

Prepared by and after recording return to:

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

FENCE ENCROACHMENT AGREEMENT

THIS FENCE ENCROACHMENT AGREEMENT (“**Agreement**”) is made this ___ day of January, 2024 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, Attn: Corporate Real Estate Department. The County and FPL are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties.**”

Recitals

WHEREAS, FPL owns that certain real property located at 1480 27th Avenue SW, Vero Beach, Indian River County, Florida having Indian River County Parcel Identification Number 33392600006000200009.0 (“**FPL Property**”);

WHEREAS, the County owns that certain real property located adjacent to and contiguous with the FPL Property (“**County Property**”);

WHEREAS, FPL’s existing fence encroaches onto the County Property (“**Encroachment**”) as reflected on the drawing attached hereto as Exhibit A and by this reference made a part hereof (“**Encroachment Area**”); and

WHEREAS, FPL has requested consent from the County to keep, maintain, repair, replace and enjoy the Encroachment upon the County Property within the Encroachment Area, and the County is willing to grant such consent upon the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth in this Agreement, FPL and the County hereby agree as follows:

1. Recitals. The Parties agree that the foregoing recitals are true and correct and are incorporated herein by this reference.

2. Encroachment. The County hereby consents for FPL to maintain, use, operate, repair, replace and enjoy the Encroachment on the County Property within the Encroachment Area, subject to compliance with the following terms and conditions:

a. FPL shall keep the Encroachment Area free of any trash or debris caused solely and directly by FPL, or its contractors, employees or agents. FPL shall not allow the Encroachment Area to be used for any unlawful purpose. FPL shall comply with all

applicable governmental laws, ordinances, rules and regulations while using the Encroachment Area for the purposes granted herein.

b. FPL will repair any damage to the Encroachment Area if the Encroachment area is damaged during the term of this Agreement, unless such damage is caused by the County's negligence or misconduct.

c. Except as to the Encroachment, FPL shall not construct any additional improvements of any kind within the confines of the Encroachment Area.

d. Notwithstanding the forgoing, in the event the Encroachment is destroyed or damaged or in need of replacement, now or in the future at any time, the replacement Encroachment may only be installed or constructed in the same location as the current Encroachment.

3. Future County Improvements. The Parties hereby acknowledge and agree that, in the future, the County may need to pave, expand and/or improve the Encroachment Area in connection with a County public right-of-way project ("**Future Improvement**"), and that the County's construction of such Future Improvement may conflict with, and in the ordinary course would require the relocation of the Encroachment. However, both Parties recognize that relocation of the Encroachment may not be practicable given the nature of the Encroachment. Should the County's need for improvement or construction of any Future Improvement occur which presents a conflict with FPL's Encroachment, and FPL is not able or willing to relocate or alter its Encroachment to resolve the conflict, then FPL agrees to pay the County the incremental actual and reasonable costs incurred by the County to design and construct its Future Improvement so as to avoid the conflict with FPL's Encroachment that otherwise would not have been incurred, whereupon FPL shall pay the County within sixty (60) days after receipt from the County of an invoice for those incremental costs; provided, however, in no event shall incremental cost exceed \$50,000.00 without the prior written consent of FPL.

4. No Ownership. FPL acknowledges and agrees that it shall not have any ownership interest in and to the Encroachment Area or the County Property by virtue of this Agreement.

5. Termination. The County may terminate this Agreement at any time upon at least one (1) year's prior written notice to FPL. FPL may terminate this Agreement at any time upon at least thirty (30) days' prior written notice to the County.

6. Removal; Restoration. Upon the termination of this Agreement, upon the County's written request, FPL shall remove the Encroachment and restore the Encroachment Area, normal wear and tear excepted.

7. Liability and Indemnification. The County shall in no way be liable or responsible for any accident or damage that may occur in conjunction with any of the activities described in this Agreement, unless caused by the County's negligence or misconduct. FPL shall defend, hold harmless and indemnify the County with respect to any and all actions, causes of action, liabilities, losses, damages or expenses (including reasonable attorneys' fees) arising out of or relating to any negligence, intentional misconduct, breach of this Agreement or breach of applicable law by FPL

in conjunction with any of the activities described in this Agreement, unless caused by the County's negligence or misconduct; provided, however, in no event shall FPL be liable for any consequential, special, exemplary, punitive, indirect or incidental losses or damages. This section shall survive the termination of this Agreement with respect to any acts or omissions occurring prior to the date of termination.

8. Insurance Requirements. FPL shall procure, maintain and provide evidence of Commercial General Liability Insurance covering liability arising out of premises, operations, bodily injury, property damage, products and completed operation and liability under an insured contract (contractual liability), with limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. The policy shall list the County as an additional insured and shall provide the County with at least 30 days written notice prior to cancellation or material change in coverage. FPL may meet the above insurance requirements by any combination of primary, excess or self-insurance.

9. 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.

10. Choice of 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.

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

12. Counterparts. This Encroachment Agreement may be executed in counterparts, each of which when conformed shall be an original and all of which together shall constitute a single document.

[Remainder of page intentionally left blank; Signature pages and Acknowledgements follow]

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the date and year first above written.

ATTEST:

**RYAN L. BUTLER
CLERK & COMPTROLLER**

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

By: _____
Deputy Clerk

By: _____
Its: _____
Print Name: _____

Signed and delivered
in the presence of:

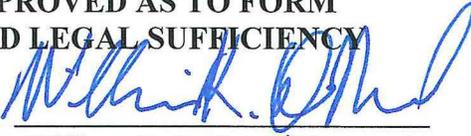
Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: 

William K. DeBraal, County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
Department Director

WITNESSES:

FPL:

Florida Power & Light Company,
a Florida corporation

Sign: Rachel Falcone

By: Gregg Hall

Print: Rachel Falcone

Name: Gregg Hall

Title: FPL SR Mgr.

Sign: Chandi Mudigeti

Print: Chandi Mudigeti

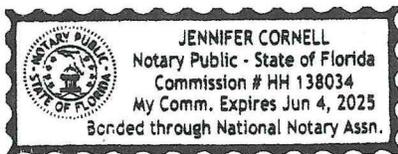
ACKNOWLEDGMENT

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 13 day of November, 2023, by Gregg Hall, as Senior manager of Florida Power & Light Company, a Florida corporation, on behalf of the corporation.

[NOTARIAL SEAL]



Notary: Jennifer Cornell

Print Name: Jennifer Cornell

Notary Public, State of Florida

My commission expires: June 4, 2025

Personally Known OR Produced Identification

Type of Identification Produced _____

Exhibit A
Encroachment Area

LEGAL DESCRIPTION:

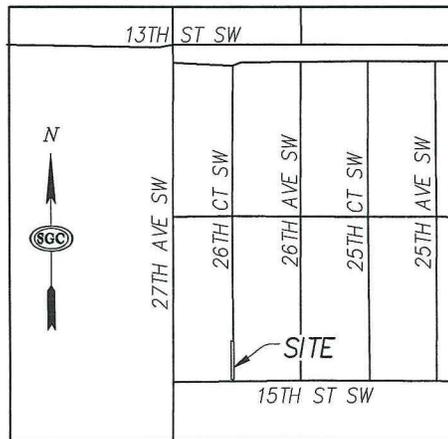
A PORTION OF 26TH COURT SOUTHWEST ALSO KNOWN AS TENNESSEE AVENUE (A 70.00 FOOT WIDE PUBLIC RIGHT-OF-WAY PER OSLO PARK UNIT NUMBER 7 AS RECORDED IN PLAT BOOK 4, PAGE 28 OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA), BEING WITHIN THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 33 SOUTH, RANGE 39 EAST, INDIAN RIVER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 1, BLOCK B, OSLO PARK UNIT NUMBER 7, ACCORDING TO SAID PLAT BOOK 4, PAGE 28; THENCE RUN ALONG THE EAST LINE OF SAID BLOCK B, ALSO BEING THE WEST RIGHT-OF-WAY LINE OF SAID 26TH COURT SOUTHWEST (TENNESSEE AVENUE) S00°03'11"W FOR 427.33 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE S00°03'11"W FOR 172.67 FEET TO THE SOUTHEAST CORNER OF LOT 13, BLOCK B, BEING A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 15TH STREET SOUTHWEST ALSO KNOWN AS SHAMROCK LANE (A 35.00 FOOT WIDE PUBLIC RIGHT-OF-WAY PER SAID PLAT BOOK 4, PAGE 28); THENCE DEPARTING SAID WEST RIGHT-OF-WAY LINE RUN S89°48'56"E FOR 4.39 FEET; THENCE RUN ALONG A LINE PARALLEL TO AND 4.39 FEET EASTERLY OF SAID WEST RIGHT-OF-WAY LINE N00°03'11"E FOR 172.67 FEET; THENCE RUN N89°48'56"W FOR 4.39 FEET TO THE POINT OF BEGINNING.

CONTAINING 758 SQUARE FEET (0.017 ACRES) MORE OR LESS.

LEGEND:

—	LINE BREAK
PC	POINT OF CURVATURE
PRC	POINT OF REVERSE CURVATURE
PCC	POINT OF COMPOUND CURVATURE
PNT	POINT OF NON-TANGENCY
PT	POINT OF TANGENCY
R/W	RIGHT OF WAY
ORB	OFFICIAL RECORDS BOOK
PB	PLAT BOOK
PG(S)	PAGE(S)
L	LENGTH
R	RADIUS
A	CENTRAL ANGLE
CB	CHORD BEARING
CH	CHORD LENGTH
SF	SQUARE FEET
AC	ACRES
SEC	SECTION
(P)	PLAT



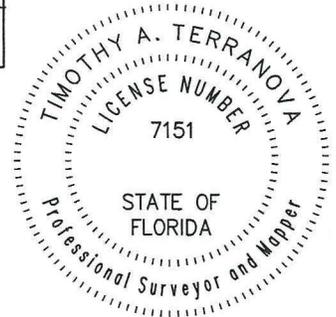
VICINITY MAP
(NOT TO SCALE)

SHEET INDEX:

- SHEET 1: VICINITY MAP, NOTES, LEGAL DESCRIPTION
- SHEET 2: SKETCH OF DESCRIPTION

SKETCH NOTES:

- BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD 83 (2011 ADJUSTMENT), DERIVING A BEARING OF S00°03'11"W ALONG THE EAST LINE OF BLOCK B, OSLO PARK UNIT NO. 7 PER PLAT BOOK 4, PAGE 28.
- LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, ADJOINERS OR OTHER INSTRUMENTS OF RECORD.
- THIS SKETCH MEETS THE APPLICABLE "STANDARDS OF PRACTICE" AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN RULE 5J17.050-.052, FLORIDA ADMINISTRATIVE CODE.
- THIS IS NOT A BOUNDARY SURVEY.



Timothy A. Terranova

Digitally signed by Timothy A. Terranova
Date: 2023.12.08 15:04:47 -05'00' 12/08/23

TIMOTHY A. TERRANOVA
PROFESSIONAL SURVEYOR & MAPPER
LICENSE NUMBER LS 7151
DATE
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

(SEE SHEET 2 FOR SKETCH OF DESCRIPTION)

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY. SHEET 1 OF 2

SKETCH OF DESCRIPTION OF FENCE ENCROACHMENT AGREEMENT

LOCATED IN SECTION 26, TOWNSHIP 33 SOUTH, RANGE 39 EAST INDIAN RIVER COUNTY, FLORIDA

PREPARED FOR:
FLORIDA POWER & LIGHT COMPANY

SGC ENGINEERING, LLC

SURVEY AND MAPPING

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



DATE: 12/08/23 SCALE: 1" = 40' DRAWN: SAS CHECK: TAT

FILE: K:\PROJECTS\2030005 - FPL - Oslo Substation Easement - Vero Beach - FLDWG\WORKSHEETS\2030005-Sketch of Description.dwg
LOCN: Steven Stuglik
PLOTTED: 12/08/2023 2:34:27 PM

FILE: K:\PROJECTS\2030005 - FPL - Oslo Substation Easement - Vera Beach - FL\DWG\WORKSHEETS\2030005_Sketch of Description.dwg
 LOGON: Steven Stuglik
 PLOTTED: 12/08/2023 2:34:28 PM

POINT OF COMMENCEMENT

NE CORNER OF LOT 1, BLOCK B
 PER PLAT BOOK 4, PAGE 28
 NORTHING: 1179670.14'
 EASTING: 846108.21'

PARCEL ID - 33392600006000200008.0

LOT 8

POINT OF BEGINNING

NORTHING: 1179242.81'
 EASTING: 846107.81'

LOT 9

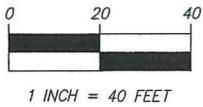
E LINE OF BLOCK B AND
 WEST R/W LINE OF 26TH
 COURT SW

LOT 10

OSLO PARK UNIT NO. 7
 PB 4, PG 28
 BLOCK B

PARCEL ID - 33392600006000200009.0

27TH AVENUE SW
 EMERSON AVENUE (P)
 (70.00' WIDE R/W PER
 PB 4, PG 28)



15TH STREET SW

SHAMROCK LANE (P)
 (35.00' WIDE R/W PER
 PB 4, PG 28)

NORTH R/W LINE OF
 15TH STREET SW

LOT 11

LOT 12

LOT 13

4.39'

S00°03'11"W 427.33'
 (BASIS OF BEARING)

S00°03'11"W 172.67'

N00°03'11"E 172.67'

L1

SE CORNER OF LOT 13,
 BLOCK B, PB 4, PG 28

LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°48'56"E	4.39'
L2	N89°48'56"W	4.39'

26TH COURT SW

TENNESSEE AVENUE (P)
 (70.00' WIDE R/W PER
 PB 4, PG 28)

FENCE
 ENCROACHMENT
 AGREEMENT AREA
 (±0.017 AC OR 758 SF)

(SEE SHEET 1 FOR LEGAL DESCRIPTION)

SKETCH OF DESCRIPTION ONLY. THIS IS NOT A SURVEY.

SHEET 2 OF 2

SKETCH OF DESCRIPTION OF
**FENCE ENCROACHMENT
 AGREEMENT**

LOCATED IN
 SECTION 26, TOWNSHIP 33 SOUTH, RANGE 39 EAST
 INDIAN RIVER COUNTY, FLORIDA

PREPARED FOR:
 FLORIDA POWER & LIGHT COMPANY

SGC ENGINEERING, LLC

SURVEY AND MAPPING

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DATE: 12/08/23 SCALE: 1" = 40' DRAWN: SAS CHECK: TAT