



Interoffice Memorandum

July 27, 2022

AGENDA ITEM

TO: Mayor Jerry L. Demings
—AND—
County Commissioners

THRU: Lavon B. Williams, Esq., AICP *LBW*
Interim Deputy Director
Community and Family Services Department

FROM: Matt Suedmeyer, Manager
Parks and Recreation Division

SUBJECT: **Consent Agenda Item – August 9, 2022**
Temporary License Agreement between Duke Energy and Orange
County for the Cady Way Trail

Duke Energy desires to remove and replace an existing wood power pole located at 2718 Merrie Oaks Road, Winter Park, FL 32792, which backs up to the County's Cady Way Trail. Duke Energy requests access to the residential site from the Cady Way Trail. Duke Energy agrees to restore any disturbed areas back to original site conditions.

The County has requested that Duke Energy enter into a Temporary License Agreement with the County for access. The agreement has been reviewed and approved by the County Attorney's Office, Risk Management Division, and Real Estate Management Division.

ACTION REQUESTED: Approval and execution of Temporary License Agreement by and between Orange County and Duke Energy Florida, LLC permitting Duke Energy to access the Cady Way Trail and authorization for the Mayor or designee to execute any further necessary amendments to such Agreement that do not change the scope of the project or increase the overall project budget. District 5.

MS/gw:jamh

Attachment

c: Carla Bell Johnson, AICP, Deputy County Administrator

TEMPORARY LICENSE AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT ("Agreement") is made by and between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida ("County"), having an address at P.O. Box 1393, Orlando, Florida 32802, **WINTER PARK**, a municipality of the State of Florida ("City"), having an address at 401 S. Park Avenue, Winter Park, Florida 32789, and **DUKE ENERGY FLORIDA, LLC**, a Florida limited liability company, d/b/a DUKE ENERGY ("Licensee"), having an address at P.O. Box 14042, St. Petersburg, Florida 33733.

RECITALS

WHEREAS, the County is the fee simple owner of certain real property located in Orange County, Florida more particularly described herein and depicted in Exhibit "A" attached hereto and incorporated herein by reference ("County Property"); and

WHEREAS, the City is the fee simple owner of certain real property located in Orange County, Florida more particularly described herein and depicted in Exhibit "B" attached hereto and incorporated herein by reference ("City Property"); and

WHEREAS, Licensee seeks a license to access a portion of the City Property and County Property along the Cady Way Trail ("License Area") for the purpose of installing a power pole within an easement more particularly described herein and depicted in Exhibit "C" attached hereto and incorporated herein by reference ("Easement Area"); and

WHEREAS, City and County agree to authorize Licensee to access the City Property and County Property pursuant to the terms and conditions stated herein; and

WHEREAS, the parties hereto desire to set forth their mutual understanding of the terms and conditions of their agreement contained herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties agree as follows:

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

2. ***County Property.*** The County Property is located in unincorporated Orange County, Florida and is also identified as Parcel ID 04-22-30-0000-00-016.

3. ***City Property.*** The City Property is located in incorporated Orange County, Florida and is also identified as Parcel ID 09-22-30-0120-98-030.

4. ***Creation of Temporary License.*** The City and County hereby grant to Licensee the nonexclusive right to enter upon and use the City and County Property during the term of this Agreement, as may be extended, subject to the terms and conditions contained herein. Licensee's use of the City and County Property shall be limited to use as a means of access for the installation of a power pole in the Easement Area in accordance with the plans attached hereto and incorporated herein as Exhibit "D" (the "Project"), which Project is hereby approved by the City and County. Licensee shall ensure that its employees, agents, subcontractors, vendors, and suppliers comply with all the terms and provisions of this Agreement. Any unauthorized use of the City or County Property by Licensee or Licensee's employees, agents, subcontractors, vendors, or suppliers shall be cause for termination of this Agreement pursuant to Paragraph 10 herein. This Agreement does not create an ownership or possessory interest in Licensee.

5. ***Term.*** The term of this Agreement will commence upon full execution by all parties hereto and terminate ninety (90) days thereafter, unless sooner terminated pursuant to the provisions contained herein. The term of this Agreement may be extended for up to two (2) additional thirty (30) day terms through written request by Licensee to the City Manager and

County Administrator with copies to the County's Real Estate Management Division and Public Works Department and the City no less than ten (10) days prior to the then-current termination date. The City Manager and the Manager of Orange County's Real Estate Management Division, or a designee, are hereby authorized to execute such extension(s) on behalf of the City and County, respectively, without further approval of the City or County Commissioners. The City Administrator's and Real Estate Manager's approval of the extension(s) will not be unreasonably withheld.

6. ***Licensee's Obligations & Restrictions.***

a. Licensee shall install a power pole located in the Easement Area directly behind the property located at 2718 Merrie Oaks Road, Winter Park 32792. Licensee is responsible for repairing any damage to the City and/or County Property, including but not limited to the Cady Way Trail, caused by Licensee or Licensee's employees, agents, subcontractors, vendors or suppliers. Licensee shall be responsible for removing and/or restoring any wooden bollards or fencing disturbed due to access or egress to or from the City and County Property.

b. City and County shall close the Cady Way Trail for three days consisting of a Tuesday, Wednesday, and Thursday for completion of the Project. Licensee will determine the actual dates of such days to complete the Project and must provide a notice of commencement of the Project to City and County at least fifteen (15) days in advance of the commencement of the Project.

c. Licensee shall enter the License Area via Ward Park off of S. Perth Lane. Licensee shall access the Easement Area via a service road located along the northern boundary of the City Property and via the Cady Way Trail located along the northern boundary of the County Property. Licensee shall exit the License Area via the Cady Way Trail where it intersects with N.

Ranger Blvd. Licensee shall install a temporary four-foot tall orange plastic construction fence at the intersection of the Cady Way Trail and N. Ranger Blvd. east of the Easement Area and at the intersection of the Cady Way Trail and Cady Way south of the Easement Area during the period Licensee is completing the Project.

d. Any Project plans required by this Agreement shall be prepared by a Florida Licensed Professional Engineer or an engineer subject to the regulatory jurisdiction of the Florida Public Service Commission.

e. No storage of any kind is permitted on the City or County Property.

f. Licensee shall only utilize vehicles and equipment with rubber tires. No vehicles utilizing metal tracks or treads are permitted on City or County Property.

g. Licensee's use of the City and County Property shall not interfere with, nor impede access to, the City's maintenance facilities located along the aforesaid service road or the City's recreational facilities, and Licensee's access to and use of the City and County Property shall, at all times, be subordinate to the City and County's access to and use of the City and County Property.

h. Licensee's access to the City and County Property is permitted between 7:00 AM and 7:00 PM, Tuesday through Thursday.

i. Prior to Licensee accessing the City and County Property, Licensee shall arrange for the condition of the City and County Property to be videotaped for quality purposes. No later than ninety (90) days following termination of this Agreement, Licensee shall restore the City and County Property to the condition it was in prior to Licensee's use or better condition. If Licensee fails to restore the City and/or County Property within the timeframe required herein, the City and/or County may restore their respective property to such condition, and Licensee shall

reimburse the City and/or County for all expenses thereby incurred for such restoration.

7. ***Safety and Security Precautions.***

a. Licensee shall take all reasonable precautions for, and will be responsible for initiating, maintaining, and supervising all activities relating to the safety and security of all persons and property affected by or involved in Licensee's use of the City and County Property under this Agreement.

b. Licensee shall comply with all applicable safety, labor, and security laws, ordinances, rules, regulations, standards and lawful orders of any public authority bearing on the safety and security of persons or property or their protection, damage, injury, or loss affected by Licensee's use of the City and County Property under this Agreement.

c. Licensee shall act with reasonable care and discretion to prevent any threatened damage, injury, or loss in any emergency affecting the safety and security of persons or property affected by Licensee's use of the City and County Property under this Agreement.

8. ***Insurance.*** Licensee shall procure and maintain, for the duration of this Agreement, insurance of the types and limits specified below. Insurance carriers furnishing these coverages must be authorized to do business in the State of Florida, and must possess a minimum, current rating of A-Class VIII in the most recent edition of "Best's Key Rating Guide."

a. Workers' Compensation - covering its employees with statutory workers' compensation limits, and no less than \$500,000.00 for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City and County and its agents, employees and officials.

b. Commercial General Liability - covering all operations including, but not limited to, Contractual, Products and Completed Operations and Personal Injury. The limits shall

be not less than \$1,000,000.00 per occurrence and an aggregate limit of at least \$2,000,000.00. The City and County shall be specifically added as an additional insured on all liability policies. Such insurance shall be issued on an occurrence basis and include coverage for the Licensee's operations, independent contractors, subcontractors, and "broad form" property damage coverages protecting itself, its employees, agents, contractors, or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, and products liability/completed operations including what is commonly known as groups A, B, and C. Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Licensee or by any of its subcontractors arising from work or services performed under the Agreement. Public liability coverage must include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Licensee's agreement to indemnify, defend, and hold harmless the City and County as provided in the Agreement. The commercial general liability policy must provide coverage to the City and County when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, Independent Contractors, Property of County and City in Contractor's Care, Custody or Control or Property of County and City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When County and City is added as additional insureds by endorsement, ISO

Endorsements CG 20 10 and CG 20 37 or their equivalent must be used and provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85. Licensee shall require its subcontractors performing work under this Agreement to add the County and City to its Commercial General Liability policy as an additional insured by ISO Endorsement CG 20 38. All commercial general liability policies shall provide a waiver of subrogation in favor of the County and the City. The commercial general liability policy must be provided on a project or location specific basis for the location or project site where the work or services are to be performed under the Agreement. In the alternative, the commercial general liability policy must be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County's or City's Risk Manager.

c. Business Automobile Liability – Licensee shall secure and maintain during the term of this Agreement motor vehicle coverage covering all owned, non-owned and hired vehicles, *i.e.*, "Any Auto," Coverage Symbol 1, with limits of not less than \$1,000,000.00 per occurrence, Combined Single Limits (CSL) or its equivalent per occurrence. Such policy must protect the Licensee, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance or use of a motor vehicle.

d. Pollution Legal Liability – Pollution Legal Liability with a limit of not less than one million dollars (\$1,000,000.00) per occurrence on a per-project basis.

Prior to entering upon the City and County Property, and during the duration of the Agreement, Licensee shall file with the City and County current certificates of all required insurance on forms acceptable to the City and County and thirty (30) days prior written notice of cancellation or reduction in coverage, except ten (10) days prior written notice is allowed for cancellation due to non-payment of premium. The certificates must be accompanied by the

additional insured and waiver of subrogation endorsements for each policy that applies. Licensee shall be permitted to self-insure for any and all insurance coverages under this Agreement. As such, Licensee assumes responsibility for its contractual and legal obligations that are normally insured. Where delineated to provide additional insured coverages, the self-insurance program(s) shall respond in accordance with written contract.

Failure of the City or County to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the City or County to identify a deficiency from evidence provided will not be construed as a waiver of Licensee's obligation to maintain such insurance. Failure of Licensee to maintain adequate insurance coverage for itself or for any other persons or entities for which it is responsible does not relieve Licensee of any contractual responsibility or obligation.

It is the responsibility of Licensee to ensure that all its subcontractors maintain adequate insurance. Failure of Licensee to maintain adequate insurance coverage for itself or for any other persons or entities for whom it is responsible, or to ensure that its subcontractors maintain adequate coverage, will not relieve Licensee of any contractual responsibility or obligation or liability.

9. ***Indemnification.*** Licensee shall indemnify, defend, and hold harmless the City and County from and against any and all liabilities, claims, losses, costs, damages, fees, fines, suits or expenses of any kind and nature (including without limitation, attorneys' fees), for injury or death to persons or damage to property or property rights arising out of Licensee's use of the City's or County's Property, or the use of the City's or County's Property by Licensee's employees, agents, subcontractors, vendors, or suppliers. Licensee assumes all risk of damage to property owned by Licensee, its employees, agents, subcontractors, vendors, and suppliers that may occur while on or about the City and County Property for any reason whatsoever, other than damage to such property

that is caused by the City or County. The indemnification provisions contained herein shall survive the termination or expiration of this Agreement.

10. ***Breach of Agreement.*** The failure of Licensee to comply with any covenant or condition of this Agreement shall constitute a breach of this Agreement. If Licensee is in breach of this Agreement in any manner, the City and/or County shall give Licensee written notice of any such breach. If (i) Licensee fails to cure such breach within five (5) days after receiving such notice, or (ii) fails to commence such cure within five (5) days after receiving such notice and to diligently prosecute such cure to completion, if the nature of such breach is such that more time is reasonably required by Licensee in order to cure such breach, then the City and/or County may terminate this Agreement. The City and County expressly reserve any and all other legal remedies available at law and in equity. Damages, if any, shall be limited to actual, out-of-pocket expenses incurred to remedy a breach of this Agreement. Speculative, consequential, punitive or other non-actual damages are prohibited.

11. ***Waiver of Breach.*** Waiver of breach of one or more covenants or conditions of this Agreement is not a waiver of breach of other covenants and conditions of this Agreement, or of a subsequent breach of the waived covenant(s) or condition(s).

12. ***Termination.*** This Agreement may be terminated at any time by any party on not less than fifteen (15) days written notice. The City or County may terminate this Agreement upon the breach of this Agreement by Licensee pursuant to the terms of Paragraph 10 herein. This Agreement will automatically terminate upon completion of the Project.

13. ***Compliance with Applicable Laws.*** Licensee shall observe and comply with all applicable federal, state, and local rules, orders, laws and regulations pertaining to the use of the City and County Property.

14. ***Amendments to Agreement.*** The conditions and covenants of this Agreement may not be amended or modified other than in writing signed by the parties hereto.

15. ***Entire Agreement.*** The entire Agreement between the parties with respect to the subject matter herein is contained in this Agreement. No other Agreement, oral or written, regarding the subject matter herein may be deemed to exist or to bind the parties hereto.

16. ***Notices.*** All notices to any party shall be given (i) by certified or registered mail, postage prepaid, return receipt requested, or (ii) by nationally recognized overnight courier service providing proof of delivery.

As to County: Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802

and

Orange County Public Works Department
Development Engineering Division
Attn: Manager
4200 John Young Parkway
Orlando, Florida 32839-9205

and

Orange County Administrative Services Department
Real Estate Management Division
Attn: Manager
P.O. Box 1393
Orlando, Florida 32802

As to City: Winter Park City Manager
401 S. Park Avenue
Winter Park, Florida 32789

As to Licensee: Duke Energy Florida, LLC
Attn: Ismaeal "Ed" Naji
P.O. Box 14042
St. Petersburg, Florida 33733

The names and/or addresses may be changed by written notice as above provided. Notice will be effective upon receipt.

17. ***Validity.*** The validity, interpretation, construction, and effect of this Agreement will be in accordance with and governed by the laws of the State of Florida. If any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

18. ***Hazardous Waste and Materials.*** Licensee, including its employees, agents, contractors, subcontractors, vendors, and suppliers shall not discharge any hazardous or toxic materials or waste on the City or County Property. Licensee shall indemnify, defend, and hold harmless the City and County from and against any claims including without limitation third party claims for personal injury or property damage, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, taxes, assessments, liabilities, settlement amounts, interest or losses, including reasonable attorney's fees and expenses, consultant fees, expert fees, and all other costs and expenses of any kind or nature that arise directly or indirectly in connection with the presence, release or threatened release of any hazardous substances by, through, or at the direction of Licensee, its employees, agents, subcontractors, vendors or suppliers, including but not limited to known contaminants in or into the air, soil, groundwater, surface water or improvements at, on, about, under or within the City and/or County Property, or any portion thereof, or elsewhere in connection with the transportation of hazardous substances to or from the City and/or County Property by, through, or at the direction of Licensee, its employees, agents, subcontractors, vendors or suppliers. Provided however, Licensee is not required to indemnify, defend, or hold harmless the City and/or County from any claims resulting from the negligent or willful misconduct of the City and/or County, or its

employees, contractors, vendors, or other agents, or resulting from any environmental condition existing on the City or County Property or elsewhere that is not caused, disturbed, or exacerbated by Licensee or its employees, agents, subcontractors, vendors, or suppliers. The indemnification provisions contained herein will survive the termination or expiration of this Agreement.

19. **Assignment.** No party may assign its rights hereunder, or as hereinafter granted pursuant to the provisions hereof, in whole or in part, without the prior written consent of the other parties.

20. **Attorney's Fees.** The parties expressly agree that each party shall bear the cost of its own attorney and legal fees in connection with any dispute arising out of this Agreement, or the breach, enforcement, or interpretation of this Agreement, regardless of whether such dispute results in mediation, arbitration, litigation, all or none of the above, and regardless of whether such attorney and legal fees are incurred at trial, retrial, on appeal, at hearings or rehearings, or in administrative, bankruptcy, or reorganization proceedings.

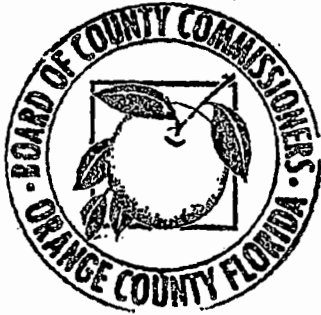
21. **Venue.** Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION HERewith.

22. ***Sovereign Immunity.*** For avoidance of doubt, nothing in this Agreement shall constitute, or be deemed or construed as, a waiver of the sovereign immunity or limits of liability by City or County, including its elected officials, officers, employees, or agents, beyond the statutory limited waiver of immunity or limits of liability set forth in Section 768.28, Florida Statutes, as amended from time to time. Regardless of anything set forth in this Agreement to the contrary, nothing in this Agreement may be deemed as a waiver of sovereign immunity or the limits of liability of the City or County beyond any statutorily limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the City and the County for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the Legislature for tort. Nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against either the City or the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This provision shall survive termination or expiration of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK –

SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Temporary License Agreement
as of the day(s) and year below written.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: August 9, 2022

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

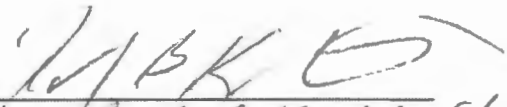
Katie Smith

Printed Name

Date: August 9, 2022

CITY OF WINTER PARK, FLORIDA

By: Board of City Commissioners


By: Randy B. Knight, City Manager
Date: 7-18-22

**DUKE ENERGY FLORIDA, LLC, a
Florida limited liability company,
d/b/a DUKE ENERGY**

By Tsmael

Print Name Tsmael Naji

Title: Engineering Technologist I

Date: 6/10/22

STATE OF Florida

COUNTY OF Orange

BEFORE ME, a Notary Public in and for said County and State, on the date below, by (☒) physical presence or (☐) online notarization, appeared Tsmael Naji, as the _____ of DUKE ENERGY FLORIDA, LLC, a Florida limited liability company, d/b/a DUKE ENERGY authorized to conduct business in Florida, and that he/she acknowledged executing the foregoing instrument on behalf of said corporation. Said person (☐) is personally known to me or (☒) produced a driver's license issued by the State of Florida, which is either current or has been issued within the past five (5) years and bears a serial or other identification number.

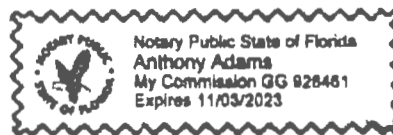
IN WITNESS WHEREOF, I have affixed my notarial seal this 10 day of June, 2022

[Signature]
Signature of Notary Public

Anthony Adams
Printed Name of Notary Public

My Commission expires: 11/03/2023

[NOTARY SEAL]



Legal Description of County Property

THAT PT OF VAC RR R/W N/K/A CADY WAY TRAIL LYING IN SEC 4 (LESS PT DEEDED)
SEE 5974/1674 & 5980/439 & 6025/1575 & 1579 & 6034/3899 & 6036/4690 & 6040/926 &
6043/3811 & 6363/3213 & 6561/5085 & 7207/4400

Exhibit "B"

Legal Description of City Property

ALOMA SECTION 1 O/51 GOLFCOURSE AS PLATTED ALOMA SEC 1 FAIRWAYS NO 3 & 15 & ALL OF BLKS 10 11 & 12 & VACATED R/W'S LYING BETWEEN SAID PTS & THOSE PTS LYING NLY & ELY OF ELY MOST POINT OF FAIRWAY NO 3 TO CITY R/W & THOSE PTS OF THE NW1/4 OF THE NE1/4 & THE NE1/4 OF THE NW1/4 LYING N OF CADY WY & W OF LOTS 1 THRU 18 OF WINTER PARK PINES UNIT 1 Y/94 & S OF N LINE OF VAC RR R/W & E OF ALOMA O/51 SEE 2527/862 3095/71 4366/2570

[illegible]

