



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 6

**DATE:** May 17, 2021

**TO:** Mayor Jerry L. Demings  
-AND-  
County Commissioners

**THROUGH:** Mindy T. Cummings, Manager  
Real Estate Management Division *MTC*

**FROM:** Kim Heim, Senior Title Examiner  
Real Estate Management Division *MTC for KH*

**CONTACT PERSON:** **Mindy T. Cummings, Manager**

**DIVISION:** **Real Estate Management**  
**Phone: (407) 836-7090**

**ACTION REQUESTED:** Approval and execution of Trail Relocation Easement Agreement between Duke Energy Florida, LLC d/b/a Duke Energy and Orange County and authorization to record instrument

**PROJECT:** Little Econ Greenway (Duke Energy)  
  
District 3

**PURPOSE:** To allow for the relocation of a portion of County improvements on County owned property and the relocation, replacement and/or reconstruction of certain utility improvements within an existing easement owned by Duke

**ITEM** Trail Relocation Easement Agreement  
Revenue: None

**APPROVALS:** Real Estate Management Division  
County Attorney's Office  
Parks and Recreation Division

**REMARKS:**

Duke Energy Florida, LLC d/b/a Duke Energy (Duke) is the current owner and holder of a utility easement (Easement) running through, and encumbering a portion of County owned property (Property) which, is used by Duke in connection with its business operations as an electrical utility provider. County constructed on its property a portion of Little Econ Trail (County's Trail) within the Easement. Duke is undertaking improvements to its electrical system and the improvements conflict with a portion of County's Trail. Duke has requested and County has agreed, with set terms and conditions, to allow Duke to relocate County's Trail and Duke has requested and County has agreed, with set terms and conditions, to allow Duke onto the Property for its improvements and to relocate the trail. This Trail Relocation Easement Agreement will allow Duke to proceed and states the terms and conditions by which Duke can proceed.

Duke to pay all recording fees.

**JUN 08 2021**

**THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:**

ORANGE COUNTY REAL ESTATE MGMT. DIV.  
ATTN: MANAGER  
400 E. SOUTH ST.  
5TH FLOOR  
ORLANDO, FL 32801

**Property Appraisers Parcel Identification Numbers:**

18-22-31-0000-00-074

**Project:** Little Econ Greenway/Duke Trail Relocation (2020)

\_\_\_\_\_  
SPACE ABOVE THIS LINE FOR RECORDING DATA

**TRAIL RELOCATION EASEMENT AGREEMENT**

THIS TRAIL RELOCATION EASEMENT AGREEMENT (this "**Agreement**") is made as of the Effective Date (hereinafter defined) by and between ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, ("**County**") and DUKE ENERGY FLORIDA, LLC, a Florida limited liability company d/b/a Duke Energy ("**Duke**").

**RECITALS**

A. County is the owner of record of fee simple title to the County Property (hereinafter defined), which County Property is currently improved with a recreational trail and other improvements, and owned, used, enjoyed, and operated by County as part of the Little Econ Greenway (hereinafter defined).

B. Duke is the current owner and holder of a utility easement running through, and encumbering a portion of, the County Property by virtue of that certain easement recorded in Official Records Book 867, Page 496, re-recorded in Official Records Book 974, Page 63, and re-recorded again in Official Records Book 1033, Page 572, all of the Public Records of Orange County, Florida, (the "**Existing Easement**") which Existing Easement is used by Duke in connection with its business operations as an electrical utility provider.

C. A portion of County's improvements associated with the Little Econ Greenway are located within the portion of the County Property encumbered by the Existing Easement (the "**Conflicting County Improvements**").

D. Duke is currently undertaking improvements to its electrical system, ("**Duke Project**") which Duke Project, in part, involves the relocation, replacement, and/or reconstruction of certain electrical transmission lines, towers, tower foundations, and other utility improvements ("**New Duke Improvements**") within the Existing Easement. Without limiting the generality of the foregoing, the New Duke Improvements proposed to be installed by Duke within the Existing Easement as part of the Duke Project conflict with some of the Conflicting County Improvements,

and will require a portion of said Conflicting County Improvements to be relocated and reconstructed as part of the Duke Project.

E. In order to allow Duke to proceed with the Duke Project, Duke has requested County's approval to, and County has agreed to allow Duke to, relocate and reconstruct a portion of said Conflicting County Improvements, all as more particularly set forth herein.

F. As a portion of the Conflicting County Improvements to be relocated will be relocated, in part, to areas of the County Property outside of the Existing Easement, Duke has requested that County, and County has agreed to, grant Duke a temporary construction easement over a portion of the County Property, all as more particularly set forth herein.

**NOW, THEREFORE**, in consideration of Ten and No/100 Dollars (\$10.00), the mutual covenants and agreements set forth herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties (hereinafter defined) hereby agree as follows:

#### **ARTICLE I – RECITALS; DEFINITIONS**

Section 1.1 Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

Section 1.2 Definitions. As used in this Agreement, the following defined terms shall have the following defined meanings:

(a) Agents. The term “**Agents**” shall mean employees, contractors, subcontractors, consultants, and other agents of Duke.

(b) Board. The term “**Board**” shall mean and refer to the Orange County Board of County Commissioners.

(c) Concept Plan. The term “**Concept Plan**” shall mean and refer to that certain conceptual plan and alignment for the relocation and reconstruction of a portion of the Conflicting County Improvements set forth in **Exhibit “B”** attached hereto, which exhibit is hereby incorporated herein by this reference.

(d) County Property. The term “**County Property**” shall mean and refer to the real property that is legally described on **Exhibit “A”** attached hereto.

(e) Effective Date. The term “**Effective Date**” shall mean and refer to latest of: (i) the date this Agreement is executed by Duke; (ii) the date this Agreement is executed by County; (iii) the date this Agreement is approved by the Board; and (iv) the date this Agreement is recorded in the Official Records of Orange County, Florida.

(f) Notice Addresses. The term “**Notice Addresses**” shall mean and refer to:

As to Duke: Duke Energy Florida, LLC  
Attn: Manager Land Services

3300 Exchange Pl.  
Lake Mary, FL 32746

As to County: Orange County Parks and Recreation Division  
Attn: Manager  
Barnett Park  
4801 W. Colonial Dr.  
Orlando, FL 32808

*with a copy to:* Orange County Real Estate Management Division  
Attn: Manager  
400 E. South St.  
5th Floor  
Orlando, FL 32801

(g) Parties. The term “**Parties**” shall mean and refer to, collectively, County and Duke.

(h) Little Econ Greenway. The term “**Little Econ Greenway**” shall mean and refer to that certain multi-use recreational trail and associated amenities, which is open to the public, operated by County, and is presently approximately 7.4 miles in length running from the intersection of Alafaya Trail and Lokanotosa Trail, through Jay Blanchard Park, to Forsyth Road.

(i) Permits. The term “**Permits**” shall mean and refer to, collectively, any and all permits, approvals, licenses, authorizations, and/or entitlements of/from any and all governmental authority(ies) that will be necessary or beneficial for the construction, installation, use, operation, inspection, maintenance, service, repair, and/or replacement of the Trail Improvements.

(j) Plans. The term “**Plans**” shall mean and refer to those certain engineering plans, designs, specifications, and drawings for the Trail Improvements entitled “Rio Pinar to Econlockhatchee Little Econ Greenway Trail Re-Route Construction Drawings Project: 30000889” dated April, 2021. Select pages of the Plans are set forth in Exhibit “C” attached hereto, which exhibit is hereby incorporated herein by this reference.

(k) Temporary Construction Easement Area. The term “Temporary Construction Easement Area” shall mean and refer to the smallest portion of the County Property, minimally and reasonably necessary, that needs to be accessed by Duke and its Agents to construct and install the Trail Improvements consistent with the Plans and the Permits. For avoidance of doubt, the Temporary Construction Easement Area includes lands both within, and outside of, the boundaries of the Existing Easement.

(l) Trail Improvements. The term “**Trail Improvements**” shall mean and refer to, collectively, those improvements associated with the Little Econ Greenway to be constructed within the Temporary Construction Easement Area as depicted on Plans. For avoidance of doubt, the Trail Improvements consist primarily of: (i) construction and installation of an approximately eight hundred ninety-two (892) linear foot long segment of new fourteen foot (14’) wide (12.299

square feet) multi-use recreational; (ii) removal of an approximately eight hundred seventy-seven (877) linear foot long segment of existing fourteen foot (14') wide (12,151 square feet) multi-use recreational, together with restoration of the surface area (including but not limited to grading and resodding) underneath and surrounding such removed trail segment; and (iii) site preparation, clearing, grading, grubbing, and landscaping associated with the trail segments to be installed and/or removed.

## **ARTICLE II– TEMPORARY CONSTRUCTION EASEMENT**

**Section 2.1 Temporary Construction Easement.** County does hereby give and grant to Duke a non-exclusive, temporary construction easement over, under, on, upon, through, and across the Temporary Construction Easement Area for the purpose of Duke and its Agents performing such activities on and within Temporary Construction Easement Area – as minimally necessary and with the least amount of disruption as possible – as required by the Plans and the Permits to construct and install the Trail Improvements within the Temporary Construction Easement Area (the “**Temporary Construction Easement**”).

**Section 2.2 Termination.** The Temporary Construction Easement granted by this article shall automatically terminate, without the necessity of County obtaining any release from Duke, upon the earlier to occur of: (i) one (1) year after the date this Agreement is recorded in the Official Records of Orange County, Florida; and (ii) completion of construction of the Trail Improvements. Notwithstanding the foregoing, upon termination of the Temporary Construction Easement as provided above, and upon request of County, Duke shall join with County in execution of a termination of the Temporary Construction Easement to be recorded by County, at County’s sole cost and expense, in the Official Records of Orange County, Florida.

**Section 2.3 Reservation of Rights.** County hereby reserves unto itself all other rights to use the Temporary Construction Easement Area that are not inconsistent with the easement rights granted pursuant to this Article. Without limiting the generality of the foregoing, except to the extent that County hereafter agrees in writing to short-term, minor interruptions and maintenance of traffic activities, Duke’s activities within the Temporary Construction Easement Area shall not be permitted or allowed to block, impede, restrict, or hinder – and Duke shall be responsible to ensure that at all times there is – free and uninterrupted ingress, egress, access, and passage along all portions of the Little Econ Greenway by pedestrians, walkers, joggers, runners, bicyclists, and others consistent with the normal operation and use of the Little Econ Greenway. Without limiting the generality of the foregoing, Duke shall not close or remove any portion of the existing Little Econ Greenway trail until the replacement trail segment to be constructed as part of the Trail Improvements has been constructed and has been opened for use by the public.

**Section 2.4 Restrictions on Use of Temporary Construction Easement.** Notwithstanding any term or provision of this Agreement to the contrary, Duke hereby acknowledges and agrees that: (i) except during periods when the Trail Improvements are being constructed and installed within the Temporary Construction Easement Area, Duke shall make no use of the portion(s) of the Temporary Construction Easement Area outside of the boundaries of the Existing Easement; and (ii) no improvements of any kind or nature, other than the Trail Improvements, shall be constructed or installed within the portion(s) of the Temporary Construction Easement Area outside of the boundaries of the Existing Easement. For avoidance of doubt, no New Duke

Improvements (or other utility improvements of Duke) may be constructed, installed, used, operated, inspected, maintained, serviced, repaired, replaced, and/or reconstructed over, under, on, upon, through, or across any portion of the County Property – other than within the boundaries of the Existing Easement.

### **ARTICLE III – MAINTENANCE OF TRAIL IMPROVEMENTS**

**Section 3.1 Maintenance of Trail Improvements Prior to Completion.** Until such time as the Trail Improvements have been completed by Duke and turned over to and accepted by County for operation and maintenance as part of the Little Econ Greenway, all Trail Improvements shall be used, operated, inspected, maintained, serviced, repaired, replaced, and/or reconstructed by Duke, at Duke's sole cost and expense, in a good and safe state of repair and in a reasonably neat, clean, and orderly condition, ordinary wear and tear excepted, and in all events in compliance with the Permits, the Plans, other reasonable requests and requirements of the Orange County Parks and Recreation Division, and all other applicable governmental regulations and/or requirements.

### **ARTICLE IV – INDEMNIFICATION AND INSURANCE**

**Section 4.1 Indemnification.** Except for any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including reasonable attorney and legal fees prior to and upon appeal) arising solely out of, or resulting solely from, the negligent or willful acts of County, its officials, agents, and/or employees, Duke shall defend, indemnify, save, and hold harmless County and County's officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including reasonable attorney and legal fees prior to and upon appeal) of any kind or nature whatsoever related to the Temporary Construction Easement to the extent directly or indirectly arising out of, or to the extent caused by:

- (a) the use and enjoyment of any part of the County Property by Duke, Agents of Duke, and/or the public (collectively "**Permittees**");
- (b) liens and other charges asserted against the Temporary Construction Easement Area and/or the County Property for any purpose whatsoever to the extent arising as a result of the actions of Permittees;
- (c) claims relating to injury to persons or property occurring on or about the Temporary Construction Easement Area, the County Property, and/or surrounding lands to the extent caused by the use or control of the same by Permittees;
- (d) failure by Permittees to properly construct and/or install any and all Trail Improvements within the Temporary Construction Easement Area; and/or
- (e) any activities by Permittees over, under, on, upon, through, or across the Temporary Construction Easement Area, the County Property, and/or surrounding lands.

The terms and provisions of this Section 4.1 shall survive any termination of this Agreement, and may be enforced by County as provided in Article VI.

Section 4.2 Insurance Requirements.

(a) For as long as this Agreement is in effect, Duke shall be responsible to ensure compliance with the following:

(1) Duke shall obtain and possess Commercial General Liability coverage, issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, for all operations under this Agreement, including but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$1,000,000.00 Combined Single Limits (CSL) or its equivalent per occurrence. Such coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Severability of Interests. The general aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.

(2) Duke shall obtain and possess all-risk property insurance to cover any and all improvements installed in the Temporary Construction Easement Area, including but not limited to the Trail Improvements, for their full replacement value.

(3) All persons that perform any work on any and all improvements in the Temporary Construction Easement Area, including but not limited to the Trail Improvements, shall have Workers' Compensation coverage for any and all employees with statutory workers' compensation limits, and no less than \$100,000.00 for each incident of bodily injury or disease for Employers' Liability.

(4) All parties that perform any work on any and all improvements in the Temporary Construction Easement Area, including but not limited to the Trail Improvements, shall have business automobile liability coverage for all owned, non-owned, and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida, or its equivalent, with limits of not less than \$500,000.00 per accident. In the event that Duke does not own automobiles, Duke shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the commercial General Liability policy or separate business Auto Liability policy.

(b) Duke shall require and ensure that each of its Agents maintains the above-required insurance until the completion of their work under any contract associated with the Temporary Construction Easement hereby granted.

(c) Prior to commencing construction within the Temporary Construction Easement Area, Duke shall provide Certificates of Insurance to County to verify the above-required coverages and compliance with this Agreement. The name of the project for which the improvements are to be installed and the type and amount of coverage provided shall be clearly stated on the face of each Certificate of Insurance. The insurance coverage shall name Orange County, Florida, as an additional insured, and shall contain a provision which forbids any cancellation, changes or material alterations, or renewal of coverage without providing thirty (30) days prior written notice to County.

(d) Failure of Duke to maintain insurance coverage for itself or for any other persons or entities for whom it is responsible, to ensure that its Agents maintain coverage, or to



ensure compliance with this Section 4.2, shall not relieve Duke of any contractual responsibility, obligation, or liability.

## **ARTICLE V – GENERAL PROVISIONS**

**Section 5.1 Design, Engineering, Permitting, and Construction of Trail Improvements.** The Trail Improvements shall be designed, engineered, permitted, and constructed by Duke, at Duke's sole cost and expense.

**Section 5.2 Permits.** Duke, at Duke's sole cost and expense, shall: (i) obtain all Permits prior to undertaking any activity within the Temporary Construction Easement Area, including but not limited to prior to construction of any Trail Improvements; and (ii) for so long as this Agreement is in effect, keep and maintain all Permits in full force and effect and in good standing. For avoidance of doubt, this Agreement concerns the real property interests of County, and expressly does not constitute any action on, or approval of, any required Permit that may need to be issued by County in its regulatory capacity.

**Section 5.3 Plans.** At no time shall any alteration of, or deviation from, the Plans be made. Any deviations from the Plans must be approved by County, with Duke being responsible for any additional construction costs that may be necessary in order to obtain County approval.

**Section 5.4 Duke Activities.** All work performed and other activities undertaken by Duke or its Agents within the Temporary Construction Easement Area shall: (i) comply with all applicable laws and all permits, approvals, codes, and requirements of applicable governmental authorities; and (ii) be performed in a safe and workmanlike manner.

**Section 5.5 Restoration of Surface.** Upon completion of any activity within any of the Temporary Construction Easement Area, Duke shall restore and leave the Temporary Construction Easement Area, and the affected surface area thereof, in a clean and neat condition, and otherwise in accordance with the condition required by the Permits, the Plans, other reasonable requests and requirements of the Orange County Parks and Recreation Division, and all other applicable governmental regulations and/or requirements.

**Section 5.6 Construction Liens.** No rights granted herein shall permit or empower Duke to encumber the Temporary Construction Easement Area or any other part of the County Property with construction liens arising from the exercise by Duke of the rights granted herein. Duke shall neither suffer nor permit any construction lien to be placed upon or against the Temporary Construction Easement Area or any other part of the County Property.

## **ARTICLE VI – COVENANTS AND RESTRICTIONS**

**Section 6.1 Covenants Running With The Land.** All of the covenants, terms, agreements, provisions, and restrictions set forth in this Agreement are intended to be, and shall be, construed as, covenants running with the Temporary Construction Easement Area.

(a) The Temporary Construction Easement set forth in this Agreement is not appurtenant to any lands of Duke (or otherwise); rather, the Temporary Construction Easement is an easement in gross in favor of Duke, which may be used and enjoyed by Duke and the Agents

(but only to the extent expressly set forth herein).

Section 6.2 Assignment. Neither this Agreement, nor any right or obligation of any Party arising under this Agreement, may be assigned or delegated without the written consent of all Parties.

Section 6.3 No Third-Party Beneficiaries. Except as otherwise expressly set forth herein, no person or entity other than the Parties shall have any rights or privileges under this Agreement, either as a third-party beneficiary or otherwise.

Section 6.4 Governmental Authorities. As used in this Agreement, “governmental authority” or “governmental authorities” shall mean any federal, state, county, municipal, or other governmental or quasi-governmental department or entity, or any authority, commission, board, bureau, court, community development district, water management district, or agency having jurisdiction over the County Property and/or any portion of any of said lands, including without limitation, the United States Army Corps of Engineers, Orange County, Florida, the School Board of Orange County, Florida, the Florida Department of Environmental Protection, and the St. Johns River Water Management District.

Section 6.5 Applicable Laws. Any rights granted in this Agreement shall be exercised only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits, and approvals, and any future modifications or amendments thereto.

## **ARTICLE VII – REMEDIES AND ENFORCEMENT**

Section 7.1 When a Breach becomes a Default. Except as otherwise provided by this Agreement, no breach, failure to comply with any term or provision of this Agreement, or failure of a covenant, warranty, or representation contained herein, shall be considered a “**Default**” until a non-breaching Party has provided written notice of the breach to the breaching Party and the breach has gone uncured for a period of ten (10) days; provided, however, that if such breach is of a nature that it cannot reasonably be cured within ten (10) days, then the breaching Party shall have ten (10) days from the receipt of written notice from the non-breaching Party to commence said required cure, and the amount of time reasonably necessary to complete said required cure, which reasonable time shall in no event exceed ninety (90) days from the receipt of written notice from the non-breaching Party, unless otherwise extended by the non-breaching Party in writing.

Section 7.2 All Legal and Equitable Remedies Available. In the event of a default by any Party of any of the terms or conditions hereof, the other Party(ies) shall be entitled to relief by all remedies permitted at law or in equity, including injunction and specific performance. Notwithstanding the foregoing, under no circumstances shall any party be liable for consequential, special, indirect, exemplary, or punitive damages in the event of Default by such Party hereunder.

Section 7.3 Remedies Cumulative. Subject to the limitations set forth in Section 7.2 above, any remedies specifically provided by this Agreement shall be cumulative with and in addition to all other remedies permitted at law or in equity.

Section 7.4 No Termination For Breach. Notwithstanding any other term or provision of this Agreement to the contrary, no breach hereunder shall entitle any party to unilaterally cancel,

rescind, or otherwise terminate this Agreement; provided, however, that this Section 7.4 shall not, nor be deemed or construed to, alter or limit the express meaning and effect of Section 9.1 below.

Section 7.5 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, 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.

Section 7.6 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.

Section 7.7 WAIVER OF JURY TRIAL. 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.

Section 7.8 Sovereign Immunity. For avoidance of doubt, nothing in this Agreement shall constitute, or be deemed or construed as, a waiver of sovereign immunity or limits of liability by 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 (2020).

## **ARTICLE VIII – MISCELLANEOUS**

Section 8.1 Complete Agreement. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes any prior understandings, whether written or oral, with respect to the subject matter hereof, and there are no agreements, understandings, restrictions, representations, or warranties among the Parties other than those set forth herein or herein provided for.

Section 8.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Agreement.

Section 8.3 Modification. This Agreement may be altered, amended, or modified only by written instrument recorded in the Official Records of Orange County, Florida, executed by Duke and County.

Section 8.4 Waiver. No consent or waiver, express or implied, by any Party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or a waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not

constitute a waiver by such person of its rights hereunder.

Section 8.5 Section Headings. The headings preceding the sections of this Agreement are for convenience only and shall not be considered in the construction or interpretation of this Agreement.

Section 8.6 Gender and Number. All personal pronouns used, whether in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural and the plural shall include the singular unless the context shall indicate or specifically provide to the contrary.

Section 8.7 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and a valid, legal, and enforceable provision shall be agreed upon by the Parties and become a part of the Agreement in lieu of the invalid, illegal, or unenforceable provision; in the event a valid, legal, and enforceable provision cannot be crafted, this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

Section 8.8 Drafting; Negotiation. All of the Parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any Party regardless of which Party is deemed to have drafted the Agreement.

Section 8.9 No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the Parties or their successors in interest.

Section 8.10 Governing Law. This Agreement shall be governed by, construed, and enforced under the internal laws of the State of Florida without giving effect to the rules and principles governing the conflicts of laws.

Section 8.11 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday, or holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or holiday. The last day of any period of time described herein shall be deemed to end at 6:00 p.m. local time in Orlando, Florida. For purposes of this Agreement, "holiday" shall mean federal holidays as defined in 5 U.S.C. 6103.

Section 8.12 Time. Time is of the essence with respect to this Agreement.

Section 8.13 Notices. Any notice to be given to or served upon any Party hereto, in connection herewith, must be in writing, sent to the appropriate Notice Address for such Party, and may be given by hand delivery; certified mail, return receipt requested; or guaranteed overnight delivery service; and shall be deemed to have been given when actually received by the intended recipient.

(a) Notwithstanding the foregoing, if any notice sent by certified mail, return receipt requested, or by guaranteed overnight delivery service, shall be returned to the sender as “unclaimed”, then notice shall be deemed to have been given upon the sender’s receipt of the returned, “unclaimed” notice.

(b) Notwithstanding the foregoing, if any notice sent by certified mail, return receipt requested, or guaranteed overnight delivery service, shall be returned to sender as “undeliverable” because the recipient has changed its mailing address and failed to provide the sender with an updated Notice Address, then notice shall be deemed to have been given upon the sender’s receipt of the returned, “undeliverable” notice. It shall be the duty of each Party to this Agreement to notify all other Parties to this Agreement of any change in that Party’s Notice Address.

(c) The Parties acknowledge and agree that their respective legal counsel shall be permitted to deliver notices on behalf of their respective clients.

Section 8.14 Currency. All payments made or to be made under or pursuant to this Agreement, if any, shall be in the lawful money of the United States of America for the payment of public and private debts and no other money or currency.

## **ARTICLE IX – TERMINATION**

Section 9.1 Termination by County. Notwithstanding any term or provision of this Agreement to the contrary, County may (but shall not be required to) terminate this Agreement (including but not limited to the Temporary Construction Easement granted herein) in the event that: (i) construction of the Trail Improvements has not commenced within twelve (12) months after the date this Agreement is recorded in the Official Records of Orange County, Florida; (ii) after Duke commences construction of the Trail Improvements, Duke shall fail to diligently and continuously pursue construction of the Trail Improvements to completion; or (iii) construction of the Trail Improvements has not been completed, and/or the Trail Improvements have not been turned over to County for operation and use as part of the Little Econ Greenway, within eighteen (18) months after the date this Agreement is recorded in the Official Records of Orange County, Florida. In the event that County elects to terminate this Agreement pursuant to the right granted in this Section 9.1, then County shall provide written notice of such action to Duke and shall record in the Public Records of Orange County, Florida a unilateral termination of this Agreement; notwithstanding the foregoing, upon termination of this Agreement by County as provided in this Section 9.1, and upon request of County, Duke shall join with County in execution of a confirmation of the termination of this Agreement as provided herein, which confirmation shall be recorded by County, at County’s sole cost and expense, in the Official Records of Orange County, Florida.

Section 9.2 Effect of Termination. Upon any termination of this Agreement, the Parties shall thereafter be relieved of all rights and obligations hereunder, except for those rights and obligations which expressly survive the termination of this Agreement.

Section 9.3 Restoration of Easements Areas. Notwithstanding the terms and provisions of Section 9.2 above, upon any termination of this Agreement, and upon written notice from

County requesting the same, Duke shall promptly return and restore the Temporary Construction Easement Area, and the portions of the Little Econ Greenway located therein, to a condition substantially similar as existed prior to the Effective Date. The terms and provisions of this Section 9.3 shall survive any termination of this Agreement, and may be enforced by County as provided in Article VII above.

*[signature pages and exhibits follow]*

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

“COUNTY”

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

BY: Bryan W. Burks  
for Jerry L. Demings  
Orange County Mayor

DATE: 10 June 2024

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

BY: Craig Stopysa  
for Deputy Clerk  
Craig Stopysa  
Printed Name



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

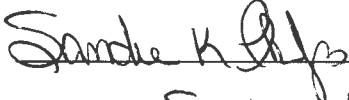
“DUKE”

Signed, sealed, and delivered  
in the presence of:


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



Print Name: SCOTT GARNER



Print Name: Sandra K Phelps

By: 

Print Name: Karen Adams

Title: Manager, Land Services - Florida

Date: 4/26/2021

APPROVED  
By Chris King at 1:04 pm, Apr 23, 2021

STATE OF FLORIDA

COUNTY OF Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 26 day of April, 2021, by Karen Adams, as manager of Duke Energy Florida, LLC, a Florida limited liability company d/b/a Duke Energy, on behalf of the company. S/he ☒ is personally known to me OR \_\_\_\_\_ has produced \_\_\_\_\_ as identification and did/did not take an oath.

[AFFIX NOTARY SEAL]



SANDRA K PHELPS  
Commission # GG 236789  
Expires August 11, 2022  
Bounded Thru Budget Notary Services

  
Notary Public

Sandra K Phelps  
Print Name

My Commission Expires: 08-11-2022



EXHIBIT "A"

Legal Description of the County Property

Begin at the SE corner of the NW 1/4 of SW 1/4 of Section 18, Township 22 South, Range 31 East, run N 0°11'04" West 25 feet, thence S 89°40'04" West 356.42 feet; thence N 12°53'50" West 1329.04 feet to the North line of the SW 1/4 of Section 18, Township 22 South, Range 31 East, thence North 89°24'04" West 598.49 feet along said quarter section line to the West 1/4 corner of Section 18, Township 22 South, Range 31 East, thence S 0°28'30" East 1331.93 feet to the SW corner of the NW 1/4 of SW 1/4 of Section 18, Township 22 South, Range 31 East, thence N 89°40'04" East 1240.57 feet to the Point of Beginning.

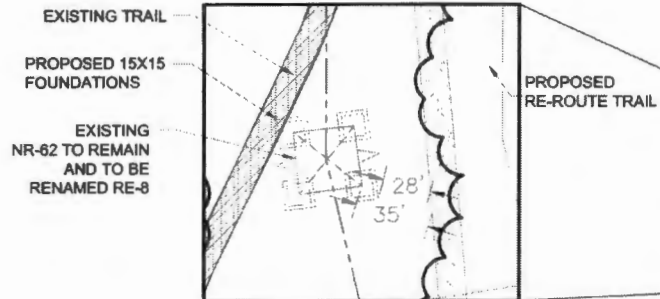
Said lands lying and being in Orange County, Florida.

*NOTE: This legal description was prepared without the benefit of a title search or examination or survey, and was taken from Parcel A of that certain "Final Judgment as to Parcels A and D" recorded on February 27, 1970, in Official Records Book 1921, Page 302, of the Public Records of Orange County, Florida. No responsibility is assumed by County for the legal or title considerations.*

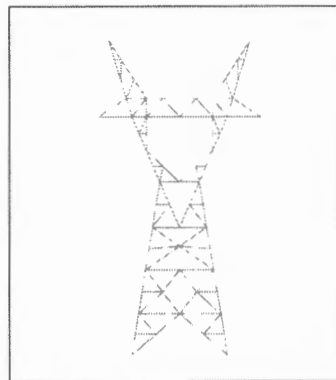
**EXHIBIT “B”**

**Concept Plan**

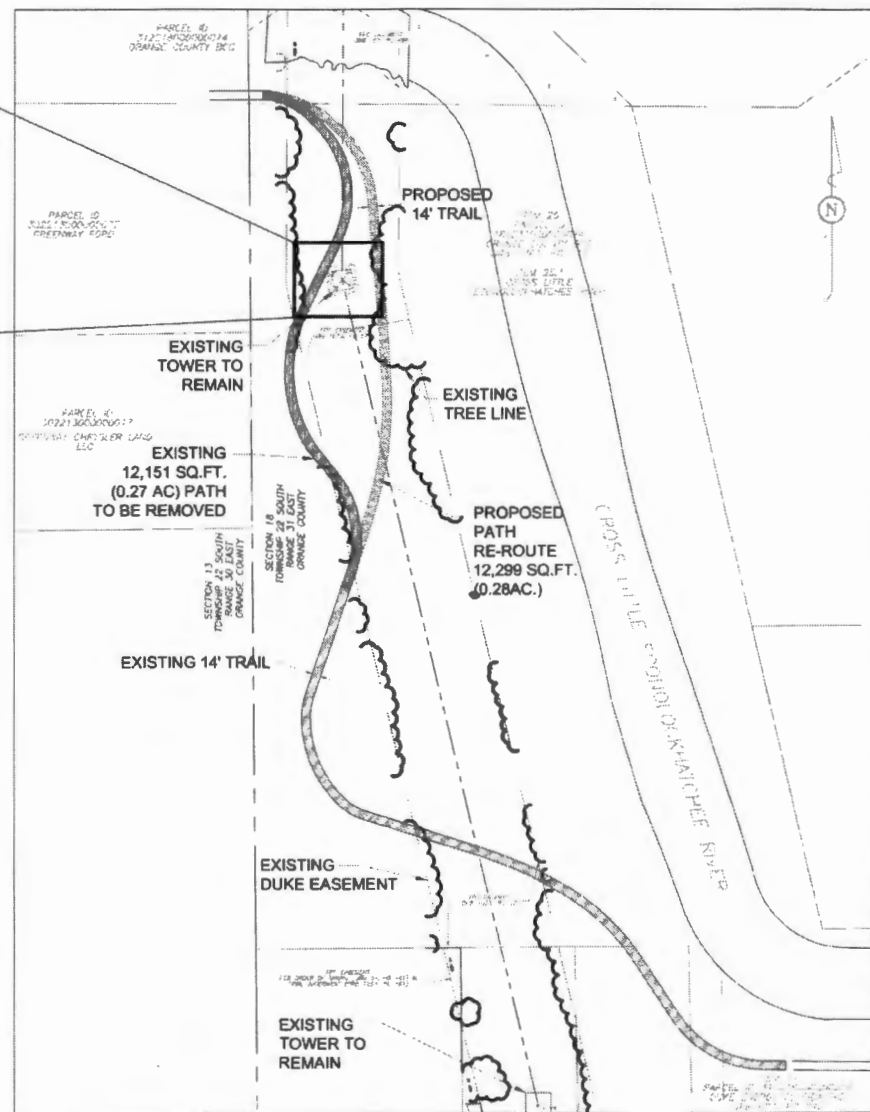
*(see attached one (1) document totaling one (1) page)*



PROPOSED REINFORCED TOWER FOUNDATIONS  
FOR NR-62 (TO BE RENAMED RE-8)  
RE-ROUTE OF ECON TRAIL



EXISTING NR-62 TO REMAIN  
AND TO BE RENAMED RE-8  
LOOKING NORTH



LITTLE ECON GREENWAY TRAIL RE-ROUTE

NOTE:  
ALL EXISTING CONDITIONS AND EASEMENT TO BE RESTORED TO EQUAL OR BETTER CONDITIONS.

LEGEND	
	TRANSMISSION TOWER POLE TO REMAIN
	DUKE ENERGY FLORIDA EASEMENT
	PROPOSED TRAIL PATH RE-ROUTE
	EXISTING TRAIL PATH TO BE REMOVED

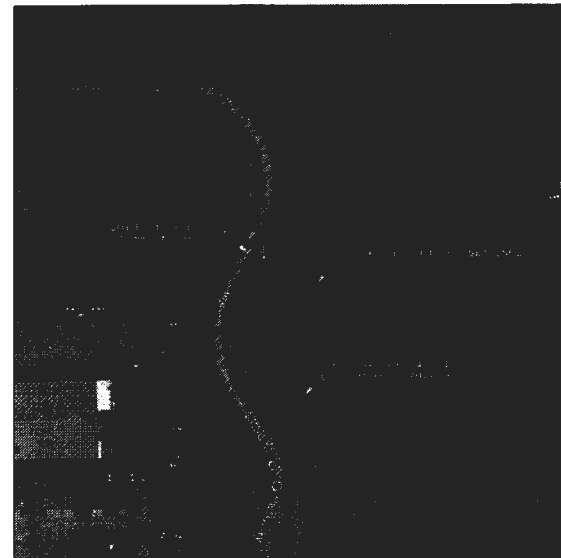
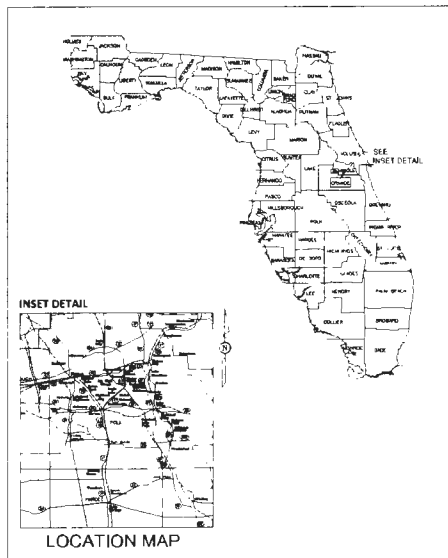
<b>DUKE ENERGY</b>	
DATE	NOV 2014
BY	JL
CHECKED	CHEN
SCALE	AS SHOWN
SHEET	1
OF	1
PROJECT	RE.3301

**EXHIBIT “C”**

**Select Plan Pages**

*(to be attached prior to execution)*

**RIO PINAR TO ECONLOCKHATCHEE  
LITTLE ECON GREENWAY TRAIL  
RE-ROUTE CONSTRUCTION DRAWINGS  
PROJECT: 30000889**



SHEET INDEX	
DWG.	DESCRIPTION
RE3300	COVER, KEY MAP & INDEX
RE3301	LAYOUT AND PLAN VIEW
RE3302	TYPICAL SECTIONS AND DETAILS

FRANCISCO B. DOMINGO, STATE OF FLORIDA, PROFESSIONAL ENGINEER, LICENSE NO. 51602. THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED BY FRANCISCO B. DOMINGO, PE ON THE DATE SHOWN BELOW USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE DIGITAL SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES. CA327013

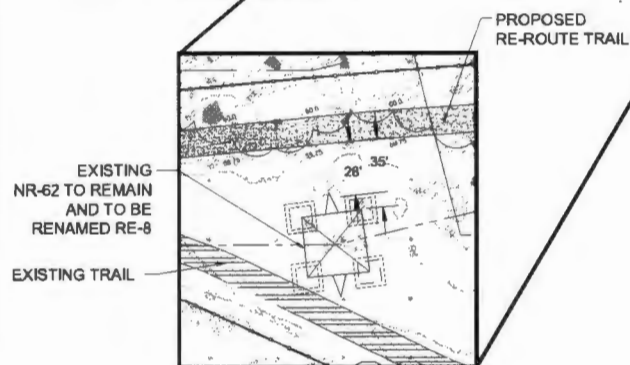
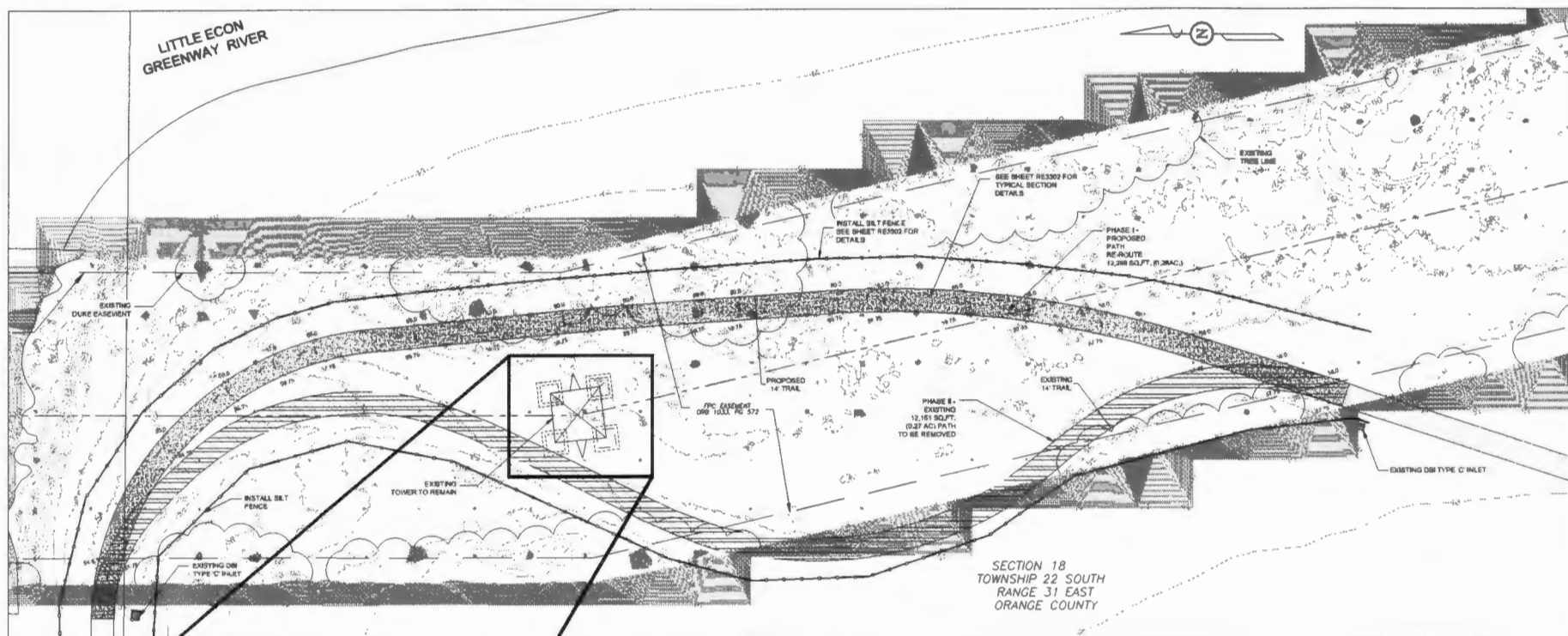
ATTENTION: IS DIRECTED TO THE FACT THAT THESE PLANS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA

**DUKE ENERGY.**

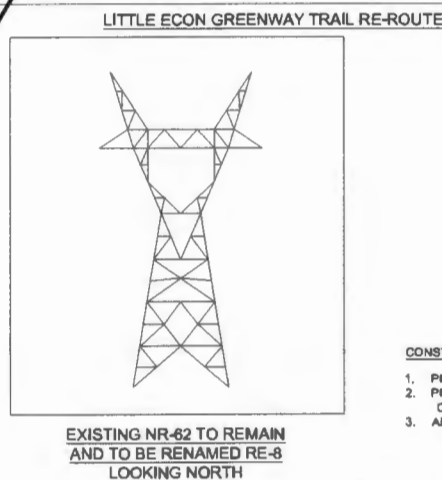
DATE: 11/21/84  
 TIME: 10:00 AM  
 BY: J. L. HARRIS  
 FOR: J. L. HARRIS

LINE: 1000000000  
 ORANGE: 1000000000  
 TRAIL: 1000000000  
 PERMIT: 1000000000  
 NO. 1000000000  
 LITTLE & ON: 1000000000  
 LOWER

1 OF 1  
 SHEET 1  
 TIME: 10:00 AM  
 PE 3300



**PROPOSED REINFORCED TOWER FOUNDATIONS  
FOR NR-62 (TO BE RENAMED RE-8)  
RE-ROUTE OF ECON TRAIL**



LEGEND	
	TRANSMISSION TOWER Pole to remain
	DUKE ENERGY FLORIDA RIGHT OF WAY
	PROPOSED S&T FENCE
	EXISTING CONTOURS
	PROPOSED BFO ELEVATION
	FLOW ARROW
	PROPOSED TRAIL PATH RE-ROUTE
	EXISTING TRAIL PATH TO BE REMOVED
	EXISTING TRAIL PATH

#### CONSTRUCTION NOTES

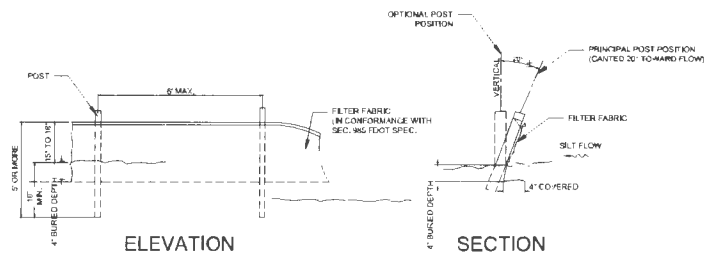
1. PHASE I SHALL CONSIST OF NEW CONSTRUCTION FOR PROPOSED RELOCATION OF TRAIL.
2. PHASE II SHALL CONSIST OF THE REMOVAL OF EXISTING TRAIL. REMOVAL NOT PERMITTED UNTIL COMPLETION OF NEW CONSTRUCTION.
3. ALL EXISTING CONDITIONS AND EASEMENT TO BE RESTORED TO EQUAL OR BETTER CONDITIONS.

FRANCISCO B. DOMINGO, STATE OF FLORIDA, PROFESSIONAL ENGINEER, LICENSE NO. 51601. THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED BY FRANCISCO B. DOMINGO, PE ON THE DATE SHOWN BELOW USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE DIGITAL SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES. CA327013

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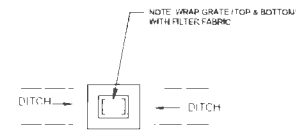
DATE	04/21	BY	KB	ROLE	LINE ENGINEERING
DRAWN	ALL	TECH	TECH		ORANGE COUNTY
DC	CHECK	SE	ENGR		TRAIL PATH RE-ROUTE PERMIT
					NO FINAL TO CONSTRUCTION
					LITTLE ECON GREENWAY TRAIL
					LAYOUT AND PLAN VIEW
1 OF 1	SHEET 1	DRG.			RE3301



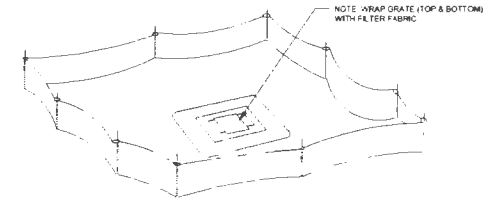
ELEVATION

SECTION

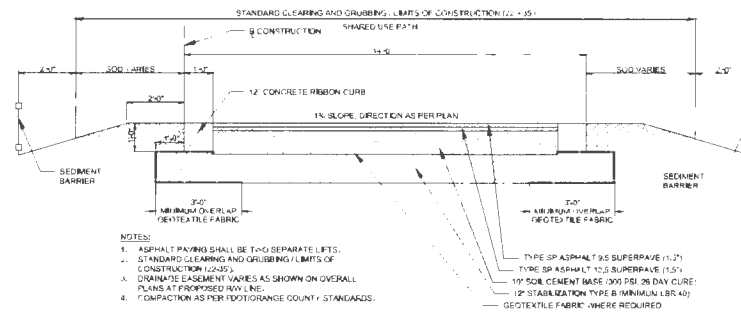
TYPICAL SILT FENCE



DITCH BOTTOM INLET



STAKED SILT BARRIER OR SILT FENCE  
PROTECTION AROUND DITCH BOTTOM INLETS



TYPICAL SOIL CEMENT TRAIL UTILITY CROSSING

#### CONSTRUCTION NOTES

- PER ORANGE COUNTY DESIGN STANDARDS, SHARED USE PATHS AND TRAILS SHALL BE DESIGNED AND CONSTRUCTED IN CONFORMANCE WITH AASHTO STANDARDS AND THE LATEST EDITION OF THE MANUAL OF UNIFORM MINIMUM STANDARDS FOR DESIGN, CONSTRUCTION AND MAINTENANCE FOR STREETS AND HIGHWAYS (FLORIDA GREENBOOK), AS PUBLISHED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION. NONSTREET SIDEWALKS SHALL BE CONSTRUCTED TO THE SAME STANDARDS AS STREET RELATED SIDEWALKS INCLUDING COMPLIANCE WITH ACCESSIBILITY REQUIREMENTS OF THE CURRENTLY-ADOPTED EDITIONS OF APPLICABLE FEDERAL AND STATE STANDARDS. SHARED USE PATHS AND SIDEWALKS SHALL ALSO BE MARKED OR SIGNED IN ACCORDANCE WITH THE AASHTO/MTDC STANDARDS.
- LAYDOWN YARD FOR ALL MATERIALS LOCATED AT 3021 SOUTH ECHO RD.
- CONTRACTOR SHALL SEED, STRAW AND TACK UPLAND GRADES WITHIN 3 DAYS OF DISTURBANCE.
- NO WORK SHALL COMMENCE PRIOR TO A SCHEDULED PRE-CONSTRUCTION MEETING WITH DUKE ENERGY. AFTER PRE-CONSTRUCTION MEETING, NO WORK SHALL COMMENCE PRIOR TO INSTALLATION OF THE BMP'S.

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DATE	BY	APP	LINE ENGINEERING
04/21	DATE	APP	ORANGE COUNTY
CUM	TECH	ALL	TRAIL PATH RE-ROUTE PERMIT
DR	ENGR	UTILE ECHO GREENWAY TRAIL	DETAILS
1 OF 1	SHEET	DWG.	RE3302