

Prepared by:  
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: \_\_\_\_\_

By: \_\_\_\_\_  
(Grantor's signature)  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

**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 \_\_\_\_\_

Signed, sealed and delivered in the presence of:

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

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

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

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

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

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

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

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

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

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

**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 TEMPORARY EASEMENT AREA**