



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 13

DATE: March 16, 2022

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

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

FROM: Mary Tiffault, Senior Title Examiner
Real Estate Management Division *MT/MTC*

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

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

ACTION REQUESTED: Approval and execution of Temporary Non-Exclusive Distribution Easement from Orange County to Duke Energy Florida, LLC, d/b/a Duke Energy and authorization for Real Estate Management Division to disburse funds to pay recording fees and record instrument.

PROJECT: Southwest Service Area Storage and Repump Facility – Duke UE
District 1

PURPOSE: To provide for access, construction, operation, and maintenance of electrical facilities by Duke Energy Florida, LLC, d/b/a Duke Energy.

ITEM: Temporary Non-Exclusive Distribution Easement
Revenue: None
Size: 4.49 acres

FUNDS: \$36.20 Payable to Orange County Comptroller
(for recording fees)

APPROVALS: Real Estate Management Division
County Attorney's Office
Utilities Department

REMARKS: Grantor to pay all recording fees.

APR 05 2022

Project Name: Southwest Service Area Storage & Repump Facility – Duke UE



SEC: 08	TWP: 24S	RGE: 27E	COUNTY: ORANGE	PROJECT: 39877473
GRANTOR: ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS				
SITE ADDRESS: AVALON ROAD, WINTER GARDEN, FLORIDA 34787				
TAX PARCEL NUMBER: 08-24-27-0000-00-043				

TEMPORARY NON-EXCLUSIVE DISTRIBUTION EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, its successors and assigns (**GRANTOR** herein), P. O. Box 1393, Orlando, Florida 32802-1393, in consideration of the mutual benefits, covenants and conditions herein contained, does hereby grant and convey to **DUKE ENERGY FLORIDA, LLC, a Florida limited liability company, d/b/a DUKE ENERGY**, its agents, lessees, successors and assigns, (**GRANTEE** herein), Post Office Box 14042, St. Petersburg, Florida 33733, the right, privilege and non-exclusive easement to construct, reconstruct, operate and maintain in perpetuity or until the use thereof is abandoned, one or more electric underground distribution lines and related underground facilities and appurtenant aboveground facilities (including supporting structures, other wires, attachments and accessories desirable in connection therewith); together with the right, privilege and easement to construct, reconstruct, operate communication facilities only for the use and convenience of the **GRANTEE** for the **GRANTEE**'s internal communications. This is subject to all applicable permitting requirements as may be required by federal, state, or local codes, statutes, ordinances, or regulations, over, under, upon and across the following described lands in Orange County, Florida, and referred to hereinafter as the Easement Area to wit:

A portion of that tract of land lying in the Southeast 1/4 of the Northwest 1/4 of Section 8, Township 24 South, Range 27 East, Orange County Florida, Described as:

Commencing at the Northwest corner of the Southwest 1/4 of the Northeast 1/4 of said Section 8; thence run South 89°45'26" West along the North line of the Southeast 1/4 of the Northwest 1/4 of said Section 8, for a distance of 268.41 feet to the POINT OF BEGINNING; thence run South 00°06'18" East for a distance of 380.01 feet; thence run South 89°45'26" West a distance of 515.02 feet; thence run North 00°06'18" West for a distance of 380.01 feet to the North line of the Southeast 1/4 of said Section 8; thence run North 89°45'26" East, along said North line for a distance of 515.02 feet to the POINT OF BEGINNING.

This easement will be replaced with a Descriptive Easement, five (5) feet on either side of all Facilities installed by GRANTEE, as will be shown on a certified surveyed sketch of description to be provided by GRANTOR within sixty (60) days after the installation of Facilities by GRANTEE. If the sketch of description is not provided by GRANTOR within sixty (60) days after completion of installation, GRANTEE will record this easement.

The Easement granted herein is solely for the purposes described herein. No additions, modifications, or improvements beyond those listed herein shall be constructed, erected, placed or maintained on or around the easement property without **GRANTOR'S** prior written approval. **GRANTEE** shall make all commercially reasonable efforts to undertake all work in the Easement Area in a safe and prudent manner. **GRANTEE** shall not make any use of the Easement Area which is or would be a nuisance or unreasonably detrimental to the Grantor.

Together with the right to patrol, inspect, alter, improve, repair, rebuild, relocate or remove such lines and related facilities, including the right to increase or decrease the number and type of supporting structures. **GRANTEE** shall be solely responsible for the construction, operation, maintenance, addition and/or removal of its systems of electric underground distribution lines, facilities and related items in the Easement Area, which shall be at **GRANTEE**'s sole expense.

GRANTEE shall have all other rights and privileges reasonably necessary or convenient for the safe and efficient operation and maintenance of said electric distribution lines and related facilities, including the right to trim, cut and keep clear trees, limbs and undergrowth along said lines, and further including the reasonable right to enter upon the adjoining lands of the **GRANTOR** for the purpose of exercising the rights herein granted. If obstructions are installed adjacent to the Easement Area, they shall be placed so as to allow ready access to **GRANTEE**'s facilities. Failure to exercise the rights herein granted to **GRANTEE** shall not constitute a waiver or abandonment.

GRANTEE accepts the Easement Area "as is" and with all faults. **GRANTEE** agrees that it assumes all risk for any damage or injury to any of its systems of electric underground distribution lines, facilities, and related items in the Easement Area, however caused.

GRANTOR covenants and agrees that no trees, buildings, structures or obstacles will be located or constructed within the Easement Area nor shall ground elevation be altered.

GRANTEE covenants and agrees to promptly repair, at its own expense, all damage to any property, facilities or improvements of **GRANTOR** located in the Easement Area or adjacent thereto, including without limitation parking areas, driveways, recreational facilities and landscaping, if such damage is incident to the exercise of **GRANTEE**'s rights, privileges, or obligations under this Easement.

GRANTEE shall exercise all rights, privileges, and obligations hereunder at its own risk and expense. Throughout the term of this easement, **GRANTEE** shall provide and maintain, and shall require its contractors (if any) to provide and maintain, such general liability, automobile liability, and workers' compensation insurance or self-insurance as required as may be necessary to protect **GRANTEE** and **GRANTOR** from losses which may arise out of or be related in any way to this easement. All such insurance or self-insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by **GRANTOR**. Upon request of **GRANTOR**, **GRANTEE** shall promptly furnish evidence of such insurance or self-insurance to **GRANTOR**. **GRANTOR** shall be listed as an additional insured on all general liability policies or programs of self-insurance. Notwithstanding any provision of this easement, nothing in this easement shall constitute, or be deemed or construed as, a waiver of sovereign immunity or limits of liability by **GRANTOR**, 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.

GRANTEE shall defend, indemnify and hold harmless **GRANTOR**, its officials, agents and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, fines, costs and expenses (including reasonable attorney's fees prior to and upon appeal) of any kind or nature whatsoever related to this easement to the extent directly arising out of or to the extent caused by: (i) the negligent use and enjoyment by **GRANTEE**, its directors, officers, employees, agents, contractors or their subcontractors, anyone employed by them, or anyone for whose acts any of them may be liable (collectively "**GRANTEE**'s Permittees") of the Easement Area; (ii) all liens and other charges asserted against the Easement Area for any purpose whatsoever to the extent arising as a result of the actions or omissions of **GRANTEE**, or **GRANTEE**'s Permittees; (iii) all claims relating to injury to persons or property occurring on or about the Easement Area to the extent caused by the use or control of the Easement Area by **GRANTEE** or **GRANTEE**'s Permittees; (iv) **GRANTEE**'s or **GRANTEE**'s Permittees' failure to properly construct and maintain its systems of electric underground distribution lines, facilities, and related items in the Easement Area; and, (v) **GRANTEE**'s or **GRANTEE**'s Permittees' construction activities upon, over or under the Easement Area or adjoining lands.

GRANTOR retains the right to use, access and enjoy and to permit others to use, access and enjoy the Easement Area for any purpose whatsoever that will not unreasonably interfere with **GRANTEE**'s rights provided herein.

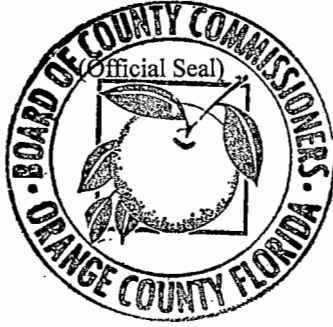
All covenants, terms, provisions and conditions herein contained shall inure and extend to and be obligatory upon the heirs, successors, lessees and assigns of the respective parties hereto.

GRANTOR and **GRANTEE** 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 easement, or the breach, enforcement, or interpretation of this easement, 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. Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this easement 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.

IN WITNESS WHEREOF, the said **GRANTOR** has caused these presents to be executed in its name by its Board, acting by the County Mayor, the day and year aforesaid.

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Orange County, Florida
By: Board of County Commissioners

BY: Bryant B. Demings
for Jerry L. Demings
Orange County Mayor

DATE: 7 April 2022

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

BY: Naehai Perez
for Deputy Clerk

Naehai Perez
Printed Name

Prepared By: Bruce C. Crawford, Esq.
Crawford & Owen, P.A.
780 Carillon Parkway Suite 301
Saint Petersburg, Florida 33716

Return to: DukeEnergy
Attn: Land Services
3300 Exchange Place, NP1B
Lake Mary, Florida 32746

