

## **HOLD HARMLESS AGREEMENT**

This Hold Harmless Agreement (hereinafter referred to as the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between Florida Power Corporation d/b/a Progress Energy Florida, Inc., a Florida corporation (hereinafter referred to as 'Progress Energy') with offices at One Hundred Central Avenue, St. Petersburg, Florida 33701 and the City of Leesburg, a Customer (hereinafter referred to as the 'Customer') with offices at 501 W. Meadow Street, Leesburg, Florida 34748. Progress Energy and the Customer shall individually be referred to as the "Party" and collectively as the "Parties."

WHEREAS, the Customer has expressed to Progress Energy Florida it can provide more rapid response to the electrical service needs of its customers during certain Customer maintenance outages by having the Customer personnel operate certain switches of Progress Energy Florida's; and

WHEREAS, Progress Energy Florida is willing to allow the Customer to operate the switches in an effort to be more responsive to the Customer's electrical service needs (hereinafter referred to as the 'Services') concerning the Customers maintenance requirements.

NOW THEREFORE, for and in consideration of the mutual promises made herein, the Parties agree as follows:

### **SECTION 1. SCOPE OF AGREEMENT**

- A. The Customer shall obtain any and all governmental fees, permits, and licenses necessary for the performance of the Services.
- B. The Customer shall, upon a time mutually agreed to by Progress Energy Florida, enter upon Progress Energy Florida's property and perform the Services.
- C. The Customer shall furnish and maintain all necessary safety equipment to provide adequate protection of person and property. The Customer shall be liable for any damages resulting from its performance of the Services.

### **SECTION 2. INDEPENDENT CONTRACTOR**

The Customer shall perform the Services hereunder as an independent contractor. Nothing in this Agreement or the conduct of the Parties pursuant hereto shall be construed or implied to have created or to create between them any relationship of principal and agent, employer and employee, partners, or of joint venturers.

### **SECTION 3. TERM**

The term of this Agreement shall commence on the date indicated above. For Termination, see Section 7, TERMINATION.

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## **SECTION 4. WARRANTY**

A. The Customer is hereby advised that the generation, transmission and/or distribution of electrical energy involve the handling of a natural force which, when uncontrolled, is inherently hazardous to life and property. The Customer is further hereby advised that, due to the nature of the work to be performed hereunder, other hazardous or dangerous conditions (not necessarily related to the inherent danger of electricity) may also be involved. Accordingly, prior to the commencement of any work on the property, the Customer shall inspect the property specifically to ascertain the actual and potential existence and extent of any hazardous or dangerous conditions and the safety measures to be taken in connection therewith. During the course of the work, the Customer shall take all such measures as may be deemed necessary or advisable to protect and safeguard itself and its property and that of the general public against all hazardous conditions as the same may arise.

B. The Customer warrants that the Services hereunder shall be performed with that degree of skill and judgment which is customarily exercised in the industry by recognized firms with respect to services of a similar or like nature and shall be in accordance with all applicable federal, state, and local laws and regulations.

## **SECTION 5. INDEMNIFICATION**

Subject to the limitations set forth in Florida Statutes, Section 768.28, the Customer hereby assumes responsibility for and agrees to indemnify and hold harmless Progress Energy Florida, its parent corporation, officers, directors, employees, and agents, from any and all claims, liabilities, obligations, damages, demands, losses, causes of action, costs or expenses of whatsoever kind or nature, including reasonable attorney's fees in all pre-litigation and litigation issues: (i) for injury to or death of any person, and for damage to or destruction of any property resulting from any errors, omissions or any negligent, reckless, fraudulent, willful, wanton, or intentional acts of the Customer or any employee, agent, or subcontractor, or anyone directly or indirectly employed by or through them, or anyone for whose acts they may be liable; (ii) for any violation or alleged violation of any applicable federal or state orders, rules or regulations of any government entity or agency by, through or as a result of the Customer or any employee, agent, subcontractor or anyone else directly or indirectly employed by or through them, or either of them, or anyone for whose acts they may be liable; (iii) for contamination of or any adverse effects on the environment; and (iv) whether directly or indirectly caused by, or arising out of a breach of this Agreement or any warranties by the Customer. Progress Energy Florida shall have the right to participate in any defense provided by the Customer, including but not limited to the selection of legal counsel.

## **SECTION 6. LIMITATION OF LIABILITY**

In no event shall Progress Energy Florida, its parent corporation, officers, directors, employees, agents, and contractors or subcontractors be liable to the Customer, its employees, agents or representatives, for any incidental, indirect, special, consequential, exemplary, punitive or multiple damages resulting from any claim or cause of action, whether brought in contract, tort (including, but not limited to, negligence or strict liability), or any other legal theory.

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## **SECTION 7. TERMINATION**

Notwithstanding anything set forth herein, either Party may terminate this Agreement by providing written notice to the other Party sixty (60) days prior to the desired termination date.

## **SECTION 8. GOVERNING LAW & VENUE**

A. This Agreement and the rights and obligations of the Parties to this Agreement shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to any principles of conflicts of laws where the giving of effect to any such principles would result in the laws of any other state or jurisdiction being applied to this Agreement.

B. Unless otherwise provided by law, any and all litigation between the Parties hereto arising out of this Agreement shall be instituted and maintained without a jury in the Circuit Court in Pinellas County, Florida. Any cause of action arising by virtue of the laws of the United States shall be instituted and maintained without a jury in the United States District Court of the Middle District of Florida, Tampa Division.

## **SECTION 9. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding between the Parties. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth or provided for herein. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition or instruction used in this Agreement.

## **SECTION 10. MODIFICATION**

No statements or agreements, oral or written, made prior to the date hereof, shall vary or modify the written terms set forth herein and neither Party shall claim any amendment, modification or release from any provision hereof by reason of a course of action or mutual agreement unless such agreement is in writing, signed by both Parties and specifically states it is an amendment to this Agreement.

## **SECTION 11. WAIVER**

No waiver by either Party with respect to any breach or default of any right or remedy, shall be deemed to constitute a continuing waiver of any other breach or default, or of any other right or remedy, or of any other term, condition or provision of this Agreement, unless such waiver is expressed in writing and signed by the Party against which such waiver is sought to be enforced. Nor shall any usage of trade, course of dealing, practice of performance, or failure to strictly enforce any term, right, obligation or provision of this Agreement by either Party be construed as a continuing waiver of any provision herein, unless such waiver is expressed in writing and signed by

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the Party against which such waiver is sought to be enforced.

### **SECTION 12. SEVERABILITY**

In the event any provision, or any part or portion of any provision of this Agreement shall be deemed or defined by any law, regulation, ordinance, or order of any court of any governmental agency, or regulatory body having jurisdiction over either party, or held or declared by a court of competent jurisdiction to be unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the Parties shall be reduced or abated only to the extent required to remove or cure such illegal or unenforceable portion, so long as the Agreement is not affected in a manner or to the extent which would render it economically, technically, materially, or commercially infeasible to either Party.

### **SECTION 13. SURVIVAL OF PROVISIONS**

Neither termination nor cancellation of this Agreement shall be deemed to relieve the Parties of any obligations hereunder that by their nature survive termination or cancellation including, but not limited to, all warranty, indemnification, and limitation of liability obligations.

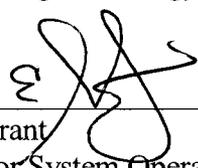
### **SECTION 14. CAPTIONS**

The headings used throughout this Agreement are inserted for reference purposes only and are in no way to be construed as a limitation of the scope of the particular sections to which they refer.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year written below.

Florida Power Corporation  
D/b/a Progress Energy Florida, Inc.

City of Leesburg Electric Utility

By:  Date: 5/25/04  
Eric Grant  
Director System Operations, Florida

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title: