



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Development and Environmental Services Group

J.1.

8/3/2021

Subject:

Approval, Re: Purchase and Sale Agreement (three originals) and Escrow Agreement (three originals) for a Portion of County Owned Land to Florida Power and Light (FPL) for an FPL Substation at Viera- District 4.

Fiscal Impact:

There is no fiscal impact to the County. Revenues will be deposited into Utility Services Department.

Dept/Office:

Public Works Department / Land Acquisition / Utility Services Department

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the attached three original Purchase and Sale Agreements, the attached three original Escrow Agreements and to authorize the Chair to sign any documents related to the transaction and final closing under the terms of the Purchase and Sale Agreement and Escrow Agreement.

Summary Explanation and Background:

The subject property is located in Section 18, Township 26 South, Range 36 East, south of Charlie Corbeil Way in Viera.

Florida Power and Light has requested the County sell 10.014 acres of a portion of County owned land located south of Charlie Corbeil Way behind the South-Central Waste Water Treatment Plant and along the FPL transmission line, in order to construct a Substation. The substation will provide electricity to the residents of Viera. Consent and Waiver of Restrictive Covenants with A. Duda and Sons has been obtained.

As further consideration for the County to enter into the sales agreement, FPL has agreed to install and connect an express feeder cable from the Substation to and for the benefit of the County's South-Central Waste Water Treatment Plant to serve as back-up power to the Plant. The express feeder cable will be installed and connected at the sole expense of FPL, valued at \$450,000.00. FPL has agreed to place the cost of the express feeder line in escrow until completion and operation of the feeder line, anticipated December 31, 2023.

The sales price of \$651,000.00 was established through a fair market value appraisal report provided by Durrance and Associates, opined at \$651,000.00.

The User Department approves this request.

This acquisition follows the policies and procedures as set forth in Administrative Order 37.

Clerk to the Board Instructions:

Upon execution by the Chair, Public Works Department will contact the Clerk's office to make arrangements to pick up the three original executed Purchase and Sale Agreements and the three original executed Escrow Agreements.

Legistar # 3191
Attached documents to be
executed by the Chair.

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BOARD OF COUNTY COMMISSIONERS

AGENDA REVIEW SHEET

AGENDA: Purchase and Sale Agreements (three originals) for a portion of County owned land to Florida Power and Light (FPL) for an FPL Substation at Viera – District 4.

AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Lucy Hamelers, Land Acquisition Supervisor

CONTACT PHONE: 321-350-8353 Ext. 58353

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor			<u>7-22-2021</u>
COUNTY ATTORNEY Christine Schverak Assistant County Attorney	<u>cms</u>		<u>07222021</u>



August 4, 2021

MEMORANDUM

TO: Marc Bernath, Public Works Director

RE: Item J.1., Purchase and Sale Agreements and Escrow Agreements for a Portion of County Owned Land to Florida Power and Light (FP&L) for an FP&L Substation at Viera

The Board of County Commissioners, in regular session on August 3, 2021, approved and authorized the Chair to execute the three Purchase and Sale Agreements, and the three Escrow Agreements; and authorized the Chair to sign any documents related to the transaction and final closing under the terms of the Purchase and Sale Agreement and Escrow Agreement. Enclosed are three fully-executed Purchase and Sale Agreements and three fully-executed Escrow Agreements.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encls. (6)

cc: Asset Management
Utility Services
Finance
Budget

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is made this 3rd day of August, 2021, between Brevard County, a political subdivision of the State of Florida ("**Seller**") and Florida Power & Light Company, a Florida corporation ("**Buyer**").

THAT, FOR AND IN CONSIDERATION of the mutual covenants, representations, warranties, and agreements contained herein, and for other good and valuable consideration, Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the following described property upon the terms and conditions hereinafter set forth:

1. **Description of Property.** Seller has fee simple title to that certain real property located in Brevard County, Florida, which is more particularly described in Exhibit A attached hereto and by this reference made a part hereof ("**Land**"), together with the following property and rights (collectively, the "**Realty**"): (i) all improvements located on the Land, including all buildings, structures and other facilities; (ii) all fixtures and equipment situated on the Land and owned by Seller; (iii) all intangible property owned or held by Seller in connection with the Land, including development rights; (iv) all deposits, licenses, permits, authorizations, warranties, approvals and contract rights pertaining to ownership of the Land; (v) all strips and gores of land lying adjacent to the Land, together with all easements, privileges, rights-of-way, riparian and other water rights, lands underlying any adjacent streets or roads, and appurtenances pertaining to or accruing to the benefit of the Land; and (vi) any minerals, including oil, gas and other hydrocarbon substances located in, on and/or under the Land. The Land and the Realty are collectively referred to hereinafter as the "**Property**".

2. **Purchase Price; Deposit; Cash Balance.** The total purchase price for the Property ("**Purchase Price**"), plus or minus prorations and subject to such adjustments as are hereinafter provided, is Six Hundred Fifty-One Thousand and No/100 Dollars (\$651,000.00). The Purchase Price shall be payable as follows:

2.1. **Deposit.** Sixty-Five Thousand One Hundred and No/100 Dollars (\$65,100.00) ("**Deposit**") shall be paid and delivered by Buyer in immediately available U.S. funds by wire transfer to DPW Law Firm, 3507 Kyoto Gardens Drive, Suite 205, Palm Beach Gardens, Florida 33410 ("**Escrow Agent**" and "**Title Agent**") within five (5) days after the Effective Date (as defined below in Section 3). Escrow Agent agrees to hold the Deposit in escrow in accordance with the terms of this Agreement. The Deposit shall be fully refundable to Buyer if for any reason Buyer elects not to proceed with the purchase of the Property and notifies Seller of such election in writing prior to the expiration of the Inspection Period (as defined below in Section 11), or any extension thereof, or if Buyer is otherwise entitled to recoup the Deposit.

2.2. **Cash Balance.** Five Hundred Eighty-Five Thousand Nine Hundred and No/100 Dollars (\$585,900.00), plus or minus prorations and subject to such adjustments as are hereinafter provided, shall be paid and delivered by Buyer to the Escrow Agent at or prior to the Closing (as defined below in Section 4) in immediately available U.S. funds by wire transfer to Escrow Agent ("**Cash Balance**") to be delivered to Seller at Closing.

2.3. **Additional Consideration – Back Up Utility Facilities to County Water and Sewer Plant.** Buyer anticipates constructing a new electrical substation ("**Substation**") on the Property after Closing. As further consideration for Seller entering into this Agreement, and in the event Buyer closes on the Property and builds the Substation thereon, after Closing, Buyer, at Buyer's sole cost and expense, agrees to install an express feeder cable ("**Back-Up Feeder Cable**") from the Substation to Seller's existing water and sewer plant located at 10001 N. Wickham Road, Viera, Florida ("**Plant**") to be connected to and to serve as back-up power to the Plant. The Back-Up Feeder Cable shall be

installed within Buyer's existing transmission easement as more particularly set forth on attached Exhibit B no later than December 31, 2023. The cost of the Back-Up Feeder Cable (including installation) is estimated to be approximately Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00). At Closing, Buyer agrees to deposit with Escrow Agent the additional sum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) ("**Escrowed Funds**") to evidence funds to pay for the Back-Up Feeder Cable. It is anticipated that Buyer's construction of the Back-Up Feeder Cable will be completed and become operational around the same time the Substation is completed and becomes operational. Buyer shall notify Seller when the Back-Up Feeder Cable is completed and operational ("**Notice of Completion**"). The Escrowed Funds will be held in escrow after the Closing in accordance with the escrow agreement attached hereto as Exhibit C ("**Escrow Agreement**"), which Escrow Agreement shall be executed by the parties concurrently with the Closing. This Section shall survive closing.

3. **Time for Acceptance & Effective Date.** This offer shall expire and become null and void unless Buyer receives a fully executed counterpart from Seller on or before September 14, 2021 at 5:00 p.m., Eastern Time, whereupon after that time, this Agreement shall be null and void and of no further force and effect unless the parties otherwise agrees to extend such time period. Execution and delivery shall be defined as the receipt of the fully executed Agreement by Buyer by means of the U.S. Mail, delivery by a nationally recognized overnight delivery service, hand delivery or email transmission. In the event delivery is by email transmission, the party delivering this Agreement shall deliver to the other party an original copy of the fully executed Agreement within two (2) business days from the date of such email transmission; provided, however, failure to do so shall not affect the validity of the execution and delivery of this Agreement. The date of this Agreement, for purposes of performance, shall be the date when the last one of Seller or Buyer has signed this Agreement, as stated on the signature page (the "**Effective Date**").

4. **Closing.** This transaction shall be closed and the deed, other closing instruments and possession shall be delivered to Buyer on or before thirty (30) days after the expiration of the Inspection Period ("**Closing**" or "**Closing Date**"), unless extended by other provisions of this Agreement. The precise time and place of Closing shall be determined by Buyer in a location to be designated by Buyer before the Closing Date or Buyer shall have the right to effect the Closing via a "mail away" closing (i.e. in which funds are sent via wire transfer and closing documents are delivered via overnight delivery or courier delivery service to the Escrow Agent).

5. **Documents for Closing.** At Closing, Seller shall execute and deliver to Buyer the following closing documents:

(i) a good and sufficient deed ("**Deed**") in form of Exhibit D attached hereto and by this reference made a part hereof, subject only to the Permitted Exceptions (as defined below in Section 8.1), in proper form for recording;

(ii) a construction and mechanics' lien affidavit in the usual and customary form, certifying that there are no construction or mechanics' liens affecting the Property, and that no person, firm or corporation is entitled to maintain a construction or mechanics' lien against the Property and further certifying that as of the date of Closing, no person, firm or corporation is in possession of the Property, or is entitled to possession thereof, except for Buyer, with "gap" language, certifying, among other things, that there are no matters pending against Seller that could give rise to a lien or encumbrance affecting the Property, and that Seller has not transferred title to the Property or leased the Property or encumbered or otherwise dealt with title to the Property, since the most recent effective date of the title commitment, such affidavit to be in form, substance and content sufficient to enable the title insurance company to insure Buyer as the owner of the Property simultaneously with the delivery of the Deed and other closing documents and satisfactory to delete the standard exceptions;

(iii) a non-foreign affidavit of Seller asserting that Seller is not a foreign person or foreign entity within the meaning of Section 1445(f) of the Internal Revenue Code;

(iv) an appropriate bill of sale with warranty of title for all personal property included in this transaction;

(v) appropriate assignments of all leases, deposits, licenses, easements, rights-of-way, contract rights, guarantees and warranties, intangible rights and other property and rights included in this transaction;

(vi) a certificate of representations and warranties;

(vii) the Escrow Agreement;

(viii) Temporary Construction Easement (as defined in Section 40 below);

(ix) Utility Easement (as defined in Section 41 below);

(x) all keys, combination to locks and the like with respect to the Property; and

(xi) all other documents or things reasonably required to be delivered to Buyer or by the Title Agent to evidence Seller's ability to transfer the Property to Buyer.

At Closing, Seller and Buyer shall each execute counterpart closing statements and such other documents as are reasonably necessary to consummate this transaction.

6. **Expenses.** The parties shall bear the following costs:

6.1. **Seller Expenses.** Seller shall be responsible for payment of the following: (i) the costs of recording any instruments or documents necessary to clear title; (ii) its prorata share of real estate taxes and assessments levied on the Property for the year of Closing, if any; and (iii) any other expense expressly agreed in this Agreement to be paid by Seller.

6.2. **Buyer Expenses.** Buyer shall be responsible for payment of the following: (i) state surtax and documentary stamp taxes which are required to be affixed to the Deed; (ii) the recording costs on the Deed; (iii) the premiums and any other related fees and costs of examining title and obtaining the title commitment and owner's title insurance policy for the amount of the Purchase Price, including applicable tax and lien searches; (iv) the Survey; (v) all costs and expenses in connection with Buyer's due diligence investigation; (vi) Escrow Agent's settlement fees; and (vii) any other expense agreed in this Agreement to be paid by Buyer.

7. **Prorations.** Real estate taxes, personal property taxes, assessments, property owner assessments and all items of income (if any) and expense regarding the Property shall be prorated as of the date of Closing. The proration shall be based upon the previous year's taxes, if the current year's assessment is not available. Seller shall pay all assessments and liens for public improvements against the Property, if any, which are as of the Effective Date certified liens. Buyer shall assume and pay all assessments and liens, if any, for public improvements which become certified subsequent to the Effective Date. Either party may request and shall be entitled to a re-proration of taxes when the actual amount for the year of Closing is levied.

8. **Title.**

8.1. **Title Commitment.** Within thirty (30) days after the Effective Date, Buyer, at Buyer's expense, shall obtain a title commitment for an owner's title insurance policy from Title Agent in favor of Buyer in the amount of the Purchase Price, together with copies of all instruments and documents which appear as title exceptions on such title commitment. The title commitment and any endorsement thereof shall show Seller to be vested with good, marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances and other matters, except only the following (collectively, the "**Permitted Exceptions**"): (i) ad valorem real estate taxes for the year of Closing and subsequent years; (ii) all applicable zoning ordinances and regulations, none of which shall prohibit or otherwise interfere with all uses presently being made of the Property; and (iii) restrictions or matters appearing on the plat, which shall not prohibit or otherwise interfere with all uses presently being made of the Property.

8.2. **Title Defects.** If Buyer finds any title matters set forth in the title commitment objectionable, such objections shall be specified in writing and delivered to Seller within thirty (30) days after Buyer's receipt of the title commitment ("**Title Defects**"), which may include any unrecorded leases disclosed by the Seller in accordance with this Agreement, and Seller shall cure such Title Defects prior to the Closing Date. If Seller is incapable of curing such Title Defects prior to the Closing Date, Seller shall notify Buyer of its incapability, and Buyer shall have five (5) days after the receipt of Seller's notice to either (i) waive any uncured Title Defects and proceed to Closing and the parties shall agree at that time on any appropriate reduction to the Purchase Price (in which event the remaining Title Defects along with all other matters that appear on the title commitment and the Survey, shall be deemed "**Permitted Exceptions**"), or (ii) terminate this Agreement upon written notice to Seller, whereupon Buyer shall receive the return of its Deposit, together with earned interest thereon, if any, and upon the return of same, this Agreement shall be deemed terminated and of no further force and effect and Seller and Buyer shall be released and relieved from any further liability or obligation hereunder except for matters specifically provided herein to survive the termination hereof.

8.3. **Title Update.** Buyer shall cause the title commitment and Survey to be updated to a date as near as practicable to the Closing Date and if the updated title commitment or updated Survey reflect any additional changes that are not caused by Buyer, Seller shall be required to cure same prior to the Closing Date, and if Seller is unable to do so prior to the Closing Date, the Closing Date will be extended for a reasonable period of time, not to exceed thirty (30) days, in order to allow Seller time to cure same exercising all commercially reasonable efforts. If Seller is incapable of curing such Title Defects prior to the Closing Date, as same may be extended as set forth above, Seller shall notify Buyer of its incapability, and Buyer shall have five (5) days after the receipt of Seller's notice to either (i) waive any uncured Title Defects and proceed to Closing and receive a reduction to the Purchase Price, or (ii) terminate this Agreement upon written notice to Seller, whereupon Buyer shall receive the return of its Deposit, together with earned interest thereon, if any, and upon the return of same, this Agreement shall be deemed terminated and of no further force and effect and Seller and Buyer shall be released and relieved from any further liability or obligation hereunder except for matters specifically provided herein to survive the termination hereof.

Notwithstanding the foregoing, Seller shall be obligated to cure all liens (mechanics' or otherwise), mortgages and any other items of ascertainable monetary amounts, except those created or arising by, through or under Buyer, if any, prior to Closing, and for these purposes, Seller may utilize all or a portion of the Purchase Price when paid at Closing to satisfy the same.

9. **Survey.** Within thirty (30) days after the Effective Date, Buyer, at Buyer's expense, shall obtain and examine a survey of the Property ("**Survey**") by a surveyor licensed to practice as such in the State of Florida showing and certifying the exact location and legal description and acreage of the Property and notify Seller of any survey objections within the said same time period and in the same manner as Buyer has to make its Title Defects as set forth above. Survey objections, if any, shall be treated in the same manner as Title Defects are treated herein.

10. **Deliveries; Existing Leases.** Within ten (10) days after the Effective Date, Seller shall, to the extent within Seller's possession or control, deliver to Buyer true, correct and complete copies of Seller's prior title insurance policy, existing survey, and existing Phase I environmental site assessment report, permits, and any other relevant information pertaining to the Property. Seller represents and warrants that there are no leases, permits, or licenses of any type (oral or written) affecting the Property, or any portion thereof. Seller shall deliver exclusive possession of the Property to Buyer at Closing.

11. **Inspection Period.** Buyer shall have one hundred eighty (180) days after the Effective Date ("**Inspection Period**") to enter upon the Property for the purpose of inspecting same, making surveys, maps, contour studies, engineering studies, conducting test borings, other subsurface soil tests and the like that Buyer deems necessary and appropriate in its sole discretion. Buyer, in its sole discretion, shall have the right to terminate this Agreement for any reason or no reason whatsoever at any time prior to the expiration of the Inspection Period upon delivering written notice to Seller, whereupon Buyer shall receive a return of its Deposit and Buyer and Seller shall be released and relieved from any further liability or obligation hereunder except for matters specifically provided to survive the termination of this Agreement.

Seller hereby grants Buyer and Buyer's engineers, consultants, architects, agents and designees, the right to go upon the Property for the purposes of conducting such surveys, inspections, tests, soil borings and other investigatory activities with respect to the Property, as may be reasonable and appropriate in order for Buyer to make its determination of whether or not it elects to proceed to Closing. When such inspections have been completed, Buyer will restore the Property to substantially the same condition as existed before such entry. Buyer agrees to indemnify and save and hold Seller harmless from and against any loss, damage, liability, claim or obligation of any kind or nature whatsoever which Seller may incur or which may be asserted against the Property or Seller as a result of Buyer's activities upon or relating to the Property during the Inspection Period. This indemnification obligation shall survive the Closing or earlier termination of this Agreement.

Following the Inspection Period, and until the Closing Date, Buyer and Buyer's agents, engineers, surveyors and other consultants may continue to enter upon the Property at any reasonable time while this Agreement remains in effect in order to conduct such investigations, surveys, studies, tests and analyses as Buyer may reasonably deem necessary or appropriate.

12. **Intentionally Deleted.**

13. **Seller's Representations, Warranties and Covenants.** Seller represents and warrants to Buyer and covenants and agrees with Buyer as of the Effective Date and as of the Closing as follows:

(i) At Closing, Seller will convey to Buyer good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions;

(ii) There are no parties in possession or entitled to possession of any portion of the Property other than Seller;

(iii) There are no leases encumbering the Property. Further, Seller shall not enter into any lease regarding the Property;

(iv) There are no contracts or agreements encumbering the Property and Seller shall not enter into any new contracts or agreements;

(v) To the best of Seller's knowledge, no hazardous substance or toxic waste are or have been stored upon, or contaminate, the Property or used in connection with the Property, nor, are any hazardous substances or toxic waste or other pollutants contained upon or under the Property or being discharged from the Property directly or indirectly into any body of water. Seller knows of no underground tank located on or under the Property;

(vi) (a) To the best of Seller's knowledge, the Property and its use complies with all currently applicable laws, requirements, codes, orders, ordinances, rules and statutes, including, without limitation, those currently relating to fire safety, environmental protection, conservation, zoning and building (collectively referred to as "**Laws and Regulations**"), and (b) there are no actual, or to the best of Seller's knowledge, threatened or contemplated, suits, actions or proceedings with respect to all or part of the Property (I) for condemnation, (II) alleging any violation of any currently applicable Laws and Regulations, or (III) which could result in a lien or lis pendens affecting all or any part of the Property;

(vii) Seller will deliver to Buyer copies of all licenses, permits, approvals and other governmental documentation relating to the Property evidencing compliance or noncompliance with applicable Laws and Regulations, and applicable restrictive covenants, if any, and copies of all notices received and any other information and documentation in Seller's possession and relating to, or affecting, any of Seller's representations and warranties herein or the Property;

(viii) Seller's warranties and representations shall be true and correct as of the date hereof and as of the Closing Date as if made on the Closing Date;

(ix) During the period between the date of this Agreement and Closing, Seller shall continue to operate and manage the Property in a prudent and businesslike manner consistent with its operation and management prior to the date of this Agreement. Seller shall: (a) continue to maintain all of the present services to the Property, (b) make all repairs and replacements in the ordinary course of business to the Property, and (c) not remove any of the personal property from the Property except in replacement of same. In addition, Seller shall make all payments due prior to Closing in connection with the Property, including all utility payments and payments on any other obligations affecting the Property;

(x) Seller shall comply prior to Closing with all laws, rules, regulations, and ordinances of all governmental authorities having jurisdiction over the Property. Seller shall be responsible for and shall promptly pay all amounts owed for labor, materials supplied, services rendered and/or any other bills or amounts related to Seller and Seller's ownership and/or operation of the Property prior to Closing;

(xi) Prior to Closing, no portion of the Property or any interest therein shall be alienated, encumbered, conveyed or otherwise transferred;

(xii) Seller shall not cause or permit to be caused any adverse change in status of title or survey to the Property or circumstances or conditions affecting the Property or its prospective use. In the event Seller takes any action or permits any change to be taken which shall adversely affect the status of title or survey to the Property or circumstances or conditions affecting the Property or its prospective use, Seller shall cure such defect prior to the Closing Date, which may be extended for a commercially reasonable period of time, but in no event more than thirty (30) days, in order to allow Seller a reasonable amount of time to cure, using good faith diligent efforts;

(xiii) Seller has no knowledge that any commitment has been made to any governmental authority, utility company, school board, church or other religious body, homeowners' association or any other organization, group or individual relating to the Property which would impose an

obligation on Buyer to make any contributions or dedications of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Property;

(xiv) Seller shall cooperate fully with Buyer and execute all documents required by Buyer or governmental or quasi-governmental authority, if any, for the purpose of securing any permits, land use change, re-zoning, zoning variance or special use for the Property; and

(xv) Seller shall disclose promptly to Buyer in writing any condition or event arising or occurring after the Effective Date that becomes known to Seller and that contradicts any representation or warranty of Seller set forth herein or otherwise affects the marketability of title to the Property.

This section shall survive Closing.

14. **Zoning Variance or Special Use Approval.** Seller and Buyer agree that Buyer's obligation to consummate the purchase contemplated in this Agreement shall be subject to the approval by the appropriate governmental or quasi-governmental authority of any zoning variance, FAA, or special use approval required to construct and operate an electric utility substation and all customary appurtenant activities and facilities on the Property and the expiration of all appeal periods with respect thereto ("**Governmental Approvals**"). Seller agrees that it shall cooperate fully with Buyer's requests pertaining hereto, at no expense to Seller, and sign all documents required, if any, for the purpose of securing said zoning variance or special use. Buyer shall be responsible for taking all necessary actions, at its sole cost and expense, associated with obtaining all of Buyer's permits and approvals required by applicable governmental agencies to consummate this transaction, including those associated with lot splits.

In the event that all required and necessary Governmental Approvals are not obtained prior to the expiration of the Inspection Period, Buyer shall have the option, in its sole discretion, to either: (i) extend the Inspection Period for an additional ninety (90) days upon giving written notice to Seller prior to expiration of the scheduled Inspection Period, (ii) terminate this Agreement, whereupon the parties shall be released of all further obligations each to the other, except those that are stated to specifically survive termination of this Agreement, and the Deposit shall be returned to Buyer subject to provisions herein; or (iii) waive the condition for Governmental Approvals and proceed to Closing.

In the event that all required and necessary Governmental Approvals are not obtained prior to the expiration of the extended Inspection Period, if exercised above, Buyer shall have the option, in its sole discretion, to either: (i) terminate this Agreement, whereupon the parties shall be released of all further obligations each to the other, except those that are stated to specifically survive termination of this Agreement, and the Deposit shall be returned to Buyer subject to provisions herein; or (ii) waive the condition for Governmental Approvals and proceed to Closing.

15. **Conditions Precedent.** It shall be a condition precedent to Buyer's obligation to purchase the Property and to perform its other obligations hereunder that each and every one of the conditions set forth under this section shall have been satisfied at or before Closing, except for any such condition waived in writing by Buyer, in whole or in part: (i) Seller shall have timely performed each and every one of its respective obligations under this Agreement to be performed by it at or prior to Closing; (ii) Buyer shall require any title exceptions for the Property in connection with oil, mineral, gas and/or similar reservations to be deleted from the title commitment or modified to reflect that the "Right of Entry" has been released prior to Closing; and (iii) Seller's warranties and representations set forth in this Agreement shall have been true and correct when made and shall be true and correct on the Closing Date. This Section shall survive Closing.

16. **Remedies on Default of Buyer.** In the event Buyer fails to perform any of its obligations under the terms of this Agreement in a timely manner as set forth herein, and such failure

continues for fifteen (15) days after receipt of written notice thereof from Seller, Seller may declare Buyer in default. In the event of such default by Buyer, Seller may, as its sole and exclusive remedy, terminate this Agreement upon notice to Buyer, whereupon the Deposit shall be paid to Seller as liquidated and agreed upon damages, consideration for the execution of this Agreement, and the parties shall be relieved of all further obligations under this Agreement except those that are specifically stated herein to survive termination hereof. Seller and Buyer agree that the actual damages to Seller in the event of Buyer's breach are impractical to ascertain as of the date of this Agreement and the amount of the Deposit is a reasonable estimate thereof.

17. **Remedies on Default of Seller.** In the event Seller fails to perform any of its obligations under the terms of this Agreement in a timely manner as set forth herein, and such failure continues for fifteen (15) days after receipt of written notice thereof from Buyer, Buyer may declare Seller in default. In the event of a default by Seller under this Agreement, Buyer, at its option, may either (i) terminate this Agreement, whereupon Escrow Agent shall return to Buyer the Deposit, together with any interest earned thereon, if any, and whereupon the parties shall be relieved of all further obligations hereunder, except those that are stated to specifically survive termination of this Agreement, or (ii) seek specific performance of Seller's obligations hereunder. In the event specific performance is not available to Buyer as a result of an intentional act of Seller, Buyer shall be entitled to such remedies as may be allowed pursuant to the laws of the State of Florida. This Section shall survive Closing or the early termination of this Agreement.

18. **Condemnation.** In the event of the institution of any proceedings, or if subject to a bona fide threat of such proceedings, judicial, administrative or otherwise, which shall relate to the proposed taking of any portion of the Property by eminent domain, Buyer may either cancel this Agreement, whereupon the Deposit shall be returned to Buyer and this Agreement thereupon shall be of no further force and effect, or elect to purchase the Property. If Buyer elects to purchase the Property, Buyer shall be entitled to that portion of any award, damages, settlement or other consideration paid or to be paid in connection with such taking or sale to which Buyer would have been entitled had it been the owner of the Property prior to such taking, sale, or threat of taking.

19. **Brokerage.** The parties hereby each represent and warrant to the other that no broker or finder has been engaged by it in connection with this transaction. In the event any claim for any brokerage commission or fee is asserted against Seller or Buyer in connection with this transaction from anyone, the party at fault shall indemnify, save harmless and defend the other party from and against such claim (including reasonable attorney, paralegal and expert fees and disbursements in all proceedings and at all levels of proceedings). This section shall survive Closing or termination of this Agreement.

20. **Intentionally Deleted.**

21. **Successors and Assigns.** This Agreement, when duly executed by all parties, shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their heirs, executors, successors and assigns.

22. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties and there are no other agreements, representations or warranties other than as set forth herein, and supersedes all prior discussions, negotiations and agreements between the parties, whether oral or written. This Agreement may not be changed, altered or modified except by an instrument in writing duly signed by both parties.

23. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida.

24. **Notices.** Any notices required or permitted to be given under this Agreement shall be delivered by hand, by e-mail providing a transmission receipt or delivered by a nationally recognized overnight delivery service, and addressed as described below; notices shall be deemed effective only upon receipt or refusal of delivery or, if by e-mail sent after 5:00 p.m. on the next ensuing business day after transmission:

Seller:	Brevard County 2725 Judge Fran Jamieson Way Viera, Florida 32940 Attn: Office of the County Attorney
Buyer:	Florida Power & Light Company 425 N. Williamson Boulevard Daytona Beach, Florida 32174 Attn: Meier Wise, Corporate Real Estate Manager
With Copy To:	Florida Power & Light Company 700 Universe Boulevard (Law/JB) Juno Beach, Florida 33408 Attn: Seth S. Sheitelman, Esq.
To Escrow Agent:	DPW Law Firm 3507 Kyoto Gardens Drive Palm Beach Gardens, Florida 33410

25. **Insertion of Corrections or Modifications.** Typewritten or handwritten provisions inserted on this Agreement or on the exhibits hereto (and initialed by both parties) shall control all printed provisions in conflict therewith.

26. **Time.** Time is of the essence in this Agreement. Unless expressly stated otherwise, all time periods herein shall be calculated using calendar days. For purposes of this Agreement, any time period that falls on a Saturday, Sunday or legal holiday under laws of the State of Florida, will be extended to the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time where the Property is located.

27. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which together shall constitute one and the same Agreement. A facsimile or similar electronic transmission of a counterpart signed by a party hereto shall be regarded as an original signed by such party for all purposes.

28. **Assignment.** The rights of Buyer hereunder may not be assigned by the Buyer, except to its parent, subsidiary or affiliate, without the expressed written consent of the Seller which consent shall not be unreasonably withheld, conditioned or delayed. In the event of an assignment, Buyer shall be released from any and all of its obligations hereunder.

29. **Recordation.** This Agreement shall not be recorded in any public records by either party hereto.

30. **Advice of Counsel.** Each party acknowledges that it has been advised, or has had the opportunity to be advised, by its own counsel with respect to the transaction governed by this Agreement.

31. **Jurisdiction; Jury Trial Waiver.** ALL DISPUTES BETWEEN BUYER AND SELLER ARISING UNDER OR RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT OR EQUITY OR OTHERWISE, SHALL BE RESOLVED ONLY IN THE FEDERAL OR STATE COURTS IN BREVARD COUNTY, FLORIDA; AND EACH PARTY HERETO SUBMITS TO THE JURISDICTION OF SUCH COURTS AND WAIVES ANY OBJECTION TO THE VENUE AND JURISDICTION OF SUCH COURTS. BUYER AND SELLER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. BUYER ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO SELLER IN ENTERING INTO THIS AGREEMENT AND THAT BUYER HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.

32. **Radon Gas.** Pursuant to Florida Statutes Section 404.056(5), Seller hereby makes, and Buyer hereby acknowledges, the following notification:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

33. **Risk of Loss.** The Property shall be conveyed to Buyer in the same condition as on the Effective Date of this Agreement, ordinary wear and tear excepted, free of all tenancies or occupancies. Risk of loss to the Property between the Effective Date and the Closing Date, shall be upon the Seller and the doctrine known as the "Doctrine of Equitable Conversion" shall not be applicable to this transaction.

34. **Construction.** This Agreement shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Buyer have contributed substantially and materially in the negotiation and preparation of this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits, schedules, addendums or amendments hereto.

35. **Headings and Gender.** All headings in this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.

36. **Severability.** In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

37. **Confidentiality.** Buyer and Seller agree to treat all information received with respect to the Property, whether such information is obtained from Seller or from Buyer's due diligence investigations, in a confidential manner. Neither Buyer nor Seller shall disclose any such information to

any third parties, other than such disclosure to Seller or Buyer's counsel, consultants, accountants and advisers as may be required in connection with the transactions contemplated hereby (such disclosure to be made expressly subject to this confidentiality requirement) or as otherwise required to disclose by law. Except for Buyer's securing any land use change, re-zoning, zoning variance or special use, or permit(s) for the Property in accordance with Section 13 above, Seller and Buyer agree to keep this Agreement confidential and not make any public announcements or disclosures with respect to the subject matter of this Agreement prior to Closing without the written consent of the other party. As a material inducement to Buyer entering into this Agreement, Seller agrees to keep the name of the Buyer confidential and not make any public announcements or disclosures with respect to Buyer's identity prior to Closing without the written consent of Buyer.

38. **Escrow Agent.** The Escrow Agent shall not be liable for any actions taken in good faith, but only for its gross negligence or willful misconduct. The parties hereby indemnify and hold the Escrow Agent harmless from and against any loss, liability, claim or damage whatsoever (including reasonable attorneys' fees and paralegals' fees and court costs at trial and all appellate levels) the Escrow Agent may incur or be exposed to in its capacity as escrow agent hereunder except for gross negligence or willful misconduct; provided, however, nothing in this Section shall be construed as altering or impacting in any way the Seller's sovereign immunity under Florida Statute Section 768.28, and the protections, limitations, and dollar thresholds afforded thereunder. If there be any dispute as to disposition of any proceeds held by the Escrow Agent pursuant to the terms of this Agreement, the Escrow Agent is hereby authorized to interplead said amount or the entire proceeds with any court of competent jurisdiction and thereby be released from all obligations hereunder. The Escrow Agent shall not be liable for any failure of the depository.

39. **OFAC.** Seller represents and warrants that Seller is not barred from doing business with U.S. entities pursuant to the U.S. Department of Treasury's Office of Foreign Asset Control ("OFAC"), including OFAC's Specially-Designated-Nationals ("SDN") list and lists of known or suspected terrorist organizations. If Buyer identifies or is informed that Seller is a valid match for OFAC's SDN list, then this Agreement is void, and the parties shall cancel and revoke this Agreement immediately. In the event of cancellation or revocation of this Agreement under this provision, Buyer shall immediately contact OFAC to report the transaction and the Deposit shall be immediately returned to Buyer.

40. **Temporary Construction Easement.** As further consideration for Seller entering into this Agreement, Buyer, at Buyer's sole cost and expense, agrees to install a swale on a portion of Seller's remainder property located adjacent to and contiguous with the Property. Seller agrees to grant Buyer a temporary construction easement on Seller's remainder real property in the form of attached Exhibit E ("**Temporary Construction Easement**") for the purpose of Buyer, at buyer's sole cost and expense, constructing a swale in the location as more particularly depicted and described on attached Exhibit E ("**Temporary Easement Area**"). Buyer shall deliver the legal description and sketch of the Temporary Easement Area to Seller together with the Survey for the Property prior to Closing. At Closing, Seller shall deliver to Buyer an original duly executed, witnessed and notarized copy of the Temporary Construction Easement.

41. **Utility Easement.** At Closing, Seller agrees to grant Buyer a perpetual easement on a portion of Seller's Plant real property in a location to be mutually agreed upon by the parties prior to Closing for the purposes of Buyer's installation, operation, maintenance, repair and/or replacement of the Back-Up Feed Cable in the form of attached Exhibit F ("**Utility Easement**"). Once the easement area is mutually agreed upon by the parties, Seller shall deliver the legal description and sketch of the easement area to Buyer prior to Closing. At Closing, Seller shall deliver to Buyer an original duly executed, witnessed and notarized recordable copy of the Utility Easement to record in the Public Records at Closing at Seller's expense.

(Remainder of page intentionally left blank to allow for signatories)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered, all of which has been done on the date shown below for each party.

Seller:

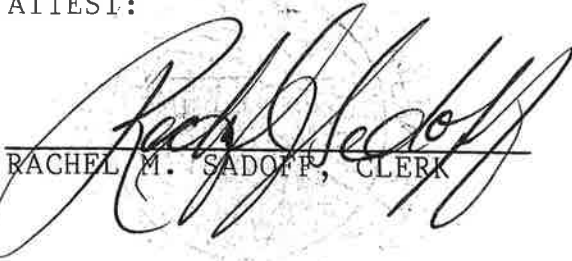
Brevard County, a political subdivision
of the State of Florida

Reviewed for legal form and content:

Christine M. Schwerak

(Assistant) County Attorney

ATTEST:


RACHEL M. SADOFF, CLERK

By:

Name: Rita Pritchett

Title: Chair to Brevard County Board of
County Commissioners

Signed by Seller: August 3, 2021

As approved by the Board 8-3-2021

Buyer:

Florida Power & Light Company,
a Florida corporation

By:

Name: Deborah H. Caplan

Title: Executive Vice President, Human Resources and
Corporate Services

Signed by Buyer: July 12, 2021

AGREED TO AND ACCEPTED:

Escrow Agent:

DPW Law Firm

By:

Name: Daniel P. Wurtenberger

Title: Partner

Date: _____, 2021

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered, all of which has been done on the date shown below for each party.

Seller:

Brevard County, a political subdivision
of the State of Florida

By: _____
Name: _____
Title: _____

Signed by Seller: _____, 2021

Buyer:

Florida Power & Light Company,
a Florida corporation

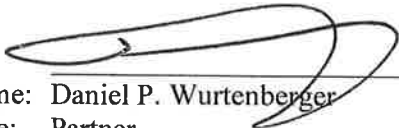
By: _____
Name: Deborah H. Caplan
Title: Executive Vice President, Human Resources and
Corporate Services



Signed by Buyer: _____, 2021

AGREED TO AND ACCEPTED:

Escrow Agent:
DPW Law Firm

By: 
Name: Daniel P. Wurtenberger
Title: Partner

Date: July 20, 2021

EXHIBIT A
To Purchase and Sale Agreement

Legal Description

Brevard Parcel Identification Number: a portion of 26-36-18-00-4

<u>LEGAL DESCRIPTION</u>		EXHIBIT "A"	
<u>PARCEL # N/A</u>		SHEET 1 OF 2	
PARENT PARCEL ID#: 26-36-18-00-4		NOT VALID WITHOUT SHEET 2 OF 2	
PURPOSE: Property Conveyance		<u>THIS IS NOT A SURVEY</u>	
<u>LEGAL DESCRIPTION:</u> PARCEL # (PREPARED BY SURVEYOR)			
A parcel of land lying within Section 18, Township 26 South, Range 36 East, Brevard County, Florida, more particularly described as follows: From the Northeast Corner of Section 18; thence South 00°35'19" East along the East line of Section 18 a distance of 3,776.12 feet; thence South 89°36'07" West, 95.96 feet to the Southeast corner of the South Parcel (as described in Official Records Book 5262, Page 3838, Public records of Brevard County, Florida), also being a point on the West line of a 110 foot Florida Power and Light easement (as recorded in Official Records Book 97, pages 646 and 647, Public records of Brevard County, Florida) and the POINT OF BEGINNING; Thence continue South 89°36'07" West, a distance of 890.20 feet; thence North 00°25'33" West, a distance of 490.00 feet; thence North 89°36'07" East, a distance of 890.20 feet to a point on said Western line of the 110 foot Florida Power & Light easement; thence South 00°25'33" East, along said Western easement line, a distance of 490.00 feet to the POINT OF BEGINNING. Containing 10.014 acres, 436,198 square feet, more or less.			
<u>SURVEYORS NOTES:</u>			
NOTE: THIS IS NOT A SKETCH OF SURVEY, BUT ONLY A GRAPHIC DEPICTION OF THE DESCRIPTION SHOWN HEREON. THERE HAS BEEN NO FIELD WORK, VIEWING OF THE SUBJECT PROPERTY OR MONUMENTS SET IN CONNECTION WITH THE PREPARATION OF THE INFORMATION SHOWN HEREON. NOTE: LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHT-OF-WAY AND/OR EASEMENTS OF RECORD. NO TITLE WORK WAS FURNISHED.			
PREPARED FOR AND CERTIFIED TO: BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS		 Digitally signed by Thomas P Kiernan Date: 2021.03.16 13:53:35 -04'00'	
PREPARED BY:  CULPEPPER & TERPENING INC. 2000 SOUTH US HIGHWAY 1 • SUITE 100 • PALM BEACH, FLORIDA 33480 PHONE 561-844-0000 • FAX 561-844-0001 • WWW.CPTI.COM BOTH OF WHICH ARE PARTS OF THE RECORDS OF THE BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR		THOMAS P. KIERNAN, PSM 6199 PROFESSIONAL SURVEYOR & MAPPER NOT VALID UNLESS SIGNED AND SEALED	
DRAWN BY: GLM	CHECKED BY: TPK	PROJECT NO. 19-250	
DATE: 3-18-2021	DRAWING: 19-250 s&d 1	REVISIONS	SECTION 18 TOWNSHIP 26 SOUTH RANGE 36 EAST
		DATE 3-16-2021	DESCRIPTION REVISED LEGAL DESCRIPTION AND AREA

SKETCH OF DESCRIPTION

PARCEL # N/A

PARENT PARCEL ID #: 26-36-18-00-4

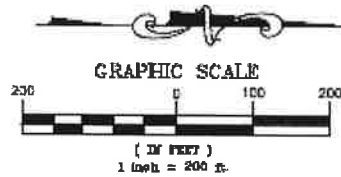
PURPOSE: Property Conveyance

EXHIBIT "A"

SHEET 2 OF 2

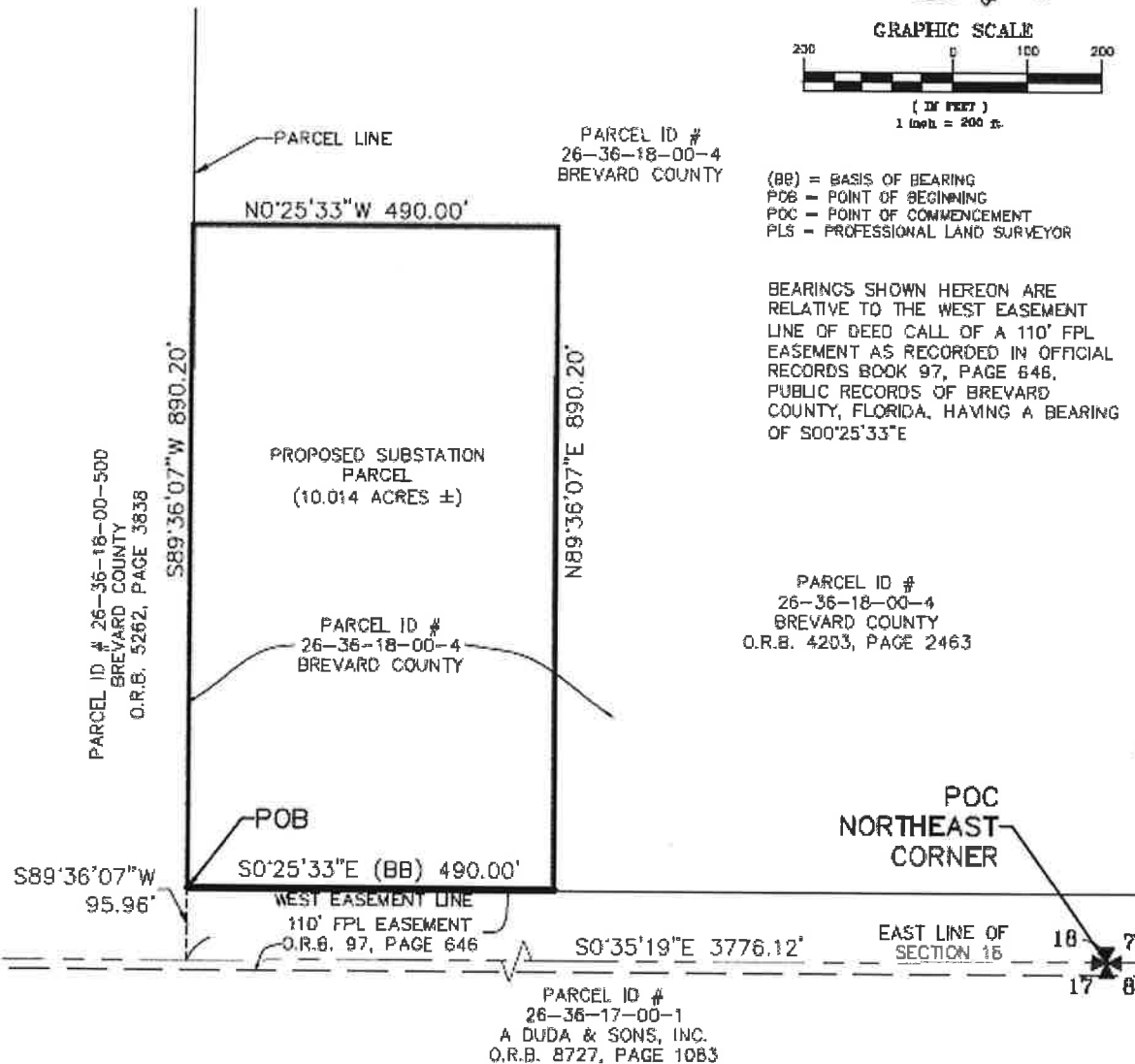
NOT VALID WITHOUT SHEET 1 OF 2

THIS IS NOT A SURVEY



(BB) = BASIS OF BEARING
POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
PLS = PROFESSIONAL LAND SURVEYOR

BEARINGS SHOWN HEREON ARE
RELATIVE TO THE WEST EASEMENT
LINE OF DEED CALL OF A 110' FPL
EASEMENT AS RECORDED IN OFFICIAL
RECORDS BOOK 97, PAGE 646,
PUBLIC RECORDS OF BREVARD
COUNTY, FLORIDA, HAVING A BEARING
OF S00°25'33"E



PREPARED BY:



SCALE:

1"=200'

PROJECT NO.:

19-250

SECTION 18

TOWNSHIP 26 SOUTH

RANGE 36 EAST

EXHIBIT B
To Purchase and Sell Agreement

Easement for Installation of the Back-Up Feeder

Right of Way Agreement granted by A. Duda and Sons, Incorporated to Florida Power & Light Company dated April 14, 1958 and recorded on April 21, 1958 in Official Records Book 97, Page 646 of the Public Records of Brevard County, Florida

EXHIBIT C

Form Escrow Agreement

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into this _____ day of _____, 20____, by and between Brevard County, a political subdivision of the State of Florida ("Seller"), Florida Power & Light Company, a Florida corporation ("Buyer"), and DPW Law Firm ("Escrow Agent"):

RECITALS

Whereas, Seller and Buyer entered into that certain Purchase and Sale Agreement dated _____, 2021 ("Agreement") relating to the sale and purchase of that certain real property located in Brevard County, Florida more particularly described in the Agreement (the "Property");

Whereas, as more particularly described in the Agreement, Buyer, at its sole cost and expense, has agreed to install a Back-Up Feeder Cable (as defined in the Agreement) from Buyer's Substation (as defined in the Agreement) to Seller's Plant (as defined in the Agreement) to connect to and to serve as back-up power to the Plant no later than December 31, 2023 (Completion Date) in accordance with the terms of the Agreement;

Whereas, to secure Seller's obligations under the Agreement, Seller has agreed to deposit in escrow with Escrow Agent, the additional sum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) ("Escrowed Funds") at Closing together with Purchase Price; and

Whereas, the Escrowed Funds will be deposited in escrow with Escrow Agent to be held and disbursed as provided herein.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars and No/100 (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

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

Section 2. **Deposit of Escrowed Funds.** Contemporaneously with the execution of this Escrow Agreement:

1. Seller shall deposit the Escrowed Funds with Escrow Agent at Closing.
2. Escrow Agent hereby accepts its appointment as escrow agent to hold the Escrowed Funds upon the terms and conditions as set forth in this Escrow Agreement.
3. The Escrow Funds will be held by Escrow Agent in a non-interest bearing account.

Section 3. **Disbursement of Escrow Funds.**

Upon receipt of the Notice of Completion (as defined in the Agreement), Escrow Agent shall release the Escrowed Funds to Buyer. In the event that Buyer has not

installed the Back-Up Feeder Cable from Buyer's Substation to Seller's Plant by December 31, 2023, Buyer shall forfeit its rights to the Escrowed Funds, and upon Seller's written request to Escrow Agent, the Escrowed Funds shall be released to Seller.

C. Written Authorization and Instruction to Disburse from Seller and Buyer

Escrow Agent shall only be obligated and authorized to disburse the Escrowed Funds in accordance with this Section 3, or other instructions executed by Buyer and Seller.

Section 4. Limitation of Escrow Agent's Liability. In the event of actual or potential dispute as to the rights of the parties hereto under this Escrow Agreement or the Escrowed Funds, the Escrow Agent may in its sole discretion, continue to hold the Escrowed Funds until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or it may deposit all monies held pursuant to this Escrow Agreement with the Clerk of Court, Brevard County, Florida, and upon notifying all parties concerned of such action, all liability on the part of the Escrow Agent shall fully terminate, except to the extent of an account of any monies theretofore delivered out of escrow. In the event of any suit between Seller and Buyer wherein the Escrow Agent is made a party by virtue of acting as such Escrow Agent hereunder, or in the event of any suit wherein Escrow Agent interpleads the Escrowed Funds, the Escrow Agent shall be entitled to recover a reasonable attorney's fee and costs incurred, said fees and costs to be charged and assessed as court costs against the non-prevailing party. All parties agree that Escrow Agent shall not be liable to any party or person whomsoever for any action taken or omitted by Escrow Agent, including but not limited to any misdelivery of monies or instruments subject to this escrow, unless such misdelivery shall be due to breach in willful bad faith of this Escrow Agreement or gross negligence on the part of the Escrow Agent. Escrow Agent shall have the right to rely upon any written instructions provided by counsel for both Seller and/or Buyer and such instructions shall be binding on Seller and/or Buyer, respectively.

Section 5. Severability. If any provision of this Escrow Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of the remaining provisions contained herein.

Section 6. Amendment. This Escrow Agreement may be modified or amended only by an instrument in writing executed by all parties hereto.

Section 7. Governing Law. The validity, interpretation and enforcement of this Escrow Agreement and all other documents and instruments executed in connection with this transaction shall be governed by and construed under the laws of the State of Florida.

Section 8. Counterparts. This Escrow Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed to be an original, and when so executed shall constitute one Agreement binding on all the parties hereto. For purposes of this Agreement an electronic signature shall be deemed an original.

Section 9. Notices. Any notices required or permitted to be given under this Escrow Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), or sent by electronic delivery with a confirmed transmission, and addressed or sent as follows:

If to Seller:

Brevard County

If to Buyer:

Florida Power & Light Company

2725 Judge Fran Jamieson Way
Viera, Florida 32940
Attn: Office of the County Attorney

700 Universe Boulevard
Juno Beach, Florida 33408
Attn: Corporate Real Estate

With a Copy To:

Florida Power & Light Company
700 Universe Boulevard (LAW/JB)
Juno Beach, Florida 33408
Attn: Seth S. Sheitelman, Esq.

Escrow Agent:

DPW Law Firm
Attention: Dan Wurtenberger
4500 PGA Boulevard, Suite 100
Palm Beach Gardens, FL 33418
Phone: 561-508-5642
Email: dan@dpwlawfirm.com

Notices hereunder shall be deemed given when delivered to the addresses set forth above if sent by overnight courier or mail. Electronic notices shall be deemed given when sent with confirmation, provided that a counterpart of such notice is delivered within two (2) business days thereafter by overnight courier to the addresses provided above.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement the day and year first above written.

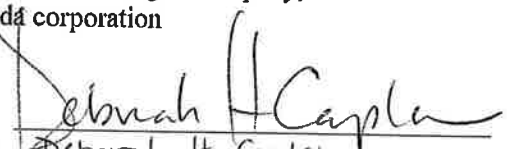
Seller:

Brevard County, a political subdivision of the State of Florida

By: _____
Name: _____
Title: _____

Buyer:

Florida Power & Light Company,
a Florida corporation

By: 
Name: Deborah H. Caplan
Title: Executive Vice President
Human Resources and
Corporate Services 

Escrow Agent:

DPW Law Firm

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement the day and year first above written.

Seller:

Brevard County, a political subdivision of the State of Florida

By: _____
Name: _____
Title: _____

Buyer:

Florida Power & Light Company,
a Florida corporation

By: _____
Name: _____
Title: _____

SS

Escrow Agent:

DPW Law Firm

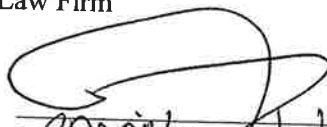
By: 
Name: Daniel Whiteley
Title: Partner

EXHIBIT D
To Purchase and Sale Agreement

Form County Deed

Prepared by and return to:
Office of the County Attorney
2725 Judge Fran Jamieson Way, Building C
Viera, Florida 32940

COUNTY DEED
(STATUTORY FORM - SECTION 125.411, Florida Statutes)

THIS INDENTURE, made this ____ day of _____, _____, between Brevard County, 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 Florida Power & Light Company, a Florida corporation, whose address is 700 Universe Boulevard, Juno Beach, Florida 33408, Attention: Corporate Real Estate Department, party of the second part,

(Whenever used herein the terms “party of the first part” and “party of the second part” include all the parties to this instrument and their heirs, legal representatives, successors and assigns. “Party of the first part” and “party of the second part” are used for singular and plural, as the context requires and the use of any gender shall include all genders)

WITNESSETH that the said party of the first part, for and in consideration of the sum of Ten Dollars, to it in hand paid by the party of 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 following described land situate, lying and being in Brevard County, Florida to wit:

See Exhibit “A” attached hereto and by reference made a part hereof, together with all riparian and littoral rights appertaining thereto, and all interests in subsurface oil, gas, and minerals pursuant to 270.11(3), Florida Statutes.

Property Appraiser’s Parcel Identification Number: a portion of 26-36-18-00-4.

THIS CONVEYANCE is subject to all covenants, conditions, restrictions, rights of way, limitations, easements and similar matters of record, if any, but this reference shall not operate to reimpose same.

[Signatures appear on following page.]

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:

RACHEL SADOFF
CLERK TO THE BOARD

By: _____
Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

County:

BREVARD COUNTY,
a political subdivision of the State of Florida,
by and through its Board of County
Commissioners

By: _____
Rita Pritchett, Chair

(Official Seal)

Exhibit "A"
To County Deed

Legal Description of the Property

A parcel of land lying within Section 18, Township 26 South, Range 36 East, Brevard County, Florida, more particularly described as follows:

From the Northeast Corner of Section 18; thence South 00°35'19" East along the East line of Section 18 a distance of 3,776.12 feet; thence South 89°36'07" West, 95.96 feet to the Southeast corner of the South Parcel (as described in Official Records Book 5262, Page 3838, Public records of Brevard County, Florida), also being a point on the West line of a 110 foot Florida Power and Light easement (as recorded in Official Records Book 97, pages 646 and 647, Public records of Brevard County, Florida) and the POINT OF BEGINNING;

Thence continue South 89°36'07" West, a distance of 890.20 feet; thence North 00°25'33" West, a distance of 490.00 feet; thence North 89°36'07" East, a distance of 890.20 feet to a point on said Western line of the 110 foot Florida Power & Light easement; thence South 00°25'33" East, along said Western easement line, a distance of 490.00 feet to the POINT OF BEGINNING.

EXHIBIT E
To Purchase and Sale Agreement

Form Temporary Construction Easement

**This instrument prepared by
and after recording return to:**

Seth S. Sheitelman, Esq.
Florida Power & Light Company
700 Universe Boulevard (Law/JB)
Juno Beach, Florida 33408

Temporary Construction Easement

THIS TEMPORARY CONSTRUCTION EASEMENT ("Easement") is executed and effective this _____ day of _____, 2021 ("**Effective Date**"), by and between Brevard County, a political subdivision of the State of Florida ("**Grantor**"), whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, and Florida Power & Light Company, a Florida corporation ("**Grantee**"), whose address is 700 Universe Boulevard, Juno Beach, Florida 33408. Grantor and Grantee are sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**."

1. **Grant of Easement.** Grantor, being the owner of that certain real property located in Brevard County, Florida as more particularly described in Exhibit A attached hereto and made a part hereof ("**Temporary Easement Area**"), for and in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee, and Grantee's employees, agents and contractors, a non-exclusive temporary construction easement in, on, over, under and across the Temporary Easement Area, for the purposes of constructing a swale, and the right of ingress to and egress from the Temporary Easement Area, including persons, vehicles, equipment, and materials.

2. **Term.** The term of this Easement ("**Term**") shall commence on the Effective Date and automatically expire at midnight on the first (1st) anniversary of the Term without the need for further action on the part of either Party.

3. **Maintenance and Use.** Grantee shall keep the Temporary Easement Area free of any trash or debris caused solely and directly by Grantee, or its contractors, employees or agents. Grantee shall not allow the Temporary Easement Area to be used for any unlawful purpose. Grantee shall comply with all applicable governmental laws, ordinances, rules and regulations while using the Temporary Easement Area for the purposes granted herein. This Easement is granted with all rights necessary and convenient for the full use and enjoyment of the Temporary Easement Area for the purposes described herein.

4. **Authority.** Grantor hereby represents and warrants to Grantee that Grantor owns the Temporary Easement Area in fee simple and is fully authorized and empowered to grant the rights and benefits herein granted to Grantee.

5. **Damage.** Throughout the Term of this Easement, Grantee will repair any damage to the Property to the extent that such damage is caused solely and directly by Grantee or its contractors, employees or agents.

6. **Removal.** Upon the expiration of the Term, Grantee shall remove all its personal property from the Temporary Easement Area.

7. **Complete Agreement.** This Easement represents the complete and integrated agreement of the Parties with respect to the subject matter herein and supersedes all prior oral or written agreements.

8. **Governing Law.** This Easement shall be governed by and interpreted in accordance with the laws of the State of Florida. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Easement by good faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Easement, each shall have all remedies available at law or in equity.

9. **Jurisdiction; Jury Trial Waiver.** Venue for any litigation regarding this Contract shall be in any federal or state court having jurisdiction 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 Easement.**

10. **Attorneys' Fees.** In the event of any litigation arising between the Parties under this Easement, each party shall bear its own attorneys' fees and costs. This paragraph shall survive expiration or earlier termination and extinguishment of this Easement.

11. **Successors and Assigns.** This Easement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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

[SIGNATURES ON FOLLOWING PAGES]

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

ATTEST:

RACHEL SADOFF
CLERK TO THE BOARD

By: _____
Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

County:

BREVARD COUNTY,
a political subdivision of the State of Florida, by
and through its Board of County Commissioners

By: _____
Rita Pritchett, Chair

(Official Seal)

WITNESSES:

Signed, sealed and delivered
in the presence of:

Witness Signature

Print Name

Witness Signature

Print Name

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 _____, 20____, 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
To Temporary Construction Easement

Temporary Easement Area

LEGAL DESCRIPTION

Being a 25.00 foot wide Temporary Construction Easement lying within Section 18, Township 26 South, Range 36 East, Brevard County, Florida, more particularly described as follows:

Commence at the Northeast corner of said Section 18; thence South 00°35'19" East along the East line of Section 18, a distance of 3,776.12 feet; thence South 89°36'07" West, a distance of 986.16 feet to the POINT OF BEGINNING of the following described easement;

Thence South 00°25'33" East, a distance of 28.94 feet; thence South 89°34'27" West, a distance of 25.00 feet; thence North 00°25'33" West, a distance of 543.95 feet; thence North 89°36'07" East, a distance of 827.01 feet; thence South 00°23'53" East, a distance of 25.00 feet; thence South 89°36'07" West, a distance of 802.00 feet; thence South 00°25'33" East, a distance of 490.00 feet to the POINT OF BEGINNING.

Containing 0.773 acres, more or less.

NOTE: THIS IS NOT A SKETCH OF SURVEY, BUT ONLY A GRAPHIC DEPICTION OF THE DESCRIPTION SHOWN HEREON. THERE HAS BEEN NO FIELD WORK, VIEWING OF THE SUBJECT PROPERTY OR MONUMENTS SET IN CONNECTION WITH THE PREPARATION OF THE INFORMATION SHOWN HEREON.

NOTE: LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHT-OF-WAY AND/OR EASEMENTS OF RECORD.

THOMAS P. KIERNAN
Professional Surveyor & Mapper
Florida Certificate No. 6199

DATE

Page 1 of 2



**CULPEPPER &
TERPENING INC**

2980 SOUTH 25th STREET • FORT PIERCE, FLORIDA 34981
PHONE 772-464-3537 • FAX 772-464-0497 • www.ct-eng.com
STATE OF FLORIDA BOARD OF PROFESSIONAL
ENGINEERS AUTHORIZATION NO. 4286

**TEMPORARY CONSTRUCTION
EASEMENT**

DESCRIPTION

JOB NO: 19-250 mtd TCE.dwg

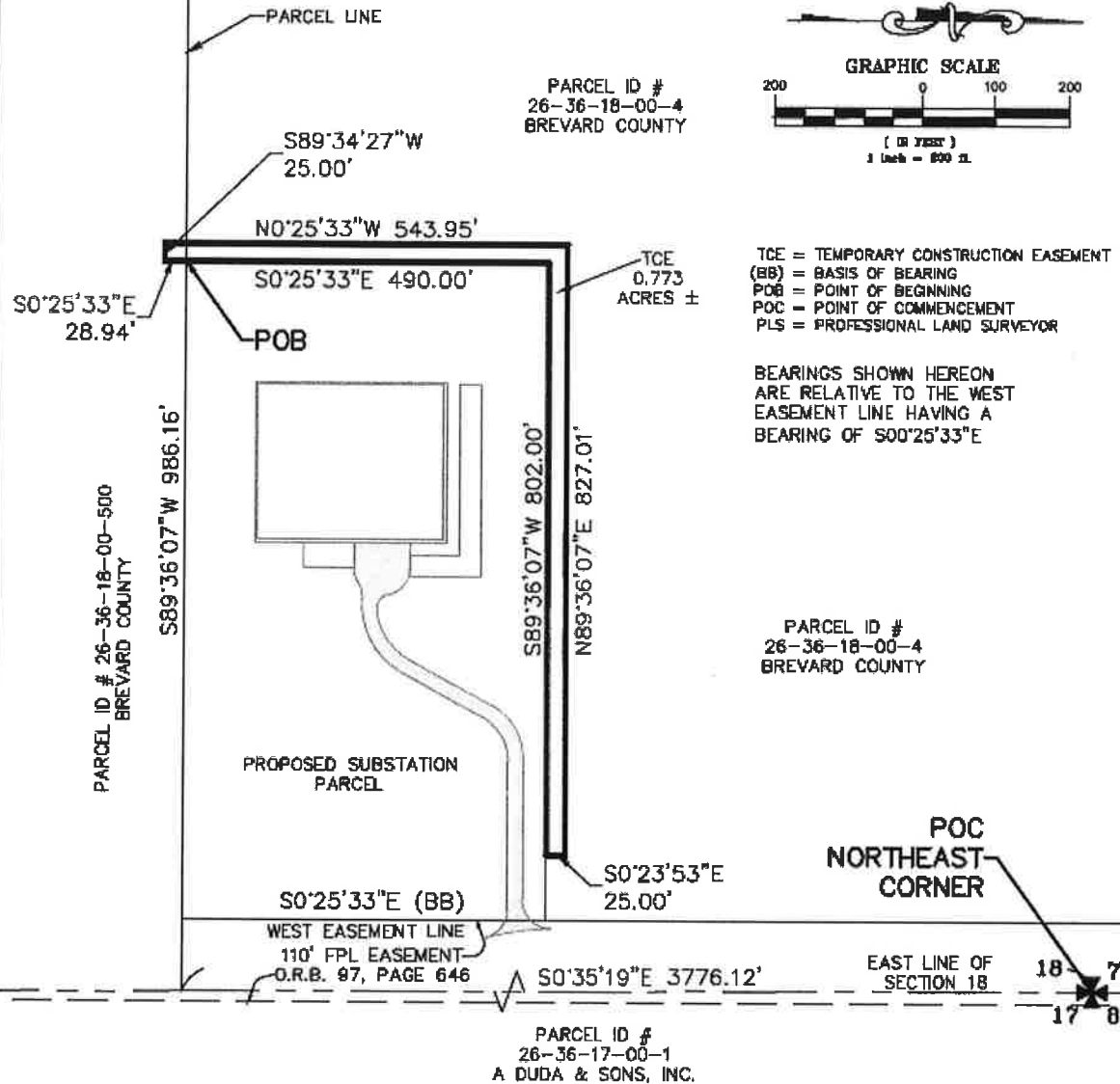
SCALE: N/A

DRAWN BY: CLM

DATE: 3-10-2021

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

THIS IS NOT A SURVEY



Page 2 of 2



**CULPEPPER &
TERPENING INC**

2980 SOUTH 25th STREET • FORT PIERCE, FLORIDA 34981
PHONE 772-484-3537 • FAX 772-464-9497 • www.ct-eng.com
STATE OF FLORIDA BOARD OF PROFESSIONAL
ENGINEERS AUTHORIZATION NO. 4286

**TEMPORARY CONSTRUCTION
EASEMENT**

SKETCH OF DESCRIPTION

JOB NO: 18-250 add TCE.dwg

SCALE: 1"=200'

DRAWN BY: GJM

DATE: 3-10-2021

EXHIBIT F
To Purchase and Sale Agreement

Form Utility Easement

Work Request No. _____
Sec. ___, Twp __ S, Rge __ E
Parcel I.D. _____
(Maintained by County Appraiser)

**EASEMENT
(BUSINESS)**

This Instrument Prepared By

Name: Seth Sheitelman
Co. Name: Florida Power & Light Company
Address: 700 Universe Boulevard
Juno Beach, Florida 33408

The undersigned, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grant and give to Florida Power & Light Company, its affiliates, licensees, agents, successors, and assigns ("FPL"), a non-exclusive easement forever for the construction, operation and maintenance of overhead and underground electric utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage as well as the size of, and remove such facilities or any of them within an easement described as follows:

Reserved for Circuit Court

See Exhibit "A" ("Easement Area")

Together with the right to permit any other person, firm, or corporation to attach wires to any facilities hereunder and lay cable and conduit within the Easement Area and to operate the same for communications purposes; the right of ingress and egress to the Easement Area at all times; the right to clear the land and keep it cleared of all trees, undergrowth and other obstructions within the Easement Area; the right to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the Easement Area, which might interfere with or fall upon the lines or systems of communications or power transmission or distribution; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the Easement Area heretofore described, over, along, under and across the roads, streets or highways adjoining or through said Easement Area.

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

ATTEST:

RACHEL SADOFF
CLERK TO THE BOARD

By: _____
Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

County:

BREVARD COUNTY,
a political subdivision of the State of Florida, by and
through its Board of County Commissioners

By: _____
Rita Pritchett, Chair

(Official Seal)

Exhibit "A"
To Utility Easement

Easement Area

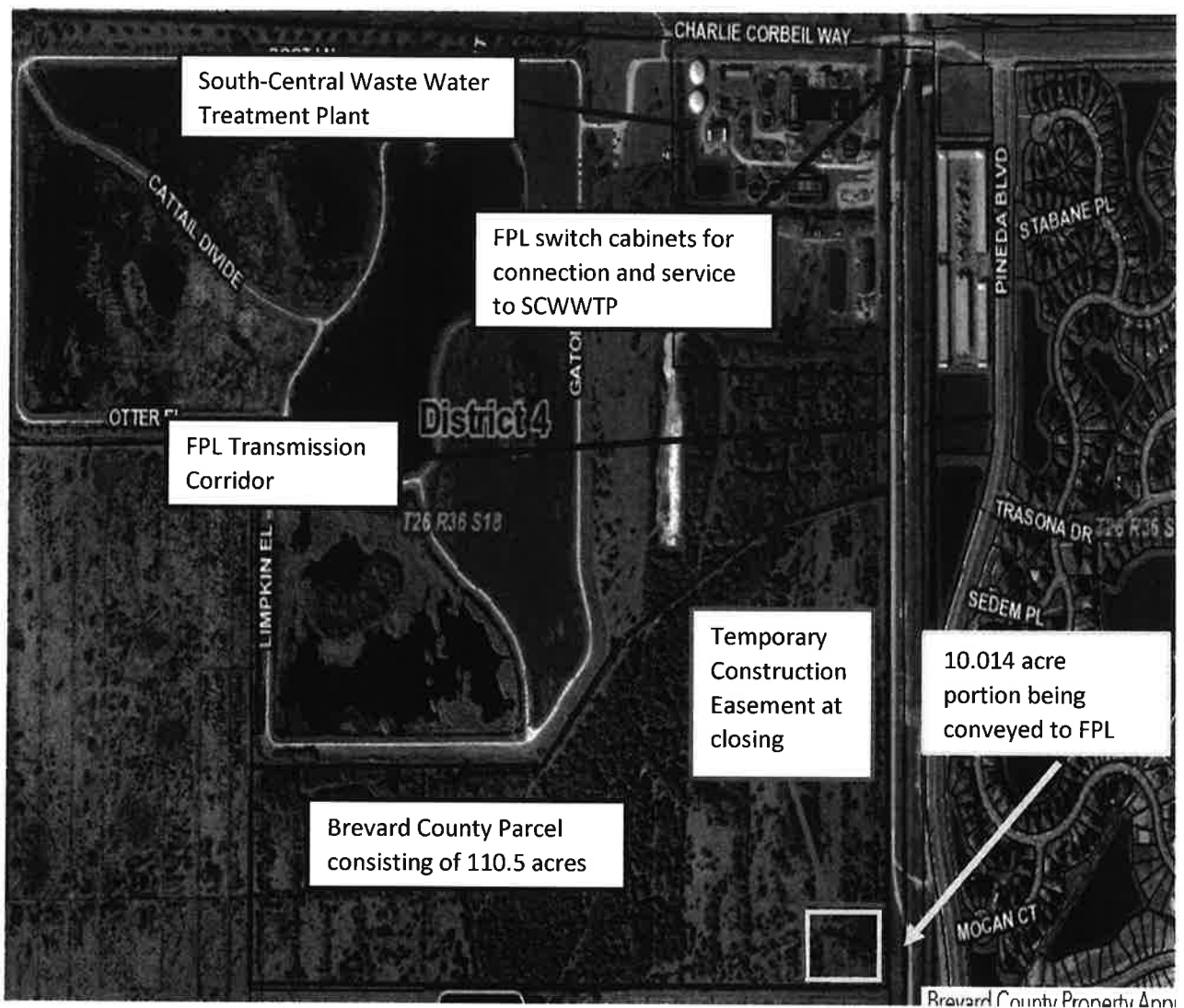
[To be agreed upon by the parties and inserted prior to Closing.]

LOCATION MAP

Section 18, Township 26 South, Range 36 East - District: 4

PROPERTY LOCATION: South of Charlie Corbeil Way in Viera

OWNERS NAME(S): Brevard County, Florida



ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into this 3rd day of August 20²¹, by and between Brevard County, a political subdivision of the State of Florida ("Seller"), Florida Power & Light Company, a Florida corporation ("Buyer"), and DPW Law Firm ("Escrow Agent"):

RECITALS

Whereas, Seller and Buyer entered into that certain Purchase and Sale Agreement dated August 3, 2021 ("Agreement") relating to the sale and purchase of that certain real property located in Brevard County, Florida more particularly described in the Agreement (the "Property");

Whereas, as more particularly described in the Agreement, Buyer, at its sole cost and expense, has agreed to install a Back-Up Feeder Cable (as defined in the Agreement) from Buyer's Substation (as defined in the Agreement) to Seller's Plant (as defined in the Agreement) to connect to and to serve as back-up power to the Plant no later than December 31, 2023 (Completion Date) in accordance with the terms of the Agreement;

Whereas, to secure Seller's obligations under the Agreement, Seller has agreed to deposit in escrow with Escrow Agent, the additional sum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) ("Escrowed Funds") at Closing together with Purchase Price; and

Whereas, the Escrowed Funds will be deposited in escrow with Escrow Agent to be held and disbursed as provided herein.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars and No/100 (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

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

Section 2. **Deposit of Escrowed Funds.** Contemporaneously with the execution of this Escrow Agreement:

1. Seller shall deposit the Escrowed Funds with Escrow Agent at Closing.
2. Escrow Agent hereby accepts its appointment as escrow agent to hold the Escrowed Funds upon the terms and conditions as set forth in this Escrow Agreement.
3. The Escrow Funds will be held by Escrow Agent in a non-interest bearing account.

Section 3. **Disbursement of Escrow Funds.**

Upon receipt of the Notice of Completion (as defined in the Agreement), Escrow Agent shall release the Escrowed Funds to Buyer. In the event that Buyer has not

installed the Back-Up Feeder Cable from Buyer's Substation to Seller's Plant by December 31, 2023, Buyer shall forfeit its rights to the Escrowed Funds, and upon Seller's written request to Escrow Agent, the Escrowed Funds shall be released to Seller.

C. Written Authorization and Instruction to Disburse from Seller and Buyer

Escrow Agent shall only be obligated and authorized to disburse the Escrowed Funds in accordance with this Section 3, or other instructions executed by Buyer and Seller.

Section 4. Limitation of Escrow Agent's Liability. In the event of actual or potential dispute as to the rights of the parties hereto under this Escrow Agreement or the Escrowed Funds, the Escrow Agent may in its sole discretion, continue to hold the Escrowed Funds until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or it may deposit all monies held pursuant to this Escrow Agreement with the Clerk of Court, Brevard County, Florida, and upon notifying all parties concerned of such action, all liability on the part of the Escrow Agent shall fully terminate, except to the extent of an account of any monies theretofore delivered out of escrow. In the event of any suit between Seller and Buyer wherein the Escrow Agent is made a party by virtue of acting as such Escrow Agent hereunder, or in the event of any suit wherein Escrow Agent interpleads the Escrowed Funds, the Escrow Agent shall be entitled to recover a reasonable attorney's fee and costs incurred, said fees and costs to be charged and assessed as court costs against the non-prevailing party. All parties agree that Escrow Agent shall not be liable to any party or person whomsoever for any action taken or omitted by Escrow Agent, including but not limited to any misdelivery of monies or instruments subject to this escrow, unless such misdelivery shall be due to breach in willful bad faith of this Escrow Agreement or gross negligence on the part of the Escrow Agent. Escrow Agent shall have the right to rely upon any written instructions provided by counsel for both Seller and/or Buyer and such instructions shall be binding on Seller and/or Buyer, respectively.

Section 5. Severability. If any provision of this Escrow Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of the remaining provisions contained herein.

Section 6. Amendment. This Escrow Agreement may be modified or amended only by an instrument in writing executed by all parties hereto.

Section 7. Governing Law. The validity, interpretation and enforcement of this Escrow Agreement and all other documents and instruments executed in connection with this transaction shall be governed by and construed under the laws of the State of Florida.

Section 8. Counterparts. This Escrow Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed to be an original, and when so executed shall constitute one Agreement binding on all the parties hereto. For purposes of this Agreement an electronic signature shall be deemed an original.

Section 9. Notices. Any notices required or permitted to be given under this Escrow Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), or sent by electronic delivery with a confirmed transmission, and addressed or sent as follows:

If to Seller:

Brevard County

If to Buyer:

Florida Power & Light Company

2725 Judge Fran Jamieson Way
Viera, Florida 32940
Attn: Office of the County Attorney

700 Universe Boulevard
Juno Beach, Florida 33408
Attn: Corporate Real Estate

With a Copy To:

Florida Power & Light Company
700 Universe Boulevard (LAW/JB)
Juno Beach, Florida 33408
Attn: Seth S. Sheitelman, Esq.

Escrow Agent:

DPW Law Firm
Attention: Dan Wurtenberger
4500 PGA Boulevard, Suite 100
Palm Beach Gardens, FL 33418
Phone: 561-508-5642
Email: dan@dpwlawfirm.com

Notices hereunder shall be deemed given when delivered to the addresses set forth above if sent by overnight courier or mail. Electronic notices shall be deemed given when sent with confirmation, provided that a counterpart of such notice is delivered within two (2) business days thereafter by overnight courier to the addresses provided above.

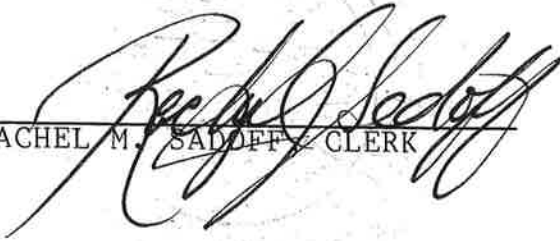
[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement the day and year first above written.

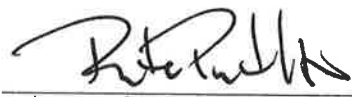
Seller:

Brevard County, a political subdivision of the State of Florida

ATTEST:


RACHEL M. SADOFF, CLERK

By:


Name: Rita Pritchett

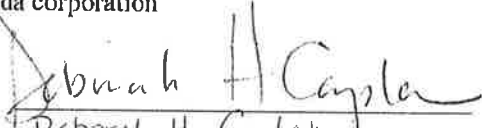
Title: Chair of Brevard County Board
of County Commissioners

As approved by the Board 8-3-2021

Buyer:

Florida Power & Light Company,
a Florida corporation

By:


Name: Deborah H. Caplan

Title: Executive Vice President
Human Resources and
Corporate Services

SS

Escrow Agent:

DPW Law Firm

By:

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement the day and year first above written.

Seller:

Brevard County, a political subdivision of the State of Florida

By: _____
Name: _____
Title: _____

Buyer:

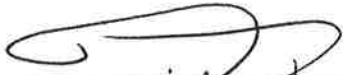
Florida Power & Light Company,
a Florida corporation

By: _____
Name: _____
Title: _____

SSS

Escrow Agent:

DPW Law Firm

By: 
Name: Danielle Hanger
Title: Partner