

## Appendix D: Agreement to Lease and Joint Participation Agreement with Duke Energy

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No. \_\_\_\_\_  
BCC 12-16-14  
2:02 P.M. Filson/FUTCH/Schmidt

- #15 Revised Agreement to Lease and Joint Participation Agreement with Duke Energy Florida, Inc. d/b/a Duke Energy for the Pinellas/Duke Energy Trail Extension Project (PID No. 000186A) approved; Chairman authorized to sign the agreement and the Clerk to attest. Authorization granted to complete the design and construction of trail Segment B2, from Enterprise Road/U.S. Highway 19 to State Road 590, and to seek funding for additional trail segments.

Motion - Commissioner Long  
Second - Commissioner Gerard

Managing County Assistant Attorney Michael Zas presented a brief overview of the agreement, noting that the original agreement with Florida Power/Progress Energy, now Duke Energy, has expired; that construction standards have been revised; and that the County will oversee and award the construction contracts under the new agreement.

In response to requests by Commissioner Eggers, Director of Engineering and Technical Support Kevin Becotte referred to the Pinellas trail map, noting the location of the proposed Duke Energy Trail and indicating that the proposed trail will be 20 miles long, beginning in St. Petersburg and extending to East Lake Road. He stated that some of the trail segments have been completed; and that funds are available in the Capital Improvement Program to allow construction of Segment B2; whereupon, Mr. Woodard related that the vision is to create a trail system that loops through the entire County, and discussion ensued.

Chairman Seel extended her appreciation to everyone that assisted with the project, and introduced Duke Energy Representative Melissa Seixas; whereupon, she related that, through the generosity of Duke Energy, Pinellas County will be able to continue the trail without the financial obligation of leasing the property.

Vote - 6 - 0

**REVISED AGREEMENT TO LEASE AND JOINT PARTICIPATION AGREEMENT**

**THIS REVISED AGREEMENT TO LEASE AND JOINT PARTICIPATION AGREEMENT** made and entered into and effective this 16 day of December, 2014, is between DUKE ENERGY FLORIDA, INC. d/b/a DUKE ENERGY formerly known as FLORIDA POWER CORPORATION d/b/a PROGRESS ENERGY FLORIDA, INC. (hereinafter referred to as "Duke Energy") and PINELLAS COUNTY, FLORIDA, hereinafter referred to as "County", hereinafter jointly referred to as "Parties".

**WHEREAS**, the Parties entered into an Agreement to Lease dated December 3, 1999 to commit to a joint project to create an extension of the Pinellas Trail, hereinafter referred to as "Project", which was amended by a First Amendment to Agreement to Lease dated December 4, 2001 and then amended again by a Second Amendment to Agreement to Lease dated June 17, 2003; and

**WHEREAS**, the Agreement to Lease and Amendments thereto expired on December 2, 2010 and the Parties desire to renew the agreement; and

**WHEREAS**, on December 3, 1999, the Parties also contemporaneously entered into a Joint Participation Agreement to provide for a funding source, master plan, surveying, engineering and construction for the Project which was then amended in the First Amendment to Joint Partnership Agreement dated June 17, 2003; and

**WHEREAS**, the Parties now agree to renew the agreements referenced herein and to combine the Agreement to Lease and Amendments thereto, and the Joint Participation Agreement and Amendment thereto, into one new agreement now referred to as the Revised Agreement to Lease and Joint Participation Agreement (hereinafter referred to as the "Revised Agreement"); and

I, KENNETH P. BURKE, Clerk of the Circuit Court and Clerk Ex-Officio, Board of County Commissioners, do hereby certify that the above and foregoing is a true and correct copy of the original as it appears in the official files of the Board of County Commissioners of Pinellas County, Florida. Witness my hand and seal of said County FL this 13 day of December, A.D. 2014.  
KENNETH P. BURKE, Clerk of the Circuit Court Ex-Officio  
Clerk of the Board of County Commissioners,  
Pinellas County, Florida.  
By [Signature]  
Deputy Clerk

**WHEREAS**, this Revised Agreement supplants and supersedes the Agreement to Lease and Amendments thereto and the Joint Participation Agreement and Amendment thereto and now controls this Project as it moves forward; and

**WHEREAS**, the Parties entered into a Trail Lease on June 17, 2003, amended on February 22, 2005, December 27, 2007 and June 2, 2009, which provides that upon completion of each segment of the Project, the Lease is to be amended, in part, to incorporate those completed Project segments into the Lease and the Parties affirm that nothing herein is intended to contravene the Trail Lease, as amended; and to the extent the terms of the Trail Lease are not consistent with this Revised Agreement, the terms of this Revised Agreement and its exhibits shall supersede the terms of the Trail Lease only if a term contained within this Revised Agreement conflicts with same; and

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, and for other good and valuable consideration, receipt of which is hereby acknowledged by the Parties, it is hereby agreed by and between the Parties as follows:

1. All of the above whereas clauses are incorporated herein and made a part of this Revised Agreement.
2. Any reference to the term Pinellas Trail relates solely to that portion of the Pinellas Trail that is or will be physically located upon the lands owned by Duke Energy in fee simple title or encumbered by a Duke Energy easement, hereinafter referred to as "Duke Energy Property".
3. Any reference herein to the term "Project" refers specifically to segments of the Pinellas Trail to be constructed on Duke Energy Property as follows: In accordance with the Concept Plan, and Master Plan as amended, attached hereto as Exhibits "A" and "B"

respectively, a proposed trail is to be designed and constructed near the intersection of East Lake Road and Tampa Road, moving in a southerly direction to the Countryside area, along the west side of U.S. 19 south, and then east to Weedon Island in the Gateway area on public right of way or property owned or encumbered by Duke Energy and is considered part of the Pinellas Trail arterial that will provide a continuous loop within the County. Consistent with the aforementioned Master Plan and considering Pinellas County is designated by the State of Florida as a Dense Urban Land Area, the impervious surface of the Trail shall consist of a 12' continuous hard surface unless physical constraints preclude otherwise, referred to as the Trail Utilization Area, except for the segment which has already been designed by Duke Energy which portion shall be 15 feet wide flanked by a 5 foot sod buffer for a total of 25 foot wide area.

4. The Parties now agree that the construction of the Project over the portion of the Duke Energy Property herein shall be designed, permitted, bid, awarded, and constructed by the County.

5. The Parties further agree that, if necessary, the County will be responsible for obtaining additional rights of way and easements outside the fee owned boundaries of Duke Energy Property needed to complete the Project as defined herein.

6. Duke Energy shall provide the County with all existing and latest construction plans for segments of the Project already designed or partially designed by Duke Energy but not constructed in both paper and electronic format and the County shall have plans completed and/or updated to County standards and Duke Energy's Electric Transmission Right of Way Requirements For Shared Use Paths/ Trails which are incorporated herein by reference via an engineering consultant designer who may be the same or different from the original designer. These plans which identify the location and typical section, for the Trail will be considered

acceptable by Duke Energy, pending modification to incorporate specific reinforced equipment crossings as outlined in this agreement and to remove mitigation sites therein. No floodplain/wetland mitigation or floodplain compensation sites shall be permitted within the Trail Utilization Area or upon any other Duke Energy fee owned or easement property.

7. In order to complete the revised design, permit and construct in accordance with County standards and the Duke Energy standards referred to in paragraph 6, Duke Energy will allow the County, their agents and other permitting entities to enter Duke Energy Property to perform survey, engineering, permit evaluations and geotechnical work and hazmat evaluations as needed.

8. County hereby expressly understands, covenants and agrees (a) that nothing contained in this Agreement or contemplated is intended to or shall increase Duke Energy's liability for personal injury or death or for any property damage, (b) that Duke Energy does not assume any such additional liability, (c) that liability arising out of the utilization and occupancy of Duke Energy's right-of-way and/or easement by County and County's employees, agents, contractors, invitees or any representative, is hereby assumed by County and shall be at the sole and exclusive risk of County, (d) that County shall answer any and all complaints relative to County's utilization of Duke Energy's right-of-way and/or easement, (e) that County shall protect, defend and hold harmless Duke Energy, its directors, officers, employees, representatives, agents and contractors from and against any and all actions, claims, damages and/or loss including costs and attorney's fees occasioned by or growing out of any actual or claimed usage or condition of Duke Energy's right-of-way and/or easement arising in any manner whatsoever, directly or indirectly, by reason of this Agreement or County's utilization thereof, and (f) that County covenants not to interfere with Duke Energy's existing and future

high voltage electric transmission and distribution lines and related facilities in any manner whatsoever.

9. The County will send Duke Energy a Notice of Intent to Proceed prior to the County's surveying, testing, designing and inspecting the Project on any segment of the Project on Duke Energy property. The services to be performed by the County for these segments of the Project may include, but not be limited to, the survey, environmental and hazmat investigations, preliminary design, testing, final design, preparation of construction plans and specifications, applications for federal, state, and local permit, and the construction of these segments of the Project. Preparation of construction plans and specifications shall include, but not be limited to, pavement, drainage structures, erosion protection, and maintenance of traffic all of which must comply with applicable NESC standards and OSHA standards. Unless otherwise mutually agreed upon by both Pinellas County and Duke Energy, the general alignment of the Trail shall be consistent with the intent identified in the aforementioned Master Plan prepared by Progress Energy (Exhibit B). In the event environmental contamination is discovered, either during the planning/design phase or the construction phase of the project, the County reserves the right to cancel this agreement and/or modify the alignment of the Trail out of the contaminated area, of which Duke Energy's approval for a modified alignment shall not be unreasonably withheld.

10. All proposed construction plans must be approved in writing by Duke Energy which approval shall not be arbitrarily denied, delayed or conditioned.

11. Duke Energy's Asset Protection Agent or designated representative shall be notified by County thirty (30) days prior to the commencement of construction activities within Duke Energy's Property.



12. The County acknowledges and agrees that it is solely responsible for the design, implementation and/or enforcement of the County's safety program or plan and that Duke Energy is not responsible for any errors or omissions in said safety program or plan.

13. At locations where any existing Duke Energy access road, as identified by Duke Energy in Exhibit "C", attached hereto, will cross the Trail within Duke Energy's Property, the Trail shall be designed and constructed to be driven over by a 134,000 pound vehicle (83,000 pound maximum axel loading) and to accommodate a crane outrigger load of 100,000 pounds. These Trail reinforcement areas shall be a minimum of 20' long and match the width of the Trail's bicycle and pedestrian facility, with markings to indicate "heavy equipment crossing".

14. The Parties further agree that the heightened construction standards described in paragraph 13 above shall also be constructed at the crossing locations in the vicinity of Stag Run Boulevard; specifically, the County agrees to reinforce that certain segment approximately 882 feet in length that is north of the Stag Run Cul-de-Sac and within the limits of properties owned by Duke Energy depicted in the attached Exhibit "D" which is incorporated herein.

15. Prior to commencing construction activities within Duke Energy's Property, the County will furnish Duke Energy with a fully completed certificate of insurance, in duplicate, evidencing insurance coverage of the liability assumed in the amount of Twenty Five Million (\$25,000,000.00) Dollars. Specifically, the County will carry, and will cause all of its contractors to carry, policies of insurance with respect to General Liability, Bodily Injury and Property Damage insuring against all risks to all persons or entities which may sustain property damage or personal injury as a result of the combined acts and omissions of the County or its contractors, which may be related in any way to the County's use of Duke Energy Property. Duke Energy shall be named as an additional insured on the County's insurance policy.



16. Subject to Duke Energy's prior written approval, Duke Energy will afford the County or its contractors the ability to use Duke Energy property outside and/or along the Project area for initial construction purposes. Additional areas may also be added on future Trail segments considered on a case by case basis, in which written approval by Duke Energy shall not be unreasonably withheld.

17. The County agrees not to use any equipment capable of extending over twelve (12) feet in height above natural ground within Duke Energy's Property without Duke Energy written authorization which shall not be unreasonably withheld provided appropriate safety measures as required by Duke Energy are incorporated into the activity being conducted.

18. Other than Duke Energy's facilities, and those approved in writing by Duke Energy and shown on the construction plans for the County's utilization within Duke Energy Property, no overhead wires, poles, light standards, dumpsters, signs, trees, buildings, structures or obstacles shall be located, constructed or installed within Duke Energy's Property.

19. All of County's operations, activities and equipment used within Duke Energy's right of way and/or easement beneath or in proximity to any of Duke Energy's electrical facilities shall, at all times, be in strict compliance with applicable provisions of the National Electrical Safety Code (NESC), the Occupational Safety and Health Act of 1971 (OSHA) and OSHA Crane Construction Standards for Power Line Safety, Sections 1926.1408 & 1409 and other applicable Federal, State or local rules, ordinances, regulations and codes. County is further notified and hereby agrees to so notify any of County's employees, agents, contractors, representatives or other persons engaging in County's activities upon said right of way and/or easement with County's knowledge and under County's supervision or control, that extreme caution is necessary around all of Duke Energy's electrical facilities, supporting structures,

anchor guys or related appurtenances, and in the event of any damages or injuries, County shall immediately report the nature and extent thereof to Duke Energy's nearest local office.

20. The area within Duke Energy's Property which is disturbed by the County's utilization, including Duke Energy's patrol road, shall be restored by the County to a condition at least as good as that which existed prior to construction.

21. Duke Energy's Asset Protection Agent or designated representative may verify that construction of the improvements within Duke Energy's Property are constructed in compliance with the terms and conditions of the construction plans. The County's construction manager (or designated representative) will make reports to Duke Energy's inspector regarding any damages to Duke Energy's Property caused by the construction of the improvements. The County agrees to pay all expenses incurred in connection with the repair of such damages.

22. The County shall be responsible for clean-up of any and all hazardous material spills resulting from the County's utilization which may occur within Duke Energy's Property. If a hazardous material spill occurs, the County shall immediately report the nature and extent of the spill to Duke Energy's Environmental Department at 866-769-1266.

23. The County agrees to furnish Duke Energy's Asset Protection Agent or designated representative with a set of as-built drawings of the County's utilization area within sixty (60) days of completion of construction, noting the location of the County's improvements within Duke Energy's Property.

24. Upon completion of construction, the County shall notify Duke Energy's Asset Protection Agent or designated representative for inspection of Duke Energy's Property.

25. The County and Duke Energy agree that as segments of the Project are completed, the Trail Lease, as amended, will be further amended to incorporate these newly

constructed segments of the Project.

26. The County hereby waives any right to claim damages to the Trail as defined herein caused by Duke Energy's construction, operation, or maintenance of its transmission and distribution facilities, so long as Duke Energy shall not willfully cause damage to or unreasonably interfere with the County's utilization of the Duke Energy Trail.

27. Duke Energy does not guarantee that County's utilization will be completely compatible with the safe and efficient operation and maintenance of Duke Energy's existing and future high voltage electric transmission and distribution lines within Duke Energy's right of way and/or easement. In the event that County's utilization interferes with Duke Energy's present or future use of the subject real property, County agrees to relocate or adjust its facilities and/or improvements at County's sole cost and expense. County further agrees to reimburse Duke Energy for all expenses associated with the relocation of any existing Duke Energy facilities necessitated by County's utilization in the event the proposed Trail necessitates the relocation of an existing Duke Energy facility. In the event that Duke Energy exercises its rights to install additional electric facilities within the land that is the subject of this Agreement, Duke Energy shall not be obligated to repair, replace or reimburse the costs of any of County's improvements placed upon the property.

28. All notices shall be sent to the following addresses for the County and Duke Energy unless otherwise informed:

As to County:

As to Duke Energy:

Timothy Mumford  
Asset Protection Agent  
2501- 25<sup>th</sup> Street North  
St. Petersburg, FL 33713

29. As consideration for the use of Duke Energy property as set forth herein, the Parties agree that once completed, the trail under the Project herein located on Duke Energy Property shall be named the Duke Energy Florida Trail and to the extent not prohibited by Florida Department of Transportation (FDOT) or other regulatory agencies, all references in signage, including any signs on bridges connection on either side of Duke Energy fee-held or easement property that reference the Trail, and literature for the Trail shall refer to the Trail as The Duke Energy Florida Trail and shall contain the official Pinellas County identification to indicate that it is a cooperative project. All literature on the trail will contain a reference to Duke Energy Florida's contribution in language acceptable to Duke Energy. Duke Energy and the County will coordinate in a naming event and in cooperative joint events such as dedication, groundbreaking, or grand opening that may be conducted by the County. The County will keep all future signs referencing the Duke Energy Florida Trail in good repair. Duke Energy reserves the right to change the name of the Trail and it will be Duke Energy's expense for all costs involved in changing the name of the Trail.

County shall be responsible for printing, installing and maintaining signage within the Duke Energy Property. The naming rights signage will contain language mutually developed by Duke Energy and County. The signage to be implemented on future Trail segments shall be located up to every one-quarter (1/4) of a mile along the side of the Trail and at every road crossing. Additionally, the County may provide to the public educational brochures about the Trail. The language for these brochures will be jointly agreed upon between the County and Duke Energy.

30. Duke Energy agrees to forebear encumbering that portion of Duke Energy property as depicted in the aforementioned Master Plan dated November 1, 2001, as amended,

attached hereto as Exhibit B, dedicated for the construction and collocation of the Duke Energy Florida Trail.

31. The term of this Agreement shall be perpetual unless terminated in accordance with the provisions set forth in paragraph 32.

32. This Agreement may be terminated by the earlier of mutual consent of the Parties. The County reserves the right to terminate this Agreement upon a decision of a future Board of County Commissioners to discontinue the construction of the Trail or in the event that funds are not budgeted to fund this Agreement which is subject to Sections 129.07, 129.08, 129.09, Florida Statutes. Upon termination of this Agreement, all rights of possession and use revert back solely to Duke Energy.

WITNESSES:

Bruce Todd Boyer  
Print Name: Bruce Todd Boyer

Sam Evans  
Print Name: Sam Evans

DUKE ENERGY FLORIDA, INC. d/b/a  
DUKE ENERGY, a Florida corporation

By: Daniel Hendricks  
Print Name: Daniel Hendricks  
Title: Manager Land Services

(Corporate Seal)



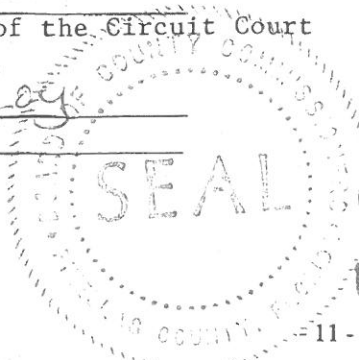
ATTEST:

Ken Burke - Deputy Clerk  
Print Name: Ken Burke  
Clerk of the Circuit Court

Norman D. Lutz  
Print Name: Norman D. Lutz

PINELLAS COUNTY, FLORIDA, a  
Political subdivision of the State of Florida

By: Karen Williams Seel  
Print Name: Karen Williams Seel  
Title: Commission Chair



APPROVED AS TO FORM  
OFFICE OF COUNTY ATTORNEY

By: M. Zas  
Attorney