

RESOLUTION NO. 2020- 109

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A NON-EXCLUSIVE PERMISSIVE USE AGREEMENT GRANTING FPL USE OF THE ST. JOHNS COUNTY FAIRGROUNDS AS A STAGING AREA DURING A DISASTER.**

**RECITALS**

**WHEREAS**, Florida Power & Light Company, a Florida corporation (“FPL”), has executed and presented to the County a Non-Exclusive Permissive Use Agreement, attached hereto as Exhibit “A”, incorporated by reference and made a part hereof, for use of the St. Johns County Fairgrounds (“Property”) as a staging area during a disaster; and

**WHEREAS**, FPL seeks temporary use of the Property as a staging area during local, state and federal emergencies, declared disasters, major storms, hurricanes, and military or civil disturbances, to park trucks, stage employee vehicles, store equipment and to serve as a show-up site for employees of FPL, its contractors, and other utilities assisting FPL; and

**WHEREAS**, FPL may access the Property twenty-four (24) hours a day, seven (7) days a week, on an as-needed basis, for as long as reasonably necessary to reinstall or restore electrical services to the residents of St. Johns County; and

**WHEREAS**, FPL, at its sole cost and expense, will provide any surface improvements, utility services, sanitation facilities, fuel dispensing equipment, mobile offices, tents, and/or eating facilities necessary to facilitate use of the Property; and

**WHEREAS**, during use of the Property as a temporary staging area, FPL agrees to take all necessary measures to secure its vehicles and equipment from public access. FPL agrees to secure the staging area against theft, vandalism, and site abuse, and shall provide temporary lighting to insure the safety of its equipment; and

**WHEREAS**, following use of the Property, within no more than ten (10) days, FPL, at its sole cost and expense, shall restore the Property to its original condition prior to use; and

**WHEREAS**, it is in the best interest of the County to accept the Permissive Use Agreement to further the ability of FPL to provide much needed services to the citizens of St. Johns County during a disaster.

**NOW THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of St. Johns County, Florida, as follows:

**Section 1.** The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

**Section 2.** The Board of County Commissioners hereby approves the terms of the Non-Exclusive Permissive Use Agreement for use of St. Johns County Property and authorizes the County Administrator, or designee, to execute said Agreement.

**Section 3.** To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**Section 4.** The Clerk of the Court of St. Johns County is instructed to file the original Non-Exclusive Permissive Use Agreement in the Public Records of St. Johns County, Florida.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 7<sup>th</sup> day of April, 2020.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: [Signature]  
Jeb S. Smith, Chair

ATTEST: Brandon Patty, Clerk

By: [Signature]  
Deputy Clerk

**APR 9 2020**  
**RENDITION DATE** \_\_\_\_\_



EXHIBIT "A" TO RESOLUTION



**NON-EXCLUSIVE PERMISSIVE USE AGREEMENT  
FOR USE OF ST. JOHNS COUNTY PROPERTY**

**THIS AGREEMENT** ("Agreement") is made as of this \_\_\_ day of \_\_\_\_\_, 2020, by and between St. Johns County, a political subdivision of the State of Florida, with an address of 500 San Sebastian View, St. Augustine, FL 32084 ("County") and Florida Power & Light Company, a Florida corporation, with an address at 700 Universe Blvd., Juno Beach, FL 33408 ("Contractor"). The County and the Contractor enter into this Agreement on the basis of the following facts, understandings and intentions:

**WHEREAS**, the County owns certain real property located at 5840 State Road 207 (Parcel Account No. 036010-0000) and 255 Moccasin Creek Lane Unit H (Parcel Account No. 033690-0000), Elkton, Florida 32033, and more specifically depicted on Exhibit A (hereafter referred to as "Property"); and

**WHEREAS**, this Property is currently used as a fairground facility; and

**WHEREAS**, the Contractor seeks temporary use of the Property as a staging area during local, state and federal emergencies, declared disasters, major storms, hurricanes, and military or civil disturbances, to park trucks, stage employee vehicles, store equipment and to serve as a show-up site for employees of FPL, its contractors, and other utilities assisting FPL; and

**WHEREAS**, accordingly, the County and the Contractor seek to enter into this Agreement to set forth their respective duties and obligations regarding use of the Property as described herein; and

**NOW, THEREFORE**, in consideration of the premises and mutual covenants of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The recitals stated above are hereby incorporated into the body of this Agreement, and are adopted by each of the parties as findings of fact.

2. **Permissive Use (Non-Exclusive).** Subject to the terms and conditions contained herein, the County hereby grants the Contractor permission to enter onto the Property, and non-exclusive use of the Property as a staging area during local, state and federal states of emergency, declared disasters, major storms, hurricanes, and military or civil disturbances, to park trucks, stage employee vehicles, store equipment and to serve as a show-up site for employees of FPL, its contractors, and other utilities assisting FPL.

3. **Duration of Use.** The effective term of this Agreement shall be for a period of one (1) year commencing on the date set forth above, and shall automatically renew from year to year thereafter until one party provides the other party no less than ninety (90) days prior written notice of its intent not to renew this Agreement.

4. **Prior Approval.** Upon request by the Contractor, access to or use of the Property shall be approved in writing by the County. Requests for use of the Property shall be directed to the Emergency Management Officer at the St. Johns County Emergency Operations Center, located at 100 EOC Drive, St. Augustine, FL 32092, Phone: 904-824-5550, prior to each use.

5. **Access.** Upon the County's approval of use of the Property, Contractor may access the Property twenty-four (24) hours a day, seven (7) days a week, on an as-needed basis, for as long as reasonably necessary for Contractor to reinstall or restore electrical services. It is expressly understood by the parties that the Contractor is solely responsible for the cost of any radiomen, signage, barricades, etc., necessary to protect the public during use of the Property.

6. **Condition of the Property.** The Contractor understands and agrees to accept use of the Property in its "as-is, where-is" condition.

7. **Improvements.** At its sole cost and expense, Contractor will provide, any surface improvements; utility services; sanitation facilities; fuel dispensing equipment; mobile offices, tents, and/or eating facilities necessary to facilitate use of the Property. Upon mutual consent of the parties, Contractor may purchase from the County water, gas, electricity, or other utility service, at applicable County rates.

8. **Restoration.** Following use of the Property, within no more than ten (10) days, Contractor, at its sole cost and expense, shall restore the Property to its original condition prior to use.

9. **Security.** During use of the Property as a temporary staging area, Contractor agrees to take all necessary measures to secure its vehicles and equipment from public access. The Contractor agrees to secure the staging area against theft, vandalism, and site abuse, and shall provide temporary lighting to insure the safety of its equipment. The Contractor understands and agrees that the County assumes no liability for any damage to any vehicles or equipment stored on or at the Property.

10. **Indemnification.** The Contractor will indemnify, defend and hold harmless the County, its officers, employees, contractors, subcontractors, guests, invitees, volunteers and agents, against any and all claims for loss or expense or suits for damage to persons or property (including the Contractor's property), caused by or arising from use of the Property by the Contractor, its employees, members, agents, and subcontractors. The Contractor acknowledges and agrees that this provision regarding Indemnification survives early termination by either party or expiration of this

Agreement.

11. **Insurance.** The Contractor is self-insured and maintains a comprehensive property and liability insurance program with deductibles of \$3,000,000.00 per occurrence. The County will be exempt from, and in no way liable for, any sums of money, which may represent a self-insured retention in any insurance program. The payment of such self-insured retention will be the sole responsibility of the Contractor providing such insurance. The self-insurance shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not been self-insured, contained a self-insured retention or deductible.

12. **Permits, Licenses and Approvals.** Prior to its use of the Property, at its sole cost and expense, the Contractor shall secure and maintain all applicable licenses, permits and approvals necessary to complete the work described herein.

13. **Hazards.** The Contractor hereby acknowledges and understands that, in the event that the Contractor's use of the Property creates a public safety hazard as determined in the County's sole discretion, at the Contractor's sole cost and expense, the Contractor shall be required to take all necessary actions to remedy such hazard(s) as directed by the County.

14. **Litigation.** The parties knowingly, voluntarily and intentionally waive the right they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement, or any document contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether oral or written) or action of either party.

15. **Miscellaneous Provisions.**

a. Neither the County nor the Contractor will assign this Agreement or delegate or subcontract the performance of the Agreement without the prior written consent of the other.

b. This Agreement shall not be amended or modified in any manner except by written instrument properly executed by each party.

c. This Agreement is governed by the laws of the State of Florida, and any provisions contained in this Agreement in conflict therewith shall be void and of no effect. Any suit, action or proceeding arising in connection with this Agreement shall be brought in St. Johns County, Florida.

d. No delay or failure by the County to exercise or enforce any right or provision of this Agreement will be considered a waiver thereof.

e. If any provision of this Agreement is determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remainder of this Agreement.

f. The obligations under this Agreement, which by their nature would continue beyond the expiration of the term of this Agreement, shall survive termination or expiration of this Agreement.

g. This Agreement contains the entire understanding between the parties with respect to the subject matter of this Agreement.

h. This Agreement may be executed in one or more counterparts all of which when taken

together shall be considered one and the same agreement. A complete, executed copy of this Agreement shall be enforceable as an original.

i. The parties shall allow public access to all documents, papers, letters, or other material subject to the provisions of chapter 119, Florida Statutes, and made or received in conjunction with this Agreement.

j. Each party covenants to the other party that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IN WITNESS WHEREOF, County and the Contractor have caused this Agreement to be made on the date above written.

**WITNESSES:**

**ST. JOHNS COUNTY, FLORIDA**  
A political subdivision of the State of Florida

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Hunter S. Conrad, County Administrator Date

\_\_\_\_\_  
Print

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print

ATTEST: Brandon Patty, Clerk

Legally Sufficient:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Deputy County Attorney Date

**WITNESSES:**

Orin Shakerdye      3/13/20  
Signature                      Date

ORIN SHAKERDYE  
Print

Nellie Addison      3/13/20  
Signature                      Date

Nellie Addison  
Print

**FLORIDA POWER & LIGHT COMPANY**  
A Florida corporation

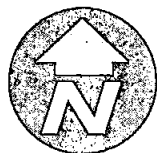
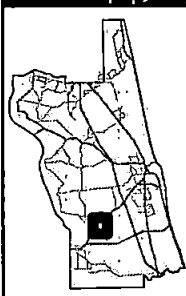
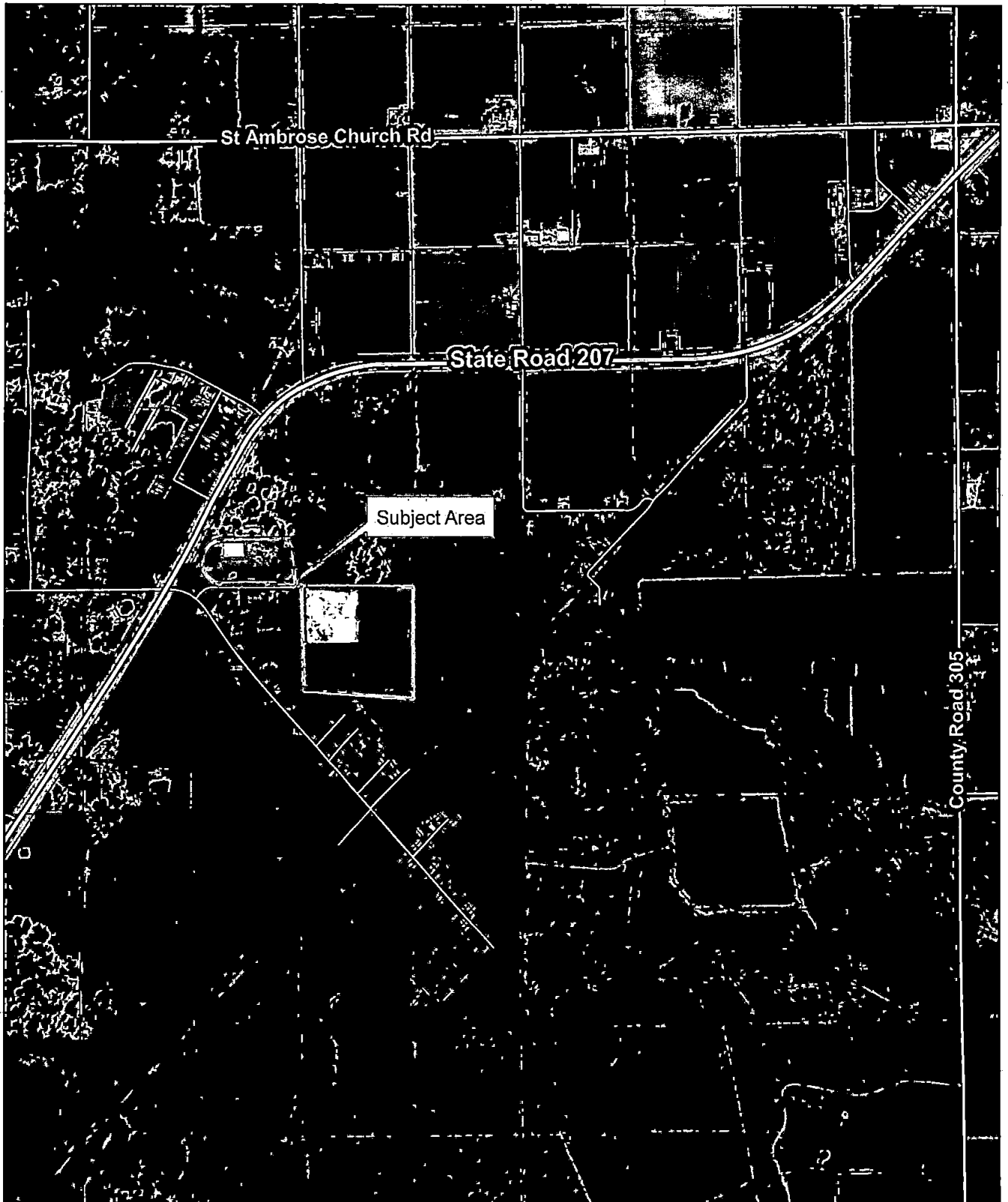
By: [Signature]      3/13/20  
Alex Rubio, Vice President      Date  
Integrated Supply Chain

**EXHIBIT A**

**St John's County Fairgrounds  
5840 SR 207 Elkton, FL**







2016 Aerial Imagery

0 500 1,000 1,500

Feet  
March 13, 2020

## Permissive Use Agreement

*Florida Power & Light*

Land Management  
Systems  
Real Estate  
Division  
(904) 209-0764

Disclaimer:  
This map is for reference use only.  
Data provided are derived from multiple  
sources with varying levels of accuracy.  
The St. Johns County Real Estate  
Division disclaims all responsibility  
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