

Construction Yard Agreement

THIS CONSTRUCTION YARD AGREEMENT (“**Agreement**”) is made and entered into as of March _____, 2021 (“**Effective Date**”) by and between Indian River County, a political subdivision of the State of Florida (“**County**”), whose address is 1801 27th Street, Vero Beach, Florida 32960, and Florida Power & Light Company, a Florida corporation (“**FPL**”), whose address is 700 Universe Boulevard, Juno Beach, Florida 33408.

RECITALS

WHEREAS, County is the fee simple owner of that certain approximately 3.5+/- acre parcel of real property depicted and described on attached Exhibit A (“**Property**”); and

WHEREAS, FPL desires to occupy and use the Property and County desires to permit FPL to temporarily occupy and use the Property upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, agreements and promises contained herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, County and FPL agree as follows:

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

2. **Use.** County hereby grants FPL, its contractors, employees and agents, the exclusive right to occupy and use the Property as a temporary staging and construction area for the placement of construction equipment and materials relating to construction of FPL’s nearby transmission facilities, including (at FPL’s discretion) installation of a security fence with a gate that can be locked, and uses incidental thereto, together with a right of access over, and on the Property, by foot and motor vehicle, including trucks and heavy equipment, for the purpose of accessing the Property, and for other uses incidental to such staging area use, and the right to cut and keep clear all buildings, structures, improvements, trees, undergrowth and other obstructions within the Property. County grants FPL, at FPL’s sole cost and expense, the right to demolish and remove all existing buildings, improvements and structures currently located on the Property in accordance with all applicable governmental laws, ordinances, rules and regulations. FPL recognizes that County has an existing cattle lease operation that predates this Agreement, and, at all times, FPL’s activities shall not unreasonably interfere with the existing ingress and egress afforded to the cattle lessee.

County expressly agrees that it will have no right, title or interest in FPL’s equipment or materials, and expressly disclaims any right, title or interest in such materials and equipment whether arising by lien, operation of law or otherwise. County shall cooperate fully with FPL and execute all documents required by FPL or governmental or quasi-governmental authority, if any, for the purpose of securing any permits for the Property for its permitted use hereunder.

3. **Term.** The term of this Agreement shall commence on the Effective Date and shall expire at 11:59 PM on December 31, 2021 (“**Term**”); provided however, in the event this Agreement has not been earlier terminated pursuant to any of the provisions contained herein, then FPL may, at FPL’s option, elect to extend the Term for up to two (2) additional consecutive one (1) month periods by giving County written notice thirty (30) days prior to the expiration of the then current Term.

4. **Liens.** FPL shall not cause any liens to be filed against the Property as a result of FPL’s activities on the Property. In the event that any such lien is filed against the Property, FPL will cause same to be removed within sixty (60) days following FPL’s receipt of notice of same.

5. **Maintenance and Use.** FPL shall keep the Property free of any trash or debris caused by FPL, or its contractors, employees or agents. FPL shall not allow the Property to be used for any unlawful

purpose. FPL shall comply with all applicable governmental laws, ordinances, rules and regulations while using the Property for the purposes granted herein. This Agreement is granted with all rights necessary and convenient for the full use and enjoyment of the Property for the purposes described herein.

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

7. **Removal and Restoration.** Upon the expiration of the Term, FPL shall remove all FPL's property located on the Property and restore the Property to substantially the same physical condition that existed on the Effective Date, normal wear and tear excepted, except that FPL shall not be required to replant any trees, brush or undergrowth that was cleared pursuant to this Agreement.

8. **Indemnity.** FPL agrees to exercise the privileges granted under this Agreement at its own risk and to protect, defend, indemnify and save County harmless, from and against any and all claims, demands, damages, actions, causes of action, or suits relating to personal injury, death and/or property damage to the extent arising from FPL's, its employees' or contractors' use of, or activities upon, the Property, and except where caused by the negligence, omission or willful conduct of County. FPL's liability hereunder shall be limited to direct damages and shall exclude any other liability, including special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

9. **Insurance.** During the term of this Agreement, FPL shall maintain the following insurance:

<u>Workers' Compensation:</u>	<u>Amount:</u>
Coverage A	Statutory
Coverage B – Employer's Liability	\$2,000,000 each Bodily Injury by Accident
Disease	\$2,000,000 policy limit Bodily Injury by
Disease	\$2,000,000 each occurrence Bodily Injury by
<u>Automobile Liability:</u>	
Bodily Injury/Property Damage	\$3,000,000
Combined – Single Limit	Coverage applies to all owned, non-owned, hired and leased vehicles (including trailers)
<u>Commercial General Liability:</u>	
Bodily Injury/Property Damage	\$5,000,000 each occurrence, or,
Combined – Single Limit	\$10,000,000 general aggregate
<u>Pollution Legal Liability:</u>	\$5,000,000

The insurance carriers providing the coverage required by this Section shall be rated at least A- VII by A.M. Best. FPL shall deliver the Certificates of Insurance or a letter of self-insurance evidencing the foregoing policies to the County within 15 calendar days after the effective date. The Certificates or letter of self-

insurance and the insurance policies required by this Section shall contain a provision that provides that the insurance coverage afforded under the policies will not be canceled or non-renewed until at least 30 days prior written notice has been given to the County, excluding workers' compensation and pollution legal liability. With the exception of the workers' compensation policy and the pollution legal liability policy, the County and its shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns shall be shown as additional insureds under all of the insurance policies required by this Section. The policies required by this Section shall be primary and the insurance providers shall agree to waive their rights of subrogation against the County and its shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns, excluding pollution legal liability. FPL may meet the requirements in this Section using any combination of primary, umbrella/excess or self-insurance programs.

10. **Quiet Enjoyment.** County represents, covenants and warrants to FPL that: County owns the Property in fee simple, has the full right, power and authority to execute this Agreement, and is fully authorized and empowered to grant the rights and benefits herein granted to FPL; County's execution and performance of this Agreement will not violate any laws, ordinances, covenants or provisions of any mortgage, lease or other agreement binding County or the Property; there are no agreements with third parties affecting the Property; and at all times during the Term, FPL's quiet enjoyment of the Property or any part thereof shall not be disturbed.

11. **Notices.** All notices that may or are required to be given by either party to the other hereunder shall be in writing, directed to such party at the address appearing on the first page of this Agreement and sent by United States certified mail, postage prepaid, or by overnight courier. Notices sent by overnight courier shall be deemed delivered on the date of delivery or rejection of delivery. Notices sent by United States certified mail, postage prepaid shall be deemed delivered three (3) days (Sundays and holidays excluded) following deposit in the United States mail.

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

13. **Governing Law.** This Agreement 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 Agreement by good faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity.

14. **Jurisdiction; Jury Trial Waiver.** Venue for any litigation regarding this Agreement shall be in any federal or state court having jurisdiction in Indian River 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.

15. **Counterparts.** This Agreement may be executed in counterparts, each of which is an original and all of which together constitute one and the same instrument. For purposes of this Agreement a facsimile or other electronic signature shall be deemed to be an original.

[Signatures appear on following page.]

The parties hereto have executed this Agreement as of the date first written above.

County:

ATTEST:

**JEFFREY R. SMITH
CLERK & COMPTROLLER**

**INDIAN RIVER COUNTY, a political
subdivision of the State of Florida**

By: _____
Deputy Clerk

By: _____
Its: _____
Print Name: _____

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
Assistant County Attorney

By: _____
Department Director

FPL:

Florida Power & Light Company,
a Florida corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

Property

(See attached)