

Structure No.: 155M2  
Section, Township, Range: 6-50-26  
Easement No.: 8C-6

**RIGHT-OF-WAY CONSENT AGREEMENT  
(Governmental Entity)**

FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is P.O. Box 14000, Juno Beach, Florida 33408-0420, Attn: Corporate Real Estate Department, hereinafter referred to as "**Company**", hereby consents to BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, whose mailing address is 3299 Tamiami Trail East, Naples, FL 34112, hereinafter referred to as "**Licensee**", using an area within Company's right-of-way granted by that certain agreement recorded in O.R. Book 513, at Page 583, Public Records of Collier County, Florida. The said area within Company's right-of-way is hereinafter referred to as "**Lands**". The use of the Lands by Licensee, shall be solely for the purpose of installation of pavers and landscaping associated with the Rich King Memorial Greenway as submitted by Licensee attached as **Exhibit "A"**.

In consideration for Company's consent and for the other mutual covenants set forth below, and for Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Licensee agrees to obtain all necessary rights from the owners of the Lands in the event Licensee does not own said Lands; to obtain any and all applicable federal, state, and local permits required in connection with Licensee's use of the Lands; and at all times, to comply with all requirements of all federal, state, and local laws, ordinances, rules and regulations applicable or pertaining to the use of the Lands by Licensee pursuant to this Agreement.

2. Licensee understands and agrees that the use of the Lands pursuant to this Agreement is subordinate to the rights and interest of Company in and to the Lands and agrees to notify its employees, agents, and contractors accordingly. Company specifically reserves the right to maintain its facilities located on the Lands; to make improvements; add additional facilities; maintain, construct or alter roads; maintain any facilities, devices, or improvements on the Lands which aid in or are necessary to Company's business or operations; and the right to enter upon the Lands at all times for such purposes. Licensee understands that in the exercise of such rights and interest, Company from time-to-time may require Licensee, to relocate, alter, or remove its facilities and equipment, including parking spaces and areas, and other improvements made by Licensee pursuant to this Agreement which interfere with or prevent Company, in its opinion, from properly and safely constructing, improving, and maintaining its facilities. Licensee agrees to relocate, alter, or remove said facilities, equipment, parking spaces and areas, and other improvements within ninety (90) days of receiving notice from Company to do so. Such relocation, alteration, or removal will be made at the sole cost and expense of Licensee and at no cost and expense to Company; provided however, should Licensee, for any reason, fail to make such relocation, alteration, or removal, Company retains the right to enter upon the Lands and make said relocation, alteration, or removal of Licensee's facilities, equipment, parking spaces and areas, and other improvements and Licensee hereby agrees to reimburse Company for all of its costs and expense incurred in connection therewith upon demand.

3. Licensee agrees that it will not use the Lands in any manner which, in the opinion of Company, may tend to interfere with Company's use of the Lands or may tend to cause a hazardous condition to exist. Licensee agrees that no hazardous substance, as the term is defined in Section 101 (14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601 [14]), petroleum products, liquids or flammables shall be placed on, under, transported across or stored on the Lands, which restricts, impairs, interferes with, or hinders the use of the Lands by Company or the exercise by Company of any of its rights thereto. Licensee agrees further that in the event it should create a hazardous





condition, then upon notification by Company, Licensee shall, within seventy-two (72) hours, at its sole cost and expense, correct such condition or situation; provided however that the Company retains the right to enter upon the Lands and correct any such condition or situation at any time and, by its execution hereof, Licensee hereby agrees to indemnify and hold harmless Company from all loss, damage or injury resulting from Licensee's failure to comply with the provisions of this Agreement.

4. Licensee hereby agrees and covenants to prohibit its agents, employees, and contractors from using any tools, equipment, or machinery on the Lands capable of extending greater than fourteen (14) feet above existing grade and further agrees that no dynamite or other explosives shall be used within the Lands and that no alteration of the existing terrain, including the use of the Lands by Licensee as provided herein, shall be made which will result in preventing Company access to its facilities located within said Lands. Unless otherwise provided herein, Licensee agrees to maintain a one hundred and fifty (150) foot wide area, clear of any activities, with a lineal measurement of seventy five (75) feet on each side of the centerline of Company's existing and planned facilities.

5. Licensee understands and agrees that the planting of trees, shrubs, and other foliage capable of exceeding fourteen (14) feet in height at full maturity is not permitted within Company's Lands.

6. Outdoor lighting installed or to be installed upon the Lands by Licensee are not to exceed a height of fourteen (14) feet above existing grade and all poles or standards supporting light fixtures are to be of a non-metallic material.

7. Sprinkler systems installed or to be installed by Licensee upon the Lands are to be constructed of a non-metallic material and sprinkler heads are to be set so the spray height does not exceed fourteen (14) feet above existing grade and does not make contact with any Company's facilities. Aboveground systems shall not be installed within or across Company patrol or finger roads and underground systems crossing said patrol and finger roads are to be buried at a minimum depth of one (1) foot below existing road grade.

8. Licensee agrees to warn its employees, agents, contractors and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by Company within the Lands are of high voltage electricity and agrees to use all safety and precautionary measures when working under or near Company's facilities. Licensee hereby acknowledges the receipt and required execution of Form 360 "Exhibit C" prior to the commencement of construction within the Lands.

9. Licensee agrees, at all times, to maintain and keep the Lands clean and free of debris. Except as provided herein, Licensee further understands and agrees that certain uses of the Lands are specifically prohibited; such uses include but are not limited to recreational purposes, hunting and camping, and Licensee agrees to notify its employees, agents, contractors, and invitees accordingly.

10. The use of the Lands by Licensee shall be at the sole risk and expense of Licensee, and Company is specifically relieved of any responsibility for damage or loss to Licensee or other persons resulting from Company's use of the Lands for its purposes.

11. Notwithstanding any provision contained herein, Licensee agrees to reimburse Company for all cost and expense for any damage to Company's facilities resulting from Licensee's use of the Lands and agrees that if, in the opinion of Company, it becomes necessary as a result of Licensee's use of the Lands for Company to relocate, rearrange or change any of its facilities, to promptly reimburse Company for all cost and expense involved with such relocation, rearrangement or change.

12. Licensee agrees it will exercise its privileges hereunder at its own sole risk and agrees subject to the limitations contained in Section 768.28, Florida Statutes, if applicable, to indemnify and save harmless Company, its parent, subsidiaries, affiliates, and their respective officers, directors, agents and employees





(hereinafter referred to as the "FPL Entities"), from all liability, loss, cost, and expense, including attorneys' fees, which may be sustained by FPL Entities to any person, natural or artificial, by reason of the death of or injury to any person or damage to any property, arising out of or in connection with the herein described purposes by Licensee, its contractors, agents, or employees; and Licensee agrees subject to the limitations contained in Section 768.28, Florida Statutes, if applicable, to defend at its sole cost and expense and at no cost and expense to FPL Entities any and all suits or action instituted against FPL Entities, for the imposition of such liability, loss, cost and expense.

13. Licensee shall, and shall cause each of Licensee's contractors and subcontractors performing work in connection with the Project during the period of this Agreement, to procure and maintain at Licensee's and such contractors' and subcontractors' sole expense, the following minimum insurance, with insurers with a rated "A-, VII" or higher by A.M. Best's Key Rating Guide that are licensed to do business in the State of Florida, or as may be approved in writing by COMPANY's Risk Management Department from time to time:

- (i) Workers' Compensation Insurance for statutory obligations imposed by applicable Florida law, including, where applicable, the United States Longshoremen's and Harbor Workers' Act, the Maritime Coverage and the Jones Act;
- (ii) Employers' Liability Insurance, including Occupational Disease, shall be provided with a limit of One Million Dollars (\$1,000,000) for bodily injury by accident, with a limit of One Million Dollars (\$1,000,000) for bodily injury by disease/policy and with a limit of One Million Dollars (\$1,000,000) for bodily injury by disease/employee;
- (iii) Automobile Liability Insurance which shall apply to all owned, non-owned, leased and hired automobiles in an amount with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage per accident; and
- (iv) General Liability Insurance, written on Insurances Services Office form GC 00 01 1204 (or equivalent) covering liability arising out of premises, operations, bodily injury, property damage, products completed and liability insured under and insured contract (sometimes referred to broad form contractual liability), with minimum limits of One Million Dollars (\$1,000,000) combined single limit per occurrence, which shall insure the indemnity obligations assumed by Licensee under this Agreement.

Except for the Workers' Compensation Insurance, the FPL Entities shall be designated as an additional insured on Licensee and/or Licensee's contractors insurance policies required to be maintained under this Agreement. All policies of insurance required to be maintained by Licensee and Licensee's contractors and subcontractors hereunder shall provide and each of Licensee, and Licensee's contractors and subcontractors, shall cause the insurers of their respective insurance to include, either in its printed text or by endorsement: (i) a severability of interests clause; (ii) an endorsement that Licensee's and Licensee's contractors' and subcontractors' insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of FPL Entities; and (iii) a waiver of subrogation against FPL Entities.

In the event that any policy furnished by Licensee and/or Licensee's contractors and subcontractors provides for coverage on a "claims made" basis, the retroactive date of the policy shall be the same as the effective date of this Agreement, or such other date, as to protect the interest of FPL Entities. Furthermore, for all policies furnished on a "claims made" basis, Licensee's and Licensee's contractors' and





subcontractors' providing of such coverage shall survive the termination of this Agreement, until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. If coverage is on "occurrence" basis, Licensee and Licensee's contractors and subcontractors shall maintain such insurance during the entire term of this Agreement.

Licensee and Licensee's contractors and subcontractors shall promptly provide evidence of the minimum insurance coverage required under this Agreement in the form of an ACORD certificate or other certificate of insurance acceptable to FPL. Upon FPL's request, Licensee and Licensee's contractors and subcontractors shall provide FPL with complete copies of all required insurance policies under this Agreement. If any of the required insurance is cancelled or non-renewed, Licensee and Licensee's contractors and subcontractors shall file a new Certificate of Insurance or binder with FPL demonstrating to FPL's satisfaction that the required insurance coverages to be maintained hereunder have been extended or replaced. Neither Licensee's nor Licensee's contractors and subcontractors failure to provide evidence of minimum coverage of insurance following FPL's request, nor FPL's decision to not make such request, shall release Licensee and Licensee's contractors and subcontractors from their respective obligations to maintain the minimum coverage provided for in this Section.

Licensee shall be responsible for managing and administering all insurance policies required hereunder, including the payment of all deductibles and self-insured retention amounts, the filing of all claims and the taking of all necessary and proper steps to collect any proceeds on behalf of the relevant insured person or entity. Licensee shall at all times keep FPL informed of the filing and progress of any claim. If Licensee shall fail to perform these responsibilities, FPL may take such action as it determines appropriate under the circumstances. In the event Licensee collects proceeds on behalf of other persons or entities, it shall ensure that these are paid directly from the insurers to the relevant person or entity and, in the event that it receives any such proceeds, it shall, unless otherwise directed by FPL, pay such proceed to such party forthwith and prior thereto, hold the same in trust for the recipient.

Nothing in this Section shall be deemed to limit Licensee's liability under this Agreement regardless of the insurance coverages required hereunder. No limitation of liability provided to Licensee under this Agreement is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable to FPL Entities under coverage required to be carried by Licensee under this Agreement, it being the intent of the parties that the full amount of insurance coverage bargained for be actually available notwithstanding any limitation of liability contained in the Agreement, if any. FPL assumes no responsibility for the solvency of any insurer or the failure of any insurer to settle any claim. In the event that the Licensee self insures, Licensee shall provide Company with a letter of self-insurance in form and substance satisfactory to Company's Risk Management Department. Licensee's contractors and sub-contractors may not self-insure. This Section shall survive the expiration of this Agreement

14. This Agreement will become effective upon execution by Company and Licensee and will remain in full force and effect until completion of Licensee's use of the Lands pursuant to this Agreement, unless earlier terminated upon ninety ( 90 ) days written notice by Company to Licensee, or at the option of Company, immediately upon Licensee failing to comply with or to abide by any or all of the provisions contained herein.

15. The use granted herein as shown on **Exhibit "A"** shall be under construction by Licensee within three (3) years of the effective date of this Agreement and the construction shall be diligently pursued to completion. Licensee shall give Company ten (10) days prior written notice of its commencement of construction. "Under construction" is the continuous physical activity of placing the foundation or continuation of construction above the foundation of any structure or improvement permitted hereunder. Under construction does not include application for or obtaining a building permit, a site plan approval or zoning approval from the appropriate local government agency having jurisdiction over the activity, purchasing construction





materials, placing such construction materials on the site, clearing or grading the site (if permitted) in anticipation of construction, site surveying, landscaping work or reactivating construction after substantially all construction activity has remained stopped for a period of four (4) months or more. Licensee acknowledges that failure to have the use under construction within the three (3) year time period will result in immediate termination of this Agreement in accordance with Paragraph 14 herein for failing to comply with the provisions contained herein unless Licensor grants a written extension for a mutually agreed upon time. Any request for an extension of time shall be submitted in writing by Licensee no later than thirty (30) days prior to the expiration of the three (3) year period for the project to be under construction.

16. The term "Licensee" shall be construed as embracing such number and gender as the character of the party or parties require(s) and the obligations contained herein shall be absolute and primary and shall be complete and binding as to each, including its successors and assigns, upon this Agreement being executed by Licensee and subject to no conditions precedent or otherwise.

17. Should any provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. In the event of any litigation arising out of enforcement of this Consent Agreement, the prevailing party in such litigation shall be entitled to recovery of all costs, including reasonable attorneys' fees.

18. Licensee may assign its rights and obligations under this Agreement to a solvent party upon prior written consent of the company, which consent shall not be unreasonably withheld.

19. Licensee agrees that any review or approval by Company of the plans and/or specifications submitted by Licensee attached hereto as **Exhibit "A"**, the approval of the identity of any contractors, subcontractors and materialmen, or the delivery by Company of any construction specifications to Licensee, is solely for the purpose of processing this Consent, and without any representation or warranty whatsoever to Licensee with respect to the adequacy, correctness or efficiency thereof or otherwise and it is understood that such Company's approval does not absolve Licensee of any liability hereunder. Further, Licensee, in connection with the construction, maintenance and/or removal of improvements depicted on **Exhibit "A"** to the Agreement, agrees to observe and fully comply with all construction, operation and maintenance standards, as well as all applicable laws, rules and regulations of the United States, the State of Florida, and all agencies and political subdivisions thereof, including without limitation, the National Electric Safety Code and the Occupational Safety & Health Administration regulations, standards, rules, registers, directives or interpretations.

20. This Agreement includes and is subject to the provisions described on the attached Addendum.

Executions on following page



The parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witnesses:

**FLORIDA POWER & LIGHT COMPANY**

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

By: \_\_\_\_\_  
Its: Corporate Real Estate Manager  
Print Name: Mark L. Byers

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

Approved and accepted for and behalf of Collier County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Official Seal)

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

CRYSTAL K. KINZEL, Clerk

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
W.L. McDaniel, Jr., Chairman

APPROVED AS TO FORM & LEGALITY

BY: \_\_\_\_\_  
~~Assistant~~ County Attorney



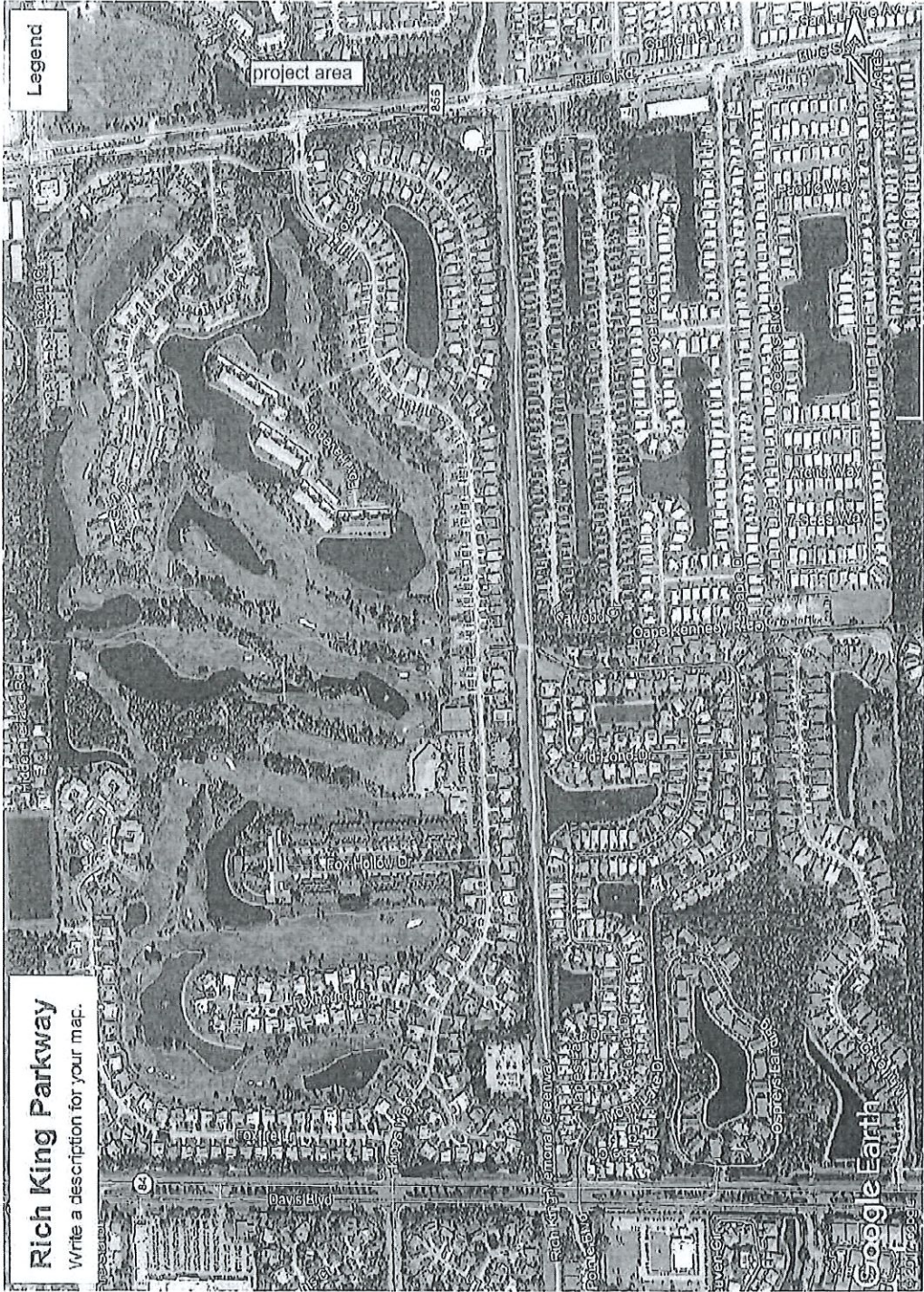
## ADDENDUM

- Prior to installation, Licensee must schedule a Safety Six meeting for all construction personnel working on the project. Please contact FPL Transmission Operations at (239) 690-2735 to schedule the meeting.
- Any proposed vegetation being planted directly under Company facilities must be planted at existing ground level and not on raised beds with the exception of small growing shrub types.
- Licensee has been informed and understands that Company will be adding additional facilities to the Lands in 2020. Installation of Licensee's improvements would be better timed to occur after Company has completed its work to avoid damage to said improvements. Licensee will coordinate timing of its installation with Company to minimize such conflicts. Any damage to improvements made by Licensee will be Licensee's responsibility pursuant to paragraph 10 of this Agreement.

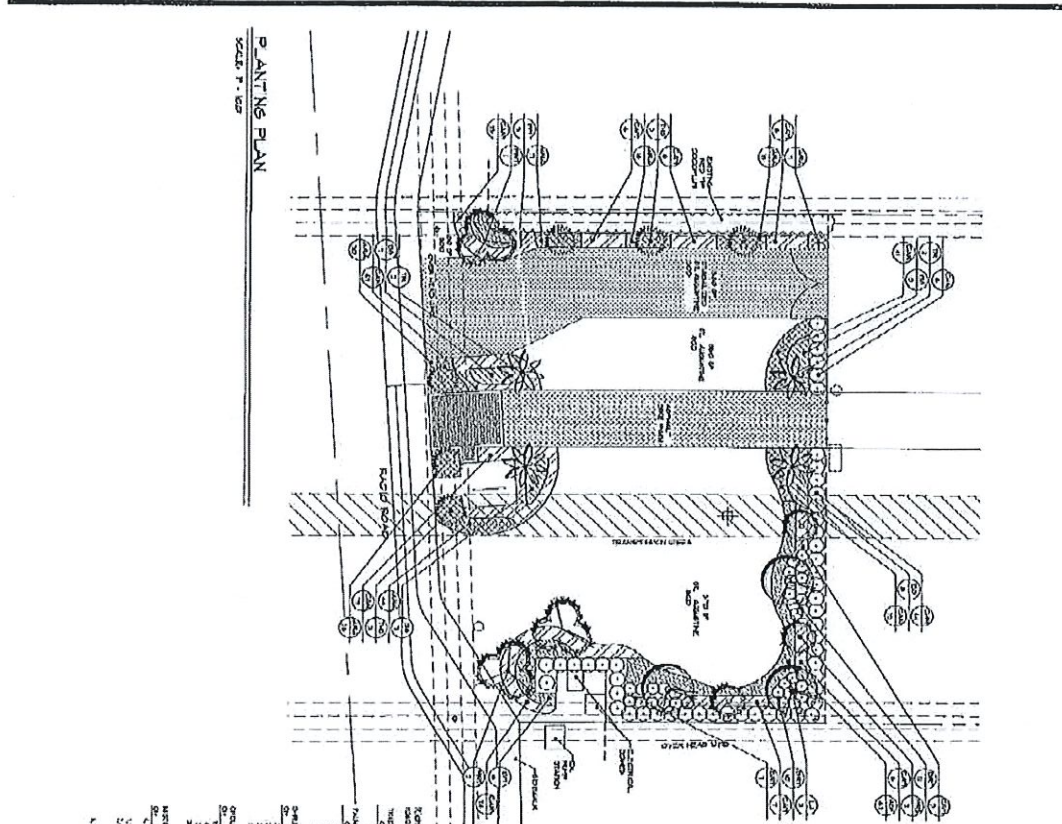




EXHIBIT "A"







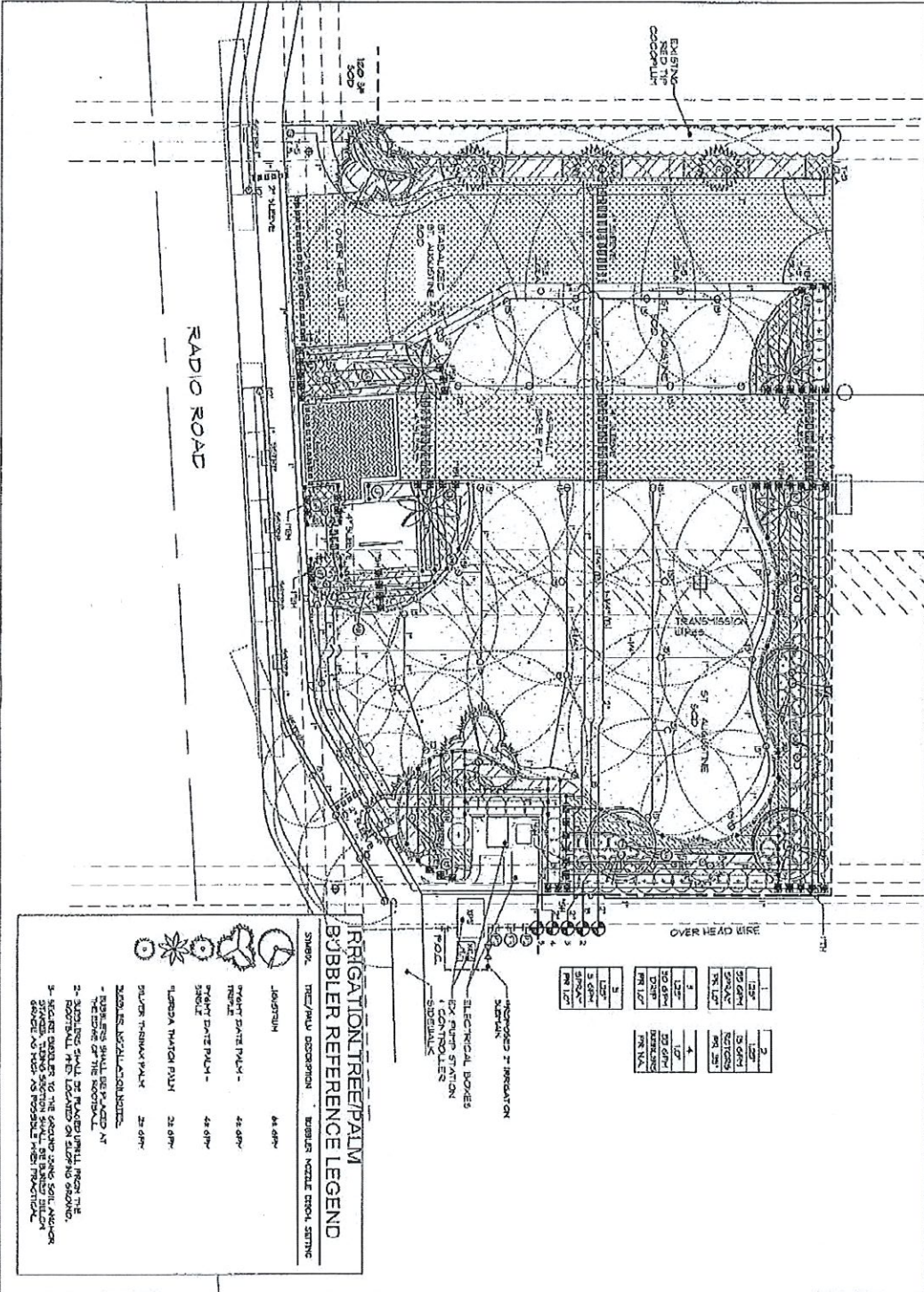
**Rich King Greenway Position**

NO.	Plant	Quantity	Notes	Plant	Quantity	Notes
01	1-1	1	1	1-1	1	1
02	1-2	1	1	1-2	1	1
03	1-3	1	1	1-3	1	1
04	1-4	1	1	1-4	1	1
05	1-5	1	1	1-5	1	1
06	1-6	1	1	1-6	1	1
07	1-7	1	1	1-7	1	1
08	1-8	1	1	1-8	1	1
09	1-9	1	1	1-9	1	1
10	1-10	1	1	1-10	1	1
11	1-11	1	1	1-11	1	1
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96	1-96	1	1	1-96	1	1
97	1-97	1	1	1-97	1	1
98	1-98	1	1	1-98	1	1
99	1-99	1	1	1-99	1	1
100	1-100	1	1	1-100	1	1

<b>PLANTING PLAN</b> SHEET NO. 1001	SCALE 1" = 10.0' 	RICH KING GREENWAY NAPLES, FLORIDA PREPARED FOR: CLIENT	 WJW & ASSOCIATES 1111 BAYVIEW BLVD., SUITE 100 NAPLES, FLORIDA 34102 TEL: 239.438.1111 FAX: 239.438.1112



IRRIGATION PLAN  
SCALE: 1" = 100'





**EXHIBIT "C"**



**FPL.**

**NOTIFICATION OF FPL FACILITIES**

Customer/Agency _____	Date of Meeting/Contact: _____
Developer/Contractor Name _____	Project Number/Name: _____
Location of Project _____	City: _____
FPL Representative _____	Phone: _____
Developer/Contractor Representative _____	FPL Work Request #/Work Order #: _____

FPL calls your attention to the fact that there may be energized, high voltage electric lines, both overhead and underground, located in the area of this project. It is imperative that you visually survey the area and that you also take the necessary steps to identify all overhead and underground facilities prior to commencing construction to determine whether the construction of any proposed improvements will bring any person, tool, machinery, equipment or object closer to FPL's power lines than the OSHA-prescribed limits. If it will, you must either re-design your project to allow it to be built safely given the pre-existing power line location, or make arrangements with FPL to either deenergize and ground our facilities, or relocate them, possibly at your expense. You must do this before allowing any construction near the power lines. It is impossible for FPL to know or predict whether or not the contractors or subcontractors, and their employees, will operate or use cranes, digging apparatus or other mobile equipment, or handle materials or tools, in dangerous proximity to such power lines during the course of construction, and, if so, when and where. Therefore, if it becomes necessary for any contractor or subcontractor, or their employees, to operate or handle cranes, digging apparatus, draglines, mobile equipment, or any other equipment, tools or materials in such a manner that they might come closer to underground or overhead power lines than is permitted by local, state or federal regulations, you and any such contractor or subcontractor must notify FPL in writing of such planned operation prior to the commencement thereof and make all necessary arrangements with FPL in order to carry out the work in a safe manner. Any work in the vicinity of the electric lines should be suspended until these arrangements are finalized and implemented.

The National Electrical Safety Code ("NESC") prescribes minimum clearances that must be maintained. If you build your structure so that those clearances cannot be maintained, you may be required to compensate FPL for the relocation of our facilities to comply with those clearances. As such, you should contact FPL prior to commencing construction near pre-existing underground or overhead power lines to make sure that your proposed improvement does not impinge upon the NESC clearances.

It is your responsibility and the responsibility of your contractors and subcontractors on this project to diligently fulfill the following obligations:

1. Make absolutely certain that all persons responsible for operating or handling cranes, digging apparatus, draglines, mobile equipment or any equipment, tool, or material capable of contacting a power line, are in compliance with all applicable state and federal regulations, including but not limited to U.S. Department of Labor OSHA Regulations, while performing their work.
2. Make sure that all cranes, digging apparatus, draglines, mobile equipment, and all other equipment or materials capable of contacting a power line have attached to them any warning signs required by U.S. Department of Labor OSHA Regulations.
3. Post and maintain proper warning signs and advise all employees, new and old alike, of their obligation to keep themselves, their tools, materials and equipment away from power lines per the following OSHA minimum approach distances (refer to OSHA regulations for restrictions):

*Power Line Voltages	**Personnel and Equipment (29 CFR 1910.333 and 1926.600)	Cranes and Derricks (29 CFR 1926.1407, 1408)	Travel under or near Power Lines (on construction sites, no load) (29 CFR 1926.600 - Equipment) (1926.1411 - Cranes and Derricks)	
0 - 750 volts	10 Feet	10 Feet	4 Feet	4 Feet
751 - 50,000 volts	10 Feet	10 Feet	4 Feet	6 Feet
69,000 volts	11 Feet	15 Feet	10 Feet	10 Feet
115,000 volts	13 Feet	15 Feet	10 Feet	10 Feet
138,000 volts	13 Feet	15 Feet	10 Feet	10 Feet
230,000 volts	16 Feet	20 Feet	10 Feet	10 Feet
500,000 volts	25 Feet	25 Feet	16 Feet	16 Feet

\*When uncertain of the voltage, maintain a distance of 20 feet for voltages up to 350,000 volts and 50 feet for voltages greater than 350,000 volts.  
 \*\*For personnel approaching insulated secondary conductors less than 750 volts, avoid contact (Maintain 10 Feet to bare energized conductors less than 750 volts). For qualified personnel and insulated aerial lift equipment meeting requirements of 29 CFR 1910.333, distances may be reduced to those shown in 29 CFR 1910.333 Table S-5.

4. All excavators are required to contact the Sunshine State One Call of Florida, phone number 1-800-432-4770 or 811 a minimum of two working days (excluding weekends) in advance of commencement of excavation to ensure facilities are located accurately.
5. Conduct all locations and excavations in accordance with the Florida Statute 556 of the Underground Facilities Damage Prevention & Safety Act and all local city and county ordinances that may apply.
6. When an excavation is to take place within a tolerance zone, an excavator shall use increased caution to protect underground facilities. The protection requires hand digging, pot holing, soft digging, vacuum methods, or similar procedures to identify underground facilities.

A copy of this notification must be provided by you to each contractor and subcontractor on this project, to be shared with their supervision and employees prior to commencing work on this project.

_____	_____
Means by which this notification was provided to customer and/or contractor	Address
_____	_____
FPL Representative Signature	Date
_____	_____
Customer/Developer/Contractor Representative Signature	Date

Form 369 (Rev. 1/8/12)

