

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

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

EASEMENT AGREEMENT
(Communications Equipment)

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

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To Grantor:	Attn: Stockton Whitten, City Manager City of Cocoa, Florida Stone Street Cocoa, FL 32922
To Grantee:	Florida Power & Light Company 700 Universe Boulevard Juno Beach, Florida 33408 Attn: Corporate Real Estate Department

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

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

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

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

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

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

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

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

[Signatures appear on the following page.]

WITNESSES:

Signed, sealed and delivered
in the presence of:

Witness Signature

Print Name

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

Witness Signature

Print Name

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

GRANTEE:

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation

By: _____

Print Name: _____

Title: _____

ACKNOWLEDGMENT

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

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

[NOTARIAL SEAL]

Notary: _____

Print Name: _____

Notary Public, State of Florida

My commission expires: _____

Personally Known **OR** Produced Identification

Type of Identification Produced _____

Exhibit A

Legal Description of the Property

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

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

and

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

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

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

and

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

Exhibit B

Legal Description of the Easement Area