

RESOLUTION NO. 24-33

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND THE CITY OF FORT LAUDERDALE, AND PROVIDING FOR SEVERABILITY, RECISSION OF CONFLICTING RESOLUTION PROVISIONS, AND AN EFFECTIVE DATE.

WHEREAS, the City of Fort Lauderdale ("City") has multiple accounts for street lighting services with Florida Power & Light Company ("FPL") which are covered by service agreements; and

WHEREAS, in 2020, the City secured the professional services of Troy & Banks, Inc., to conduct an independent field audit of the City's "FPL" electricity bills and accounts to identify billing discrepancies and cost saving opportunities; and

WHEREAS, the intent of this audit was to generate a new funding source that could be reinvested in achieving additional electricity cost savings through energy efficiency improvements and renewable energy projects; and

WHEREAS, as a result of the City's independent field audit, the City identified and alleged that FPL overbilled the City by charging the City for a number of utility poles that the City is no longer responsible to pay; and

WHEREAS, the City and FPL have reached a satisfactory resolution and wish to enter into a Settlement Agreement, in substantially the form attached and identified as "Exhibit A" to memorialize their understanding, subject to certain terms and conditions; and

WHEREAS, the City Commission finds approving the proposed Settlement Agreement will serve a legitimate government purpose and wish to authorize the City Manager or his designee to execute the same;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

**SECTION 1.** That the City Manager or his designee is hereby authorized to execute a Settlement Agreement with Florida Power & Light Company containing terms acceptable to the City Manager or their designee, in substantially the form attached and identified as "Exhibit A."

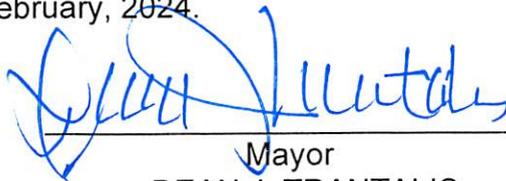
SECTION 2. That the Office of the City Attorney shall review and approve as to form all documents prior to their execution by the City Manager or their designee.

SECTION 3. That if any clause, section or other provisions within this Resolution shall be held invalid or unconstitutional by a court of competent jurisdiction, the remainder of this Resolution shall not be affected thereby but shall remain in full force and effect.

SECTION 4. That all Resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. That the Effective Date of this Resolution is the date of final adoption.

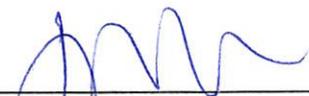
ADOPTED this 6<sup>th</sup> day of February, 2024.

  
\_\_\_\_\_  
Mayor  
DEAN J. TRANTALIS

ATTEST:

  
\_\_\_\_\_  
City Clerk  
DAVID R. SOLOMAN

APPROVED AS TO FORM  
AND CORRECTNESS:

  
\_\_\_\_\_  
City Attorney  
THOMAS J. ANSBRO

Dean J. Trantalis	<u>Yea</u>
John C. Herbst	<u>Yea</u>
Steven Glassman	<u>Yea</u>
Pamela Beasley-Pittman	<u>Yea</u>
Warren Sturman	<u>Yea</u>

## EXHIBIT A

### SETTLEMENT AGREEMENT

**THIS AGREEMENT** is entered into by and between FLORIDA POWER & LIGHT COMPANY, a Florida profit corporation, its subsidiaries, affiliates, parent corporations, and their officers, agents, employees, shareholders, representatives, successors and assigns (hereinafter referred to as "FPL") and the City of Fort Lauderdale, a Florida municipal corporation (hereinafter referred to as "Customer") (collectively referred to as "Parties").

WHEREAS, the Customer has multiple accounts for street lighting services with FPL which are covered by lighting agreements for those services including, but may not be limited to, the following FPL customer account number (collectively referred to as "Accounts"):

07778-40281; and

WHEREAS, the Customer conducted an independent field audit and, based on that audit, identified and alleged that FPL overbilled the Customer by charging the Customer for a number of poles for which the Customer is no longer responsible to pay. The Customer claims that a number of poles that were originally covered under a Street Lighting Agreement between Customer and FPL, and charged to the Customer by FPL, have now become "non-billable" poles. The Customer claims that, among other possible reasons, a pole can become non-billable for street lighting purposes when the pole has other attached wires or services that serve a purpose other than lighting services. In addition, the Customer alleges that FPL also charged Customer for some street light poles that could not be located during Customer's field audit. In total, Customer alleges that there are approximately 381 non-billable wood poles and 45 non-billable concrete poles (collectively referred to as "Non-Billable Poles") for which FPL overcharged the Customer prior to December 2022 under Customer's Accounts; and

WHEREAS, FPL has adjusted the billing on Customer's Accounts and agreed to remove the disputed charges as Non-Billable Poles beginning with the Customer's December 2022 FPL bills; and

WHEREAS, the Customer is claiming a refund for payments made by Customer to FPL for the monthly FPL charges and interest associated with Non-Billable Poles; and

WHEREAS, the Parties have reached a satisfactory resolution and wish to enter into this Settlement Agreement ("Agreement") to memorialize their accord, subject to certain terms and conditions; and

NOW, THEREFORE, in consideration of the mutual promises, and covenants herein contained, and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledge, the Parties agree as follows:

1. Parties agree the foregoing recitals are true and correct and incorporated herein by this reference.
2. FPL will issue a refund to the Customer in the amount of Two Hundred Two Thousand Two Hundred Eighty-Nine Dollars and Ninety-One Cents (\$202,289.91), payable in the

form of a check to the Customer no later than fifteen (15) calendar days after Customer's execution of this Agreement.

3. FPL will review all Lighting Agreements with Customer, and agree to correct and remove all Non-Billable Poles from Customer's current and future Accounts to ensure Customer is billed the correct number of poles and fixtures.
4. Customer agrees that FPL has corrected the monthly billing on Customer's Account number 07778-40281 beginning with Customer's December 2022 bills, removing the charges for the Non-Billable Poles. Customer further agrees that subject to the refund in paragraph 1, FPL's monthly bills for Customer's Account are correct as of the date of the execution of this Agreement, except that Customer reserves the right at its sole discretion to conduct future independent field audits and identify additional FPL billing errors, if any.
5. The parties agree that a satisfactory resolution regarding the Customer's claims has been reached and understand that this agreement is binding on both parties, their officers, agents, employees, shareholders, representatives, successors and assigns, and that both parties waive any and all rights to seek further review or bring any action before the Florida Public Service Commission or any court of competent jurisdiction, related to or arising out of the billing dispute claim or any of the facts described herein.
6. In consideration of the mutual compromise reached by the Parties, FPL and the Customer agree to acquit and forever discharge each other of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, which the other, its officers, employees, or agents may now have or which may hereafter accrue on account of, or in any way growing out of, any and all known and unknown, foreseen and unforeseen damages and the consequences that resulted from Customer's claim(s) alleged herein regarding Customer's claim that it was overbilled for Non-Billable Poles associated with the Accounts or any other street lighting agreement with FPL and or the Lighting Agreement or the facts giving rise to the claims or allegations described herein.
7. This Agreement can be signed in counterparts.

**EACH PARTY HEREBY DECLARES** that the terms of this settlement have been completely read and are **FULLY UNDERSTOOD** and **VOLUNTARILY** accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all pending claims, **DISPUTED OR OTHERWISE**, against each other, and all persons and entities described above (all such claims are expressly denied), on account of the injuries and damages above-mentioned and for the express purpose of precluding **FOREVER** any further or additional claims arising out of the aforesaid incident. Each party had an opportunity to consult with independent counsel and secure legal advice and guidance from their respective counsel prior to executing this Agreement.

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IN WITNESS WHEREOF, Parties, by and through their respective authorized representatives, execute this Settlement Agreement as follows:

ATTEST:

CITY OF FORT LAUDERDALE  
a Florida municipal corporation

\_\_\_\_\_  
DAVID R. SOLOMAN  
City Clerk

\_\_\_\_\_  
GREG CHAVARRIA  
City Manager

Date: \_\_\_\_\_

Approved as to form and correctness:  
THOMAS J. ANSBRO, City Attorney

\_\_\_\_\_  
PATRICIA SAINTVIL-JOSEPH  
Assistant City Attorney

FLORIDA POWER & LIGHT COMPANY,  
a Florida profit corporation

By: Pamela Rauch

Name: Pamela Rauch

Title: VP External Affairs and Economic Development

Date: 11-08-2023

STATE OF Florida  
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization, this 8<sup>th</sup> day of November, 2023, by Pamela Rauch,  
as VP of Florida Power & Light Company, a Florida profit corporation.

Tricia Lovejoy  
(Signature of Notary Public - State of Florida)



Tricia Lovejoy  
Notary Public  
State of Florida  
Comm# KH114258  
Expires 4/6/2025

Tricia Lovejoy  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known  OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_