



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.16.

7/23/2024

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### Subject:

Approval of Written Consent to Easement in Connection with the City of Cocoa Granting a Utility Easement to Florida Power & Light Company for Underground Electric Utility Facilities in Lee Wenner Park

### Fiscal Impact:

None

### Dept/Office:

Parks & Recreation Department / County Attorney's Office

### Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the attached Consent to Easements.

### Summary Explanation and Background:

On July 25, 2017, the Board of County Commissioners conveyed by County Deed to the City of Cocoa the property known as Lee Wenner Park (the "Park"). As part of the County Deed, the County and the City entered into an interlocal agreement which contained a restrictive covenant running with the land prohibiting the City from using the Property for uses other than for municipal and recreational purposes without the consent of the County. The County Deed reserved a perpetual, non-exclusive access and maintenance easement on, over and through the Park for the purposes of accessing, installing, maintaining, and/or repairing the pier at the Park. In case the City does not use the Park for its intended purposes, the Park would revert to the County.

The City of Cocoa desires to convey a permanent utility easement and a temporary construction easement to Florida Power & Light Company ("FPL") to construct underground electric utility communications facilities across the Park. The proposed easement is in the same area as an easement to Florida City Gas, which easement the Board consented to at its December 19, 2023. The proposed FPL easement does not affect the access and maintenance easement reserved in the County Deed. The Parks and Recreation Department does not object to the City granting the requested easement. In order to allow the FPL easements and uses, it is requested that the Board approve and authorize the Chair to execute the attached Consent to Easements

### Clerk to the Board Instructions:

Upon execution by the Chair, please provide the original executed Consent to Easement to the County Attorney's Office along with a copy of the Clerk's Memorandum.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

July 24, 2024

**M E M O R A N D U M**

**TO:** Morris Richardson, County Attorney

**RE:** Item F.16., Approval of Written Consent to Easements in Connection with the City of Cocoa Granting a Utility Easement to Florida Power & Light Company for Underground Electric Utility Facilities in Lee Wenner Park

The Board of County Commissioners, in regular session on July 23, 2024, approved and authorized the Chair to execute the Written Consent to Easement in connection with the City of Cocoa granting a Utility Easement to Florida Power & Light Company for underground electric utility facilities in Lee Wenner Park. Enclosed is a fully-executed Written Consent to Easements.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/tr

Encl. (1)

cc: Parks and Recreation

**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS  
WRITTEN CONSENT TO EASEMENTS**

**WHEREAS**, on July 25, 2017, the Board of County Commissioners of Brevard County, Florida, the "County", conveyed by County Deed to the City of Cocoa, the "City", that certain property identified in Official Records Book 8063, Page 1885, Public Records of Brevard County, Florida, the "Property"; and

**WHEREAS**, said County Deed references a number of exhibits, including, but not limited to, a description of the land to be transferred and a description of the land that the County reserved a perpetual, non-exclusive access and maintenance easement on, over and through for the purposes of accessing, installing, maintaining, and/or repairing the pier at Lee Wenner Park and all necessary appurtenances thereto; and

**WHEREAS**, as part of the County Deed, the County and City entered into an Interlocal Agreement, that, among other things, contained a restrictive covenant running with the land prohibiting the City from using the Property for uses other than for municipal and recreational purposes; and

**WHEREAS**, the Interlocal Agreement provides that the County can permit other non-recreational uses upon written consent; and

**WHEREAS**, the City desires to convey a temporary construction easement and a permanent easement to Florida Power & Light Company to construct, operate, and maintain underground electric utility communications facilities (including cables, fiber, conduit, appurtenant equipment, and appurtenant above ground equipment) over the Property (the "Proposed Project"); and

**WHEREAS**, the County finds that the Proposed Project does not violate the Interlocal Agreement; and

**WHEREAS**, the Brevard County Parks and Recreation Department does not object to the City granting the requested easements subject to the below conditions.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA** that:

1. The recitals are true and correct and incorporated herein by this reference.
2. The County does not object to the granting of the requested easements in the form approved by the County Attorney.
3. This Consent to Easements shall take effect upon approval by the Board of County Commissioners of Brevard County, Florida.

**DONE AND ORDERED** in Regular Session this 23<sup>rd</sup> day of July, 2024.

ATTEST:



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Rachel Sadoff, Clerk of Court

BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA



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Jason Steele, Chair  
As Approved by the Board on 7/23/24

Prepared by:  
Office of the County Attorney  
2725 Judge Fran Jamieson Way  
Building C- Suite 308  
Viera, Florida 32940

**COUNTY DEED**

**THIS INDENTURE**, made this 25 day of July, 2017 between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, party of the first part, and **CITY OF COCOA**, a Florida Municipal Corporation, party of the second part,

**WITNESSETH**: that the said party of the first part, for and in consideration of the sum of \$10.00 to it in hand paid by the party to the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, its successors and assigns forever, the land described in Exhibit "A", (the "Property"), said Exhibit is attached hereto and made a part of this Deed, said land lying and being in Brevard County, Florida, and commonly referred to as Lee Wenner Park.

However, the party of the first part reserves a perpetual nonexclusive access and maintenance easement on, over and through the entirety of the Property as depicted in Exhibit "B1", for the purpose of accessing, installing, maintaining and/or repairing the pier as depicted in Exhibit "B2", and all necessary appurtenances thereto.

The Property is to be used solely for providing municipal, recreational, and related activities. Any user fees required by the City must be applied uniformly with no differential in amount charged to the public. In the event this Property is not used or ceases to be used for the stated purpose and under the stated conditions, or in the event the party of the second part fails to comply with the Interlocal Agreement between the County and City dated 7/25/17 attached hereto as Exhibit "C" and made a part hereof, then all right title and interest in the Property shall revert to the party of the first part which shall thereafter have the right to reenter and repossess the Property conveyed herein. The foregoing shall be deemed to be a restrictive covenant which shall be deemed to be a covenant running with the land.

**IN WITNESS WHEREOF** the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair of said board, the day and year aforesaid.

ATTEST:

  
Scott Ellis, Clerk of Court

**BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA**

By:

  
Curt Smith, Chairman

As approved by the Board 7/25/17

“EXHIBIT A”

LEE WENNER PARK

Official Records Book 2930, Page 2376:

A parcel of filled land adjacent to and East of Section 33, Township 24 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Begin at the intersection of the North line of the State of Florida Board of Trustees of the Internal Improvement Trust Fund Dedication No. 25177 (2328-05) and the Easterly right of way line of Riveredge Boulevard as shown on the Cocoa River Development according to the plat thereof recorded in Plat Book 11 at Page 75 of the Public Records of Brevard County, Florida and run  $N00^{\circ}56'32''W$  along said Easterly right of way line for 118.56 feet to the Point of Curvature of a circular curve to the right having a radius of 49.80 feet; thence run Northeasterly along the arc of said curve and said Easterly right of way line through a central angle of  $50^{\circ}24'50''$  for 43.82 feet to the North line of the parcel released by the State of Florida Department of Transportation recorded in Official Records Book 2549 at Page 2910 of the Public Records of Brevard County, Florida; thence run  $N89^{\circ}18'48''E$  along the north line of said release parcel for 120.15 feet; thence run  $N79^{\circ}08'43''E$  along said North line for 244.45 feet; thence run  $N86^{\circ}55'19''E$  along said North line for 347.14 feet; thence run  $N03^{\circ}04'41''W$  along said North line for 32.00 feet; thence run  $N86^{\circ}55'19''E$  along North line for 305.71 feet to the safe upland line of the Indian River; thence meander said safe upland line the following courses;  $S31^{\circ}33'01''E$  for 28.55 feet;  $S04^{\circ}05'19''W$  for 1.34 feet;  $S04^{\circ}05'19''W$  for 17.13 feet;  $S04^{\circ}05'19''W$  for 14.29 feet;  $S04^{\circ}16'18''W$  for 2.84 feet;  $S04^{\circ}16'18''W$  for 25.14 feet;  $S42^{\circ}11'59''W$  for 31.14 feet;  $S38^{\circ}39'28''W$  for 76.67 feet;  $S39^{\circ}43'35''W$  for 83.66 feet;  $S44^{\circ}24'03''W$  for 9.08 feet to the North line of said I.I.T.F. Dedication; thence run  $S86^{\circ}55'19''W$  along said North line for 315.15 feet to the Point of Curvature of a circular curve to the right having a radius of 23,113.13 feet; thence run Westerly along the arc of said curve through a central angle of  $01^{\circ}04'00''$  for 430.25 feet to the Point of Tangency of said curve; thence run  $S89^{\circ}18'48''W$  for 162.99 feet to the Point of Beginning, said parcel contains 4.49 acres, more or less.

And

Together with those lands described in Official Records Book 2309, Page 1265, Official Records Book 1082, Page 312, and Official Records Book 1174, Page 506.

*"EXHIBIT B1"**LEE WENNER PARK**ORB 2930, Page 2376:*

A parcel of filled land adjacent to and East of Section 33, Township 24 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Begin at the intersection of the North line of the State of Florida Board of Trustees of the Internal Improvement Trust Fund Dedication No. 25177 (2328-05) and the Easterly right of way line of Riveredge Boulevard as shown on the Cocoa River Development according to the plat thereof recorded in Plat Book 11 at Page 75 of the Public Records of Brevard County, Florida and run N00°56'32"W along said Easterly right of way line for 118.56 feet to the Point of Curvature of a circular curve to the right having a radius of 49.80 feet; thence run Northeasterly along the arc of said curve and said Easterly right of way line through a central angle of 50°24'50" for 43.82 feet to the North line of the parcel released by the State of Florida Department of Transportation recorded in Official Records Book 2549 at Page 2910 of the Public Records of Brevard County, Florida; thence run N89°18'48"E along the north line of said release parcel for 120.15 feet; thence run N79°08'43"E along said North line for 244.45 feet; thence run N86°55'19"E along said North line for 347.14 feet; thence run N03°04'41"W along said North line for 32.00 feet; thence run N86°55'19"E along North line for 305.71 feet to the safe upland line of the Indian River; thence meander said safe upland line the following courses; S31°33'01"E for 28.55 feet; S04°05'19"W for 1.34 feet; S04°05'19"W for 17.13 feet; S04°05'19"W for 14.29 feet; S04°16'18"W for 2.84 feet; S04°16'18"W for 25.14 feet; S42°11'59"W for 31.14 feet; S38°39'28"W for 76.67 feet; S39°43'35"W for 83.66 feet; S44°24'03"W for 9.08 feet to the North line of said I.I.T.F. Dedication; thence run S86°55'19"W along said North line for 315.15 feet to the Point of Curvature of a circular curve to the right having a radius of 23,113.13 feet; thence run Westerly along the arc of said curve through a central angle of 01°04'00" for 430.25 feet to the Point of Tangency of said curve; thence run S89°18'48"W for 162.99 feet to the Point of Beginning, said parcel contains 4.49 acres, more or less.

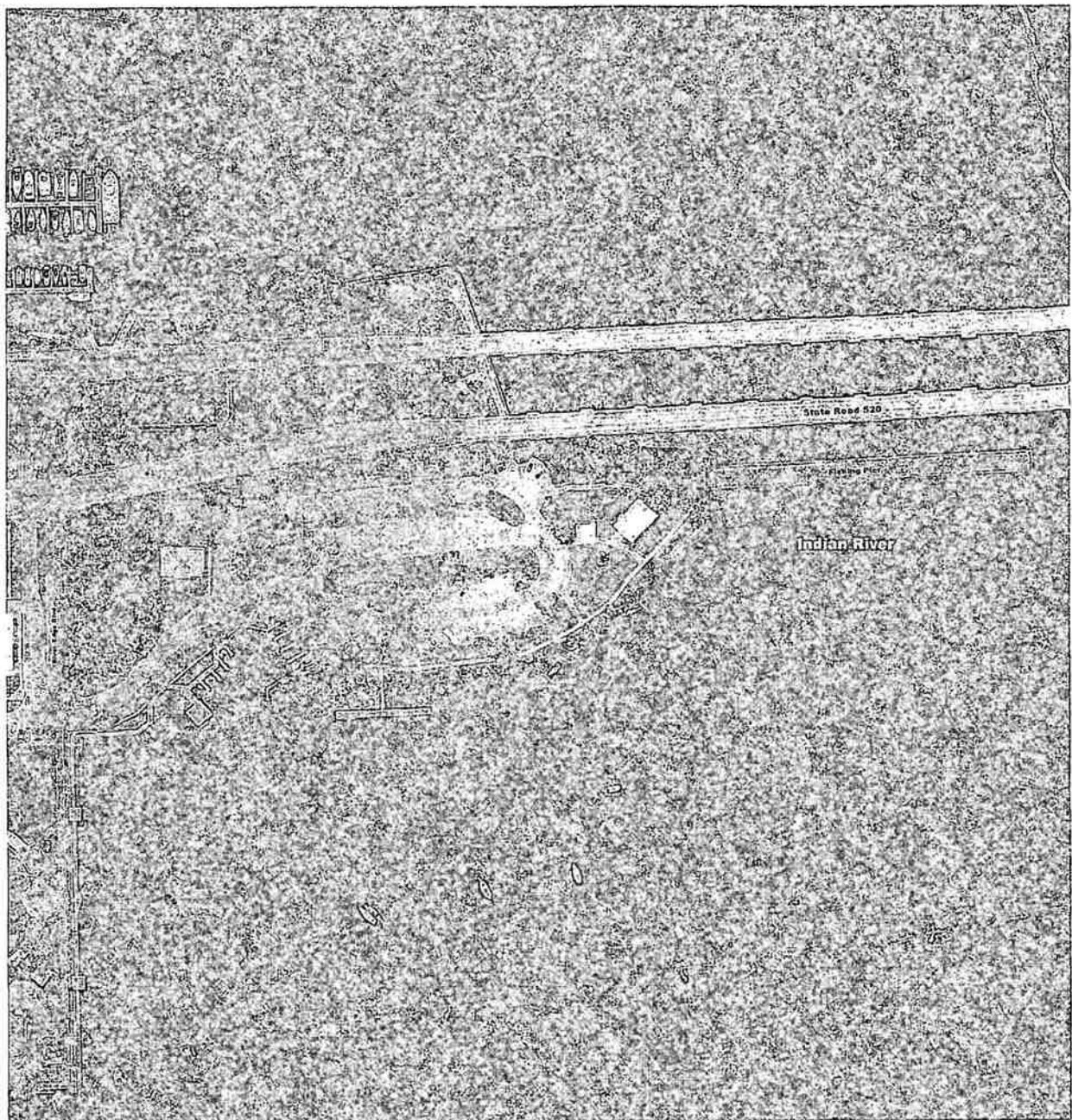
And

Together with those lands described in Official Records Book 2309, Page 1265, Official Records Book 1082, Page 312, Official Records Book 1174, Page 506, and Official Records Book 832, Page 946.

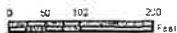
And

Together with those lands described in Dedication No. 25177 (2328-05) from the State of Florida Board of Trustees of the Internal Improvement Trust Fund.

"EXHIBIT B2"  
**Lee Wenner Park**  
300 River Edge Boulevard  
Cocoa, FL 32922



**Brevard County Parks and Recreation**  
2725 Judge Fran Jamieson Way  
Viera, FL 32940



2016 Aerial



DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representation.



Exhibit C to County Deed

Prepared by and Return to:

Anthony A. Garganese  
City Attorney of Cocoa  
Garganese, Weiss & D'Agosta, P.A.  
P.O. Box 2873  
Orlando, FL 32802-2873  
(407) 423-9366

**INTERLOCAL AGREEMENT  
BETWEEN  
BREVARD COUNTY AND THE CITY OF COCOA**

**(Transfer of Lee Wenner Park)**

**THIS INTERLOCAL AGREEMENT ("Agreement") is entered into this 25th day of July, 2017, by and between BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940, (hereafter referred to as the "County") and the CITY OF COCOA, a Florida municipal corporation, whose address is 65 Stone Street, Cocoa, Florida 32922, (hereafter referred to as the "City").**

**WITNESSETH:**

**WHEREAS, the County and the City desire to continue to cooperate and coordinate the provision of recreational services and facilities within the jurisdictional limits of the city of Cocoa in an efficient and economical manner; and**

**WHEREAS, the County and the City have common power to provide recreational services and facilities for the benefit of the public; and**

**WHEREAS, the County currently owns a portion of and maintains all of Lee Wenner Park (exclusive of the boat launch facility); and**

**WHEREAS, the City currently owns and maintains the Cocoa Riverfront Park (inclusive of the riverfront boardwalk facilities), which has been designated by the citizens of Cocoa as a special scenic and recreational landmark of the City of Cocoa by City Charter; and**

**WHEREAS, Lee Wenner Park and the Cocoa Riverfront Park are located within the City of Cocoa Downtown Village Area ("Cocoa Village") which is an important area for tourism, redevelopment and special events; and**

**WHEREAS, Lee Wenner Park and the Cocoa Riverfront Park are also generally connected by the aforesaid riverfront boardwalk and therefore share common attributes and characteristics that are recognized by the public; and**

**WHEREAS, because of the close proximity of Lee Wenner Park and Cocoa Riverfront Park and their common attributes and characteristics, the County and the City recognize that it may be more efficient and economical for the City to own, manage and improve Lee Wenner Park, especially when it comes to managing the many special events that occur in the Cocoa Village area and the demands of local tourism and recreational needs; and**

**WHEREAS, the City and the County also recognize that Lee Wenner Park and Cocoa Riverfront Park are located within the redevelopment area of the Cocoa Community Development Agency ("Agency") and that the Agency has adopted a "Cocoa Waterfront Master Plan" under which the City and the Agency have developed a strategic vision for the Cocoa waterfront (including Lee Wenner Park and Cocoa Riverfront Park) and have committed to improving the waterfront in phases through public capital improvements and public/private partnerships to the extent feasible; and**

**WHEREAS, in furtherance of this recognition, the County and the City are agreeable to transferring ownership, maintenance and functional responsibility of Lee Wenner Park and the**

buildings, structures, and facilities thereon to the City under the terms and conditions of this Agreement; and

WHEREAS, the County shall continue to own, maintain, and be responsible for the pier located at Lee Wenner Park; and

WHEREAS, this Agreement is authorized pursuant to the provisions of Chapters 125, 163, and 166, Florida Statutes and other applicable law; and

WHEREAS, the parties hereto have determined that this Agreement is in furtherance of the community health, safety and welfare and the public interest;

NOW THEREFORE, in consideration of the premises herein, the parties hereby agree as follows:

Section 1.    **Recitals.**    The above recitals are deemed true and correct and are hereby incorporated herein by this reference.

Section 2.    **Purpose.**    The purpose of this Agreement is for the County to assign and transfer to the City ownership over and full functional responsibility for a portion of Lee Wenner Park owned by the County, more particularly and legally described in "EXHIBIT A." ("Lee Wenner Park").

Section 3.    **Transfer of Responsibility.**    Within thirty (30) days of the date this Agreement is approved and fully executed by both parties ("effective date"), the County shall deliver a deed in accordance with Section 125.411, Florida Statutes, conveying its interest in Lee Wenner Park and all buildings, structures, and facilities thereon to the City. The County deed conveying Lee Wenner Park to the City shall contain a restrictive covenant running with the land prohibiting any use other than for municipal and recreational purposes, as defined herein, and associated uses directly related thereto, including the requirement of uniform user fees. The City is

expected to provide the same, or a better, level of service at Lee Wenner Park. Said County deed is attached herein as "EXHIBIT B." The County will continue to own, maintain, and be responsible for the pier, more particularly described in "EXHIBIT C." ("Pier"). The County shall retain an access and maintenance easement over a portion of Lee Wenner Park for accessing and maintaining the Pier. Said easement is more particularly and legally described in "EXHIBIT D."

If at any point the County desires to convey the Pier, the County shall notify the City in writing of the County's intent to convey the Pier. The City shall provide written notification to the County of its intent to exercise its right of first refusal within thirty (30) days of receipt of the County's notice. In the event the City fails to exercise the right of first refusal, this provision shall expire and the right of first refusal shall not bind the other purchaser. Nothing herein shall require that the County maintain, reconstruct, or repair the Pier.

The City shall be responsible for the cost to record the deeds and this Agreement in the public records of Brevard County, Florida. Upon conveyance, the City shall have ownership of, plenary authority over and full responsibility for the functional operation and maintenance of Lee Wenner Park. All of the COUNTY's rights, responsibilities, liabilities, duties and obligations as to Lee Wenner Park shall be transferred to and assumed by the CITY and said park shall be deemed City property, with the exception that the County shall be responsible for providing the City with an annual financial contribution for the future maintenance of Lee Wenner Park pursuant to Section 6 of this Agreement.

Section 4. **Covenant to Maintain For Municipal and Recreational Purposes.** Upon conveyance of Lee Wenner Park to the City, the City agrees to maintain the subject property for municipal and recreational purposes. Both parties agree that the definition of municipal purpose shall include the development of small commercial use to support waterfront or marine-related

activities but does not include the development of hotels and/or full service restaurants. Other non-recreational uses not permitted herein may be permitted upon the written consent of the Brevard County Board of County Commissioners. In event Lee Wenner Park is not used or ceases to be used for the stated purposes herein, then all right, title and interest Lee Wenner Park shall revert to the County which shall thereafter have the right to reenter and repossess Lee Wenner Park. In the event Lee Wenner Park reverts to the County, the City shall ensure that Lee Wenner Park is returned to the County in same condition or better, normal wear and tear excepted. The City agrees to make the use of Lee Wenner Park available to all County residents and visitors with no differential in fees.

**Section 5. Additional Terms.**

(a) The parties agree there shall be no metered parking at Lee Wenner Park and that, during normal hours of operation, parking shall be provided to the public free of charge.

(b) The parties agree that the name of the park shall remain Lee Wenner Park. The City shall not change the name of the park without the prior written consent of the Brevard County Board of County Commissioners.

**Section 6. County's Annual Maintenance Contribution.** The County agrees to provide, for a period of five years, an annual financial contribution to the City to be used exclusively by the City for the future maintenance and operation of Lee Wenner Park. Said contribution shall be made each fiscal year commencing on October 1, 2017 and each anniversary thereafter. The annual payment shall be due no later than November 1 of each fiscal year. The annual payment amount shall be as follows:

(a) For a period of five (5) years commencing on October 1, 2017, the payment amount shall be \$60,000.00. The total amount of financial contribution to be provided to the City for the

maintenance and operation of Lee Wenner Park is \$300,000.00. At the end of the referenced period of five (5) years the County shall have no further obligation of providing financial contributions to the City for the maintenance and operation of Lee Wenner Park.

**Section 7.**     **Implementation and Other Documents.** To the extent that the County Attorney and City Attorney determine that additional documents are required to be prepared and executed in order to effectuate the conveyance of Lee Wenner Park, the County Manager and City Manager are authorized to prepare or have prepared said documents and execute the same. Further, the parties agree to cooperate and execute such other instruments and documents as may be required to effectuate this Agreement.

**Section 8.**     **Employee Status.** Persons employed by the CITY in the performance of services and functions pursuant to this Agreement shall not be deemed to be the employees or agents of the County, nor shall they have any claims to pensions, worker's compensation, unemployment compensation, civil service or other employee rights or privileges granted to the County's officers and employees either by operation of law or by the County. Persons employed by the County in the performance of services and functions pursuant to this Agreement shall not be deemed to be the employees or agents of the City, nor shall they have any claims to pensions, worker's compensation, unemployment compensation, civil service or other employee rights or privileges granted to the City's officers and employees either by operation of law or by the City.

**Section 9.**     **Indemnification.** Neither party to this Agreement, its officers, employees or agents shall be deemed to assume any liability for the acts, omissions or negligence of the other party, its officers, employee or agents, except as provided by this Agreement.

**Section 10.**   **Notices.**

(a)     Whenever either party desires to give notice to the other party, notice shall be sent

to:

**For the COUNTY:**

County Manager  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940  
Telephone: (321) 633-2001

**For the CITY:**

City Manager  
65 Stone Street  
Cocoa, Florida 32922  
Telephone: (321) 433-8660

(b) Either of parties may change, by written notice as provided herein, the addresses or persons for receipt of notices. Each such notice shall be deemed delivered on the date delivered if by personal delivery or on the date of transmission if by facsimile, or on the date upon which the return receipt is signed or delivery is refused or notice is designated by the postal authorities as not deliverable, as the case may be, if mailed or date of delivery by overnight delivery services as evidenced by a service receipt.

Section 11. Counterparts. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

Section 12. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and neither this Agreement nor any portion of it may be altered, modified, waived, deleted or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter of this Agreement.

**Section 13.** **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties.

**Section 14.** **Public Records.** The parties shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, which have been made or received in conjunction with this Agreement.

**Section 15.** **Conflict of Interest.** Both parties agree that they will not commit any act in the performance of its obligations pursuant to this Agreement that would create a conflict of interest, as defined by Chapter 112, Florida Statutes.

**Section 16.** **Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fee and cost.

**Section 17.** **Governing Law.** This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

**Section 18.** **Venue.** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

**Section 19.** **Effective Date.** This Agreement shall take effect on the date that it is executed by both parties hereto and recorded in the Official Records of Brevard County, Florida by either the City or County.

**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement on the date first written.

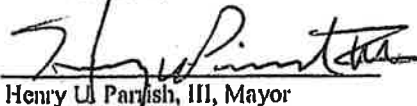


ATTEST  
CITY OF COCOA, FLORIDA  
  
Carrie Shealy, City Clerk

CITY:


CITY OF COCOA, FLORIDA:

By:

  
Henry Li Parish, III, Mayor

As authorized for execution by the City of Cocoa  
City Council at its 11/14, 2017 regular meeting.

ATTEST:

  
SCOTT ELLIS, Clerk of Court

Reviewed for legal form and content:

  
(Assistant) County Attorney

COUNTY:

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS:

By:

  
Curt Smith, Chairman

Date: July 25, 2017

As authorized by the Board of County Commissioners  
at its regular meeting on 7/25/17, 2017.

**"EXHIBIT A"****LEE WENNER PARK****Official Records Book 2990, Page 2376:**

A parcel of filled land adjacent to and East of Section 33, Township 24 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Begin at the intersection of the North line of the State of Florida Board of Trustees of the Internal Improvement Trust Fund Dedication No. 25177 (2328-05) and the Easterly right of way line of Riveredge Boulevard as shown on the Cocos River Development according to the plat thereof recorded in Plat Book 11 at Page 75 of the Public Records of Brevard County, Florida and run N00°56'32"W along said Easterly right of way line for 118.56 feet to the Point of Curvature of a circular curve to the right having a radius of 49.80 feet; thence run Northwesterly along the arc of said curve and said Easterly right of way line through a central angle of 50°24'50" for 43.82 feet to the North line of the parcel released by the State of Florida Department of Transportation recorded in Official Records Book 2549 at Page 2910 of the Public Records of Brevard County, Florida; thence run N89°18'48"E along the north line of said release parcel for 120.15 feet; thence run N79°08'43"E along said North line for 244.45 feet; thence run N86°55'19"E along said North line for 347.14 feet; thence run N03°04'41"W along said North line for 32.00 feet; thence run N86°55'19"E along North line for 305.71 feet to the safe upland line of the Indian River; thence meander said safe upland line the following courses; S31°33'01"E for 28.55 feet; S04°05'19"W for 1.34 feet; S04°05'19"W for 17.13 feet; S04°05'19"W for 14.29 feet; S04°16'18"W for 2.84 feet; S04°16'18"W for 25.14 feet; S42°11'59"W for 31.14 feet; S38°39'28"W for 76.67 feet; S39°43'35"W for 83.66 feet; S44°24'03"W for 9.08 feet to the North line of said I.I.T.F. Dedication; thence run S86°55'19"W along said North line for 315.15 feet to the Point of Curvature of a circular curve to the right having a radius of 23,113.13 feet; thence run Westerly along the arc of said curve through a central angle of 01°04'00" for 430.25 feet to the Point of Tangency of said curve; thence run S89°18'48"W for 162.99 feet to the Point of Beginning, said parcel contains 4.49 acres, more or less.

And

Together with those lands described in Official Records Book 2309, Page 1263, Official Records Book 1082, Page 312, and Official Records Book 1174, Page 506.

**"EXHIBIT B"**

Prepared by:  
Office of the County Attorney  
2725 Judge Fran Jamieson Way  
Building C- Suite 308  
Viera, Florida 32940

**COUNTY DEED**

THIS INDENTURE, made this 25 day of July, 2017 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, party of the first part, and CITY OF COCOA, a Florida Municipal Corporation, party of the second part,

WITNESSETH: that the said party of the first part, for and in consideration of the sum of \$10.00 to it in hand paid by the party to the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, its successors and assigns forever, the land described in Exhibit "A", (the "Property"), said Exhibit is attached hereto and made a part of this Deed, said land lying and being in Brevard County, Florida, and commonly referred to as Lee Weener Park.

However, the party of the first part reserves a perpetual nonexclusive access and maintenance easement on, over and through the entirety of the Property as depicted in Exhibit "B1", for the purpose of accessing, installing, maintaining and/or repairing the pier as depicted in Exhibit "B2", and all necessary appurtenances thereto.

The Property is to be used solely for providing municipal, recreational, and related activities. Any user fees required by the City must be applied uniformly with no differential in amount charged to the public. In the event this Property is not used or ceases to be used for the stated purpose and under the stated conditions, or in the event the party of the second part fails to comply with the Interlocal Agreement between the County and City dated 7/25/17 attached hereto as Exhibit "C" and made a part hereof, then all right title and interest in the Property shall revert to the party of the first part which shall thereafter have the right to reenter and repossess the Property conveyed herein. The foregoing shall be deemed to be a restrictive covenant which shall be deemed to be a covenant running with the land.

IN WITNESS WHEREOF the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair of said board, the day and year aforesaid.

ATTEST:

  
Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA

By:   
Curt Smith, Chairman  
As approved by the Board 7/25/17

## EXHIBIT "A" TO THE COUNTY DEED

**LEE WENNER PARK**Official Records Book 2930, Page 2376:

A parcel of filled land adjacent to and East of Section 33, Township 24 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Begin at the intersection of the North line of the State of Florida Board of Trustees of the Internal Improvement Trust Fund Dedication No. 25177 (2328-05) and the Easterly right of way line of Riveredge Boulevard as shown on the Cocoa River Development according to the plat thereof recorded in Plat Book 11 at Page 75 of the Public Records of Brevard County, Florida and run N00°56'32"W along said Easterly right of way line for 118.56 feet to the Point of Curvature of a circular curve to the right having a radius of 49.80 feet; thence run Northeasterly along the arc of said curve and said Easterly right of way line through a central angle of 50°24'50" for 43.82 feet to the North line of the parcel released by the State of Florida Department of Transportation recorded in Official Records Book 2549 at Page 2910 of the Public Records of Brevard County, Florida; thence run N89°18'48"E along the north line of said release parcel for 120.15 feet; thence run N79°08'43"E along said North line for 244.45 feet; thence run N86°55'19"E along said North line for 347.14 feet; thence run N03°04'41"W along said North line for 32.00 feet; thence run N86°55'19"E along North line for 305.71 feet to the safe upland line of the Indian River; thence meander said safe upland line the following courses; S31°33'01"E for 28.55 feet; S04°05'19"W for 1.34 feet; S04°05'19"W for 17.13 feet; S04°05'19"W for 14.29 feet; S04°16'18"W for 2.84 feet; S04°16'18"W for 25.14 feet; S42°11'59"W for 31.14 feet; S38°39'28"W for 76.67 feet; S39°43'35"W for 83.66 feet; S44°24'03"W for 9.08 feet to the North line of said I.I.T.F. Dedication; thence run S86°55'19"W along said North line for 315.15 feet to the Point of Curvature of a circular curve to the right having a radius of 23,113.13 feet; thence run Westerly along the arc of said curve through a central angle of 01°04'00" for 430.25 feet to the Point of Tangency of said curve; thence run S89°18'48"W for 162.99 feet to the Point of Beginning, said parcel contains 4.49 acres, more or less.

And

Together with those lands described in Official Records Book 2309, Page 1265, Official Records Book 1082, Page 312, and Official Records Book 1174, Page 506.

## EXHIBIT "B1" TO THE COUNTY DEED

LEE WENNER PARKORB 2930, Page 2376:

A parcel of filled land adjacent to and East of Section 33, Township 24 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Begin at the intersection of the North line of the State of Florida Board of Trustees of the Internal Improvement Trust Fund Dedication No. 25177 (2328-05) and the Easterly right of way line of Riveredge Boulevard as shown on the Cocoa River Development according to the plat thereof recorded in Plat Book 11 at Page 75 of the Public Records of Brevard County, Florida and run N00°56'32"W along said Easterly right of way line for 118.56 feet to the Point of Curvature of a circular curve to the right having a radius of 49.80 feet; thence run Northeasterly along the arc of said curve and said Easterly right of way line through a central angle of 50°24'50" for 43.82 feet to the North line of the parcel released by the State of Florida Department of Transportation recorded in Official Records Book 2549 at Page 2910 of the Public Records of Brevard County, Florida; thence run N89°18'48"E along the north line of said release parcel for 120.15 feet; thence run N79°08'43"E along said North line for 244.45 feet; thence run N86°55'19"E along said North line for 347.14 feet; thence run N03°04'41"W along said North line for 32.00 feet; thence run N86°55'19"E along North line for 305.71 feet to the safe upland line of the Indian River; thence meander said safe upland line the following courses; S31°33'01"E for 28.55 feet; S04°05'19"W for 1.34 feet; S04°05'19"W for 17.13 feet; S04°05'19"W for 14.29 feet; S04°16'18"W for 2.84 feet; S04°16'18"W for 25.14 feet; S42°11'59"W for 31.14 feet; S38°39'28"W for 76.67 feet; S39°43'35"W for 83.66 feet; S44°24'03"W for 9.08 feet to the North line of said I.I.T.F. Dedication; thence run S86°55'19"W along said North line for 315.15 feet to the Point of Curvature of a circular curve to the right having a radius of 23,113.13 feet; thence run Westerly along the arc of said curve through a central angle of 01°04'00" for 430.25 feet to the Point of Tangency of said curve; thence run S89°18'48"W for 162.99 feet to the Point of Beginning, said parcel contains 4.49 acres, more or less.

And

Together with those lands described in Official Records Book 2309, Page 1265, Official Records Book 1082, Page 312, Official Records Book 1174, Page 506, and Official Records Book 832, Page 946.

And

Together with those lands described in Dedication No. 25177 (2328-05) from the State of Florida Board of Trustees of the Internal Improvement Trust Fund.

EXHIBIT "B2" TO THE COUNTY DEED

**Lee Wenner Park**

300 River Edge Boulevard  
Cocoa, FL 32922



**Brevard County Parks and Recreation**

2725 Judge Fran Jamieson Way  
Viera, FL 32940

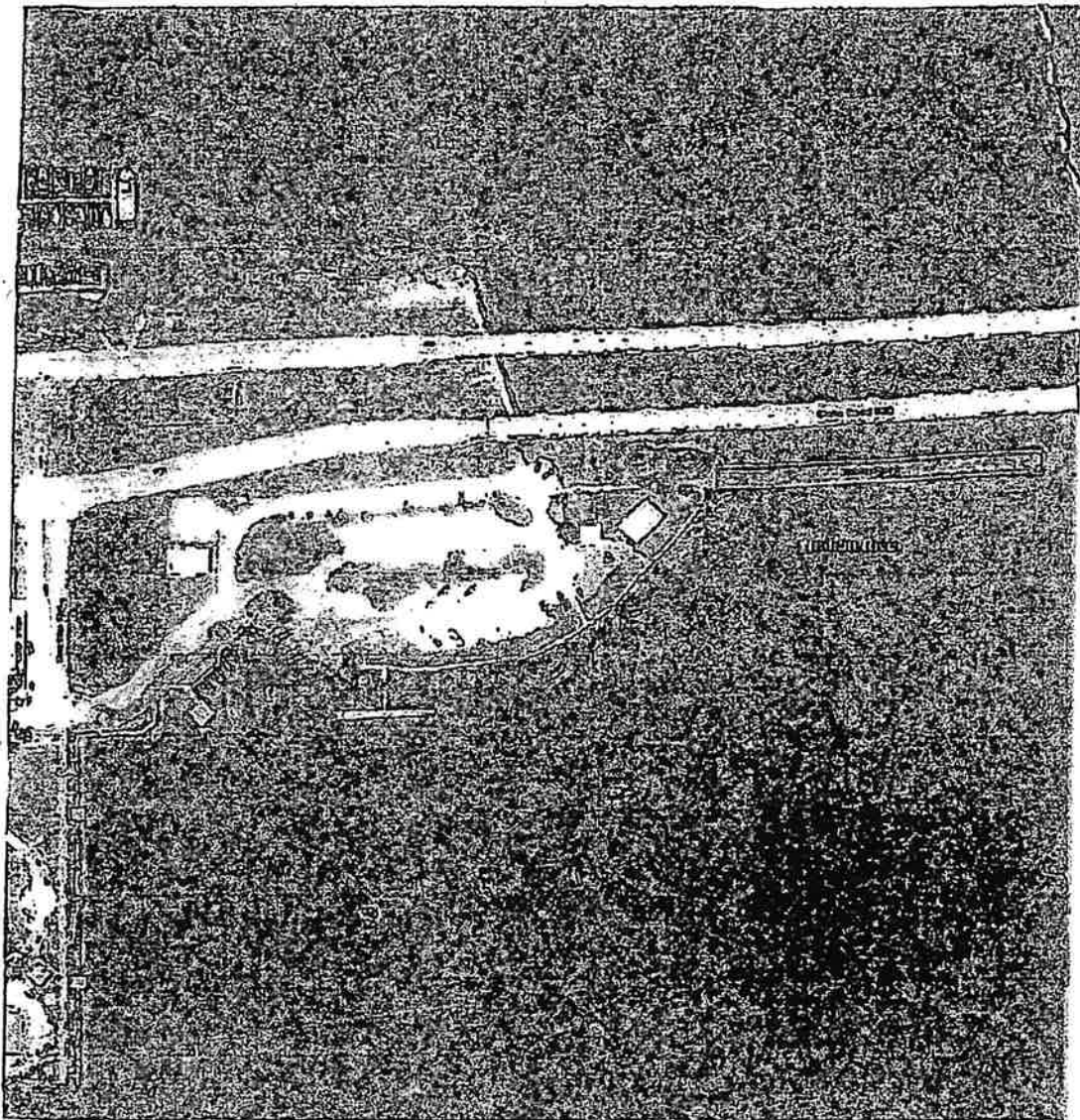
0 50 100 200  
Feet

DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representation.



INTERLOCAL AGREEMENT  
BREVARD COUNTY / CITY OF COCOA  
PAGE 14 OF PAGE 16

**"EXHIBIT C"**  
**Lee Wenner Park**  
300 River Edge Boulevard  
Cocoa, FL 32922



**Brevard County Parks and Recreation**  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representation.



INTERLOCAL AGREEMENT  
BREVARD COUNTY / CITY OF COCOA  
PAGE 15 OF PAGE 16

**"EXHIBIT D"****LEE WENNER PARK****ORB 2930, Page 2376:**

A parcel of filled land adjacent to and East of Section 33, Township 24 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Begin at the intersection of the North line of the State of Florida Board of Trustees of the Internal Improvement Trust Fund Dedication No. 25177 (2328-05) and the Easterly right of way line of Riveredge Boulevard as shown on the Cocoa River Development according to the plat thereof recorded in Plat Book 11 at Page 75 of the Public Records of Brevard County, Florida and run N00°56'32"W along said Easterly right of way line for 118.56 feet to the Point of Curvature of a circular curve to the right having a radius of 49.80 feet; thence run Northeasterly along the arc of said curve and said Easterly right of way line through a central angle of 50°24'50" for 43.82 feet to the North line of the parcel released by the State of Florida Department of Transportation recorded in Official Records Book 2549 at Page 2910 of the Public Records of Brevard County, Florida; thence run N89°18'48"E along the north line of said release parcel for 120.15 feet; thence run N79°08'43"E along said North line for 244.45 feet; thence run N86°55'19"E along said North line for 347.14 feet; thence run N03°04'41"W along said North line for 32.00 feet; thence run N86°55'19"E along North line for 305.71 feet to the safe upland line of the Indian River; thence meander said safe upland line the following courses; S31°33'01"E for 28.55 feet; S04°05'19"W for 1.34 feet; S04°05'19"W for 17.13 feet; S04°05'19"W for 14.29 feet; S04°16'18"W for 2.84 feet; S04°16'18"W for 25.14 feet; S42°11'59"W for 31.14 feet; S38°39'28"W for 76.67 feet; S39°43'35"W for 83.66 feet; S44°24'03"W for 9.08 feet to the North line of said I.I.T.F. Dedication; thence run S86°55'19"W along said North line for 315.15 feet to the Point of Curvature of a circular curve to the right having a radius of 23,113.13 feet; thence run Westerly along the arc of said curve through a central angle of 01°04'00" for 430.25 feet to the Point of Tangency of said curve; thence run S89°18'48"W for 162.99 feet to the Point of Beginning, said parcel contains 4.49 acres, more or less.

And

Together with those lands described in Official Records Book 2309, Page 1265, Official Records Book 1082, Page 312, Official Records Book 1174, Page 506, and Official Records Book 832, Page 946.

And

Together with those lands described in Dedication No. 25177 (2328-05) from the State of Florida Board of Trustees of the Internal Improvement Trust Fund.



**This instrument was prepared by  
and upon recording return to:**

Seth Sheitelman  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408

**EASEMENT AGREEMENT**  
(Communications Equipment)

**THIS EASEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the **CITY OF COCOA**, a Florida municipal corporation (“**Grantor**”), having a post office address of 65 Stone Street, Cocoa, Florida 32922, and **FLORIDA POWER & LIGHT COMPANY**, a Florida corporation, its affiliates, licensees, agents, successors, and assigns (“**Grantee**”), having a post office address of 700 Universe Boulevard, Juno Beach, Florida 33408.

W I T N E S S E T H:

**WHEREAS**, Grantor is the owner of that certain tract of land located in Brevard County, Florida which is more particularly described in Exhibit A attached hereto and made a part hereof by this reference (the “**Property**”); and

**WHEREAS**, Grantee desires to construct, operate and maintain underground electric utility communications facilities (including cables, fiber, conduits, appurtenant equipment, and appurtenant above ground equipment) on the portion of the Property described in Exhibit B attached hereto and made a part hereof by this reference (the “**Easement Area**”); and

**WHEREAS**, Grantee acknowledges that the Property is subject to that certain non-exclusive easement reserved by Brevard County in that certain County Deed recorded in Official Records Book 8063, Page 1885 of the Public Records of Brevard County, Florida (“**Existing County Easement**”) for the County to access, install, maintain, and/or repair the pier and that the Grantee’s use of the Easement Area under this Agreement shall not restrict the County’s ability to exercise its rights under the Existing County Easement; and

**WHEREAS**, the parties acknowledge that the County Deed also contains a right of reversion for the Property in favor of Brevard County; and

**WHEREAS**, Grantee further acknowledges that Grantee’s use of the Easement Area under this Agreement is subject to all existing easements and other matters of record, if any, recorded in the public records of Brevard County, Florida prior to the effective date of this Agreement; and

**WHEREAS**, Grantor agrees to permit Grantee’s activities on the Easement Area upon the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, for and in consideration of the premises, the mutual covenants and agreements hereinafter set forth, Ten and No/100 Dollars (\$10.00), and other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Grantor and Grantee hereby agree as follows:

1. **Recitals.** Grantor and Grantee hereby mutually acknowledge and agree that the foregoing recitals are true and correct and hereby incorporated into this Agreement by this reference.

2. **Grant of Easement.** Grantor hereby grants and conveys to Grantee the following irrevocable, perpetual easements, rights and interest in gross:

(i) A non-exclusive easement in, under, over, across and through the Easement Area for the purpose of constructing, reconstructing, improving, expanding, reducing, installing, operating, maintaining, repairing, replacing and inspecting above ground and below ground appurtenances, underground electric utility communications facilities (including cables, fiber, conduits, appurtenant equipment) and any related facilities (collectively, the “**Facilities**”) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the size of, and remove such Facilities within the Easement Area;

(ii) The right to keep the Easement Area free from (a) trees, undergrowth and/or other obstructions, whether natural or artificial, which might interfere with the lines or systems of communications, upon prior notice to and approval by the Grantor’s City Manager or his or her designee, which shall not be unreasonably withheld, conditioned or delayed, except in case of emergency where no such approval is required; (b) anything which may constitute a hazard or endanger persons attempting to construct, reconstruct, improve, expand, reduce, install, operate, maintain, repair, replace or inspect any of the Facilities; (c) anything which may increase the cost of constructing, reconstructing, improving, expanding, reducing, installing, operating, maintaining, repairing, replacing or inspecting any of the Facilities, except that the existing parking lot surface and supporting structures, which may be maintained, repaired, and resurfaced, shall not be considered to increase such cost and may remain on the Easement Area; and (d) anything which may unreasonably interfere with the Facilities and/or any of Grantee’s easements, rights and interest under this Agreement, and

(iii) A non-exclusive right-of-way easement of ingress, egress and access across the entirety of the Property as may be reasonably necessary or convenient for the full use and enjoyment by Grantee of its easements, rights and interest under this Agreement including, without limitation, the right to bring equipment, persons and materials onto the Property and Easement Area, subject to the requirements of Section 4 below.

3. **Restoration of Property.** Grantee shall repair any damage to the Property or Easement Area to the extent that such damage is caused by Grantee or its contractors, employees or agents. Grantee shall restore, or cause to be restored, the surface and subsurface of the Property and Easement Area to the same or substantially similar condition as reasonably practical said Property or Easement Area was in prior to Grantee’s performance of any activities contemplated by this Agreement for the Grantee’s Facilities. Grantee shall use its best efforts in its use of the Easement Area to not unreasonably interfere with use by Grantor, its guests and invitees.

4. **Coordination of Work.** With regard to initial construction of the Grantee’s Facilities, Grantee shall coordinate the timing of such initial construction with the City Manager and may not commence construction absent City Manager approval, which shall not be unreasonably withheld, conditioned, or delayed, and which shall be given to minimize interference with the City’s planned Lee Wenner Park parking lot improvements. Grantee shall provide notice to Brevard County, Parks and Recreation Department, prior to commencing initial construction of its Facilities. Grantee shall provide at

least thirty (30) days' written notice to Grantor and Brevard County, Parks and Recreation Department, prior to performing any inspection, alteration, construction, reconstruction, improvement, replacement, maintenance or repair of Grantee's Facilities which may (1) involve heavy equipment or machinery; (2) excavation of the surface of the Property, or (3) materially interfere with Grantor's use of Grantor's Property or materially interfere with Brevard County's use of its Existing County Easement, except in an event of an emergency in which life or property is in imminent danger of destruction or injury. Except in the event of an emergency, Grantee further agrees to provide at least ten (10) days' written notice to Grantor and Brevard County, Parks and Recreation Department, prior to closing any parking spaces on the Property while conducting any inspection, alteration, construction, reconstruction, improvement, replacement, maintenance or repair of Grantee's Facilities that may affect park operations. Except in the case of such emergency, Grantee shall be required to coordinate the timing, staging and specific location of the work to be performed and materials and equipment to be placed on the Property with the City Manager's Office. Except in case of an emergency, Grantee shall coordinate the timing and closure of parking spaces with the City's Leisure Services Department.

5. **Relocation of Facilities.** Grantee acknowledges and agrees that the Property is a premiere waterfront park in the City of Cocoa and located within the Cocoa Community Redevelopment Area and subject to a Waterfront Master Plan, which may be amended from time to time to include varying economic redevelopment projects and enhanced recreational and community opportunities. Grantor shall use reasonable efforts to avoid requiring Grantee to relocate its Facilities, but this Agreement shall not under any circumstances be construed to preclude the Grantor or the Cocoa Community Redevelopment Area, in its sole discretion, from amending its vision for the Property or taking action to enhance the available recreational and community opportunities on the Property in order to serve the best interests of the City's residents. Grantee agrees that should Grantor request Grantee to relocate Grantee's Facilities to another location on the Property for any reason, Grantor and Grantee shall cooperate and work together in good faith to agree upon an alternate location, footprint, design and construction plan for the new easement area ("**New Easement Area**") which shall be similar to the Easement Area in area and appropriateness for the use of Grantee's purposes, in which event the New Easement Area shall be deemed to be the Easement Area for all purposes under this Agreement; whereupon Grantee shall promptly relocate the Facilities to the New Easement Area at Grantor's expense. Upon such relocation the New Easement Area shall be deemed to be the Easement Area under this Agreement and the parties shall amend this Agreement to replace Exhibit B to show the New Easement Area.

6. **Grantor's Use of Easement Area.** Subject to Grantor's rights described in Section 5 above, and subject to the Existing County Easement, Grantor hereby covenants and agrees that it shall not construct, or permit any person or entity other than Grantee to construct, any buildings, towers or other structures on the Easement Area, nor shall it cause or permit any person or entity other than Grantee to cause the grade of the Easement Area to be changed in any manner prior to obtaining the prior written consent of Grantee.

7. **Grantor's Non-Interference.** Subject to and conditioned upon the provisions of Sections 4 and 5 of this Agreement, Grantor hereby reserves for itself the right to use the Easement Area; provided, however, that Grantor's use may not (i) violate any provision of this Agreement, (ii) constitute, in Grantee's reasonable opinion, a hazard or endanger persons attempting to construct, reconstruct, improve, expand, reduce, install, operate, maintain, repair, replace or inspect any of the Facilities, or (iii) unreasonably interfere with any of the Facilities and/or Grantee's easements, rights or interest under this Agreement.

8. **Amendment; Easement Runs with the Land.** This Agreement may only be amended by a writing signed by all of the parties hereto, and no other purported amendment hereof shall be of any force or effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their

respective heirs, personal representatives, successors and assigns, as applicable. All rights granted to Grantee hereunder are hereby also expressly granted to Grantee's servants, agents, employees, contractors and subcontractors.

9. **Release of Easement.** In the event of the Grantee's complete non-use and abandonment of the Grantee's Facilities within the Easement Area, at such time Grantor may request a release of this Agreement to record in the public records.

10. **Grantor's Representations.** Grantor for itself and its successors and assigns, does hereby warrant to Grantee and its successors and assigns, that Grantor holds fee title to the Easement Area, and warrants the title to the easements herein described and granted, and will defend the same and Grantee's right to use and quietly enjoy such easements and the Easement Area against the lawful claims of all persons whomsoever.

11. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the Grantor's (or the then owner of the Property, if Brevard County) right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the Grantor's or Brevard County's, as the case may be, potential liability under state or federal law, if applicable. As such, the Grantor (or the then owner of the Property, if Brevard County) shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the Grantor (or the then owner of the Property, if Brevard County) shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars (\$300,000.00). This paragraph shall survive termination of this Agreement.

12. **Governing Law; Venue; Waiver of Jury Trial.** This Agreement shall be governed by the laws of the State of Florida. Venue for all disputes shall be properly placed in Brevard County, Florida for state court actions and Orlando, Florida for federal court actions. The parties agree that this Agreement was consummated in Brevard County, and the site of the easement is in Brevard County, Florida. The parties hereby voluntarily, knowingly, and intentionally agree, to the extent permitted by law, to the waiver of a jury trial in any legal action or proceeding arising under or in connection with this Agreement.

13. **Notices.** All notices, demands, requests, consents, approvals or other communications (collectively, "**Notices**") required or permitted to be given hereunder or which are given with respect to this Agreement shall be effective only if in writing and delivered by personal service, or delivered to an overnight courier service with guaranteed next day delivery, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Grantor:                      Attn: Stockton Whitten, City Manager  
                                         City of Cocoa, Florida  
                                         Stone Street  
                                         Cocoa, FL 32922

To Grantee:                      Florida Power & Light Company  
                                         700 Universe Boulevard  
                                         Juno Beach, Florida 33408  
                                         Attn: Corporate Real Estate Department

With Copy To: Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408  
Attn: General Counsel

To Brevard County, Parks and Recreation:  
Director, Parks and Recreation  
2725 Judge Fran Jamieson Way  
Melbourne, Florida 32940

Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered to an overnight courier service, on the business day immediately following delivery to such service; and if mailed, on the third business day after mailing.

14. **Counterparts.** This Agreement may be executed in separate counterparts, each of which is an original, and all of which together constitute one and the same instrument.

15. **Injunctive Relief.** The parties agree that, in the event of default, there may not be an adequate remedy at law, and therefore, it is agreed the parties shall be entitled to seek injunctive relief, including a mandatory injunction.

16. **Entire Agreement.** This Agreement constitutes the full and entire agreement between the parties hereto and supersedes any oral or written prior communications between the parties related to the subject matter contained in this Agreement.

17. **Attorney's Fees.** In the event it shall be necessary for Grantor or Grantee to bring suit for specific performance or damages or to enforce any provision hereof, each party shall be responsible for its own attorney's fees, costs and expenses.

18. **Severability.** If any provision, or a portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this Agreement or the application of such provision, or portion thereof, to any persons or circumstances shall not be affected thereby and the remainder of this Agreement shall be given effect as if such invalid, inoperative or unenforceable portion has not been included; such invalid, inoperative or unenforceable provision, or portion thereof, or the application thereof to any person or circumstances, shall not be given effect.

[Signatures appear on the following page.]

**IN WITNESS WHEREOF**, the Grantor and Grantee has hereunto set their hands and affixed their seals as of the date first above written.

**WITNESSES:**

Signed, sealed and delivered  
in the presence of:

**GRANTOR:**

**CITY OF COCOA,**  
a Florida municipal corporation

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name  
Post Office Address: 65 Stone Street  
Cocoa, Florida 32922

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name  
Post Office Address: 65 Stone Street  
Cocoa, Florida 32922

**ACKNOWLEDGMENT**

STATE OF FLORIDA            )  
                                          ) SS:  
COUNTY OF BREVARD        )

The foregoing instrument was acknowledged before me by means of ☐ physical presence  
or ☐ online       notarization, this        \_\_\_\_ day       of       \_\_\_\_\_, 2024, by  
\_\_\_\_\_, as \_\_\_\_\_ of the City of Cocoa,  
a Florida municipal corporation, on behalf of the City.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
My commission expires: \_\_\_\_\_

☐ Personally Known **OR** ☐ Produced Identification  
Type of Identification Produced \_\_\_\_\_

WITNESSES:

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

Post Office Address: 700 Universe Boulevard  
Juno Beach, Florida 33408

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

Post Office Address: 700 Universe Boulevard  
Juno Beach, Florida 33408

GRANTEE:

**FLORIDA POWER & LIGHT COMPANY,**  
a Florida corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

**ACKNOWLEDGMENT**

STATE OF FLORIDA            )  
                                          ) SS:  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me by means of ☐ physical presence  
or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2024, by  
\_\_\_\_\_, as \_\_\_\_\_ of **FLORIDA**  
**POWER & LIGHT COMPANY**, a Florida corporation, on behalf of the corporation.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_

Print Name: \_\_\_\_\_

Notary Public, State of Florida

My commission expires: \_\_\_\_\_

☐ Personally Known **OR** ☐ Produced Identification

Type of Identification Produced \_\_\_\_\_

## Exhibit A

### Legal Description of the Property

A parcel of filled land adjacent to and East of Section 33, Township 24 South, Range 36 East, Brevard County, Florida, being more, particularly described as follows:

Begin at the intersection of the North line of the State of Florida Board of Trustees of the Internal Improvement Trust Fund Dedication No. 25177 (2328-05) and the Easterly right of way line of River Edge Boulevard as shown on the Cocoa River Development according to the plat thereof recorded in Plat Book 11 at Page. 75 of the Public Records of Brevard County, Florida and run N.00°56'32"W., along said Easterly right-of-way line for 118.56 feet to the Point of Curvature of a circular curve to the right having a radius of 49.80 feet; thence run Northeasterly along the arc of said curve and said Easterly right-of-way line through a central angle of 50°24'50" for 43.82 feet to the North line of the parcel released by the State of Florida Department of Transportation recorded in Official Records Book 2549 at Page 2910, of the Public Records of Brevard County, Florida; thence run N.89°18'48"E., along the North line of said release parcel for 120.15 feet; thence run N.79°08'43"E., along said North line for 244.45 feet; thence run N.86°55'19"E., along said North line for 347.14 feet; thence run N.03°04'41"W., along said North line for 32.00 feet; thence run N.86°55'19"E., along North line for 305.71 feet to the safe upland line of the Indian River; thence meander said safe upland line the following courses; S.31°33'01"E., for 28.55 feet; S.04°05'19"W., for 1.34 feet; S.04°05'19"W., for 17.13 feet; S.04°05'19"W., for 14.29 feet; S.04°16'18"W., for 2.84 feet; S.04°16'18"W., for 25.14 feet; S.42°11'59"W., for 31.14 feet; S.38°39'28"W., for 76.67 feet; S.39°43'35"W., for 83.66 feet; S.44°24'03"W., for 9.08 feet to the North line of said I.I.T.F. Dedication; thence run S.86°55'19"W., along said North line for 315.15 feet to the Point of Curvature of a circular curve to the right having a radius of 23,113.13 feet; thence run Westerly along the arc of said curve through a central angle of 01°04'00" for 430.25 feet to the Point of Tangency of said curve; thence run S.89°18'48"W., for 162.99 feet to the Point of Beginning, said parcel contains 4.49 acres, more or less.

and

All of that portion of Lot 8 of the Cocoa River Development in the City of Cocoa, Brevard County, Florida, as shown by the Plat of and Subdivision recorded in Plat Book 11, Page 7, of the Public Records of Brevard County, Florida, lying East of and within 400 feet to River Edge Boulevard as shown on said Plat, together with the submerged lands in the Indian River and the riparian or littoral rights thereunto appurtenant to the East of said River Edge Boulevard.

**Note: The specific legal description of all Land South of the above legal descriptions pertaining to Parcel I.D. 24-36-33-00-43 were not found within the Public Records. This said land was apparently described as follows:**

All of Lot 9, Cocoa River Development, according to the Plat of said subdivision recorded in Plat Book 11, Page 75, Public Records of Brevard County, Florida, lying East of the centerline of River Edge Boulevard as shown on said Plat, and all submerged lands in the Indian River and all riparian or littoral rights which may appertain to said Lot 9, Cocoa River Development.

and

All of Lots 9 and 10, Cocoa River Development, according to the Plat of said Subdivision in Plat Book 11, Page 75, Public Records of Brevard County, Florida, lying East of the centerline of River Edge Boulevard, as shown on said Plat, and all submerged lands in the Indian River and any and all riparian or littoral rights which may appertain to said Lot 9 and 10, Cocoa River Development.



**Exhibit B**

**Legal Description of the Easement Area**

## Exhibit B - Easement Area

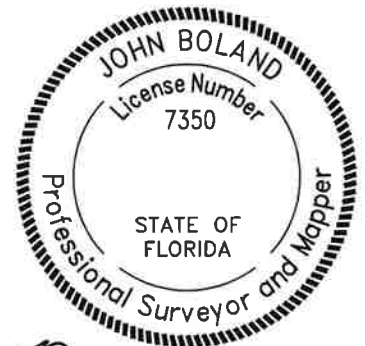
A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 8063, PAGE 1885, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING IN SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 WEST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD 520 ALSO KNOWN AS MERRITT ISLAND CAUSEWAY (A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 70100-2517) BEING MARKED BY A FOUND IRON ROD; THENCE RUN ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE S89°10'52"W FOR 27.36 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID RIGHT-OF-WAY RUN S49°56'33"E FOR 4.00 FEET; THENCE S59°57'21"E FOR 34.32 FEET; THENCE N00°01'31"E FOR 21.20 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF SAID STATE ROAD 520; THENCE RUN ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE N79°00'47"E FOR 10.19 FEET; THENCE S00°01'31"W FOR 24.14 FEET; THENCE S88°39'11"E FOR 120.77 FEET; THENCE S47°40'19"E FOR 78.51 FEET; THENCE S50°00'48"E FOR 118.45 FEET; THENCE S85°06'38"E FOR 245.15 FEET; THENCE N80°52'26"E FOR 219.72 FEET; THENCE S45°38'55"W FOR 14.18 FEET; THENCE S53°47'09"W FOR 4.00 FEET; THENCE S80°52'26"W FOR 205.81 FEET; THENCE N85°06'38"W FOR 236.67 FEET; THENCE S40°25'43"W FOR 7.51 FEET; THENCE N49°34'17"W FOR 70.34 FEET; THENCE N50°25'09"W FOR 61.93 FEET; THENCE N47°40'19"W FOR 75.01 FEET; THENCE N88°39'11"W FOR 128.21 FEET; THENCE N59°57'21"W FOR 39.35 FEET; THENCE N49°56'33"W FOR 16.42 FEET; THENCE N89°10'52"E FOR 15.28 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 8,584 SQUARE FEET (0.197 ACRES) MORE OR LESS.



VICINITY MAP  
(NOT TO SCALE)



*John Boland*  
JOHN M. BOLAND  
PROFESSIONAL SURVEYOR & MAPPER  
LICENSE NUMBER LS 7350

03/23/23  
DATE

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A  
FLORIDA LICENSED SURVEYOR AND MAPPER

### SHEET INDEX:

SHEET 1: LEGAL DESCRIPTION  
SHEET 2: LEGEND, NOTES  
SHEETS 3-5: SKETCH OF DESCRIPTION

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 1 OF 5

### SKETCH OF DESCRIPTION OF PROPOSED EASEMENT ACROSS THE LANDS OF CITY OF COCOA (LEE WENNER PARK)

SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
BREVARD COUNTY, FLORIDA

PREPARED FOR:  
FLORIDA POWER & LIGHT COMPANY

### SGC ENGINEERING, LLC

#### SURVEY AND MAPPING

1001 TOWN PLAZA COURT, SUITE 1032  
WINTER SPRINGS, FLORIDA 32708  
PHONE: (800) 581-4031  
WWW.SGCSURVEY.COM  
LB 7979



DATE: 03/23/23 SCALE: 1" = 40' DRAWN: SAS CHECK: JMB

FILE: K:\PROJECTS\1877001-Kimley Horn - FL520 Replacement\DWG\WORKSHEETS\1877001\_Plots.dwg

LOGIN: Steven Stuplik

PLOTTED: 3/23/2023 11:36:06 AM

### SKETCH NOTES:

1. BEARINGS AND COORDINATES SHOWN HEREON, IF ANY ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983.
2. THIS SKETCH MEETS THE APPLICABLE "STANDARDS OF PRACTICE" AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN RULE 5J17.050 THROUGH 5J17.052, FLORIDA ADMINISTRATIVE CODE.
3. ELEVATIONS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988(NAVD 88) [GEOID 12B].
4. IMPROVEMENTS SHOWN HEREON ARE THE RESULT OF A FIELD SURVEY CONDUCTED BY SGC ENGINEERING, LLC BETWEEN APRIL 14, 2020 AND OCTOBER 19, 2020.
5. PROPERTY SUBJECT TO ANY VALID & ENFORCEABLE EASEMENTS, RESTRICTIONS, & RIGHTS OF WAY.
6. PER FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION MEMORANDUM TO BEN DESLAURIERS DATED OCTOBER 20, 2020 AN ORDINARY HIGH WATER LINE (OHWL) HAS NOT BEEN DETERMINED AT THIS SITE. AN ELEVATION OF -0.30 FEET, NORTH AMERICAN VERTICAL DATUM 1988, ALONG THE NATURAL SHORELINE IS SUFFICIENT FOR SAFE UPLAND LINE.

### LEGEND:

---	SUBJECT EASEMENT
---	EXISTING R/W
---	PARCEL LINES
---	TIE LINE
R/W	RIGHT OF WAY
ORB	OFFICIAL RECORDS BOOK
PB	PLAT BOOK
PG(S)	PAGE(S)
SF	SQUARE FEET
AC	ACRES
SEC	SECTION
RNG	RANGE
TWN	TOWNSHIP
●	FOUND IRON ROD

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 2 OF 5

SKETCH OF DESCRIPTION OF  
**PROPOSED EASEMENT ACROSS THE  
LANDS OF CITY OF COCOA  
(LEE WENNER PARK)**

SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
BREVARD COUNTY, FLORIDA

PREPARED FOR:  
FLORIDA POWER & LIGHT COMPANY

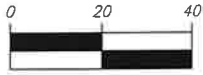
**SGC ENGINEERING, LLC**

**SURVEY AND MAPPING**

1001 TOWN PLAZA COURT, SUITE 1032  
WINTER SPRINGS, FLORIDA 32708  
PHONE: (800) 581-4031  
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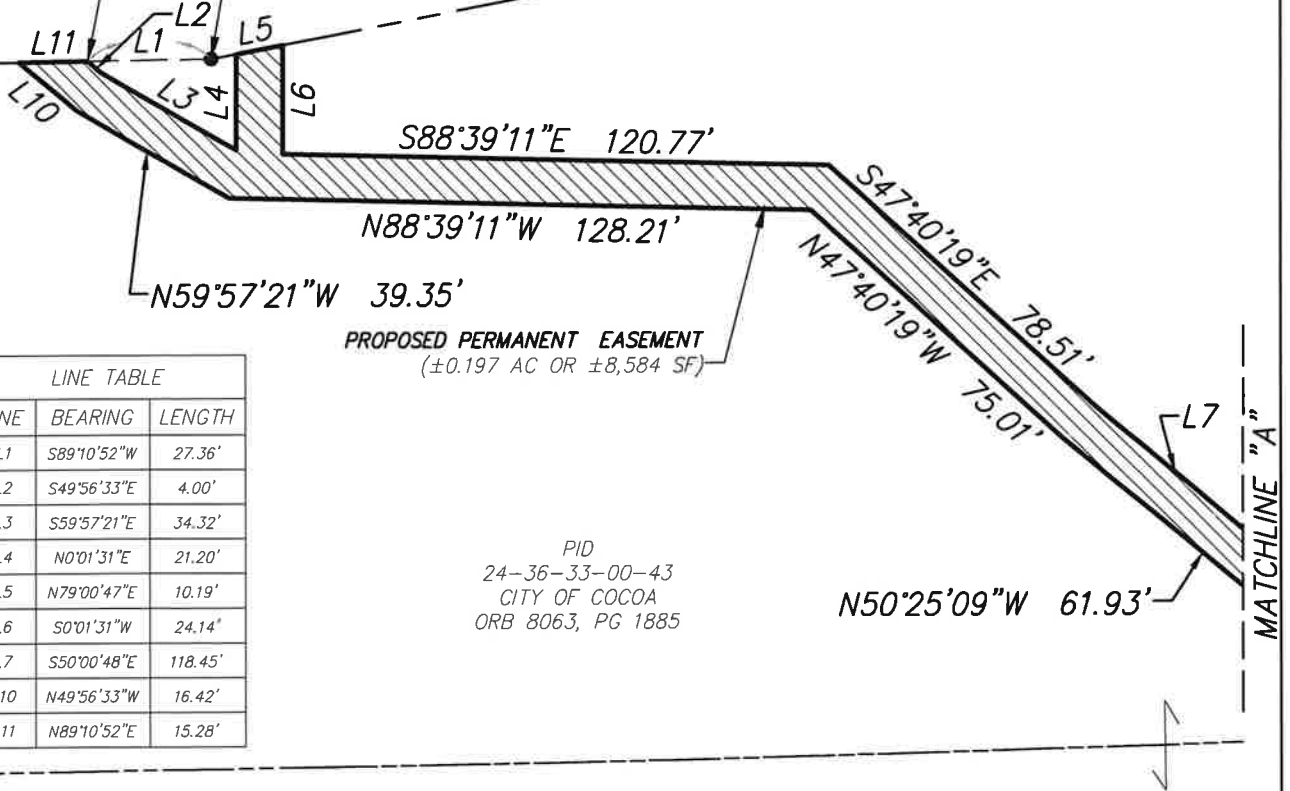
1 INCH = 40 FEET

STATE ROAD 520 (MERRITT ISLAND CAUSEWAY)  
(A VARIABLE WIDTH PUBLIC R/W PER FLORIDA DEPARTMENT OF  
TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 70100-2517)

POINT OF  
BEGINNING  
NORTHING: 1462153.23'  
EASTING: 745127.77'

POINT OF  
COMMENCEMENT  
NORTHING: 1462153.63'  
EASTING: 745155.12'  
FOUND REBAR

SOUTH R/W LINE OF STATE  
ROAD 520



LINE TABLE

LINE	BEARING	LENGTH
L1	S89°10'52"W	27.36'
L2	S49°56'33"E	4.00'
L3	S59°57'21"E	34.32'
L4	N0°01'31"E	21.20'
L5	N79°00'47"E	10.19'
L6	S0°01'31"W	24.14'
L7	S50°00'48"E	118.45'
L10	N49°56'33"W	16.42'
L11	N89°10'52"E	15.28'

PROPOSED PERMANENT EASEMENT  
(±0.197 AC OR ±8,584 SF)

PID  
24-36-33-00-43  
CITY OF COCOA  
ORB 8063, PG 1885

N50°25'09"W 61.93'

MATCHLINE "A"

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 3 OF 5

SKETCH OF DESCRIPTION OF  
PROPOSED EASEMENT ACROSS THE  
LANDS OF CITY OF COCOA  
(LEE WENNER PARK)

SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
BREVARD COUNTY, FLORIDA

PREPARED FOR:

FLORIDA POWER & LIGHT COMPANY

**SGC ENGINEERING, LLC**

**SURVEY AND MAPPING**

1001 TOWN PLAZA COURT, SUITE 1032

WINTER SPRINGS, FLORIDA 32708

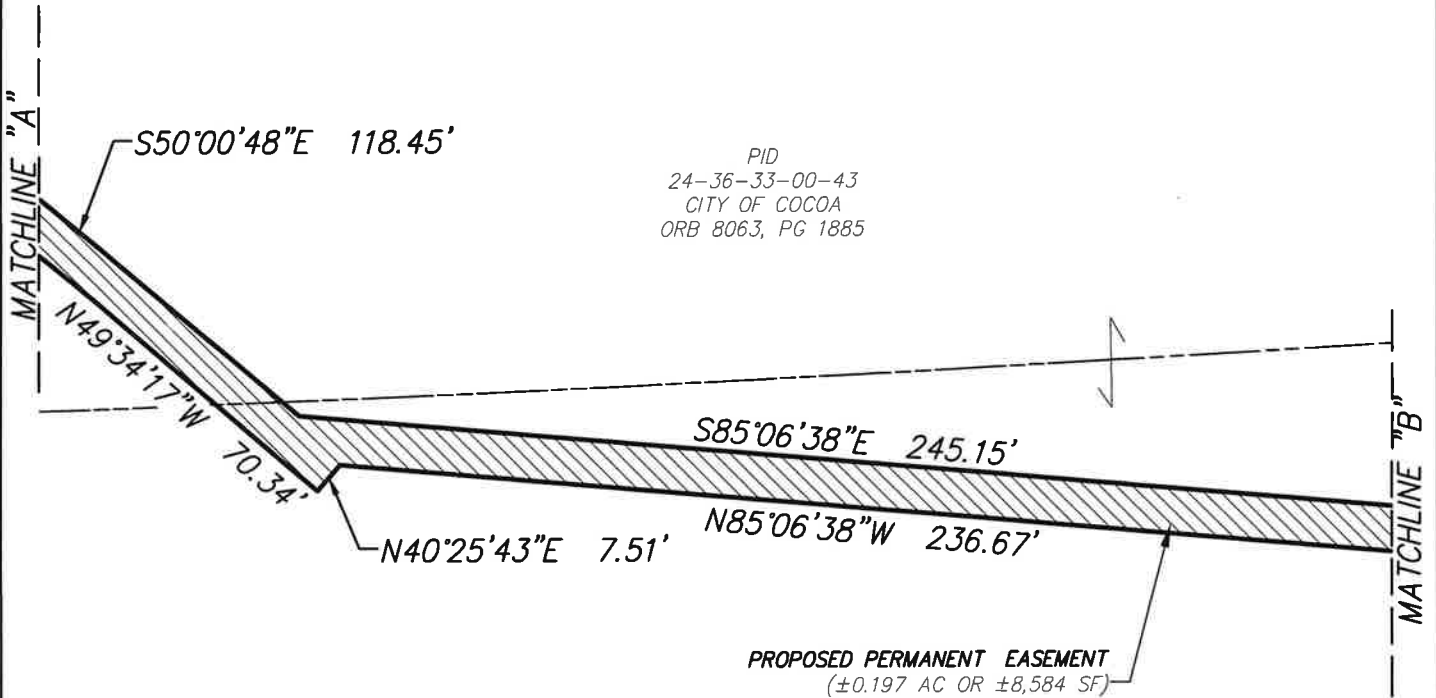
PHONE: (800) 581-4031

WWW.SGCSURVEY.COM

LB 7979

DATE: 03/23/23 SCALE: 1" = 40' DRAWN: SAS CHECK: JMB





SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 4 OF 5

SKETCH OF DESCRIPTION OF  
**PROPOSED EASEMENT ACROSS THE  
 LANDS OF CITY OF COCOA  
 (LEE WENNER PARK)**

SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
 BREVARD COUNTY, FLORIDA

PREPARED FOR:  
**FLORIDA POWER & LIGHT COMPANY**

**SGC ENGINEERING, LLC**

**SURVEY AND MAPPING**

1001 TOWN PLAZA COURT, SUITE 1032

WINTER SPRINGS, FLORIDA 32708

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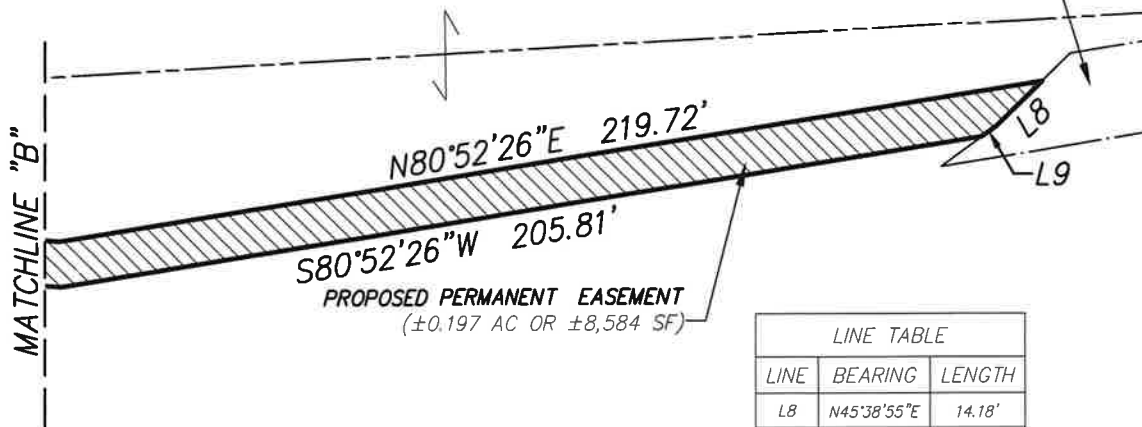


DATE: 03/23/23 SCALE: 1" = 40' DRAWN: SAS CHECK: JMB



PIVOTAL UTILITY HOLDINGS, INC.,  
A NEW JERSEY CORPORATION,  
D/B/A FLORIDA CITY GAS  
SOVEREIGNTY SUBMERGED LANDS  
EASEMENT  
SSL NO. 050358424  
EASEMENT NO. 42515

PID  
24-36-33-00-43  
CITY OF COCOA  
ORB 8063, PG 1885



LINE TABLE		
LINE	BEARING	LENGTH
L8	N45°38'55"E	14.18'
L9	N53°47'09"E	4.00'

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 5 OF 5

SKETCH OF DESCRIPTION OF  
PROPOSED EASEMENT ACROSS THE  
LANDS OF CITY OF COCOA  
(LEE WENNER PARK)

SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
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PHONE: (800) 581-4031

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LB 7979



DATE: 03/23/23 SCALE: 1" = 40' DRAWN: SAS CHECK: JMB

Prepared by and after recording return to:  
Seth Sheitelman  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408

**FLORIDA POWER & LIGHT COMPANY**

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (“**Agreement**”) is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the **CITY OF COCOA**, a Florida municipal corporation, having a post office address of 65 Stone Street, Cocoa, Florida, 32922 (“**Property Owner**” or “**Grantor**”), and **FLORIDA POWER & LIGHT COMPANY**, a Florida corporation, having a post office address of 700 Universe Boulevard, Juno Beach, Florida 33408 (“**Grantee**”).

**W I T N E S S E T H:**

**WHEREAS**, Property Owner is the owner of that certain real property more particularly described on **Exhibit “A”** attached to this Agreement and made a part hereof by reference (“**Property**”); and

**WHEREAS**, Grantee requires temporary easements over a portion of the Property as approximately depicted on **Exhibit “B”** attached to this Agreement and made a part hereof by reference (“**Temporary Easement Area**”) in order to conduct construction activities in connection with certain property Grantee has rights to use (the “**Grantee Property**”; and which Grantee Property may be a part of the Property) as provided by that certain easement agreement executed by Grantor and Grantee on the Property (“**Easement Agreement**”); and

**WHEREAS**, Grantee acknowledges that the Property is subject to that certain non-exclusive easement reserved by Brevard County in that certain County Deed recorded in Official Records Book 8063, Page 1885 of the Public Records of Brevard County, Florida (“**Existing Easement**”) for the County to access, install, maintain, and/or repair the pier and that the Grantee’s use of the Temporary Easement Area under this Agreement shall not restrict the County’s ability to exercise its rights under the Existing Easement; and

**WHEREAS**, Property Owner is willing to grant to Grantee temporary easements as provided in this Agreement.

**NOW THEREFORE**, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, cash in hand paid by Grantee to Property Owner, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Grant of Easements.** Property Owner hereby grants and conveys to Grantee the following temporary easements, rights and privileges (collectively called the “**Temporary Easements**”):

(A) a non-exclusive easement in, upon, under and through the Temporary Easement Area to move, stage and store construction and other machinery, apparatus, equipment, vehicles and personnel and to do such other activities as Grantee shall deem necessary in connection with certain activities on, in, under or above the Grantee Property, such activities on the Grantee Property including, without limitation, the construction, installation, laying, inspection, testing, operation, of underground electric utility

communications facilities (including cables, conduits, appurtenant equipment, and appurtenant above ground equipment) (collectively called the “**Facilities**”);

(B) a non-exclusive easement of unrestricted and free access, ingress and egress to and from the Temporary Easement Area on, over and through the Property;

(C) a non-exclusive easement to go on, over and through Property and the Temporary Easement Area to inspect and survey the Property and Temporary Easement Area and Easement Area as defined in the Easement Agreement;

(D) a non-exclusive easement to cut, clear, remove, and dispose of trees, undergrowth, and other obstructions located in the Temporary Easement Area that would hinder the exercise of the rights and privileges of the Temporary Easement granted in this Agreement upon prior notice to and approval by the Grantor’s City Manager or his or her designee, which shall not be unreasonably withheld, conditioned or delayed;

(E) all other rights, privileges, and easements necessary for the full enjoyment and use of the Temporary Easement Area, the Easements and the rights and privileges of the Grantee in this Agreement; and

(F) the right to erect a construction security fence around the Temporary Easement Area and Easement Area as defined in the Easement Agreement during construction for safety purposes.

2. **Commencement of Construction, Expiration of Agreement, and Restoration of Property.**

Pursuant to the Easement Agreement, with regard to initial construction of the Grantee’s Facilities, Grantee shall coordinate the timing of such construction with the City Manager and may not commence construction absent City Manager approval, which shall not be unreasonably withheld, conditioned, or delayed, and which shall be given to minimize interference with the City’s planned Lee Wenner Park parking lot improvements. This Agreement shall expire automatically upon Grantee’s completion of construction of the Facilities on the Grantee Property. Grantee assumes sole and full responsibility for any loss or damage to equipment and material stored on the Temporary Easement Area during the term of this Agreement unless such damage or loss is caused by the sole negligence of the Property Owner; in which case Property Owner shall be responsible for the loss or damage caused by its own acts and omissions. Upon completion of the Facilities, Grantee shall provide written notice of completion to the Property Owner. Further, Grantee shall leave the Property, including but not limited to the Easement Area and Temporary Easement Area, in as near as the same or substantially similar condition it was in prior to the commencement of construction as practical, subject to those improvements made pursuant to the project plans, if any. The Grantee shall, at its sole cost and expense, restore any improvements on the Property that are damaged by Grantee or its contractors, employees, or agents, incident to its construction of the project to a condition which approximates as closely as is reasonably practicable the condition of said improvements prior to being damaged. Grantee agrees to fill any holes Grantee created, level the ground of the Easement Area and Temporary Easement Area to approximately the same contour as existed just prior to the commencement of construction, to spread grass seed over the Temporary Easement Area or replace asphalt removed which were removed by Grantee in the course of Grantee’s use of the Temporary Easement Area.

3. **Maintenance of the Property.** During the term of this Agreement, Grantee shall perform its activities upon the Property in a reasonably safe manner and perform or have performed the work required by the project in a workman like manner that minimizes, to the extent practicable, the amount of dust, debris, noise and/or other construction impacts on the Property. In addition, Grantee shall not unreasonably obstruct traffic or eliminate access to the Property (especially during peak times of the day), except as necessary to complete construction of the Facilities pursuant to the project plans.

4. **Enforcement; Strict Compliance.** Grantee shall have the right to take any action, at law and in equity, to enforce or prevent the interference with the easements, rights and privileges granted in this Agreement. Failure of any party to exercise any power or right given hereunder or to insist upon strict compliance with the terms hereof shall not be, or be deemed to be, a waiver of such party’s right to demand strict compliance with the terms of this Agreement.



5. **Transferability.** Grantee shall not have the right to assign or subcontract this Agreement or any rights hereunder, without the prior written consent of Property Owner. Nothing in this Agreement shall be construed to give any rights or benefits in this Agreement to any party other than Grantee and Property Owner, and all duties and responsibilities under this Agreement will be for the sole and exclusive benefit of Grantee and Property Owner and not for the benefit of any other party.

6. **Authority.** The parties warrant and represent one to the other that they have full power and authority to enter into this Agreement.

7. **Integrated Agreement; Modification.** This Agreement constitutes the entire and complete agreement between the parties with respect to the transaction contemplated hereby, and conversations, representations, promises, inducements, warranties, or statements not reduced to writing and expressly set forth in this Agreement shall be of no force or effect whatsoever. No conduct or course of action undertaken or performed by the parties shall have the effect of, or be deemed to have the effect of, modifying, altering or amending the terms, covenants and conditions of this Agreement. This Agreement may not be modified, altered or amended except by a written instrument executed by the party to be bound and signed by both parties to the Agreement.

8. **Severability.** If any of the provisions of this Agreement are hereinafter expressly declared by a court of competent jurisdiction to be invalid or unenforceable, then any such provision shall be canceled and severed from this Agreement and the other provisions of this Agreement shall continue in full force and effect.

9. **Headings.** The headings of this Agreement are for convenience only, shall in no way define or limit the scope or content this Agreement, and shall not be considered in any construction or interpretation of the provisions of this Agreement or any part of this Agreement.

10. **Construction.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

11. **Exhibits.** Each exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and shall be construed to be a part of this Agreement by such reference or other mention at each point in which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time such terms are used.

12. **Counterparts.** This Agreement may be signed in counterparts and shall be considered a complete instrument when all parties have affixed their signatures.

13. **Governing Law.** This Agreement shall be construed, enforced, and interpreted in accordance with the laws of the State of Florida and those laws shall control in the event of any conflict of laws.

14. **Venue.** The venue for any action brought or arising out of this Agreement shall be Brevard County, Florida for state court actions and Orlando, Florida for federal court actions.

15. **General Contractor Requirements.** Grantee may retain the services of a construction contractor to construct the improvements required by the project plans at its sole cost and expense. If retained, Grantee shall require the general contractor to construct the improvements in a workmanlike manner and in compliance with the applicable statutes, ordinances, rules and regulations of all governing public authorities as those statutes, ordinances, rules and regulations are amended from time to time.

Grantee agrees to also require the general contractor to maintain a minimum of one million dollars (\$1,000,000.00) of general liability insurance coverage for purposes of covering any and all potential claims, actions, causes of action, loss, damage, injury, liability, cost or expense caused by or arising out of the contractor's performance to construct the improvements required by the project. Grantee shall require that said general contractor's insurance company list the Property Owner and Grantee as additional named insureds on the general contractor's insurance policy. Further, the general contractor shall provide proof of said insurance to Property Owner and Grantee. In addition, the construction contractor shall be required to provide the City and its officials and employees with a written indemnification and hold harmless agreement in accordance with Florida Statutes for public construction contracts. The form of said indemnification shall be subject to approval of the City Attorney. Grantee may meet the insurance requirements herein with any combination of primary, excess, or self-insurance.

16. **Improvements to Property.** Grantee agrees that all costs, expenses and/or obligations for labor, materials and/or services for or in connection with all improvements constructed on the Easement Area pursuant to the project plans shall be paid for by Grantee, and that Grantee shall protect the Property from the filing of mechanics' liens relating to said improvements. In the event that any such mechanics' liens are filed against the Property, Grantee shall promptly take such steps, at its expense, to cause a release of the mechanics' lien or liens to be filed with the Official Records of Brevard County.

17. **Notices.** Any notices required by this Agreement shall be in writing and delivered by personal service, or delivered to an overnight courier service with guaranteed next day delivery, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

For Grantee:  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408  
Attn: Corporate Real Estate Department

For Grantor:  
City of Cocoa  
Attention: City Manager  
65 Stone Street  
Cocoa, Florida 32922  
(321) 433-8686

Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered to an overnight courier service, on the business day immediately following delivery to such service; and if mailed, on the third business day after mailing. The Grantor and Grantee may freely modify the notice address at any time by providing written notice to the other party.

18. **Attorney's Fees.** Should either party bring an action to enforce any of the terms of this Agreement, each party shall bear their own attorney's fees, costs and expenses of any such action.

19. **Indemnification.** Grantee agrees to indemnify, defend, and hold Grantor, its officers, officials, employees, agents, authorized contractors and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's fees, resulting from the negligent, grossly negligent and/or intentional acts, errors or omissions of Grantee, its agents, employees, contractors, or subcontractors arising out of or in connection with the performance of its activities under this Agreement, except to the extent such injuries and/or damages are caused by the negligence or intentional acts of Grantor, or its officers, officials, employees, agents, authorized contractors and volunteers; provided however, in no event shall Grantee be liable for special, consequential or punitive damages.

The indemnification provided in this section shall obligate Grantee to defend at its own reasonable expense or to provide for such defense, at the option of Grantor, as the case may be, of any and all claims of liability and all suits and actions of every name and description that are brought against Grantor as a direct result under this Agreement. In all events, Grantor shall be permitted to choose legal counsel of its sole but reasonable choice, the actual and reasonable fees for which shall be subject to and included with this indemnification provided herein, as long as said fees are not greater than a rate deemed reasonable in Brevard County, Florida. In the event any of the Grantee's employees bring an action against the Grantor, arising out of, or in any way connected with, the use of the Property, the Grantee agrees that it shall not assert immunity under Section 440.11, Florida Statutes, as a defense to an indemnity action or obligation asserted by the Grantor in such circumstances pursuant to this Agreement.

20. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of the Grantor's right to sovereign immunity under section 768.28, Florida Statutes, or other limitations imposed on the Grantor's potential liability under state or federal law, if applicable. As such, the Grantor shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, the Grantor shall not be liable for any claim or judgment, or portion thereof, to any one person for more than two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of three hundred thousand dollars (\$300,000.00). This paragraph shall survive termination of this Agreement.

(Signatures Appear on following page)

IN WITNESS WHEREOF, the parties hereto have subscribed their names and have caused this Temporary Construction Easement Agreement to be executed as of the day and year first above written.

**GRANTOR: CITY OF COCOA,**  
a Florida municipal corporation

\_\_\_\_\_  
(Witness signature)

Print Name: \_\_\_\_\_  
(Witness)

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Witness signature)

Print Name: \_\_\_\_\_  
(Witness)

Address: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
(Grantor's signature)

Print Name: \_\_\_\_\_

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

**ACKNOWLEDGMENT**

STATE OF FLORIDA            )  
                                          ) SS:  
COUNTY OF BREVARD        )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of the City of Cocoa, a Florida municipal corporation, on behalf of the City.

[NOTARIAL SEAL]

Notary: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
My commission expires: \_\_\_\_\_

☐ Personally Known **OR** ☐ Produced Identification  
Type of Identification Produced \_\_\_\_\_

**GRANTEE:**  
**FLORIDA POWER & LIGHT COMPANY,**  
a Florida corporation

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE PROPERTY

A parcel of filled land adjacent to and East of Section 33, Township 24 South, Range 36 East, Brevard County, Florida, being more, particularly described as follows:

Begin at the intersection of the North line of the State of Florida Board of Trustees of the Internal Improvement Trust Fund Dedication No. 25177 (2328-05) and the Easterly right of way line of River Edge Boulevard as shown on the Cocoa River Development according to the plat thereof recorded in Plat Book 11 at Page. 75 of the Public Records of Brevard County, Florida and run N.00°56'32"W., along said Easterly right-of-way line for 118.56 feet to the Point of Curvature of a circular curve to the right having a radius of 49.80 feet; thence run Northeasterly along the arc of said curve and said Easterly right-of-way line through a central angle of 50°24'50" for 43.82 feet to the North line of the parcel released by the State of Florida Department of Transportation recorded in Official Records Book 2549 at Page 2910, of the Public Records of Brevard County, Florida; thence run N.89°18'48"E., along the North line of said release parcel for 120.15 feet; thence run N.79°08'43"E., along said North line for 244.45 feet; thence run N.86°55'19"E., along said North line for 347.14 feet; thence run N.03°04'41"W., along said North line for 32.00 feet; thence run N.86°55'19"E., along North line for 305.71 feet to the safe upland line of the Indian River; thence meander said safe upland line the following courses; S.31°33'01"E., for 28.55 feet; S.04°05'19"W., for 1.34 feet; S.04°05'19"W., for 17.13 feet; S.04°05'19"W., for 14.29 feet; S.04°16'18"W., for 2.84 feet; S.04°16'18"W., for 25.14 feet; S.42°11'59"W., for 31.14 feet; S.38°39'28"W., for 76.67 feet; S.39°43'35"W., for 83.66 feet; S.44°24'03"W., for 9.08 feet to the North line of said I.I.T.F. Dedication; thence run S.86°55'19"W., along said North line for 315.15 feet to the Point of Curvature of a circular curve to the right having a radius of 23,113.13 feet; thence run Westerly along the arc of said curve through a central angle of 01°04'00" for 430.25 feet to the Point of Tangency of said curve; thence run S.89°18'48"W., for 162.99 feet to the Point of Beginning, said parcel contains 4.49 acres, more or less.

and

All of that portion of Lot 8 of the Cocoa River Development in the City of Cocoa, Brevard County, Florida, as shown by the Plat of and Subdivision recorded in Plat Book 11, Page 7, of the Public Records of Brevard County, Florida, lying East of and within 400 feet to River Edge Boulevard as shown on said Plat, together with the submerged lands in the Indian River and the riparian or littoral rights thereunto appurtenant to the East of said River Edge Boulevard.

**Note: The specific legal description of all Land South of the above legal descriptions pertaining to Parcel I.D. 24-36-33-00-43 were not found within the Public Records. This said land was apparently described as follows:**

All of Lot 9, Cocoa River Development, according to the Plat of said subdivision recorded in Plat Book 11, Page 75, Public Records of Brevard County, Florida, lying East of the centerline of River Edge Boulevard as shown on said Plat, and all submerged lands in the Indian River and all riparian or littoral rights which may appertain to said Lot 9, Cocoa River Development.

and

All of Lots 9 and 10, Cocoa River Development, according to the Plat of said Subdivision in Plat Book 11, Page 75, Public Records of Brevard County, Florida, lying East of the centerline of River Edge Boulevard, as shown on said Plat, and all submerged lands in the Indian River and any and all riparian or littoral rights which may appertain to said Lot 9 and 10, Cocoa River Development.

**EXHIBIT “B”**

**LEGAL DESCRIPTION OF THE TEMPORARY EASEMENT AREA**

**EXHIBIT "B" LEGAL DESCRIPTION:**

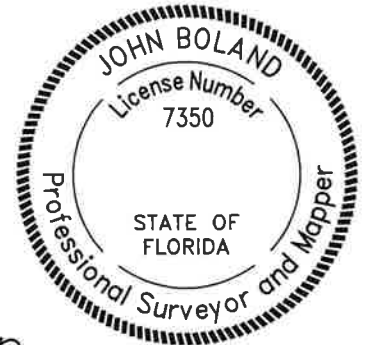
A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 8063, PAGE 1885, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING IN SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 WEST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD 520 ALSO KNOWN AS MERRITT ISLAND CAUSEWAY (A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 70100-2517) BEING MARKED BY A FOUND IRON ROD; THENCE DEPARTING SAID RIGHT-OF-WAY, RUN S50°44'19"E FOR 297.91 FEET TO THE POINT OF BEGINNING; THENCE N59°42'24"E FOR 55.38 FEET; THENCE N40°25'43"E FOR 10.00 FEET; THENCE S85°06'38"E FOR 77.25 FEET; THENCE N82°32'56"E FOR 237.58 FEET; THENCE S50°00'53"E FOR 67.13 FEET; THENCE S62°33'26"W FOR 72.61 FEET; THENCE S82°32'56"W FOR 170.32 FEET; THENCE N88°11'31"W FOR 84.09 FEET; THENCE N85°41'50"W FOR 80.42 FEET; THENCE N34°25'28"W FOR 36.64 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 26,624 SQUARE FEET (0.611 ACRES) MORE OR LESS.



**VICINITY MAP**  
(NOT TO SCALE)



*John Boland*

04/13/23

DATE

JOHN M. BOLAND  
PROFESSIONAL SURVEYOR & MAPPER  
LICENSE NUMBER LS 7350

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A  
FLORIDA LICENSED SURVEYOR AND MAPPER

**SHEET INDEX:**

SHEET 1: LEGAL DESCRIPTION

SHEET 2: LEGEND, NOTES

SHEETS 3-5: SKETCH OF DESCRIPTION

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 1 OF 4

SKETCH OF DESCRIPTION OF  
**PROPOSED EASEMENT ACROSS  
THE LANDS OF CITY OF COCOA  
(LEE WENNER PARK)**

SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
BREVARD COUNTY, FLORIDA

PREPARED FOR:

FLORIDA POWER & LIGHT COMPANY

**SGC ENGINEERING, LLC**

**SURVEY AND MAPPING**

1001 TOWN PLAZA COURT, SUITE 1032

WINTER SPRINGS, FLORIDA 32708

PHONE: (800) 581-4031

WWW.SGCSURVEY.COM

LB 7979

DATE: 04/13/23 SCALE: 1" = 40' DRAWN: SAS CHECK: JMB





FILE: K:\PROJECTS\1827001-Kimley-Horn - FL 520 Replacement\DWG\WORKSHEETS\1827001-Plots-esml-FC-FPL.dwg

LOGN: Steven Stuplik

PLOTTED: 4/13/2023 1:59:25 PM

### SKETCH NOTES:

1. BEARINGS AND COORDINATES SHOWN HEREON, IF ANY ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983.
2. THIS SKETCH MEETS THE APPLICABLE "STANDARDS OF PRACTICE" AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN RULE 5J17.050 THROUGH 5J17.052, FLORIDA ADMINISTRATIVE CODE.
3. ELEVATIONS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988(NAVD 88) [GEOID 12B].
4. IMPROVEMENTS SHOWN HEREON ARE THE RESULT OF A FIELD SURVEY CONDUCTED BY SGC ENGINEERING, LLC BETWEEN APRIL 14, 2020 AND OCTOBER 19, 2020.
5. PROPERTY SUBJECT TO ANY VALID & ENFORCEABLE EASEMENTS, RESTRICTIONS, & RIGHTS OF WAY.
6. PER FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION MEMORANDUM TO BEN DESLAURIERS DATED OCTOBER 20, 2020 AN ORDINARY HIGH WATER LINE (OHWL) HAS NOT BEEN DETERMINED AT THIS SITE. AN ELEVATION OF -0.30 FEET, NORTH AMERICAN VERTICAL DATUM 1988, ALONG THE NATURAL SHORELINE IS SUFFICIENT FOR SAFE UPLAND LINE.

### LEGEND:

	SUBJECT EASEMENT
	EXISTING R/W
	PARCEL LINES
	TIE LINE
R/W	RIGHT OF WAY
ORB	OFFICIAL RECORDS BOOK
PB	PLAT BOOK
PG(S)	PAGE(S)
SF	SQUARE FEET
AC	ACRES
SEC	SECTION
RNG	RANGE
TWN	TOWNSHIP
	FOUND IRON ROD

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 2 OF 4

SKETCH OF DESCRIPTION OF  
**PROPOSED EASEMENT ACROSS THE  
LANDS OF CITY OF COCOA  
(LEE WENNER PARK)**

SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
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STATE ROAD 520 (MERRITT ISLAND CAUSEWAY)  
 (A VARIABLE WIDTH PUBLIC R/W PER FLORIDA DEPARTMENT OF  
 TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 70100-2517)

POINT OF  
 COMMENCEMENT  
 NORTHING: 1462153.63'  
 EASTING: 745155.12'  
 FOUND REBAR

SOUTH R/W LINE OF STATE  
 ROAD 520

PID  
 24-36-33-00-43  
 CITY OF COCOA  
 ORB 8063, PG 1885

S50°44'19"E 297.88'

MATCHLINE "A"

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 3 OF 4

SKETCH OF DESCRIPTION OF  
 PROPOSED EASEMENT ACROSS THE  
 LANDS OF CITY OF COCOA  
 (LEE WENNER PARK)

SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
 BREVARD COUNTY, FLORIDA

PREPARED FOR:

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WINTER SPRINGS, FLORIDA 32708

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LB 7979

DATE: 04/13/23

SCALE: 1" = 40'

DRAWN: SAS

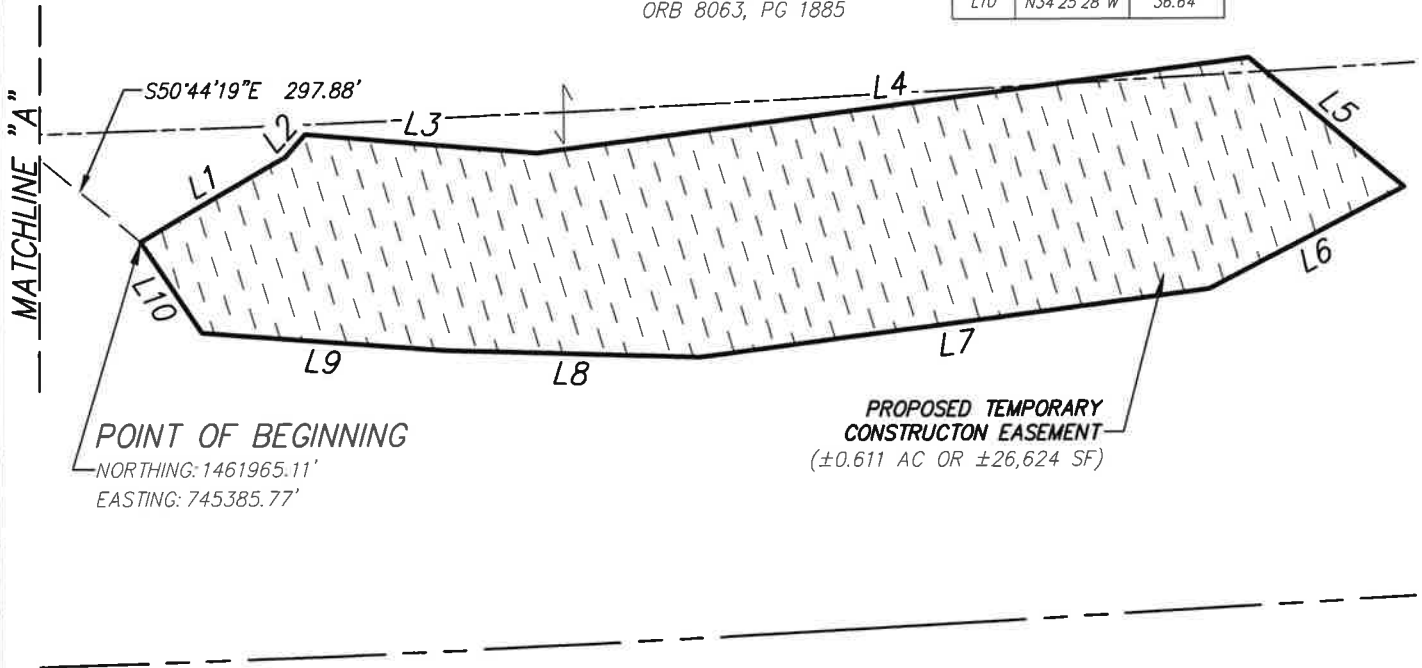
CHECK: JMB





LINE TABLE		
LINE	BEARING	LENGTH
L1	N59°42'24"E	55.38'
L2	N40°25'43"E	10.00'
L3	S85°06'38"E	77.25'
L4	N82°32'56"E	237.58'
L5	S50°00'53"E	67.13'
L6	S62°33'26"W	72.61'
L7	S82°32'56"W	170.32'
L8	N88°11'31"W	84.09'
L9	N85°41'50"W	80.42'
L10	N34°25'28"W	36.64'

PID  
24-36-33-00-43  
CITY OF COCOA  
ORB 8063, PG 1885



SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 4 OF 4

SKETCH OF DESCRIPTION OF  
**PROPOSED EASEMENT ACROSS THE  
LANDS OF CITY OF COCOA  
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SECTION 33 & 34, TOWNSHIP 24 SOUTH, RANGE 36 EAST  
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