Fibers.

FPC hereby grants a First Right of Refusal (the Refusal Right) and an Option to Lease Additional Dark Fibers (the Option) to OEU for the specified fiber count on the Route Segments (the Option Fibers) detailed on *Exhibit D*. *Exhibit D* also details the dark fiber lease price and expiration dates of the Refusal Right for the specified Fibers. At least 30 days prior to leasing to a third party the Fibers detailed in *Exhibit D*, FPC shall provide to OEU written notice of the proposed lease. OEU can exercise this Option, at a lease price and on other terms no less favorable than those specified on *Exhibit D*, up to 30 days after the date of FPC informing OEU in writing (FPC Notice) that it has a bona fide offer to lease to a third party the Fibers detailed in *Exhibit D*. In the event that OEU does not provide written notice to FPC of its intent to exercise the Option within the 30 day period after FPC Notice, FPC has the right to execute the lease of these Fibers to a third party within a period of 180 days unencumbered by the Refusal Right and the Option of OEU. In the event that FPC does not consummate the lease to that third party within the 180 day period, OEU's Refusal Right and Option are restored and any subsequent offer to lease the Option Fibers will require the above notice requirements, provided that the Refusal Right

has not expired. The failure by OEU to exercise its Option on any Route Segment shall not constitute a waiver of any OEU Option on any other Route Segment.

- 5.2 Right to Purchase Capacity. FPC shall have the right to purchase capacity, up to an aggregate of three (3) DS3's, on the OEU Fibers as detailed in *Exhibit D*, to the extent that OEU has available capacity for resale. FPC and its Affiliates shall also have the right to resell the purchased capacity to its Affiliates at cost.
6. Ownership. The OEU Fibers shall at all times remain the sole and exclusive property of FPC. Legal title shall be held by FPC. Neither the provision of the use of OEU Fibers by FPC to OEU hereunder, nor the payments by OEU contemplated hereby, shall create or vest in OEU any easement, interest or any other ownership or property right of any nature in the Cable, except FPC warrants, subject to the provisions of this Agreement, OEU's right to use the OEU Fibers, or to permit others to use the OEU Fibers for lawful telecommunications transmission purposes during the term of this Agreement pursuant to the provisions of this Agreement. OEU shall not grant any security interest in the OEU Fibers or any part or component thereof.
7. Use of Fiber; Taxes, Franchises and Easements.
- A. OEU warrants that its use of the OEU Fibers shall at all times be in compliance with all certifications, licenses, permits, etc., as required by proper regulatory authority and that OEU shall not use, provide the use, or receive a fee for the use of the OEU Fibers or capacity to others without having obtained such authorization.
- B. FPC shall be responsible for and shall pay any and all taxes or fees with respect to the construction or operation of FPC Cable, including, but not limited to, any sales, use, franchise or excise tax however designated, levied or based, which taxes or fees are (i) imposed or assessed prior to the Acceptance Date, or (ii) imposed or assessed (regardless of time) solely with respect to FPC Cable in exchange for the approval of construction or in the granting of an interest in public property or a public right-of-way relating to the situation of FPC Cable in public right-of-way. Any fees incurred by reason of the use of the OEU Fibers or the provision of telecommunication services by OEU within a local jurisdiction shall be the responsibility of the entity providing such service. Any entity using the OEU Fibers through OEU shall, at its own expense, obtain all municipal street franchise rights that may be required for the use of the OEU Fibers thereof by such entity. OEU shall be responsible for and shall pay any and all taxes or fees, including but not limited to, any sales or use tax, levied or based on the payment of the license fee set forth in Section 5A, but excluding, however, any federal or state income taxes due by FPC resulting from receipt of the license fee and excluding any ad valorem taxes due on the OEU Fibers and the OEU Premises owned by FPC.
- C. Other than as set forth in Section 7A and 7B, FPC shall be responsible, at its own expense, for the acquisition of any easement or rights-of-way rights that may be required in order to permit the installation of the Cable; FPC shall use its best commercial effort, including, if necessary, reasonable legal efforts to obtain such rights; provided, however, nothing herein shall be deemed as obligating FPC to pay any exorbitant or grossly disproportional amount for the acquisition of such rights.

- D. During the term of this Agreement, FPC may use or permit the use of FPC Fibers and the telecommunication capacity thereof for any lawful purpose. Nothing in this Agreement shall be construed or interpreted to prohibit FPC from leasing or licensing the use of FPC Fibers or otherwise providing telecommunications capacity to others or from installing or permitting others to install additional Fibers or telecommunication capacity, including without limitation, fiber optic telecommunication capacity, within the right-of-way constituting any Route Segment or to prohibit FPC from operating such telecommunication capacity (alone or in combination with others) in competition with the OEU Fibers; provided however, that no such installation or operation shall interfere with OEU's use of the OEU Fibers and the telecommunication capacity thereof.
- E. OEU shall be permitted to sublease or sublicense the use of the OEU Fibers and the telecommunications capacity thereof to third parties, provided that prior written notification is given.

8. Performance and Maintenance.

- A. FPC warrants and agrees that the provision of the OEU Fibers hereunder shall be in conformity with and shall comply with all the requirements of this Agreement, that such provision shall be made in a good and workmanlike manner and in accordance with industry standards in order to enable OEU to provide the telecommunication service. FPC further warrants and agrees that the OEU Fibers shall meet or exceed the specifications outlined in *Exhibit C*.
- B. FPC agrees to perform periodic inspections of the Cable and supporting structures. FPC further agrees to perform periodic inspections, testing, and any and all maintenance required for the provision of the OEU Fibers and to maintain and provide adequate spare equipment and parts as is appropriate for its obligations hereunder. FPC will make every effort to schedule service-affecting work from midnight to 6 A.M. on Sunday morning and Monday morning during the first and third weekends of each month, excluding the period beginning two days prior to Thanksgiving and ending on the following January 3. FPC will notify OEU as per *Exhibit F*.
- C. In the event of any interruption of provision of the OEU Fibers to OEU (Outage), FPC shall furnish immediate notice to OEU, and shall specify in such notice the nature and cause of the interruption, the extent of the repairs required, and the estimated time to restore, as per *Exhibit F*. FPC further agrees to use its best efforts to restore the provision of the OEU Fibers on an expedited basis, and to restore the Route Segment and any splicing of the OEU Fibers in a systematic and rotational manner, with OEU Fibers having equal priority to other Fibers within the Cable; every attempt will be made to dispatch repair technicians to the affected site within 2 hours, and to keep the Outage to less than 12 hours provided however, that nothing herein shall be construed to preclude FPC from giving higher priority to the restoration or preservation of electric power service (including without limitation the restoration or preservation of communications capability that in FPC's

judgment is immediately necessary to the provision of electric power service) than to the restoration of service hereunder. In the event an Outage exceeds 24 hours, FPC will extend to OEU a credit equal to one day's license fee (to be considered 1/30th of the then current monthly rate) for each consecutive 24-hour Outage interval, or fraction thereof, in excess of the initial 24 hours. (e.g. 26-hour Outage = 1 day credit; 40-hour Outage = 1 day credit; 50-hour Outage = 2 day credit). The credit shall be applied to the subsequent month's license fee payment.

- D. In the event repeater equipment is needed, FPC and OEU will specify a mutually appropriate location(s) (Regeneration Facility Location(s)) for FPC to install and maintain an enclosure for the purpose of housing such repeater equipment. Specifications for the enclosure and the location of this Regeneration Facility Location(s) shall be outlined in *Exhibit E*. Such location(s) may or may not be collocated at an existing FPC location(s). OEU shall be responsible for the purchase, operation, maintenance, and repair, of all enclosures, HVAC, and associated backup power equipment at Regeneration Facility Locations, except as outlined in *Exhibit E*, as well as costs, if any, associated with the preparation of repeater location(s) as specified in *Exhibit E*.
  - E. OEU shall be solely responsible, at its own expense, for the purchase, installation, operation, maintenance and repair of all OEU equipment and OEU facilities required in connection with the use of the OEU Fibers.
  - F. OEU may request that FPC splice into the OEU Fibers at additional, pre-existing splice points in the future, subject to FPC's approval, not to be unreasonably withheld. OEU will schedule all such splicing activities with FPC at a mutually agreed-upon time. All such splicing will be performed by FPC, and OEU shall reimburse FPC for all FPC Make-Ready costs as defined in Section 3H and outlined in a Make-Ready cost estimate FPC shall furnish to OEU upon such request of additional splice(s).
9. Alteration of Route. Whenever, during the term of this Agreement, it may be necessary or desirable from the standpoint of FPC's electric utility operations to do so, or if required by public authorities or by a final order or decree of a court or administrative agency, FPC may, upon reasonable notice to OEU, relocate all or any part of the Cable to one or more alternate routes or rights-of-way (including without limitation replacing overhead cable with underground cable, or replacing underground cable with overhead cable, if such replacement is in connection with an abandonment, relocation or replacement of electric transmission facilities over, under, on, upon or in which the Cable has been installed). FPC shall be responsible for all costs and expenses associated with the alteration or relocation of the Cable as they pertain to the On-Network Route Segment. In such event, FPC shall give OEU as much prior notice as reasonably practicable, and the parties shall cooperate to accomplish the transfer of service over the Cable to the new route or right-of-way so as to minimize any interference with the use of the OEU Fibers or FPC Fibers by either party and to avoid unreasonably impairing the ability of each to provide telecommunication service of the type, quality and reliability contemplated by this Agreement.

Except as hereinafter provided, OEU shall be responsible for all costs and expenses associated with the alteration or relocation of Cable as they pertain to this Agreement. In the event of a

major relocation (which is defined as a relocation cost that exceeds \$100,000) of any of the Cable pursuant to this Section, FPC and OEU shall mutually agree to what portion of the cost, if any, shall be the responsibility of OEU.

10. Termination. In addition to any other rights of termination specified herein, this Agreement may be terminated as follows:
  - A. By either party, in the event that an injunction or other final order or judgment is entered in any lawsuit or regulatory proceeding restraining performance under this Agreement, declaring or otherwise rendering performance unlawful or compelling removal, discontinuation or divestiture of all or part of the Route Segment, or directing FPC to pay an exorbitant or grossly disproportional amount in FPC's reasonable judgment for the acquisition of any easement or rights-of-way rights and such injunction, order or judgment has not been vacated, reversed, or stayed within 30 days from the date of entry thereof;
  - B. By either party, upon thirty (30) days prior written notice, in the event that any of the transactions contemplated by this Agreement are finally disapproved of by any Government Authority whose approval is required to consummate such transactions.
11. Effect of Termination. Upon any termination pursuant to Section 10, except as provided below, this Agreement shall be terminated and neither party nor any of its directors, officers, stockholders, Affiliates, general partners, or limited partners shall have any continuing liability to the other party or its directors, officers, stockholders, Affiliates, general partners, or limited partners under the terminated Agreement. Provided, however, that the obligations of the parties under Section 14 of this Agreement, and the obligations of OEU to pay license fees through the effective date of such termination, shall remain in full force and effect, and no termination pursuant to this Section 11 shall entitle OEU to the return of any license fee theretofore paid or afford to OEU any defense to the payment of license fees then due and payable.
12. Default.
  - A. An event of default (Event of Default) by OEU exists if any one or more of the following events shall occur and be continuing past any applicable cure periods:
    - (i) OEU shall admit in writing its inability to pay its debts as such debts become due;
    - (ii) OEU shall (1) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (2) make a general assignment for the benefit of its creditors, (3) commence a voluntary case under the U.S. Bankruptcy Code, (4) file a petition seeking to take advantage of any law relating to the bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, (5) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the U.S. Bankruptcy Code, or (6) take any action for the purpose of effecting any of the foregoing;

- (iii) A proceeding or case shall be commenced, without the application of consent of OEU, in any court of competent jurisdiction, seeking (1) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (2) the appointment of a trustee, receiver, custodian, liquidator or the like of OEU or of all or any substantial part of its assets, or (3) similar relief in respect of any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, which is not dismissed within 90 days thereafter;
  - (iv) OEU shall fail to perform any material obligation under this Agreement (other than the obligation to pay license fees) and such failure shall continue for a period of 30 days following written notice from FPC to OEU specifying such nonperformance, provided that if such failure cannot be cured within such 30-day period with the exercise of reasonable due diligence, FPC shall grant a reasonable additional period of time in which to cure such failure, so long as OEU is acting promptly and diligently to cure;
  - (v) OEU shall fail or refuse to remit to FPC within thirty (30) days of written notice following the due date thereof, any license fees then due and payable, or fail or refuse to remit to FPC any disputed license fees in accordance with Section 20A; or
  - (vi) Except as hereinafter provided in Section 22, OEU shall cause or permit the encumbrance of all or any part of its interest in this Agreement or the OEU Fibers, without the prior written consent of FPC; provided that nothing herein shall be construed to require FPC to give consent to such encumbrance or to prevent FPC from withholding its consent to such encumbrance for any or no reason.
- B. An Event of Default by FPC shall exist if any one or more of the following events shall occur and be continuing past any applicable cure period;
- (i) FPC shall (1) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (2) make a general assignment for the benefit of its creditors, (3) commence a voluntary case under the U.S. Bankruptcy Code, (4) file a petition seeking to take advantage of any law relating to the bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, (5) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the U.S. Bankruptcy Code, or (6) take any action for the purpose of effecting any of the foregoing;
  - (ii) A proceeding or case shall be commenced, without the application or consent of FPC, in any court of competent jurisdiction, seeking (1) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (2) the appointment of a trustee, receiver, custodian, liquidator or the like of FPC or of all or any substantial part of its assets, or (3) similar relief in respect of FPC under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, which is not dismissed within 90 days thereafter;

- (iii) FPC shall fail to perform any material obligation under this Agreement and such failure shall continue for a period of 30 days following written notice from OEU to FPC specifying such nonperformance, provided that if such failure cannot be cured within such 30-day period with the exercise of reasonable due diligence, OEU shall grant a reasonable additional period of time in which to cure such failure; or
- (iv) An interruption or reduction in the use or quantity of the OEU Fibers by OEU that continues for a period of 30 days following written notice from OEU to FPC of the interruption or reduction in use, provided that if use of the OEU Fibers are not restored within such 30-day period with the exercise of reasonable due diligence, OEU shall grant a reasonable additional period of time in which to restore use of the OEU Fibers.

## 12.1 Rights Upon Default.

- A. Upon the occurrence of an Event of Default by OEU, FPC shall be entitled to immediate and exclusive possession, use and control of the OEU Fibers and may forthwith terminate this Agreement by written notice to OEU. Upon the occurrence of an Event of Default OEU's right to possession and use of the OEU Fibers shall terminate and FPC shall have the right to repossess the OEU Fibers by any lawful means, without demand or notice of any kind to OEU except as may be required by law, and without terminating this Agreement or the lease created hereby.

FPC may declare immediately due and payable all the remaining installments of the license fee for the remainder of the term hereof of the applicable *Exhibit A* and such amount, less the fair licensable value of the OEU Fibers for the remainder of the term, shall be construed as liquidated damages and shall constitute a debt provable in bankruptcy or receivership. In computing such liquidated damages, there shall be added to such deficiency the reasonable expenses as FPC may incur in connection with relicensing the OEU Fibers. The failure of FPC to relicense the OEU Fibers or any part thereof after recovering of possession shall not release or affect OEU's liability for damages. OEU shall in no event be liable in any way whatsoever for failure to relicense the OEU Fibers, or in the event that the OEU Fibers are relicensed, for failure to collect the license fee under such relicensing.

- B. Upon the occurrence of an Event of Default by FPC, OEU shall be entitled to terminate this Agreement by written notice to FPC, and recover any prepaid amounts.
- C. The right to terminate this Agreement shall be in addition to, and not in substitution for, any other rights that a party may have as a result of an Event of Default by the other party. In the exercise of its right of termination as herein provided, FPC may, at its option, elect to terminate this Agreement in its entirety or with respect to the particular OEU Fibers to which OEU may be in default of its obligations under this Agreement.

- 13. Remedies. FPC and OEU may sue from time to time to recover any amounts due or enforce any rights under this Agreement, and no suit or recovery shall bar any subsequent action

brought for any amount not theretofore reduced to judgment in favor of FPC or OEU as the case may be. Except as otherwise provided by law, no repossession of the OEU Fibers by FPC shall be construed as an election by FPC to terminate this Agreement unless a written notice of such intention is given by FPC to OEU and no receipt of moneys by FPC from OEU shall reinstate this Agreement or OEU right of possession. All remedies provided in this Agreement are cumulative and exclusive and are in addition to any remedies available at law or in equity. All remedies may be exercised and enforced concurrently or sequentially as often as occasion therefore may arise.

14. Indemnification.

- A. FPC shall indemnify and save OEU and its agents, contractors, successors and assigns harmless from and against, and shall reimburse OEU for all liabilities, obligations, damages, fines, penalties, claims, demands, costs, judgments and expenses, including but not limited to reasonable attorneys' fees, which may be imposed upon or incurred or paid by or asserted against FPC by reason or in connection with any negligent act or omission by FPC or any of its agents or employees or any failure by FPC to perform or comply with any of the provisions of this Agreement; provided however, that FPC's liability to OEU hereunder shall not exceed \$100,000.
- B. To the extent allowed by Florida law and subject to the applicable limitations set forth in Florida Statutes, Section 768.28, OEU shall indemnify and save FPC and its agents, contractors, successors and assigns harmless from and against, and shall reimburse FPC for all liabilities, obligations, damages, fines, penalties, claims, demands, costs, judgments and expenses, including but not limited to reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against FPC by reason of or in connection with any negligent act or omission of OEU or any of its agents or employees or any failure by OEU to perform or comply with any of the provisions of this Agreement.
- C. The party entitled to indemnification hereunder (the Indemnified Party) shall notify the other party hereto (the Indemnifying Party) in writing of the liability, obligation, damage, fine, penalty, claim, demand, cost judgment or expense for which such indemnity allegedly applies. The Indemnifying Party may undertake the defense of any such claim or action and permit the Indemnified Party to participate therein at the Indemnified Party's own expense. The settlement of any such claim or action by an Indemnified Party without the Indemnifying Party's prior written consent which consent shall not be unreasonably withheld or delayed shall release the Indemnifying Party from its obligations hereunder with respect to such claim or action so settled.
- D. Notwithstanding any other provision of this Agreement, neither party hereto shall be liable to the other for any special, indirect, punitive or consequential damages or lost profits to anyone arising out of this Agreement or the performance or nonperformance of any activity pursuant to this Agreement even if such party has been informed of the possibility of such damages.

15. Publicity. Neither party may use the name, trademark, service mark or logo of the other party in any advertising, news releases or any other manner without the written consent of such party.
16. Access and Security.
  - A. OEU agrees, upon reasonable request (considered to be 5 business days notice for a request not Outage-related), to allow FPC direct ingress and egress to OEU's Premises at such times as may be required for FPC to perform any appropriate testing, maintenance and repair of the Cable located at OEU's Premises. OEU may require that a representative of OEU accompany any representatives of FPC having access to OEU's Premises. Employees and agents of FPC shall, while on the premises of OEU, comply with all rules and regulations, including without limitation, security requirements and, where required by government regulations, receipt of satisfactory governmental clearances. OEU shall have the right to notify FPC that certain FPC or FPC designee employees are excluded if, in the reasonable judgment of OEU, the exclusion of such employees is necessary for the proper security and maintenance of OEU's facilities.
  - B. OEU and OEU's designees shall have the right to visit any facilities of FPC over, under, on, upon or in which the Cable is installed, upon reasonable prior oral or written notice to FPC (considered to be 5 business days notice for a request not Outage-related), provided that FPC may require that a representative of FPC accompany any representatives of OEU or of a OEU designee making a visit. Such visitation right shall include the right to inspect the Cable and to review performance or service data, and other documents used in conjunction with this Agreement. Employees and agents of OEU or of a OEU designee shall, while on the premises of FPC, comply with all rules and regulations including, without limitation, security requirements and, where required by government regulations, receipt of satisfactory governmental clearances. FPC shall have the right to notify OEU that certain OEU or OEU designee employees are excluded if, in the reasonable judgment of FPC, the exclusion of such employees is necessary for the proper security and maintenance of FPC's facilities.
  - C. OEU shall be granted 24-hour access to OEU Premises. FPC may require that a representative of FPC accompany any representatives of OEU or of an OEU designee making a visit. Employees and agents of OEU or of a OEU designee shall, while on the premises of FPC, comply with all rules and regulations including, without limitation, security requirements and, where required by government regulations, receipt of satisfactory governmental clearances. FPC shall have the right to notify OEU that certain OEU or OEU designee employees are excluded if, in the reasonable judgment of FPC, the exclusion of such employees is necessary for the proper security and maintenance of FPC's facilities.
17. Confidentiality. It may be necessary for FPC to provide OEU with information necessary to permit performance of their respective obligations hereunder. FPC shall, in accordance with the provisions of this Section, at or prior to the time of providing information, identify in writing such of its information which is proprietary and trade secret as Confidential Trade Secret Information. No information which is provided to OEU shall be considered

Confidential Trade Secret Information unless it is specifically so identified at or before the time it is provided to OEU. OEU shall not, without the prior written consent of FPC,

1. use any portion of such Confidential Trade Secret Information for any purpose other than performance pursuant to this Agreement, or
2. disclose any portion of such Confidential Trade Secret Information to any persons or entities other than the agents, officers and employees of OEU who reasonably need to have access to the Confidential Trade Secret Information for purpose of performance under this Agreement and who are bound by either appropriate confidentiality agreements (if agents) or commitments consistent with those utilized by OEU in protecting its own Confidential Information (if officers or employees); provided, however, that OEU may disclose a redacted version of any document containing Confidential Trade Secret Information to a party issuing a request under the Florida Public Records Act while FPC undertakes whatever measures are legally available to it to protect such Confidential Trade Secret Information.

Confidential Trade Secret Information shall remain the property of FPC and shall be returned to FPC or shall be destroyed upon termination of this Agreement but only to the extent allowed by the Public Records Act. If OEU is compelled to disclose Confidential Trade Secret Information through lawful process in a judicial or administrative proceeding or pursuant to a request under the Public Records Law, OEU shall give notice within a reasonable time to permit FPC the opportunity to seek suitable protective arrangements before the Confidential Trade Secret Information is disclosed, and OEU shall cooperate fully with FPC's efforts to obtain such protective arrangements. Confidential Trade Secret Information shall not apply to information which:

- a. is or becomes publicly available through no fault of OEU;
- b. is in OEU's possession at the time of execution of this Agreement and not obtained from FPC;
- c. is developed by OEU independently outside the scope of any agreement with FPC;
- d. is obtained lawfully and in good faith by OEU from a third party who has no duty of confidentiality to FPC.

The provisions of this Section shall survive the termination of this Agreement for a period of three (3) years.

18. Compliance with Laws. Each party to this Agreement shall comply, at its own expense, with all applicable laws, statutes, regulations, rules, ordinances, orders, injunctions, writs, decrees or awards of any government or political subdivision thereof, or any agency, authority, bureau, commission, department or instrumentality thereof, or any court tribunal, or arbitrator

in all applicable, material respects in connection with all activities and all performance under or in connection with this Agreement.

19. Force Majeure. Notwithstanding any provision of this Agreement, the performance of the obligations set forth in this Agreement other than obligations to pay money, shall be suspended or excused in the event that such performance is adversely affected by an event of Force Majeure or its adverse effects. Force Majeure shall mean the occurrence of any act or event that has an adverse effect on the engineering, design, acquisition, construction, installation, operation or maintenance of all or any portion of the Cable, the OEU Fibers or FPC Fibers, if such act or event is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party pursuant to this Agreement. Each party shall exhaust its best commercial efforts to remedy an event or act of Force Majeure. Such acts or events include, but are not limited to, the following:
- A. Acts of God, landslides, sink holes, lightning, hurricanes, earthquakes, fires, explosions, floods, acts of a public enemy, wars, blockades, insurrections, riot, or civil disturbances;
  - B. Labor disputes, strikes, work slowdown, or work stoppages;
  - C. Orders, writs, decrees or judgments of any federal, state, or local court, administrative agency, or governmental body, so long as not the result of wanton or willful action or inaction of the party relying thereon; *provided however*, the contesting in good faith by such party of any such order or judgment, or the good faith failure by such party to contest any such order or judgment, shall not constitute or be construed to constitute a wanton or willful action or inaction of such party;
  - D. The adoption of or change after the date of the execution of this Agreement in any federal, state, or local laws, rules, regulations, ordinances, permits, or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits, or licenses by a court or public agency having jurisdiction;
  - E. The failure of any subcontractor or any supplier to furnish labor, services, materials, or equipment in accordance with its contractual obligations, together with the inability of the party relying thereon to obtain reasonable substitute performance within a reasonable time, *provided*, that in any case where such subcontractor or supplier is an Affiliate of the party seeking to rely upon such failure as an event of Force Majeure, such failure shall be deemed an event of Force Majeure only to the extent that such failure is itself due to an event of Force Majeure or its adverse effect; or
  - F. A defect in manufactured equipment or manufactured components, *provided* that in any use where such equipment or component was manufactured by the party (or an Affiliate of such party) seeking to rely upon such defect as an event of Force Majeure, such defect shall be deemed an event of Force Majeure only to the extent that the defect was caused by an independent event of Force Majeure.

20. Dispute Resolution Procedure.

- A. In order to dispute any portion of an FPC invoice, OEU shall notify FPC in writing of the amount of the disputed charge and the nature of the dispute within thirty (30) days of the date of the invoice. The undisputed portion of the invoice shall remain due as rendered. FPC will then evaluate the dispute within sixty (60) days, and notify OEU of its evaluation. If the dispute is resolved in favor of FPC, OEU shall pay FPC the disputed amount due within fifteen (15) days of receiving notice from FPC. Otherwise, no action will be required.
- B. Any dispute arising under this Agreement shall be subject to non-binding mediation prior to the initiation of judicial proceedings. The disputing parties shall attempt in good faith to resolve their dispute in accordance with the procedures and timetable established by the mediator. If a resolution of the dispute is not reached by the 30th day after the appointment of the mediator, or such later date as may be agreed to by the parties, the mediator shall promptly provide the disputing parties with a written, confidential, non-binding recommendation on resolution of the dispute, including the mediator's assessment of the merits of the principal positions being advanced by each of the disputing parties. At a time and place specified by the mediator after delivery of the foregoing recommendation, the disputing parties shall meet in a good faith attempt to resolve the dispute in light of the mediator's recommendation. Each disputing party shall be represented at the meeting by a person with authority to settle the dispute, along with such other persons as each disputing party shall deem appropriate. If the disputing parties are unable to resolve the dispute at or in connection with the meeting, then: (1) any disputing party may commence such judicial proceedings as may be appropriate; and (2) the recommendation of the mediator shall have no further force or effect, and shall not be admissible for any purpose, in any subsequent judicial proceeding. The costs of the time, expenses, and other charges of the mediator and of the mediation process shall be borne by the parties to the dispute, with each side in a mediated matter bearing one-half of such costs. Each party shall bear its own costs and attorneys' fees incurred in connection with any mediation under this Agreement.
- C. Unless otherwise agreed in writing or prohibited by applicable law, the parties shall continue to provide service, honor all other commitments under this Agreement and continue to make payments in accordance with this Agreement during the course of any dispute resolution and during the pendency of any arbitration proceeding or action at law or in equity relating hereto.
- D. In the event of litigation, the prevailing party shall be entitled to attorneys' fees and costs incurred as a direct result of such litigation.

21. Conditions Precedent. All obligations of the parties hereto are subject to the condition that all requisite governmental and regulatory approvals of the execution, delivery and performance of this Agreement shall have been received. Each party agrees to exert its best commercial efforts to obtain all such approvals applicable to its execution, delivery and performance of this Agreement as promptly as reasonably practicable and, in furtherance thereof, to modify or amend this Agreement in such particulars as may be required to obtain such approval; *provided*

that if any such required modification or amendment to this Agreement would, in the good faith judgment of either party, render the benefit to such party of this Agreement as a whole uneconomical in light of the obligations of such party under this Agreement as a whole, then FPC and OEU shall negotiate in good faith in an effort to restore, insofar as possible, the economic benefits of the OEU Fibers to OEU and the economic benefits of FPC Fibers and the license fee hereunder to FPC *provided further*, that in the event that the parties in good faith are unable to agree to terms and conditions which in their good faith judgment will reasonably retain or restore the economic benefits of the OEU Fibers to OEU and the economic benefits of FPC Fibers and the license fee hereunder to FPC, then this Agreement shall terminate, as well as all obligations of the parties hereunder other than

1. payment obligations which have accrued prior to such terminations
2. indemnity obligations resulting from events which occurred prior to such termination, and
3. obligations which pursuant to an express provision of this Agreement are to survive any termination of this Agreement

## 22. General

- A. Assignment. Neither party hereto shall assign this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party; provided, however, that either party may assign this Agreement to an Affiliate upon notice to the other party. It shall be a condition precedent to any such permitted assignment that the assignee shall execute a counterpart of this Agreement, thereby becoming a party to this Agreement and agreeing to be bound by all of the terms and provisions hereof. In the event of an assignment to a third party, consent from the other party may not be unreasonably withheld.
- B. Expenses. Except for cost and expenses specifically assumed by a party under this Agreement, each party hereto shall pay its own expenses incident to this Agreement (including without limitation amendments hereto) and the transactions contemplated hereunder including without limitation all legal and accounting fees and disbursements.
- C. Amendment. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by the parties.
- D. Binding Effect; Limitation of Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against either of the parties hereto, and that the covenants, undertaking, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors or permitted assigns.
- E. Notices. Unless otherwise provided in this Agreement all notices, demands, requests, reports, approvals or other communications which may be or are required to be given,

served or sent pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by first class, registered or certified mail, return receipt requested, postage prepaid, delivered by overnight courier with proof of delivery or transmitted by Fax followed by certified mail, addressed as follows:

To OEU: City of Ocala  
2100 NE 30th Avenue  
Ocala, Florida 34470  
Attention: Joe McKinney

To FPC: Florida Power Corporation  
3201 34th Street South, MAC B2I  
St. Petersburg, Florida 33711  
Attention: Manager, Enterprise Telecommunications  
Information Technology Department

Each party may designate by notice in writing a new address for itself to which any notice, demand, request, report, approval or communication may thereafter be so given, served or sent. Each notice, demand, request, report, approval or communication which shall be sent in the manner described above, shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee (with the return receipt or the delivery receipt being deemed evidence of such a delivery) or at such time as delivery is refused by the addressee upon presentation.

F. Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of said Agreement; *provided* that if any such ineffectiveness or unenforceability of any provision of this Agreement in the good faith judgment of either party, renders the benefits to such party of this Agreement as a whole uneconomical in light of the obligations of such party under this Agreement as a whole, then FPC and OEU shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the OEU Fibers to OEU and the economic benefits of FPC Fibers and the license fee hereunder to FPC *provided further*, that in the event that the parties in good faith are unable to agree to terms and conditions which in their good faith judgment will reasonably retain or restore the economic benefits of the OEU Fibers to OEU and the economic benefits of FPC Fibers to FPC, then this Agreement shall terminate, as well as all obligations of the parties hereunder other than

1. payment obligations which have accrued prior to such termination,
2. indemnity obligations resulting from events which occurred prior to such termination, and
3. obligations which pursuant to an express provision of this Agreement are to survive any termination of this Agreement.

In the event of a termination of this Agreement pursuant to this Section, FPC and OEU shall negotiate in good faith, given the circumstances existing at the time of termination, for an appropriate transition period for the termination.

- G. Independent Contractors. In all matters pertaining to this Agreement, the relationship of FPC and OEU shall be that of independent contractors, and neither FPC nor OEU shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between FPC and OEU and no party hereto shall have the power to bind or obligate any other party. No party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other party, unless expressly assumed in writing herein or otherwise. Each party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including without limitation social security, withholding and workers compensation responsibilities.
- H. Exercise of Right. No failure or delay on the part of either party hereto in exercising any right power or privilege hereunder and no course of dealing between the parties shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- I. Additional Actions and Documents. Each of the parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its best efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.
- J. Survival. It is the express intention and agreement of the parties hereto that all covenants, agreements, statements, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement. No provision of this Agreement, no covenant, agreement, statement, representation, warranty or indemnity shall apply or otherwise continue in effect with respect to any portion of the Cable located or installed on any Route Segment as to which the term of this Agreement has expired; *provided* that any payment obligation which has accrued prior to such expiration and any indemnity obligation resulting from events which occurred prior to such expiration shall continue in effect until satisfied in full in accordance with the terms hereof.
- K. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the transactions contemplated herein, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.
- L. Headings. Article and section headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any

purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

M. Governing Law. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Florida, excluding the conflict of law provisions thereof.

N. Forum for Mediation or Litigation. In the event that mediation or litigation is required in order to resolve any dispute or disagreement connected with this Agreement, it is agreed by and between the parties hereto that venue and jurisdiction for any such mediation or litigation shall be in Pinellas County, Florida, unless otherwise required by law.

23. Exhibits. The following *Exhibits* shall be attached to and incorporated within this Agreement as necessary. In the event of any inconsistency between the terms contained in the *Exhibits* and the body of the Agreement, the *Exhibits* shall control. Provided, however, the *Exhibits* and the body of the Agreement are intended to supplement each other to the greatest degree possible.

*Exhibit A: Customer Fiber Rates*

*Exhibit B: Make-Ready Costs*

*Exhibit C: Fiber Optic Cable Specifications*

*Exhibit D: Customer Options*

*Exhibit E: Regeneration Facility Locations, Specifications, & Shared Costs*

*Exhibit F: OEU & FPC Contact Lists and Escalation Procedures*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF OCALA, FLORIDA

Deborah Ann Watt  
Witness

Witness

ATTEST Deborah C. Bullock  
Deborah C. Bullock, City Clerk

APPROVED AS TO FORM AND LEGALITY:

[Signature]  
PATRICK G. GILLIGAN, CITY ATTORNEY

By: [Signature]

Richard A. Kesselring, Jr.  
City Council President Pro Tem

Title: \_\_\_\_\_

Date: 4/27/98

FLORIDA POWER CORPORATION

[Signature]  
Witness

[Signature]  
Witness

By: [Signature]

Arthur D. Sciarrotta  
Vice President, Information Technology  
Florida Power Corporation

Title: \_\_\_\_\_

ACCEPTED BY CITY COUNCIL

April 21, 1998  
DATE

OFFICE OF THE CITY CLERK [Signature]

Date: 7/23/98



# EXHIBIT A

## Customer Fiber Rates

Upon acceptance by the parties hereto, this Exhibit A shall be attached to and incorporated within the existing Fiber Optic Facilities Agreement and the parties agree to discharge their respective obligations as set forth below in accordance with the terms and provisions of said Agreement. Additional Customer Fiber may be added to this Exhibit at the request of the Customer and with the FPC's concurrence pursuant to Section 4 of the Agreement.

A.	Customer Fiber/Route Segment(s)	Quantity of Fiber	Monthly Rate
	Route xx: FPC Structure FO-305.3 to a point in Gainesville	up to 24 Fibers	\$ 30 x # fibers x miles

**On-Network Route:** A fiber optic route on FPC Transmission or Distribution Structures from FPC's structure FO-305.3 near the Silver Springs North substation to FPC's Archer substation. Underground to be utilized only where necessary.

**Off-Network Route:** A fiber optic route on non-FPC Transmission or Distribution Structures from FPC's Archer substation to a point in Gainesville. Underground to be utilized only where necessary.

B.	Anticipated Fiber Acceptance Date	Term of Service	Service Ending Date
	Within 90 days after completion of a route.	10 Years	Ten years following Acceptance Date.

C.	FPC Department Routing for Approval	Acceptance of Terms & Conditions Above
----	-------------------------------------	--

Approved By \_\_\_\_\_ Date \_\_\_\_\_  
*Maide Sproles* 5/8/98

Approved By \_\_\_\_\_ Date \_\_\_\_\_  
*[Signature]* 6/5/98

City of Ocala, Florida  
 By: \_\_\_\_\_  
 Title: Council President Pro Tem

Date: 4/30/98

Florida Power Corporation  
 By: Arthur D. Sciarrotta  
 Arthur D. Sciarrotta  
 Vice President, Information Technology  
 Florida Power Corporation  
 Title: \_\_\_\_\_

Date: 7/23/98

# EXHIBIT B

## Make-Ready Costs

Upon acceptance by the parties hereto, this Exhibit B shall be attached to and incorporated within the existing Fiber Optic Facilities Agreement and the parties agree to discharge their respective obligations with regard to make ready costs associated with and as set forth below in accordance with the terms and provisions of said Agreement. Additional costs may be added to this Exhibit as a result of changes in project scope or specifications requested by the Customer and agreed to by FPC pursuant to Section 4 of the Agreement.

A. 

Make-Ready Cost Calculations
------------------------------

Route xx: Any Make-Ready costs for the OEU route from the FPC Silver Springs Substation to Gainesville will be negotiated with OEU when an estimate of those costs becomes available. This Exhibit will be re-executed and replaced at that time.

B. 

Anticipated Start Date	Anticipated Completion Date
------------------------	-----------------------------

C. 

FPC Department Routing for Approval	Acceptance of Terms & Conditions Above
-------------------------------------	--

Approved By Date  
Wanda J. Probst 5/8/98

Approved By Date  
[Signature] 6/5/98

City of Ocala, Florida  
 By: [Signature]  
 Title: Council President Pro Tem  
 Date: 6-20-98

Florida Power Corporation  
 By: [Signature]  
 Arthur D. Sciarrotta  
 Vice President, Information Technology  
 Florida Power Corporation  
 Title: Florida Power Corporation  
 Date: 7/23/98

# EXHIBIT C

## Fiber Optic Cable Specifications

Upon acceptance by the parties hereto, this Exhibit C shall be attached to and incorporated within the existing Fiber Optic Facilities Agreement and the parties agree to discharge their respective obligations as set forth below in accordance with the terms and provisions of said Agreement. Additional Fiber Optic Cable Specifications may be added to this Exhibit at the request of the Customer and with OEU's concurrence pursuant to the Agreement.

### Optical Fibers:

All optical fibers will meet or exceed the Corning SMF-28, dual 1310/1550 window optical glass specifications.

### Optical Span Attenuation (includes cable and splicing):

Maximum attenuation for 1310 nm systems will be 0.38dB/km.

Maximum attenuation for 1550 nm systems will be 0.28dB/km.

### Span Specifications:

Splice points will be engineered in the route an average of 5 kilometers apart.

Discontinuities (known as steps, splices, or attenuation non-uniformities) shall be measured with an optical time domain reflectometer to determine the loss of the localized attenuation.

No fiber shall show a point discontinuity greater than 1.0 dB. However, Fiber spans that include a discontinuity in excess of specifications may still be considered acceptable, with mutual agreement of lessor and lessee, provided said Fiber still meets lessee's overall attenuation and dispersion specifications.

Performance levels will be maintained as accepted through the duration of this Agreement.

(Exhibit C, Page 1 of 2)

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# EXHIBIT C (cont.)

## Fiber Optic Cable Specifications

**General Construction:**

The Fiber optic cable will be constructed in accordance with sound commercial practices. The National Electric Safety Code will be followed in every case except where local regulations are more stringent, in which case local regulations shall govern.

Connector assemblies will be the Ultra PC (physical contact) design and will meet or exceed 50 dB return loss specifications. Connectors will have a mean insertion loss characteristic of <0.4 dB with a maximum insertion loss of <0.6dB.

Fiber protection for fan-out and termination of the cable will have 900 µm tight buffer tube, a Kevlar strength member, a cable jacket, and will have an overall diameter of 3.0mm.

Optical and span test data including OTDR traces will be submitted by lessor to lessee at an agreed upon schedule.

FPC Department Routing for Approval	Acceptance of Terms & Conditions Above	
<p>Approved By _____ Date _____</p> <p style="text-align: center;"><i>Maida D. Pool</i>      5/8/98</p> <hr/> <p>Approved By _____ Date _____</p> <p style="text-align: center;"><i>[Signature]</i>      6/5/98</p>	<p>City of Ocala, Florida</p> <p>By: <u><i>[Signature]</i></u></p> <p>Title: <u>Council President Pro Tem</u></p> <p>Date: <u>6-30-98</u></p>	<p>Florida Power Corporation</p> <p>By: <u><i>[Signature]</i></u></p> <p style="text-align: center;"><b>Arthur D. Sciarrotta</b>  <b>Vice President, Information Technology</b>  <b>Florida Power Corporation</b></p> <p>Title: _____</p> <p>Date: <u>7/23/98</u></p>

# EXHIBIT D

## Customer Options

Upon acceptance by the parties hereto, this Exhibit D shall be attached to and incorporated within the existing Fiber Optic Facilities Agreement and the parties agree to discharge their respective obligations as set forth below in accordance with the terms and provisions of said Agreement. Additional Customer Options may be added to this Exhibit at the request of the Customer and with FPC's concurrence pursuant to Section 4 of the Agreement.

### A. Renewal Options

*Customer has the following contract renewal options per Section 4.D of the Agreement at the rates indicated:*

Route Segment(s) / Renewal Period(s)	Quantity of Fiber	Monthly Rate
Route xx: FPC Structure FO-305.3 to a point in Gainesville		
1st 5 year renewal: 11th Year - 15th Year	Up to the full quantity under previous term	\$ 28.50 x # fibers x miles
2nd 5 year renewal: 16th Year - 20th Year	Up to the full quantity under previous term	\$ 15.00 x # fibers x miles
3rd 5 year renewal: 21st Year - 25th Year	Up to the full quantity under previous term	\$ 14.25 x # fibers x miles
4th 5 year renewal: 26th Year - 30th Year	Up to the full quantity under previous term	\$ 13.55 x # fibers x miles

### B. Rights of First Refusal

*Customer has the following Rights of First Refusal per Section 5.1 of the Agreement at the rate indicated prior to the expiration date noted below:*

Route Segment(s)	Expiration Date	Quantity of Fiber	Monthly Rate
Route xx: FPC FO-305.3 to a point in Gainesville	End of 1st Year	up to 12 Fibers	\$ 30.00 x # fibers x miles
Route xx: FPC FO-305.3 to a point in Gainesville	End of 2nd Year	up to 12 Fibers	\$ 31.00 x # fibers x miles
Route xx: FPC FO-305.3 to a point in Gainesville	End of 3rd Year	up to 12 Fibers	\$ 36.00 x # fibers x miles

(Exhibit D, Page 1 of 2)



# EXHIBIT E

## Regeneration Facility Locations, Specifications, & Shared Costs

Upon acceptance by the parties hereto, this Exhibit E shall be attached to and incorporated within the existing Fiber Optic Facilities Agreement and the parties agree to discharge their respective obligations as set forth below in accordance with the terms and provisions of said Agreement. Additional Regeneration Facility Locations, Specifications, & Shared Costs may be added to this Exhibit at the request of the Customer and with FPC's concurrence pursuant to Section 4 of the Agreement.

A. 

Regeneration Facility Locations
---------------------------------

Route xx: FPC Structure FO-305.3 to a point in Gainesville

No regeneration sites required for this Route.

B. 

Regeneration Facility Specifications
--------------------------------------

Construction specifications to be made only if a site is required.

Environmental Conditioning specifications to be made only if a site is required.

Power specifications to be made only if a site is required.

Remote Monitoring specifications to be made only if a site is required.

Customer contribution per regeneration site as specified above:  $\$0 \times 0 \text{ sites} = \$0$

C. 

Regeneration Facility Options
-------------------------------

Options specifications to be made only if a site is required.

Customer contribution for options specified: NONE

Options Total      \$0

D. 

Total Customer Contribution
-----------------------------

Total contribution      \$0

(Exhibit E, Page 1 of 2)

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# EXHIBIT E (cont.)

## Regeneration Facility Locations, Specifications, & Shared Costs

FPC Department Routing for Approval	Acceptance of Terms & Conditions Above	
Approved By <u>Maida D. Ford</u> Date <u>5/8/98</u>	City of Ocala, Florida By: <u>[Signature]</u> Title: <u>Council President Pro Tem</u>	Florida Power Corporation By: <u>Arthur D. Sciarrotta</u> <b>Arthur D. Sciarrotta</b> <b>Vice President, Information Technology</b> <b>Florida Power Corporation</b>
Approved By <u>[Signature]</u> Date <u>6/5/98</u>	Date: <u>4/30/98</u>	Date: <u>7/23/98</u>

(Exhibit E, Page 2 of 2)

# EXHIBIT F

## OEU & FPC Contact Lists and Escalation Procedures

Upon acceptance by the parties hereto, this Exhibit E shall be attached to and incorporated within the existing Fiber Optic Facilities Agreement and the parties agree to discharge their respective obligations as set forth below in accordance with the terms and provisions of said Agreement. Additional OEU & FPC Contact Lists may be added to this Exhibit at the request of the Customer and with OEU's concurrence pursuant to Section 4 of the Agreement.

A.

### OEU Contact List and Escalation Procedures

- For emergency repairs, contact OEU's System Control Center at  
1-352-351-6609  
There is also a ring-down circuit to this Center at FPC's ECC Load Center.
- For scheduled maintenance, contact OEU's Communications Enterprise at  
1-352-401-6900
- Escalation list for OEU

Joe McKinney	Communications Supervisor
Rich Kent	Deputy Director, Electric Utility
Dean Shaw	Director, Electric Utility

B.

### FPC Contact List and Escalation Procedures

- For emergency repairs, contact FPC's Emergency Operations Center (EOC) at  
1-813-550-3245
- For scheduled maintenance, contact FPC's Information Delivery Service Desk (SD) at  
1-813-866-4636
- Reporting and Escalation Procedures:  
FPC's EOC and SD are staffed 24 hours a day, 365 days a year. Please call the appropriate phone number shown above, and give the following information to the analyst who answers your call:
  - Your Company
  - Your Name
  - Your Phone Number
  - The nature of your call (outage, informational, planned maintenance, etc.)
  - Any pertinent details (where the outage is located, etc.)

Be certain to inform the analyst as to what number they should return your call for updates on outage repairs, etc.

If necessary, the EOC and SD analysts are equipped with a current FPC escalation list and have automated paging / notification services at their disposal.

**Please be certain to call the EOC only in a real emergency (fiber outage, etc.)**

(Exhibit F, Page 1 of 2)

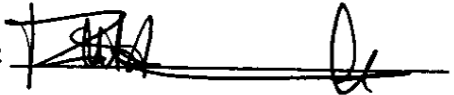
**CONFIDENTIAL & PROPRIETARY INFORMATION  
PROPERTY OF FLORIDA POWER CORPORATION**

# EXHIBIT F (cont.)

## OEU & FPC Contact Lists and Escalation Procedures

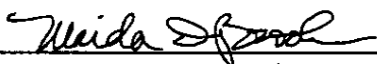
C. FPC Department Routing for Approval	Acceptance of Terms & Conditions Above
--	--

City of Ocala, Florida

By: 


Title: Carol Pimentel Panton

Date: 4-30-98

Approved By  Date 5/8/98

Approved By  Date 6/5/98

Florida Power Corporation

By: 

Arthur D. Sciarrotta  
Vice President, Information Technology

Title: Florida Power Corporation

Date: 7/23/98

(Exhibit F, Page 2 of 2)



# AUTHORIZATION AND AGREEMENT

 WORK AUTHORIZATION

 JOB ORDER

NUMBER T-082

CUSTOMER'S NAME / TRADE NAME <b>City Of Ocala</b>		REPRESENTATIVE'S NAME <b>Dean G. Shaw</b>		REPRESENTATIVE'S TITLE <b>Director of Electric Utility</b>	
STREET ADDRESS <b>P O Box 1270</b>			CITY <b>Ocala</b>	STATE <b>FL</b>	ZIP <b>32678</b>
WORK DESCRIPTION <b>Replace Four (4) wood pole structures with taller structures for clearance on City of Ocala's proposed 230KV transmission line crossing. (Structure numbers MS-228, MS-229, MS-230 and MS-231). The cost is estimated to be \$46,500. The customer will be charged for actual cost plus 15% administration cost.</b>					
BILLING METHOD <input type="checkbox"/> Contract Price \$ <input type="checkbox"/> Cost <input checked="" type="checkbox"/> Cost plus 15%			TERMS OF PAYMENT <input checked="" type="checkbox"/> In advance <input type="checkbox"/> On or before 20 days after <input type="checkbox"/> Completion of project <input type="checkbox"/> Other Explain below		
OTHER TERMS OF PAYMENT				OWNERSHIP OF COMPLETED PROJECT <input checked="" type="checkbox"/> FPC <input type="checkbox"/> Customer	
				DATE CHECK RECEIVED	

### AGREEMENT

The undersigned hereby authorizes and employs Florida Power Corporation to perform the above job and to furnish labor, necessary facilities or equipment, and/or materials for the above job and agrees to pay in accordance with terms of payment as noted above.

SIGNATURE OF ABOVE CUSTOMER OR REPRESENTATIVE 	<b>Richard A. Kesselring, Jr., Council President</b>	DATE <b>9/14/93</b>
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### AUTHORIZATION

REPORTING LOCATION <b>GOC-St. Petersburg</b>	RA CODE <b>899</b>	AUTHORIZING SUPERVISOR <b>J. L. Simpson</b>	DATE <b>8/31/93</b>
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### ACCOUNTING INFORMATION

DATE (MONTH & YEAR) 2      4	J/E (MONTH & NUMBER) 6      8	SEQ 10	ACTIVITY COMMENT 13	39

CHARGES (DEBIT)					CREDITS					\$ AMOUNT
PRIMARY ACCOUNT 4C	RA 43	EAC 46	ACTIVITY 49	TASK/RA CODE 55	PRIMARY ACCOUNT 40	RA 43	EAC 46	ACTIVITY 49	TASK 55	
			14310	899	335	899	811	WT4227	TRO	46,50000
										▲
										▲
										▲
<b>TOTAL</b>										<b>46,50000</b>

<b>TO: CONTROLLER'S DEPARTMENT</b>			
Please open Job Order		for accumulating costs.	
REQUESTED BY			DATE
	ACTIVITY	TASK	COMPLETION DATE
Please close Job Order to			
REQUESTED BY			DATE

<b>WORK ORDER NUMBER</b>
<b>7040004227</b>

This is to certify the foregoing is a true and accurate copy of the original as shown to the Controller's Department. GREEN - P&DAD YELLOW - District Office PINK - Customer GOLDENROD - Originating Department