

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, Hampson) *JGH*
Office of the General Counsel (Trierweiler) *JSC*

RE: Docket No. 20200162-EU – Joint petition for approval of amendment to territorial agreement in St. Johns County, by Florida Power & Light Company and JEA.

AGENDA: 09/01/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On June 3, 2020, Florida Power & Light Company (FPL) and JEA, collectively the joint petitioners or parties, filed a petition seeking Commission approval of a Third Amendment to their existing territorial agreement in St. Johns County. The existing service boundary line bifurcates a planned subdivision located in St. Johns County. The proposed Third Amendment allows FPL and JEA to swap certain parcels within their respective service territories in St. Johns County, which will allow JEA to serve the entire planned subdivision. The proposed Third Amendment, legal descriptions, and maps depicting the swapped land parcels and revised service boundaries are provided in Attachment A to this recommendation.

The Commission approved the parties' first territorial agreement in St. Johns County in 1965.¹ Thereafter, the territorial boundary was re-affirmed by the Commission in 1980.² In 1996, as the

¹ Order No. 3799, issued April 28, 1965, in Docket No. 7421-EU.

result of a territorial dispute, FPL and JEA entered into a new territorial agreement which replaced the prior agreement.³ After the discovery of an inconsistency between the 1996 Agreement and a territorial agreement between JEA and Clay Electric Cooperative, a new territorial agreement between FPL and JEA was approved by the Commission in 1998.⁴ In 2012, the Commission approved an amendment that altered a segment of the territorial boundaries between the parties so that a single utility could serve the electric needs of a new private development planned for an undeveloped area.⁵ In 2014, the parties entered into the second amendment to the existing territorial agreement to alter the boundary to align it with planned roadways and accommodate new expanding development.⁶

This recommendation addresses the proposed Third Amendment to the existing territorial agreement. During the review of this joint petition, staff issued a data request to the joint petitioners on June 30, 2020, for which responses were received on July 14, 2020. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

² Order No. 9363, issued May 9, 1980, in Docket No. 790886-EU, *In re: Petition of Jacksonville Electric Authority for approval of a territorial agreement between JEA and Florida Power and Light Company.*

³ Order No. PSC-96-0212-FOF-EU, issued February 14, 1996, and finalized by Order No. PSC-96-0755-FOF-EU, issued June 10, 1996, in Docket No. 950307-EU, *In re: Petition of Jacksonville Electric Authority to Resolve a Territorial Dispute With Florida Power & Light Company in St. Johns County.*

⁴ Order No. PSC-98-1687-FOF-EU, issued December 14, 1998, in Docket No. 980755-EU, *In re: Joint petition for approval of new territorial agreement between Florida Power & Light Company and Jacksonville Electric Authority.*

⁵ Order No. PSC-12-0561-PAA-EU, issued October 22, 2012, in Docket No. 120171-EU, *In re: Joint petition for approval of amendment to territorial agreement in St. Johns County between Florida Power & Light Company, a Florida corporation, and JEA, a Florida municipal corporation.*

⁶ Order No. PSC-14-0469-PAA-EU, issued August 29, 2014, in Docket No. 20140130-EU, *In re: Joint petition for approval of amendment to territorial agreement between Florida Power & Light Company and JEA.*

Discussion of Issues

Issue 1: Should the Commission approve the proposed Third Amendment to the existing territorial agreement between FPL and JEA in St. Johns County?

Recommendation: Yes, the Commission should approve the proposed Third Amendment, dated June 3, 2020, to the existing territorial agreement between FPL and JEA in St. Johns County. The proposed Third Amendment to the territorial agreement will allow JEA to serve an entire planned residential development and it will enable FPL and JEA to serve their other customers in the county in an efficient manner. (Guffey, Hampson)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.⁷

Proposed Third Amendment to Territorial Agreement

On June 3, 2020, FPL and JEA entered into the Third Amendment to their 1998 territorial agreement, which shall continue and remain in effect until the Commission, by order, modifies or withdraws its approval of this Agreement after proper notice and hearing. Other than the proposed parcel swaps, all other parts of the territorial agreement remain in effect. The proposed Third Amendment finalizes the territorial boundary adjustments between FPL and JEA that are necessary to accommodate development and facilitate the provision of electricity to the expanding development by one utility, and is also intended to avoid duplication of services in the areas subject to the parcel swaps. Pursuant to the agreed upon amendment, three parcels (5, 6, and 7) located within JEA's territory will be transferred to FPL and one parcel (parcel 4) located within FPL's territory will be transferred to JEA. Total acreage of the swapped parcels is 22.30 acres located in St. Johns County.

Currently, the subject parcels are undeveloped; and therefore, there are no customers or electric facilities in parcels 4, 5, 6, and 7 pursuant to paragraph 2 of the proposed 2020 Amendment. With the parcel swap, JEA will provide electricity to 342 residential customers in the planned development for parcel 4 (13.43 acres), and FPL will provide electricity to parcels 5, 6, and 7 (total of 8.87 acres) if developed in the future. With the parcel swap, the parties will be better positioned to provide electric service in the future to other development within this area.

Customer Notification

Paragraph 18 of the petition states that since the areas subject to the parcel swap in this 2020 Amendment are currently undeveloped, there are no infrastructure or customer accounts to be transferred; therefore, no customers were notified pursuant to Rule 25-6.0440(1), F.A.C.

In paragraph 20 of the petition, the parties state that approval of the proposed 2020 Amendment will not cause a decrease in reliability of electric service to the existing or future customers.

⁷ *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

Conclusion

After review of the petition and the petitioners' joint responses to staff's data request, staff believes the proposed Third Amendment will enable FPL and JEA to exchange four land parcels within their respective retail service territories, achieve necessary changes to accommodate development, and serve their current and future customers efficiently. It appears that the proposed Third Amendment to the existing agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in reliability of electric service. As such, staff believes that the proposed Third Amendment dated June 3, 2020, to the existing territorial agreement between FPL and JEA in St. Johns County should be approved by the Commission. The proposed Third Amendment to the territorial agreement should become effective on the date the Commission Order approving it becomes final.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Trierwiler)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

**THIRD AMENDMENT TO TERRITORIAL AGREEMENT
BETWEEN
FLORIDA POWER & LIGHT COMPANY
AND
JEA**

This Third Amendment to the Territorial Agreement, dated June 3, 2020, (“2020 Amendment”) is entered into by Florida Power & Light Company a corporation organized and existing under the laws of the State of Florida (“FPL”) and JEA, a body politic and corporate created by Charter (collectively, the “Parties”), and each of which is an electric utility as defined in Section 366.02(2), Florida Statutes.

W I T N E S S E T H

1. **WHEREAS**, FPL and JEA have an existing Territorial Agreement entered into in 1998, as amended by that certain Amendment to Territorial Agreement between FPL and JEA, dated May 25, 2012 (“2012 Amendment”), and by that certain Second Amendment to Territorial Agreement between FPL and JEA, dated March 13, 2014 (“2014 Amendment”) (such agreement and amendments are collectively referred to as the “Territorial Agreement”);
2. **WHEREAS**, the current territorial boundary between FPL and JEA traverses an area where an expanding private development is planned in northeast St. Johns County, Florida;
3. **WHEREAS**, the 2012 Amendment and 2014 Amendment aligned the territorial boundaries between FPL and JEA over certain parcels that will be included in the development, and the Parties now desire to amend the Territorial Agreement to finalize the territorial boundary adjustments between FPL and JEA that are necessary to accommodate the development; and

4. **WHEREAS**, amending the territorial boundary in the Territorial Agreement will avoid uneconomic duplication of services and provide for the cost effective provision of service to utility customers;
5. **NOW THEREFORE**, in consideration of the following mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree to amend the Territorial Agreement as follows:

1. Territorial Exchange. The Parties agree to amend the boundaries in the Territorial Agreement in order to exchange four parcels within their respective retail service territories.

- a) The first parcel is located within FPL's bounded service territory northwest of the intersection of Preservation Trail and Crestview Drive and is approximately 13.43 acres ("Swap Parcel 4"). A legal description and sketch of Swap Parcel 4 is attached as Exhibit "A." Upon approval of this 2020 Amendment by the Florida Public Service Commission ("FPSC"), Swap Parcel 4 will be transferred from FPL to JEA.
- b) The second parcel is located within JEA's bounded service territory south of the intersection of Palm Valley Road and Preservation Trail and is approximately 0.50 acres ("Swap Parcel 5"). A legal description and sketch of Swap Parcel 5 is attached as Exhibit "B." Upon approval of this 2020 Amendment by the FPSC, Swap Parcel 5 will be transferred from JEA to FPL.

- c) The third parcel is located within JEA's bounded service territory north of Park Lake Drive and Tavernier Drive and is approximately 0.55 acres ("Swap Parcel 6"). A legal description and sketch of Swap Parcel 6 is attached as Exhibit "C." Upon approval of this 2020 Amendment by the FPSC, Swap Parcel 6 will be transferred from JEA to FPL.
- d) The fourth parcel is located within JEA's bounded service territory north of Nocatee Parkway, south of Palm Valley Road, and is bordered on the west by Crosswater Parkway, and is approximately 7.82 acres ("Swap Parcel 7"). A legal description and sketch of Swap Parcel 7 is attached as Exhibit "D." Upon approval of this 2020 Amendment by the FPSC, Swap Parcel 7 will be transferred from JEA to FPL.

2. Transition. There are currently no existing customers or electric facilities within Swap Parcel 4, Swap Parcel 5, Swap Parcel 6, or Swap Parcel 7. Thus, no transition of electric service is required.

3. Condition Precedent. The approval of this 2020 Amendment by the FPSC without modification, unless otherwise agreed to by the Parties, shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This 2020 Amendment shall have no effect whatsoever until such approval has been granted by the FPSC, and the date of the FPSC's order, if any, granting such approval shall be deemed to be the effective date of the 2020 Amendment.

4. Existing Territorial Agreement. All other parts of the Territorial Agreement shall remain in effect.

IN WITNESS WHEREOF, this 2020 Amendment has been caused to be executed by FPL in its name by its Senior Vice President, and by JEA in its name by its Chief Executive Officer, on the day and year first written above.

FLORIDA POWER & LIGHT COMPANY

By:  _____

Date: June 3, 2020

Name: Manuel B. Miranda

Title: Senior Vice President, Power Delivery

JEA

By: _____

Date: _____

Name: Paul McElroy

Title: Interim Chief Executive Officer

IN WITNESS WHEREOF, this 2020 Amendment has been caused to be executed by FPL in its name by its Senior Vice President, and by JEA in its name by its interim Chief Executive Officer, on the day and year first written above.

FLORIDA POWER & LIGHT COMPANY

By: _____

Date: _____

Name: Manuel B. Miranda

Title: Senior Vice President, Power Delivery

JEA

By: Paul E. McElroy

Date: June 3, 2020

Name: Paul McElroy

Title: Interim Chief Executive Officer

Exhibit "A"

Legal description and sketch of Swap Parcel 4 in accordance with Rule 25-6.0440, F.A.C.



January 7, 2020

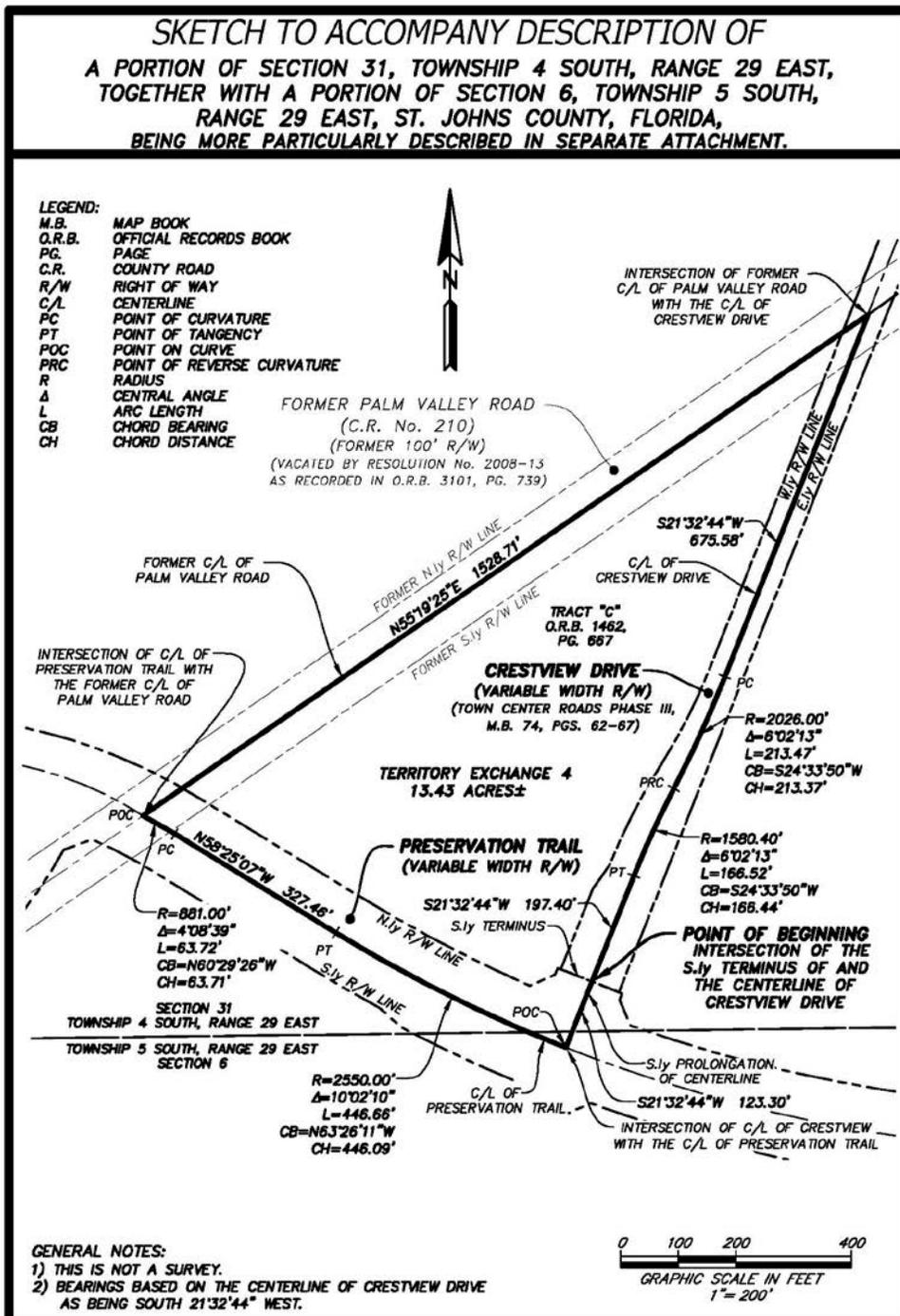
Work Order No. 19-316.00
File No. 126A-30.00A

Territory Exchange 4

A portion of Section 31, Township 4 South, Range 29 East, together with a portion of Section 6, Township 5 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the intersection of the Southerly terminus of and the centerline of Crestview Drive, a variable width right of way, as depicted on Town Center Roads Phase III, recorded in Map Book 74, pages 62 through 67, of the Public Records of said county; thence South $21^{\circ}32'44''$ West, along the Southerly prolongation of said centerline of Crestview Drive, 123.30 feet to its intersection with the centerline of Preservation Trail, a variable width right of way as presently established; thence Northwesterly along said centerline of Preservation Trail the following 3 courses: Course 1, thence Northwesterly along the arc of curve concave Northeasterly having a radius of 2550.00 feet, through a central angle of $10^{\circ}02'10''$, an arc length of 446.66 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North $63^{\circ}26'11''$ West, 446.09 feet; Course 2, thence North $58^{\circ}25'07''$ West, 327.46 feet to the point of curvature of a curve concave Southwesterly having a radius of 881.00 feet; Course 3, thence Northwesterly along the arc of said curve, through a central angle of $04^{\circ}08'39''$, an arc length of 63.72 feet to its intersection with the former centerline of Palm Valley Road, a former 100 foot right of way as vacated by Resolution No. 2008-13, recorded in Official Records Book 3101, page 739, of said Public Records, said arc being subtended by a chord bearing and distance of North $60^{\circ}29'26''$ West, 63.71 feet; thence North $55^{\circ}19'25''$ East, departing said centerline of Preservation Trail and along said former centerline of Palm Valley Road, 1528.71 feet to its intersection with said centerline of Crestview Drive; thence Southerly along said centerline of Crestview Drive the following 4 courses: Course 1, thence South $21^{\circ}32'44''$ West, departing said former centerline, 675.58 feet to the point of curvature of a curve concave Northwesterly having a radius of 2026.00 feet; Course 2, thence Southwesterly along the arc of said curve, through a central angle of $06^{\circ}02'13''$, an arc length of 213.47 feet to a point of reverse curvature, said arc being subtended by a chord bearing and distance of South $24^{\circ}33'50''$ West, 213.37 feet; Course 3, thence Southwesterly along the arc of a curve concave Southeasterly having a radius of 1580.40 feet, through a central angle of $06^{\circ}02'13''$, an arc length of 166.52 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South $24^{\circ}33'50''$ West, 166.44 feet; Course 4, thence South $21^{\circ}32'44''$ West, 197.40 feet to the Point of Beginning.

Containing 13.43 acres, more or less.



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 DATE: JANUARY 7, 2020
 DAMON J. KELLY
 PROFESSIONAL SURVEYOR AND MAPPER
 STATE OF FLORIDA LS No. 6284

THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

ORDER NO.: 19-318.00 FILE NO.: 126A-30.00A DRAWN BY: BNC CAD FILE: F:\Survey\RM\Proj\Nicollee\Sketches\Territory Exchange 4.dwg

Exhibit "B"

Legal description and sketch of Swap Parcel 5 in accordance with Rule 25-6.0440, F.A.C.



January 7, 2020

Work Order No. 19-316.00
File No. 126A-30.00B

Territory Exchange 5

A portion of Section 31, Township 4 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the centerline intersection of Palm Valley Road, a 100 foot right of way, and Preservation Trail, a variable width right of way, both as depicted on Preservation Trail, recorded in Map Book 58, pages 37 through 41, of the Public Records of said county; thence Southeasterly along said centerline of Preservation Trail and along the arc of a curve concave Southwesterly having a radius of 881.00 feet, through a central angle of $09^{\circ}46'54''$, an arc length of 150.41 feet to its intersection with the former centerline of former Palm Valley Road, a former 100 foot right of way vacated by Resolution No. 2008-13, recorded in Official Records Book 3101, page 739, of said Public Records, said arc being subtended by a chord bearing and distance of South $67^{\circ}27'12''$ East, 150.22 feet; thence South $55^{\circ}19'25''$ West, departing said centerline of Preservation Trail and along said former centerline, 482.42 feet to its intersection with said centerline of Palm Valley Road; thence Northeasterly, departing said former centerline, along said centerline of Palm Valley Road and along the arc of a curve concave Northwesterly having a radius of 700.00 feet, through a central angle of $34^{\circ}57'32''$, an arc length of 427.10 feet to the Point of Beginning, said arc being subtended by a chord bearing and distance of North $37^{\circ}50'39''$ East, 420.51 feet.

Containing 0.50 acres, more or less.

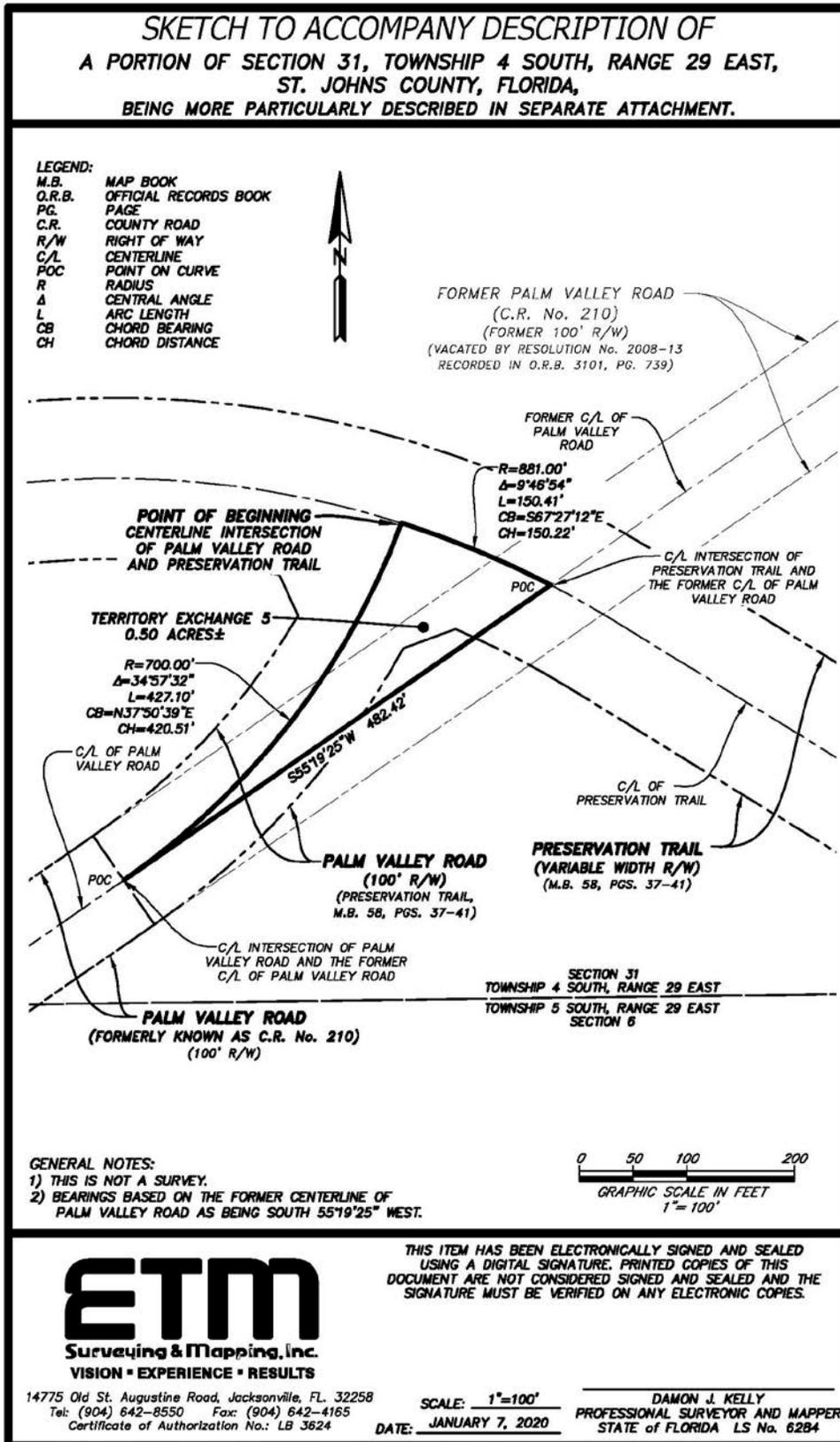


Exhibit "C"

Legal description and sketch of Swap Parcel 6 in accordance with Rule 25-6.0440, F.A.C.



January 7, 2020

Work Order No. 19-316.00
File No. 126A-30.00C

Territory Exchange 6

A portion of Section 31, Township 4 South, Range 29 East, St. Johns County, Florida, being a portion of those lands described and recorded in Official Records Book 3422, page 1351, of the Public Records of said county, being more particularly described as follows:

For a Point of Beginning, commence at the Northeasterly corner of Lakeside at Town Center Phase 1, a plat recorded in Map Book 68, pages 35 through 39, of said Public Records, said corner lying on the Northerly line of said Official Records Book 3422, page 1351; thence Easterly along said Northerly line and along the arc of a curve concave Northerly having a radius of 150.00 feet, through a central angle of $37^{\circ}40'21''$, an arc length of 98.63 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North $74^{\circ}09'45''$ East, 96.86 feet; thence North $55^{\circ}19'34''$ East, continuing along said Northerly line, 217.02 feet to a point lying on the Westerly right of way line of Town Plaza Avenue, a variable width right of way as described and recorded in Official Records Book 3580, page 1905, of said Public Records; thence Southerly, departing said Northerly line, along said Westerly right of way line and along the arc of a curve concave Westerly having a radius of 448.00 feet, through a central angle of $09^{\circ}18'20''$, an arc length of 72.76 feet to its intersection with the former centerline of Palm Valley Road, a former 100 foot right of way vacated by Resolution No. 2008-13, recorded in Official Records Book 3101, page 739, of said Public Records, said arc being subtended by a chord bearing and distance of South $18^{\circ}58'14''$ East, 72.68 feet; thence South $55^{\circ}19'25''$ West, departing said Westerly right of way line and along said former centerline, 333.01 feet to a point lying on the Easterly line of said Lakeside at Town Center Phase 1; thence North $11^{\circ}11'18''$ West, departing said former centerline and along said Easterly line, 110.40 feet to the Point of Beginning.

Containing 0.55 acres, more or less.

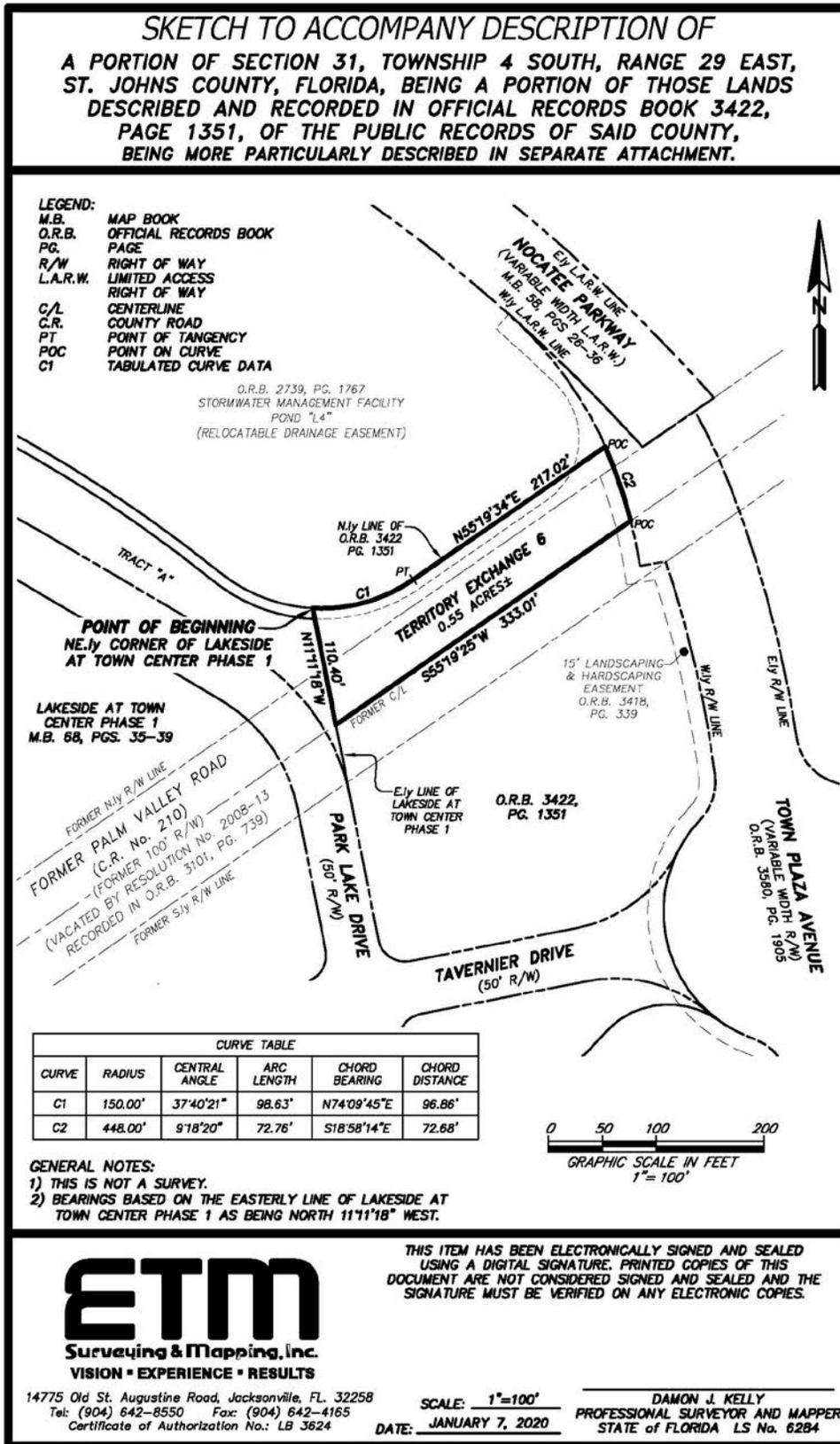


Exhibit "D"

Legal description and sketch of Swap Parcel 7 in accordance with Rule 25-6.0440, F.A.C.



January 7, 2020

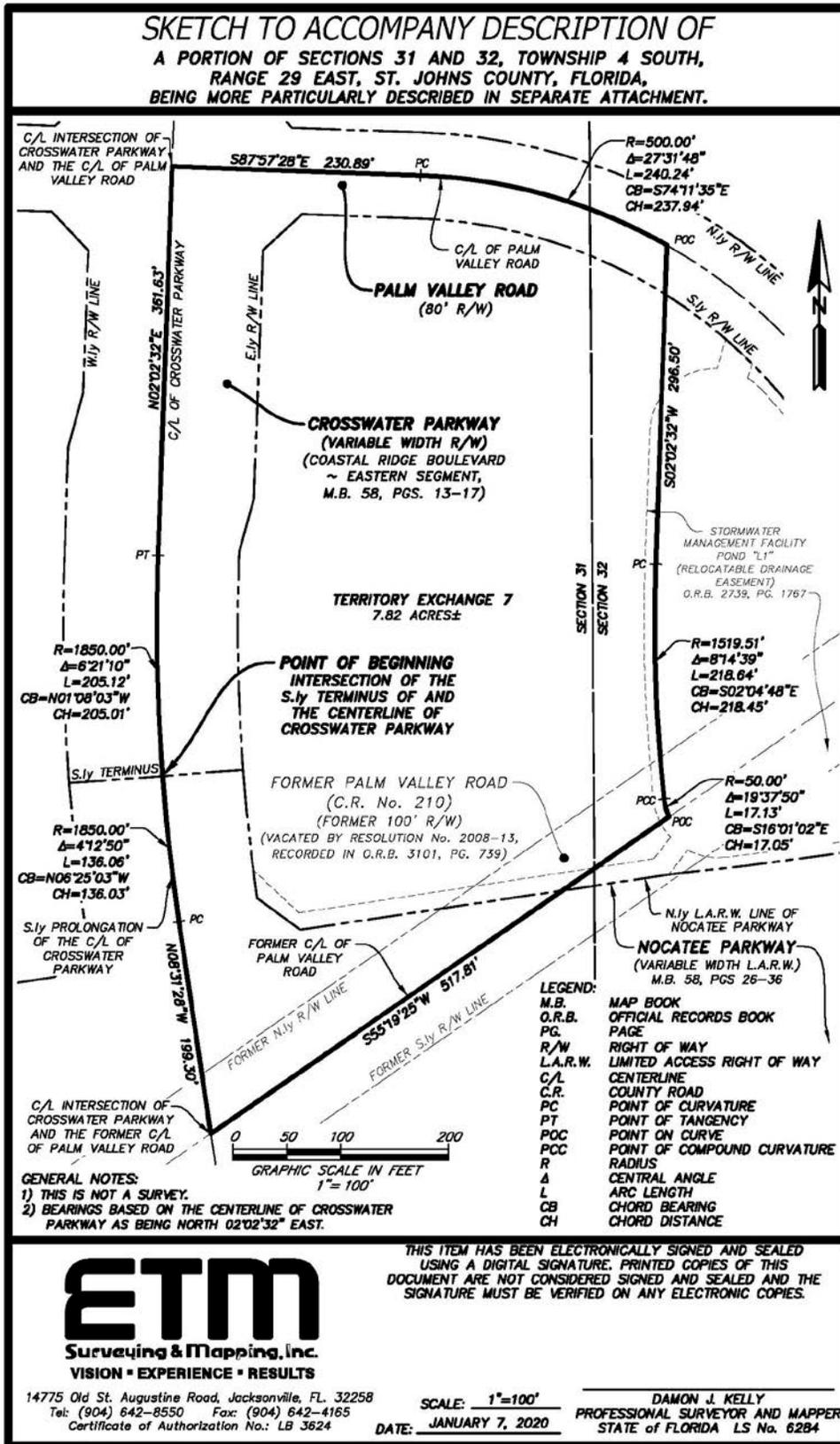
Work Order No. 19-316.00
File No. 126A-30.00D

Territory Exchange 7

A portion of Sections 31 and 32, Township 4 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the intersection of the Southerly terminus of and the centerline of Crosswater Parkway, a variable width right of way, as depicted on Coastal Ridge Boulevard ~ Eastern Segment, recorded in Map Book 58, pages 13 through 17 of the Public Records of said county; thence Northerly, along said centerline of Crosswater Parkway and along the arc of a curve concave Easterly having a radius of 1850.00 feet, through a central angle of $06^{\circ}21'10''$, an arc length of 205.12 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North $01^{\circ}08'03''$ West, 205.01 feet; thence North $02^{\circ}02'32''$ East, continuing along said centerline, 361.63 feet to its intersection with the centerline of Palm Valley Road, an 80 foot right of way as presently established; thence South $87^{\circ}57'28''$ East, departing said centerline of Crosswater Parkway and along said centerline of Palm Valley Road, 230.89 feet to the point of curvature of a curve concave Southerly having a radius of 500.00 feet; thence Easterly continuing along said centerline and along the arc of said curve, through a central angle of $27^{\circ}31'48''$, an arc length of 240.24 feet to a point on said curve, said arc being subtended by a chord bearing and distance of South $74^{\circ}11'35''$ East, 237.94 feet; thence South $02^{\circ}02'32''$ West, departing said centerline, 296.50 feet to the point of curvature of a curve concave Easterly having a radius of 1519.51 feet; thence Southerly along the arc of said curve, through a central angle of $08^{\circ}14'39''$, an arc length of 218.64 feet to a point of compound curvature, said arc being subtended by a chord bearing and distance of South $02^{\circ}04'48''$ East, 218.45 feet; thence Southerly along the arc of a curve concave Easterly having a radius of 50.00 feet, through a central angle of $19^{\circ}37'50''$, an arc length of 17.13 feet to a point lying on the former centerline of Palm Valley Road (County Road No. 210), a former 100 foot right of way vacated by Resolution No. 2008-13, recorded in Official Records Book 3101, page 739, of said Public Records, said arc being subtended by a chord bearing and distance of South $16^{\circ}01'02''$ East, 17.05 feet; thence South $55^{\circ}19'25''$ West, along said former centerline, 517.81 feet; thence North $08^{\circ}31'28''$ West, departing said former centerline of Palm Valley Road, 199.30 feet to the point of curvature of a curve concave Easterly having a radius of 1850.00 feet, lying on the Southerly prolongation of said centerline of Crosswater Parkway; thence Northerly, along said Southerly prolongation and along the arc of said curve, through a central angle of $04^{\circ}12'50''$, an arc length of 136.06 feet to the Point of Beginning, said arc being subtended by a chord bearing and distance of North $06^{\circ}25'03''$ West, 136.03 feet.

Containing 7.82 acres, more or less.



Appendix "B"

Official Florida Department of Transportation ("DOT") General Highway County map, as well as two more detailed maps, for each affected county depicting the boundary lines established by the territorial agreement, in accordance with Rule 25-6.0440, F.A.C.

