

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: September 18, 2023
RE: **Settlement Agreement with Duke Energy Florida, LLC for Construction of 230kV Transmission Line Through the City of Lakeland's Northeast Wellfield**

Attached for your consideration is a proposed Settlement Agreement between the City of Lakeland and Duke Energy Florida, LLC (Duke Energy) providing for the construction of a 230kV Duke Energy transmission line through the City's Northeast Wellfield.

Duke Energy has identified the need to build a new single-circuit 230kV transmission line over an approximately 26.2-mile long route between its existing Kathleen Substation located off of US Highway 98 North and its Osprey Energy Center in Auburndale. The identified route passes through the City of Lakeland's Northeast Wellfield, an approximately 880-acre property owned by the City located off of Old Polk City Road in northeast Lakeland. The City currently holds a Water Use Permit (WUP) for the Northeast Wellfield from the Southwest Florida Water Management District (SWFWMD) permitting the withdrawal of up to 4 million gallons per day (4.0 mgd) from the Upper Floridan Aquifer.

Because of the sensitivity of the City's property, the parties have had extensive discussions and numerous subject matter experts have been retained to analyze Duke's proposed project and recommend less impactful alternatives. Duke Energy and the City are currently parties to an eminent domain lawsuit filed by Duke Energy, wherein Duke has sought to condemn easements through the City's Wellfield for its transmission line. The City in turn has filed an administrative challenge to Duke's Florida Department of Environmental Protection (FDEP) permit to construct its project. After comprehensive negotiations and study, representatives for Duke Energy and the City have agreed to terms and conditions to allow Duke to proceed with its project and resolve the pending litigation and legal challenges, subject to City Commission approval.

The material terms and conditions of the attached Settlement Agreement between Duke Energy and the City are as follows:

- Duke Energy will modify the route of its transmission line through the Northeast Wellfield such that the transmission line will be located entirely on uplands and avoids all jurisdictional wetlands.
- Duke will install the foundations for its transmission towers in accordance with specific construction methodologies designed to

completely seal the holes in which the foundations are installed such that no leakance will occur from the surface or between the various aquifer layers beneath the foundations.

- In order to preserve existing surface water flows, Duke will not construct any new roads or alter the elevation or grade of existing roads within the Northeast Wellfield.
- No herbicides or pesticides will be used on the Northeast Wellfield at any time.
- Any trees or vegetation required to be removed to facilitate or maintain Duke's project will be cleared by hand.
- Duke will pay a total of \$4,617,484.75 in resolution of this matter. This figure is inclusive of the cost of all easements through the City's property necessary for the project, additional short-term and long-term monitoring and maintenance responsibilities placed upon the City due to the impacts of Duke's project, and all attorney's fees and expert witness fees and costs incurred by the City as a result of this matter.
- Perhaps most importantly to the City, Duke will indemnify, defend and hold the City harmless from and against all adverse consequences caused by Duke's construction and maintenance of its facilities on the Northeast Wellfield. This includes the obligation on Duke's part to indemnify the City from (i) any future reduction to the City's WUP for the Northeast Wellfield, (ii) any future denial of the City's application to renew the WUP, (iii) a future renewal of the City's WUP at a lower withdrawal amount, (iv) any future denial of a City application to increase its permitted withdrawal from the Northeast Wellfield caused by Duke's project, and (v) any costs incurred by the City if leakance begins to occur between the surficial aquifer, the intermediate aquifer, the Upper Floridan Aquifer, and/or the Lower Floridan Aquifer.

The terms and conditions of this Settlement Agreement have been thoroughly vetted by a comprehensive City team including hydrogeologists, structural engineers, environmental lawyers specializing in water law, eminent domain counsel, and City staff. It is recommended that the City Commission approve the attached Settlement Agreement between the City of Lakeland and Duke Energy Florida, LLC and authorize the appropriate City officials to execute the Agreement and all documents necessary to implement the Agreement.

Attachment



Return to:
Manny R. Vilaret, Esq.
Vilaret Law, PLLC
10901 Danka Circle, Suite C
Saint Petersburg, Florida 33716

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of the Effective Date set forth herein, by and between DUKE ENERGY FLORIDA, LLC, a Florida limited liability company, (“DEF”) and the CITY OF LAKELAND, a municipal corporation existing under the laws of State of Florida (“City”). Either DEF or the City may be separately referenced herein as the “Party.” DEF and the City are collectively referenced herein as the “Parties.”

WHEREAS, DEF is an electric utility that has identified the need to build a new single-circuit 230kV transmission line between its existing substation located at 12347 US Highway 98 North, Lakeland, Florida 33809 (the “Kathleen Substation”) and its facility located at 1651 Derby Avenue West, Auburndale Florida 33823 (the “Osprey Energy Center”), over an approximately 26.2 mile-long route lying entirely within Polk County, Florida (the “Project”);

WHEREAS, the City is a municipal corporation charged with protecting and preserving the health, safety and welfare of its citizens, which includes but is not limited to providing potable water services and water supply for fire protection to residential, commercial and industrial customers;

WHEREAS, in furtherance of the City’s potable water service responsibilities, it established the Northeast Wellfield over an approximately 880-acre property which is owned by the City in fee simple and which is located at 3000 Old Polk City Road, Lakeland Florida, 33809 within the corporate limits of the City of Lakeland (the “NEWF”);

WHEREAS, after years of work, analysis and investment by the City, it obtained Water Use Permit Number 4912.011, which was reauthorized by the Southwest Florida Water Management District (“SWFWMD”) in 2007 and subsequently modified to extend the duration of the permit among other modifications (hereinafter the “WUP”);

WHEREAS, the WUP presently authorizes the City to withdraw a total of 35.03 million gallons per day (“MGD”) annual average daily flow (“AADF”) from the upper Floridan aquifer, consisting of 28.03 MGD AADF from the Lakeland Northwest Wellfield, 3.0 MGD AADF from the Combee Wellfield, and 4.0 MGD AADF from the NEWF (the “Permitted Withdrawal”);

WHEREAS, according to the City, the City’s ability to maintain its Permitted Withdrawal is authorized by SWFWMD so long as unacceptable adverse impacts to water resources, on-site wetlands, environmental systems, off-site land uses, and existing legal users do not result from the City’s operations;

WHEREAS, it is the City’s position that the NEWF has the documented potential to withdraw additional quantities from the upper Floridan aquifer after further application and authorization from the SWFWMD (the “Future Withdrawal”);

WHEREAS, it is the City’s position that the City’s continued and uninterrupted ability to make its Permitted Withdrawal and Future Withdrawal is of critical importance to the City;

WHEREAS, as part of its Project, DEF selected a route that crossed through the NEWF and required various easement interests from the City;

WHEREAS, it is the City’s position that DEF’s selected route would have impacted various wetlands on the NEWF, including wetlands that are monitored as a critical condition of the WUP and would have impaired the City’s ability to withdraw water from the NEWF;

WHEREAS, the City represents that it has successfully resisted a curtailment of its water supply allocation under statutory and rule requirements collectively known as the Central Florida Water Initiative (“CFWI”) under Section 373.0465, Fla. Stat., and Ch. 62-41, Fla. Admin. Code and related CFWI Supplemental Applicant’s Handbook, based on administrative litigation and careful management of the environmental conditions on the NEWF;

WHEREAS, in order to accomplish the timely construction and operation of the Project, DEF sought to condemn the required easement interests across the NEWF through an eminent domain lawsuit styled *Duke Energy Florida, LLC v. City of Lakeland*, Case Number 2022-CA-003879, in the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida (the “Eminent Domain Litigation”);

WHEREAS, in partial response to DEF’s Project, on March 12, 2023, the City filed a Petition for Formal Administrative Hearing in an administrative proceeding styled *City of Lakeland v. Florida Department of Environmental Protection and Duke Energy Florida, LLC*, DOAH Case Number 23-1345, State of Florida Division of Administrative Hearings (the “Permit Proceeding”), which challenged DEF’s State 404 Program Permit for the Project, Permit No: 0417141-002-SFI issued by the State of Florida Department of Environmental Protection (“FDEP”);

WHEREAS, the Parties have engaged in settlement communications that have resulted in a revised Project route through the NEWF as illustrated on **Exhibit A**, and have further agreed to other terms set forth in detail below;

WHEREAS, in partial consideration for this Agreement, there are specific indemnification and duty to defend provisions set forth in this Agreement; and

WHEREAS, the Parties desire to avoid the expense, uncertainties, and risks of continued litigation and wish to compromise and settle all past, present, and future claims that were, could, or should have been brought against, by or between them relating to the Project, the NEWF, the Eminent Domain Litigation and the Permit Proceeding, on and subject to the terms described below;

NOW THEREFORE, by mutual agreement of the Parties and in consideration of the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation.** The terms of the recitals set forth above are incorporated herein. In the event of a conflict between the recitals and these numbered paragraphs, the numbered paragraphs will govern.
2. **Effective Date.** The effective date of this Agreement means the date on which this Agreement becomes effective and binding on the Parties, and shall be the date when the last Party has signed this Agreement (hereinafter the “Effective Date”).
3. **Agreed Route.** The Parties agree that the final Project route through the NEWF will be in substantial conformance with the route shown in **Exhibit A** (the “Agreed Route”); the Agreed Route avoids as much construction in wetlands as possible, as well as impacts regulated by Chapters 373 and 404, Fla. Stat., and Section 404 of the federal Clean Water Act. The Parties agree that no poles shall be located in any wetlands on the NEWF for any reason.
4. **Pending Litigation.** The Parties shall undertake the following:
 - a. DEF shall voluntarily dismiss with prejudice the Eminent Domain Litigation no later than two (2) business days following the Effective Date of this Agreement.
 - b. The City shall voluntarily dismiss with prejudice the Permit Proceeding no later than two (2) business days following the Effective Date of this Agreement.
 - c. DEF agrees that as of the Effective Date DEF will no longer rely on or use its State 404 Program Permit (Permit No. 0417141-002-SFI issued by FDEP) for its Project on the NEWF or its State Environmental Resource Permit (Permit No.: 53-0417141-001-EI issued by FDEP) for its Project on the NEWF until applications to amend those permits in conformity with this Agreement are submitted and FDEP authorizes any work.
 - d. No later than ten (10) business days following the Effective Date of this Agreement, DEF shall wire the amount of \$1,401,356.94 to the law firm of Oertel, Fernandez, Bryant & Atkinson, P.A., as full and final payment of all attorney fees and costs of that law firm, and all expert fees and costs of experts retained by that law firm.
 - e. As partial consideration for this Agreement, each Party waives its right to assert claims for fees and costs in either the Eminent Domain Litigation or the Permit Proceeding, subject to Paragraph 4.d. above and Paragraph 9 below, including but not limited to fee and cost claims associated with a voluntary dismissal.

- f. This agreement contained in this Paragraph 4 does not apply to any future litigation or administrative proceedings.
5. **Construction Plans.** DEF shall prepare revised Project construction plans which shall substantially conform to the Agreed Route (the “Amended Plans”). The Amended Plans shall show, illustrate or note the following:
- a. The utilization of only the approved pole foundation construction materials, protocols, and methods set forth in **Exhibit B** for any pole foundation, and related access and site preparations, that is constructed inside the NEWF boundary;
 - b. Provide a minimum span between proposed poles OK-114 and OK-116 (as shown on **Exhibit A**), and as marked in the field by the Parties on August 15, 2023 (see, **Exhibit C**) of 1,315 linear feet;
 - i. The Parties acknowledge and agree that the pole locations for OK-114 and OK-116 which were located and staked by the Parties in the field at the NEWF on August 15, 2023 with OK-116 being located at Northing = 1395065.877; Easting = 690147.559 and OK-114 being located at Northing = 1395129.049; Easting = 691460.66, shall control over any map or other conflicting narrative reference in this Agreement;
 - c. Limit the trimming of the forested and wetland area between poles OK-114 and OK-116 to hand-trimming down to ground level, but not below;
 - d. No fencing of the Agreed Route for areas internal to the NEWF;
 - i. DEF may install gates into the existing NEWF fencing along the north and south boundary lines of the NEWF where the Agreed Route crosses onto adjacent property;
 - e. No roads will be constructed on the NEWF;
 - i. The use of temporary construction geotextile mats (or matting) is acceptable, however, no “demucking” or excavation of any upland or wetland muck or fill above or below the temporary construction mats is acceptable, no placement of any fill material or rock within wetlands is acceptable, and no alteration of existing surface water flow patterns is acceptable;
 - ii. The placement of non-woven geotextile fabric (FIRAFI 380i or approved equivalent) shall be placed beneath matting in saturated soils or delineated wetlands to prevent removal of soils or filling of soils and to prevent affecting soil or muck profiles;
 - iii. DEF may add inert stabilization material (i.e., 57 stone, shell rock, etc.) to the pre-established roads and paths located inside of the Agreed Route as needed;
 - iv. The placement of temporary pole pads will avoid all wetlands;
 - v. DEF agrees to restore those areas where geotextile mats or inert stabilization materials have been placed within the Agreed Route, to the same condition as near as practicable as the condition it was before the work was performed.

- vi. If conditions arise where stabilization or improvements along the Agreed Route are needed to allow transit of DEF vehicles or equipment for construction, maintenance or repair of their facilities placed in the NEWF, prior written authorization is required prior to such improvements. These improvements, if needed, shall not alter the surface water flow from prior existing onsite conditions. If requested by the City in writing, any alterations or improvements to existing or new roads or paths along the Agreed Route shall be restored to the condition it was before the work was performed following completion of the initial construction of DEF's transmission line facilities on the NEWF.
- vii. Prior to the commencement of construction activities or any alterations to the NEWF by DEF, DEF shall record a video and take photographs along the Agreed Route to document the before condition of the Agreed Route. A digital copy of this data shall be provided to the City within thirty (30) days of its creation. Upon completion of restoration activities, DEF shall record a video and take photographs to document the restored condition of the Agreed Route. DEF shall again provide a digital copy of this data to the City within thirty (30) days of its creation.
- f. No herbicides or pesticides will be utilized on the NEWF at any time;
- g. The implementation of hazardous materials protocols for all equipment and materials brought onto the NEWF; and
- h. That no portion of the NEWF will be used for anything other than inert material storage and staging during construction (i.e., no chemicals, petroleum products or other contaminants will be stored or staged on the NEWF).

DEF shall submit its Amended Plans to the City for review and approval within thirty (30) days of the Effective Date. The City shall respond to DEF with its comments or approval within fifteen (15) days of being provided with the Amended Plans. The Parties agree to work in good faith to prepare and finalize the Amended Plans in accordance with the terms and intent of this Agreement, and to revise and approve the Amended Plans as quickly as possible. The Amended Plans, once approved by the City are hereinafter referred to as the "Approved Plans."

6. **Amended Permits.** DEF shall apply for an amended/modified federal 404 permit, Florida Environmental Resource Permit ("ERP") and any other permit that DEF determines, in its sole discretion, to be necessary to construct and operate the Project over and across the Agreed Route (the "Amended Permits"). DEF agrees to incorporate the above referenced construction materials, protocols, methodologies and restrictions into their applications for the Amended Permits, with the understanding by the Parties that the agencies have discretion over what is included in any given permit. Provided all applications for the Amended Permits are based upon the Approved Plans and are otherwise consistent with this Agreement, the City agrees not to oppose or challenge the applications for the Amended Permits or, upon issuance, the Amended Permits themselves, so long as the Amended Permits are consistent with this Agreement. Notwithstanding the foregoing, the City reserves the right to appear in any proceeding (application process, litigation, etc.) if the City determines, in its sole discretion, that its appearance is necessary to monitor progress of such proceedings to ensure the Amended

Permits are consistent with this Agreement, to address matters raised by any third-party in the permitting process or to otherwise enforce the terms of this Agreement against DEF. Furthermore, the Parties acknowledge that final pole locations, the Project construction plans, temporary and permanent access and clearing will be subject to FDEP's approval, including any changes or adjustments required by FDEP to the Approved Plans in order for DEF to obtain necessary permit modifications. Any modification required by FDEP of the agreed-upon materials, protocols, methodologies, restrictions or locations require the City's advance written approval. The City agrees that it shall work with DEF and FDEP in good faith to agree upon reasonable permit modification conditions which incorporate the information required by this paragraph.

7. **Surveys.** Upon the City's approval of the Approved Plans, DEF shall have thirty (30) days to provide the City with surveys and legal descriptions of all easement parcels that DEF determines are necessary for the Agreed Route (as modified by the Approved Plans, if at all). The City's surveyor shall have fifteen (15) days to review and respond to DEF with any edits to the surveys or legal descriptions. Upon approval of the surveys and legal descriptions by the City, they shall be signed and sealed by DEF's surveyor (a licensed Florida professional surveyor and mapper), and shall be certified to the City as an additional party.
8. **Easements.** The Parties agree that DEF will require perpetual utility easements and temporary construction easements to construct and permanently maintain the Project. As required herein, the City shall convey to DEF perpetual utility easements and temporary construction easements which substantially conform to the instruments attached hereto as **Exhibits D and E**, respectively (collectively, the "Easements"). The Easements will be finalized by the Parties upon the completion of the corresponding signed and sealed surveys. The Parties agree that the utility Easements granted pursuant to this Agreement will not affect the City's ownership or control of the NEWF for purposes of the City's WUP and the City's Permitted Withdrawal.
9. **Compensation.** In exchange for the settlement of the claims, releases, and other terms set forth herein, and in exchange for the Easements, DEF will pay the City \$3,216,127.81 (the "Compensation"). The Compensation is inclusive of all amounts owed for the Easements, for added short-term and long-term monitoring and maintenance responsibilities placed upon the City due to impacts associated with the Project, and for all attorneys' and expert witness fees and costs that have been or will be incurred by the City for the Eminent Domain Litigation through the time of the Closing (defined in Paragraph 10).
10. **Closing.** Within thirty (30) days of DEF's receipt of the Amended Permits, or the finalization of the Easements, whichever occurs last, the Parties shall conduct a closing to convey to DEF executed copies of the finalized Easements in exchange for DEF's payment of the Compensation (the "Closing"). Construction of the Project will not commence until after the Closing. The Parties acknowledge and agree that DEF will pay for all Closing costs, including recording costs, associated with the conveyance of the Easements. DEF shall make its payment via wire transfer to the trust account of the City's designated agent for appropriate disbursement.

11. Survival of this Agreement. Upon completion of the Closing, the issues of the Easements and the Compensation shall be fully and finally resolved. However, it is expressly acknowledged, understood and agreed upon by the Parties that all other terms of this Agreement, including, but not limited to, the indemnification and duty to defend provisions herein, shall survive the Closing and shall remain enforceable as set forth herein. The Parties further agree that all other terms of this Agreement, including, but not limited to, the indemnification and duty to defend provisions set forth herein will survive:

- a. any termination of this Agreement;
- b. the sale or conveyance of the ownership of DEF;
- c. DEF's insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of DEF's debts;
- d. DEF's assignment for the benefit of creditors; and
- e. DEF's dissolution or ceasing to do business.

Notwithstanding, should the NEWF permanently cease to be used as a wellfield for a minimum period of twenty-four (24) months for a reason unrelated to DEF's Project on the NEWF, the City shall provide written notification to DEF or shall respond to a written inquiry from DEF, whereupon the Parties shall jointly determine whether any ongoing rights and obligations under this Agreement shall also cease. If it is agreed that the surviving rights and obligations under this Agreement shall terminate, then, upon written request by DEF, the City shall provide DEF with a Notice of Termination in a form sufficient to be recorded in the Official Records of Polk County, Florida.

12. Construction of the Project. Without regard to whether it is shown in the Approved Plans, DEF agrees to abide by the following conditions during the construction of the Project on the NEWF:

- a. In the event that DEF, or any of its contractors, subcontractors, employees or agents damage the surface condition of the NEWF or any of its improvements, DEF will immediately notify the City (as set forth herein), repair and/or restore same to the same or better condition than it was before the work was performed. The repair/restoration work shall be subject to the City's approval.
- b. With the exception of the allowances set forth in Paragraph 5.e., DEF will not install any roads or above-grade improvements in connection with construction on the NEWF. The Parties agree to cooperate and coordinate as to construction and access methods for construction including but not limited to gate access.
- c. DEF will provide at its own expense security personnel during construction hours to secure any access points used by DEF for construction. DEF will secure all access points overnight with locks on the gates used for access, and will provide the City with the ability to operate and secure same.
- d. To the greatest extent possible during construction, DEF will minimize any clearing of native vegetation within all wetland areas to remove only those trees necessary to complete the Project. Low brush will remain intact to the greatest extent practicable. The clearing method will be performed in a similar manner (by

hand) used by DEF when accessing the previously performed soil borings on the NEWF pursuant to the March 17, 2023 and August 15, 2023 Right of Entry agreements. For those trees which must be removed, they will be cut to ground level (by hand) and the roots will remain intact.

- e. DEF will remove all cut materials and construction debris at its own expense.
- f. DEF will not use herbicides or pesticides on the NEWF.
- g. DEF will not install security fencing internal to the NEWF but will repair any existing fencing that may be altered or damaged during construction to the satisfaction of the City.
- h. DEF may leave/store vehicles and vehicular equipment overnight on the NEWF within the Easements, but shall provide for protective mats or other barriers to prevent fluid leakages into the soil. The City will not be responsible for the security of equipment stored at any time on the NEWF.
- i. DEF may not store any chemicals, oil or fuel on the NEWF.
- j. City personnel will observe construction of the pole foundations, poles, stringing of the transmission line(s) and all other activities necessary to complete the Project. City personnel will be required to comply with DEF standard Project safety requirements requested by DEF. The purpose of the City's observation is to ensure compliance with this Agreement and to ensure the protection of the NEWF. If, during construction of the Project on the NEWF, City personnel identify an issue that in the City's sole opinion violates this Agreement, the approved Agreed Plans or endangers the NEWF in any way, City personnel will communicate that verbally and in writing to DEF, at which point DEF agrees to immediately stop all construction activities on the NEWF until the Parties can discuss the issue and mutually agree on how to proceed. Should the Parties be unable to agree on a way to proceed, the Dispute Resolution provisions shall apply.
- k. During construction, DEF will follow its standard containment control procedures to minimize releases of any gas or oil from equipment onto the property and will provide onsite DEF environmental oversight.
- l. DEF will remove all disturbed soils and/or spoils within 48 hours.
- m. DEF shall not disturb the ditch or surface water structures at and/or around OK-109 and OK-112 as shown on **Exhibit A**.
- n. Any tree trimming around OK-109 and OK-112, and any tree trimming around and between OK-114 and OK-116, shall be by hand.
- o. DEF shall utilize only the approved pole foundation construction materials and methods set forth in **Exhibit B**.

13. Activities Post-Construction and Post-Closing. Following the Closing and the construction of the Project, and without regard to whether it is shown in the Approved Plans, DEF agrees to abide by the following conditions on the NEWF.

- a. In the event that DEF, or any of its contractors, subcontractors, employees or agents damage the surface condition of the NEWF or any of its improvements, DEF will immediately notify the City (as set forth herein), repair and/or restore same to the same or better condition than it was before the work was performed. The repair/restoration work shall be subject to the City's approval.
- b. With the exception of the allowances set forth in Paragraph 5.e., DEF will not install any roads or above-grade improvements in connection with construction on the NEWF unless otherwise approved by the City in writing. The Parties agree to cooperate and coordinate as to maintenance and access methods including but not limited to gate access.
- c. If requested in writing by the City, DEF will provide at its own expense security personnel during maintenance hours to secure any access points used by DEF for maintenance. DEF's maintenance activities shall not interfere with the City's ability to operate and secure the NEWF.
- d. To the greatest extent possible, DEF will minimize any clearing of native vegetation within all wetland areas to only remove those trees which are necessary for the operation or maintenance of DEF's facilities. Low brush will remain intact to the greatest extent possible. Clearing will be performed by hand. For those trees which must be removed, they will be cut to ground level (by hand) and the roots will remain intact.
- e. DEF will remove all cut materials and construction debris at its own expense.
- f. DEF will not use herbicides or pesticides on the NEWF at any time.
- g. DEF will not install security fencing internal to the NEWF but will repair any existing fencing that may be altered or damaged during maintenance to the satisfaction of the City.
- h. DEF may not leave/store vehicles and vehicular equipment overnight on the NEWF within the Easements, unless approved by the City. The City will not be responsible for the security of equipment stored at any time on the NEWF.
- i. DEF may not store any chemicals, oil or fuel on the NEWF.
- j. During maintenance activities, City personnel will observe all maintenance activities necessary for the Project. City personnel will be required to comply with safety requirements reasonably requested by DEF. The purpose of the City's observation is to ensure compliance with this Agreement and to ensure the protection of the NEWF. If, during maintenance activities on the NEWF, City personnel identify an issue that in the City's sole opinion violates this Agreement or endangers the NEWF in any way, DEF agrees to stop all activities on the NEWF until the issue is resolved. Should the Parties be unable to agree on a way to proceed, the Dispute Resolution provisions shall apply.
- k. During maintenance on the NEWF, DEF will follow its standard containment control procedures to minimize releases of any gas or oil from equipment onto the property and will provide onsite DEF environmental oversight.

1. If DEF fails to comply with any of the above, the Parties shall follow the Dispute Resolution procedures below.
14. **Dispute Resolution.** For issues identified under Paragraphs 12. j. and 13. j., or for any other dispute arising under this Agreement, the Parties agree to initially submit any controversy or claim to an authorized representative of each Party who shall agree to meet in good faith in an attempt to resolve any such dispute. Notice of any dispute shall be made in writing within five (5) business days after the first day of the event giving rise to such dispute. Written documentation and supporting data shall be promptly submitted regarding the nature and substance of the dispute. All negotiations pursuant to this Dispute Resolution paragraph are to be deemed confidential and shall be treated as compromise and settlement negotiations for the purposes of applicable rules of evidence. If the Parties cannot resolve a dispute through such a meeting then the dispute shall be submitted to non-binding mediation to be held in front of a mediator that is mutually agreeable to the Parties. If the Parties cannot resolve a dispute through mediation, either Party shall then be entitled to file a corresponding action in a court of law. In any event, if the dispute in question has not been resolved by negotiation within ninety (90) days of the disputing Party's notice, and the Parties have not otherwise agreed to extend such negotiation period, then either Party may initiate litigation.
15. **Acknowledgment and Indemnification Regarding the NEWF.**
- a. **Acknowledgement.** DEF acknowledges that:
 - i. the City represents that the NEWF has been used by the City as a potable water supply wellfield since the early 1990's and that the earliest permit for the NEWF was in December of 1989 where the Southwest Florida Water Management District authorized the City to pump an average of 9.0 MGD AADF from the NEWF in Permit No. 209795;
 - ii. the City represents that the City's current permit, the WUP, authorizes the City to withdraw 4.0 MGD AADF from the NEWF;
 - iii. the City has no desire for DEF to place any of DEF's Project facilities on the NEWF property in perpetuity;
 - iv. but for the DEF's indemnification and defense of the City, the Compensation, the route realignment, the foundation modifications, the construction and other specifications contained in this Agreement, the City would not enter into this Agreement;
 - v. DEF's indemnification and defense of the City as provided herein is a material inducement to the City's entry into this Agreement; and
 - vi. the survival of DEF's indemnification of and agreement to defend the City in perpetuity as set forth below is a material inducement to the City's entry into this Agreement.
 - b. **Indemnification.** DEF shall and does hereby indemnify and hold harmless the City and its respective trustees, heirs, executors, predecessors in interest, successors, assigns, and past, present and future officers, directors, shareholders, members, employees, servants, insurers, guarantors, attorneys in fact and at law

and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated, from and against any and all costs, expenses, liens, losses, encumbrances, liabilities, claims, demands, causes of action, obligations, suits or damages, agency fines or costs, whether known or unknown, whether choate or inchoate, now existing or arising at any time in the future, (including reasonable attorneys' fees and expenses actually incurred), including regulatory actions that result in modified permits, or claims, demands, or requests to modify permits, asserting noncompliance with permit conditions in the WUP caused by DEF's Project on the NEWF, including any future work performed by DEF or by its contractors, agents, or any other parties conducting work on the NEWF at DEF's direction or for DEF's benefit on the NEWF (an "Indemnified Claim"). Should an Indemnified Claim result in the City's loss, as determined by any final, non-appealable judicial order or pursuant to a binding alternative dispute resolution procedure, of any or all of its permitted potable water supply from the NEWF, such Indemnified Claim shall include the replacement of an equivalent amount of potable water of the 4.0 MGD AADF allocation currently permitted to be withdrawn from the NEWF under the WUP as of the Effective Date of this Agreement.

- c. The following shall constitute and be included without limitation within the definition of an "Indemnified Claim":
 - i. any future reduction to the City's Permitted Withdrawal or Future Withdrawal caused by the DEF Project on the NEWF;
 - ii. any future agency denial of the City's applications to renew the WUP caused by the DEF Project on the NEWF;
 - iii. any future agency renewal of the WUP at a lower withdrawal amount than authorized by the City's WUP caused by the DEF Project on the NEWF;
 - iv. any future agency denial of the City's applications to increase the amount of water to be withdrawn from the NEWF caused by the DEF Project on the NEWF;
 - v. any costs related to the future discovery from monitoring efforts following construction of the DEF Project on the NEWF that leakance is occurring between the surficial aquifer, the intermediate aquifer, the Upper Floridan Aquifer, and/or the Lower Floridan Aquifer in the areas adjacent to DEF Project towers and foundations resulting in adverse impacts on jurisdictional wetlands in the NEWF, water quality degradation, or water quantity caused by the DEF Project on the NEWF;
 - vi. any future costs incurred by the City to comply with any federal, state, or local laws, rules, regulations, orders, ordinances, including, but not limited to the Southern Water Use Caution Area ("SWUCA") statutes and rules, and the CFWI statutes, rules and applicant handbooks due in whole or in part to the presence of DEF's Project on the NEWF; and
 - vii. the enforcement of these indemnification provisions.

- d. Notwithstanding the foregoing, DEF shall have no obligation to indemnify, defend or hold harmless the City from or against any costs, expenses, liens, losses, encumbrances, liabilities, claims, demands, causes of action, obligations, suits or damages, agency proceedings, fines or costs, that solely arise out of the City's operation or maintenance of the NEWF or the City's own negligence, gross negligence, willful or illegal conduct by the City, its agents or assigns.
- e. This indemnity provision shall be perpetual and shall apply to all DEF Project improvements, construction activities, repairs, maintenance, reconstruction or replacement of any improvements, and any future improvement not contemplated by this Agreement, placed on, across or under the Easements by DEF, its successors or assigns.
- f. **Savings Clause:** The parties agree that to the extent the written terms of this Indemnification conflict with any applicable provisions of Florida laws or statutes, the written terms of this Indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statutes and to contain such limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by Florida Law.
- g. **DEF Duty to Defend City.** In the event of actual or threatened litigation and/or regulatory proceedings or requirements arising from any Indemnified Claims, whether the City is a permittee, petitioner, respondent, plaintiff or defendant, appellant or appellee, the City shall promptly notify DEF of the assertion of any such claims for which DEF may be responsible. In such instances, the City shall promptly provide written notice to DEF:
 - i. describing in reasonable detail the nature of the claim and the basis for the request for indemnification under this Agreement;
 - ii. including a copy of all documents or pleadings related to such claim; and
 - iii. including the City's best estimate of the amount of liabilities, damages, losses, attorneys' fees, costs and expenses that may arise from such claim.

Upon written request by the City as to any threatened, pending or completed Indemnified Claim, DEF shall have the right to consult with the City on the hiring outside counsel to defend such claims. DEF shall reimburse the City for the reasonable defense of such matters by the City's attorneys and other professionals, including, but not limited to, consultants and expert witnesses. The duty to defend applies immediately upon written request. DEF's obligation to pay for the defense of the City is independent of and in addition to DEF's duty to indemnify and hold the City harmless. DEF acknowledges and agrees that the City shall have the right to independently select and hire necessary counsel, consultants and experts, as needed, to defend any Indemnified Claims. All the City's reasonable costs in this regard shall be reimbursed by DEF as an Indemnified Claim. The City shall have the sole authority to settle any Indemnified Claim. DEF and the City shall fully cooperate in connection with the

defense of any Indemnified Claims. While not required by this Agreement, DEF and the City agree to consider entering into a Joint Defense Agreement, where appropriate, regarding any Indemnified Claims.

- h. The liability of DEF under this paragraph 15 shall in no way be limited, impaired, released, discharged, reduced or otherwise affected by:
 - i. the accuracy or inaccuracy of the representations made in this Agreement by any Party;
 - ii. the subsequent sale of the NEWF by the City;
 - iii. negligence, delay or forbearance of the City in demanding, requiring, or enforcing payment from DEF of any sums due hereunder; or
 - iv. receivership, insolvency, or dissolution, if applicable, of DEF.
- i. Should the NEWF permanently cease to be used as a permitted wellfield for a minimum period of twenty-four (24) months for a reason unrelated to DEF's Project on the NEWF, the City shall provide written notification to DEF or shall respond to a written inquiry from DEF, whereupon the Parties shall jointly determine whether any ongoing rights and obligations under this Agreement shall also cease. If it is agreed that the surviving rights and obligations under this Agreement shall terminate, then, upon written request by DEF, the City shall provide DEF with a Notice of Termination in a form sufficient to be recorded in the Official Records of Polk County, Florida.

16. Ongoing Monitoring. Once DEF has demobilized and completed its construction on the NEWF, the City will install monitoring wells, using a portion of the Compensation provided by DEF, which take the same readings as, and are compatible with, the City's current monitoring system at locations within the Easements to be determined by the City in consultation with DEF.

- a. DEF Rights as to Monitoring Data. The following documents shall be available to DEF upon DEF's reasonable request: historical data on water levels and water quality from the past 5 years, baseline data and copies of all data from the monitoring system that relate to DEF's use of the NEWF.
- b. Maintenance of Records. The City will maintain all data derived from the monitoring wells and all reports prepared from that data (the "Monitoring Records"). The Monitoring Records shall be retained by the City for a period of twenty (20) years from the Effective Date.
- c. Mandatory Reporting to DEF. Notwithstanding the other requirements of this section, the City shall notify DEF within thirty (30) days of the City's receipt of any report that may reasonably give rise to an Indemnified Claim, and shall provide DEF with all associated monitoring data. The failure to timely provide such notification shall not act as a waiver of the City's right to indemnification or any other right under this Agreement.
- d. Availability of Records and Reports. The City shall supply information that DEF or its representatives may from time to time reasonably request relative to the

monitoring system and the Monitoring Records that relates to DEF's use of the NEWF. This information shall, on written request of DEF, be open for examination by DEF and DEF's representatives at a reasonable time and place.

- e. Audit. DEF may require, at DEF's sole cost, upon prior written notice and during the City's normal business hours, an audit of the City's monitoring related to this Agreement.

17. Post-Construction Access to the NEWF. Upon the conclusion of Project construction, DEF shall close and lock the gates it installs along the northern and southern boundaries of the NEWF. DEF shall insure that the City has the ability to utilize and secure all DEF gates. These gates shall remain DEF's primary access points to its Easements on the NEWF. If post-construction non-emergency on-site access is required by DEF, it shall schedule and coordinate its access onto the NEWF through City of Lakeland Water Utilities Department at least 2 business days prior to DEF's entry onto the NEWF. For non-emergency access please call the City of Lakeland's Manager of Water Production office at (863) 834-6750 or the C.W. Combee Water Treatment Plant Control Room at (863) 834-4957. If post-construction emergency access is required by DEF, it shall notify the City's Combee Water Treatment Plant Control Room (863) 834-4957, a 24-hour, 7 day a week staffed facility that will respond and open gates. In all instances, DEF shall notify the City of the activities to be conducted while on the NEWF. While the Parties acknowledge that there are currently no additional or enhanced security requirements being imposed on the NEWF or the Project by regulatory agencies, the Parties agree to mutually abide by any future security requirements which may be imposed on the NEWF or the Project by the Department of Homeland Security or other agency with jurisdiction.

18. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Parties at the following addresses:

To DEF:	Legal Department Duke Energy Florida, LLC 299 1 st Avenue North St Petersburg, Florida 33701 Attn: Kathryn Christian, Esq.
With copy to:	Shutts & Bowen LLP c/o Fred S. Werdine, Esq. 4301 West Boy Scout Blvd., Ste. 300, Tampa, FL 33607
To City:	City of Lakeland Water Utilities 501 East Lemon Street Lakeland, FL 33801 Attn: Water Utilities Director
With copy to:	City of Lakeland

	228 S. Massachusetts Avenue Lakeland, FL 33801 Attn: City Attorney
C. Wayne Combee Water Treatment Plant Control Room:	863-834-4957

19. **No Admission of Liability.** The Parties agree and acknowledge that this settlement is a compromise of disputed claims, and that neither the recitals, terms, conditions, or other statements in the Agreement nor the payment of sums herein mentioned shall be construed as an admission of liability on the part of the Parties. Notwithstanding, this Agreement shall be admissible in any action, suit, or legal proceeding seeking its enforcement.
20. **Recording.** This Agreement shall be recorded within five (5) business days of the Effective Date at DEF's sole expense.
21. **Succession.** All of the agreements, conditions, methodologies, protocols, and terms in this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heir, executors, representatives, administrators, successors, receivers, trustees, purchasers, agents and assigns.
22. **Authority to Sign this Agreement.** The persons signing this Agreement on behalf of the Parties represent and warrant that they have full authority to execute this Agreement and make it fully binding upon the Party for whom they have signed.
23. **Understanding of Agreement.** The Parties have read all of the terms of this Agreement. They had access to counsel of their choosing and an adequate opportunity to review this Agreement with their attorneys and have their attorneys explain the terms of this Agreement to them, including the force and effect of this Agreement. The Parties understand and agree to the terms stated in this Agreement. The Parties have signed this Agreement freely and voluntarily, without any duress or coercion, and upon the advice of their attorneys.
24. **Entire Agreement (Merger and Integration Clause).** This Agreement constitutes and merges the entire understanding of the Parties and supersedes any and all prior and contemporaneous oral and written statements, representations, and negotiations between the Parties. The Parties acknowledge that they have read this Agreement and that it is a complete, written statement of the terms and conditions of the settlement. The Parties agree that all of the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be modified or amended except by an instrument in writing signed by all of the Parties. No provision of this Agreement may be waived except in writing signed by the Party waiving the provision. No waiver of any specific provision shall be deemed a waiver of any other provision.

25. **Enforcement.** If either Party is required to enforce its rights under this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees and costs, including expert fees and litigation costs, and attorneys' fees and costs incurred in litigating entitlement to attorney's fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs, the Parties waiving any statute, rule, law or public policy to the contrary. Any specific remedies set forth in this Agreement, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative upon all other rights set forth herein or allowed by this Agreement or by law.
26. **No Reliance on Other Party (Non-Reliance).** The Parties have entered into this Agreement based solely upon their own independent investigation, knowledge, and judgment of their particular situation, the extent of their claimed damages and injuries, and the facts and circumstances related to their dealings and involvement with the other Party. The Parties represent that they had adequate opportunity to consult with counsel of their choosing for purposes of same. The Parties agree that any information, facts, statements, or representations they received from the other Party that were relevant to their decision to enter into this Agreement could have been and should have been written into this Agreement, and in signing this Agreement the Parties have not relied on and have not been influenced by, any oral or written information, facts, statements, representations, or anything else that has been said or supplied to them by or on behalf of a Party that are not expressly stated in this Agreement.
27. **Adequate Consideration.** With the exception of claims which might result from the Indemnification set forth herein, the Parties acknowledge that the Compensation is fair and sufficient consideration to resolve the claims between them, and/or any other claims asserted or that could have been asserted regarding the Project at the time of this Agreement.
28. **Governing Law, Jurisdiction, Forum, and Interpretation of this Agreement.** This Agreement shall be deemed to have been prepared, signed, and delivered exclusively in the State of Florida, and this Agreement shall be governed by, interpreted, performed, and enforced in accordance with the laws of the State of Florida, without regard to its choice of law rules. The Parties agree that the sole and exclusive jurisdiction for any action arising from or related to this Agreement shall be in the appropriate state court in Polk County, Florida. No provision of this Agreement shall be interpreted for or against any Party because the provision was drafted by that Party or that Party's attorney, and both Parties shall be deemed to have participated equally in the drafting of the language of this Agreement. If any term or condition of this Agreement is determined by a court of competent jurisdiction to void for any reason, the Parties hereto acknowledge and agree that the remainder of the terms and conditions of this Agreement shall remain in full force and effect, but only upon the condition that the material purposes of this Agreement may be realized by the Parties without the voided term or condition.
29. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, and by the different Parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement, binding on all of the Parties. Any of the Parties hereto may execute this Agreement by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. Delivery of a counterpart

hereof by facsimile transmission or by e-mail or other electronic transmission (including via an Adobe portable document format file (also known as a “PDF” file)) shall be effective as delivery of a manually executed counterpart hereof. Each Party intends to be bound by such Party’s facsimile, “PDF” or other electronically delivered format signature on this Agreement, is aware that the other Parties hereto may rely on any such electronically transmitted signature, and hereby waives any and all defenses to the enforcement of this Agreement based upon the form of signature or its manner of delivery.

[Execution signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in their respective names on the day and year indicated below.

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

ATTEST:

Print or Type Name

Print or Type Name

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

mailing address:

Signature of First Witness

Print or Type Name of First Witness

CORPORATE SEAL

Signature of Second Witness

Print or Type Name of Second Witness

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____, _____ of **Duke Energy Florida, LLC, a Florida limited liability company, d/b/a Duke Energy**, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped

My Commission Expires: _____

CITY OF LAKELAND, a municipal corporation existing under the laws of State of Florida

Execution Date: _____

H. WILLIAM MUTZ, MAYOR

ATTEST:

KELLY S. KOOS, CITY CLERK

**APPROVED AS TO FORM AND
CORRECTNESS:**

**PALMER C. DAVIS
CITY ATTORNEY**

STATE OF FLORIDA
COUNTY OF POLK

THE FOREGOING INSTRUMENT was acknowledged before me by means of [] physical presence or [] online notarization, this ____ day of _____, 2023, by H. William Mutz, as Mayor of the **City of Lakeland, a municipal corporation existing under the laws of the State of Florida**, on behalf thereof, who [] is personally known to me, or [] produced _____ as identification.

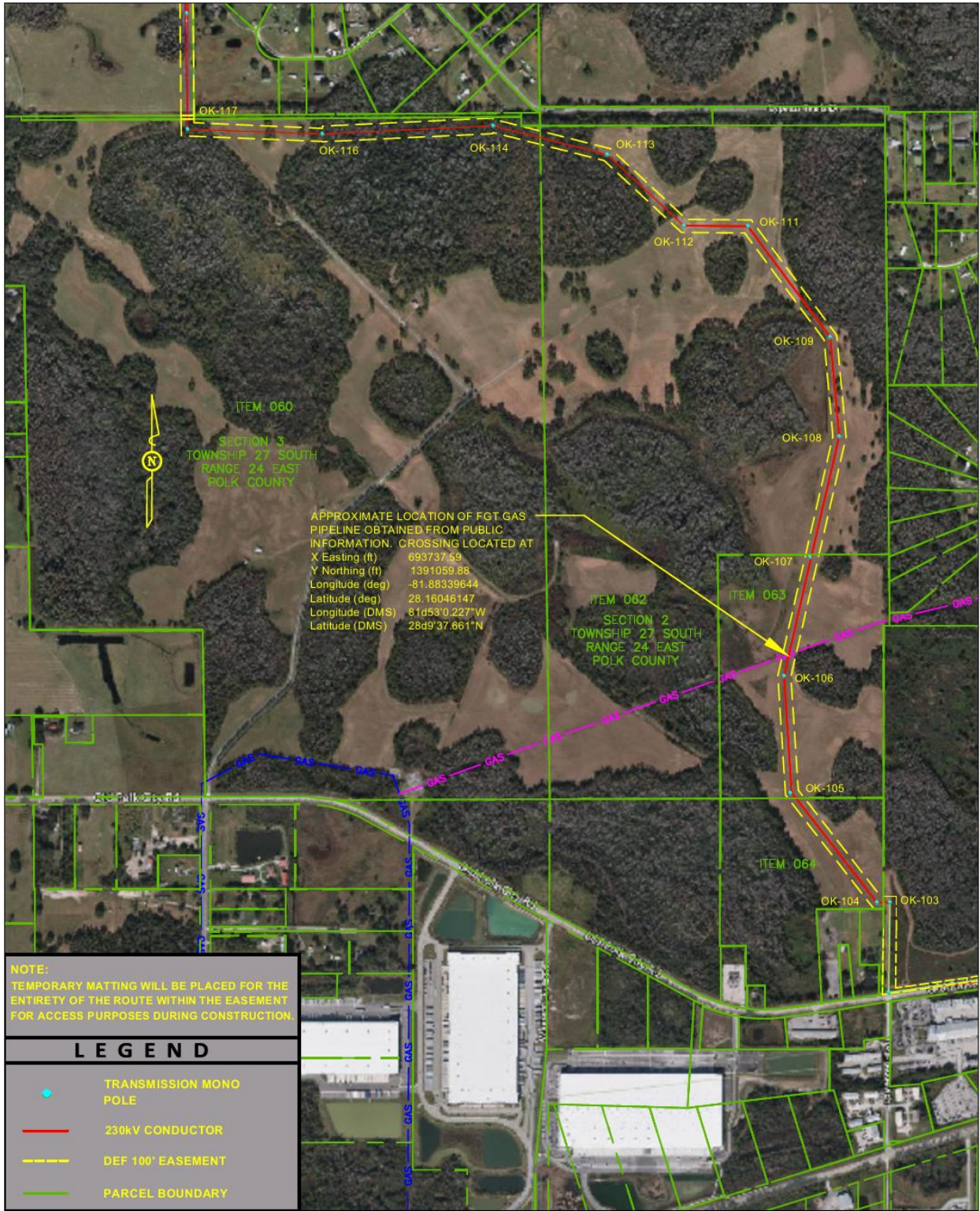
[AFFIX NOTARY SEAL]

Notary Public Signature
Print Notary Name: _____
My commission expires: _____

Exhibit A

Agreed Route

Appears on the following 7 pages



APPROXIMATE LOCATION OF FGT GAS PIPELINE OBTAINED FROM PUBLIC INFORMATION. CROSSING LOCATED AT

X Easting (ft)	693737.59
Y Northing (ft)	1391059.88
Longitude (deg)	-81.88339644
Latitude (deg)	28.16046147
Longitude (DMS)	81d53'0.227"W
Latitude (DMS)	28d9'37.861"N

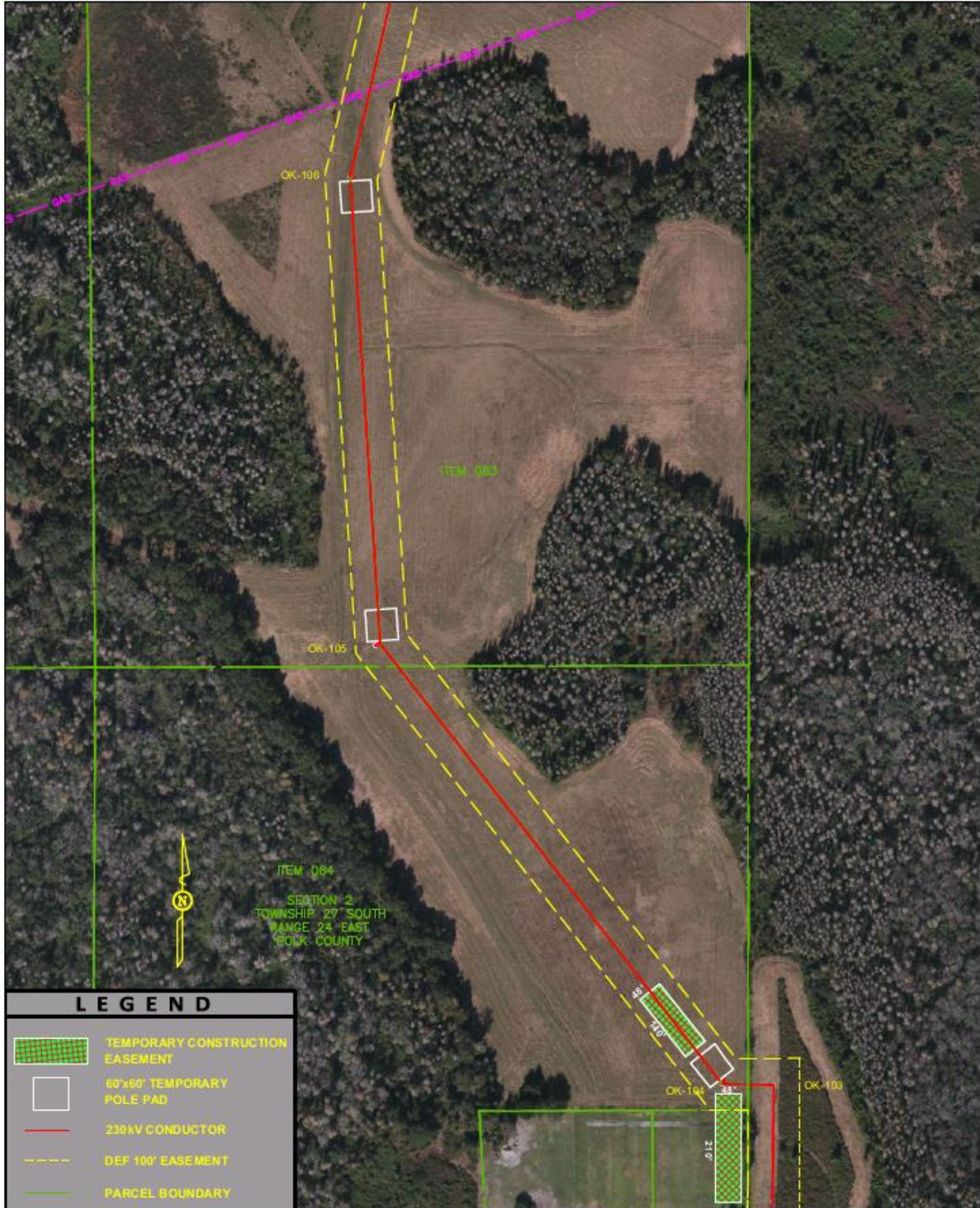
NOTE:
TEMPORARY MATTING WILL BE PLACED FOR THE ENTIRETY OF THE ROUTE WITHIN THE EASEMENT FOR ACCESS PURPOSES DURING CONSTRUCTION.

LEGEND	
	TRANSMISSION MONO POLE
	230kV CONDUCTOR
	DEF 100' EASEMENT
	PARCEL BOUNDARY

REV.#	REVISION DESCRIPTION	BY	DATE
E	STR. OK-113, 114, & 116 RELOCATED PER FIELD DISCUSSION	RD	8/23
D	UPDATED STRUCTURE NUMBERS	RD	6/23
C	MODIFIED ROUTE, REMOVED STRUCTURE OK-110	RD	6/23
B	STRUCTURES RELOCATED PER WETLAND COORDINATES	RD	5/23
A	ISSUED FOR REVIEW	RD	5/23

OSPREY TO KATHLEEN
LAKELAND CITY WATERSHED
REROUTE
OPTION 6B


	APPROVED	TS	SHEET
	DATE	6/23	1 OF 1
SCALE: 1"=1000'	DWG.	OK8021	

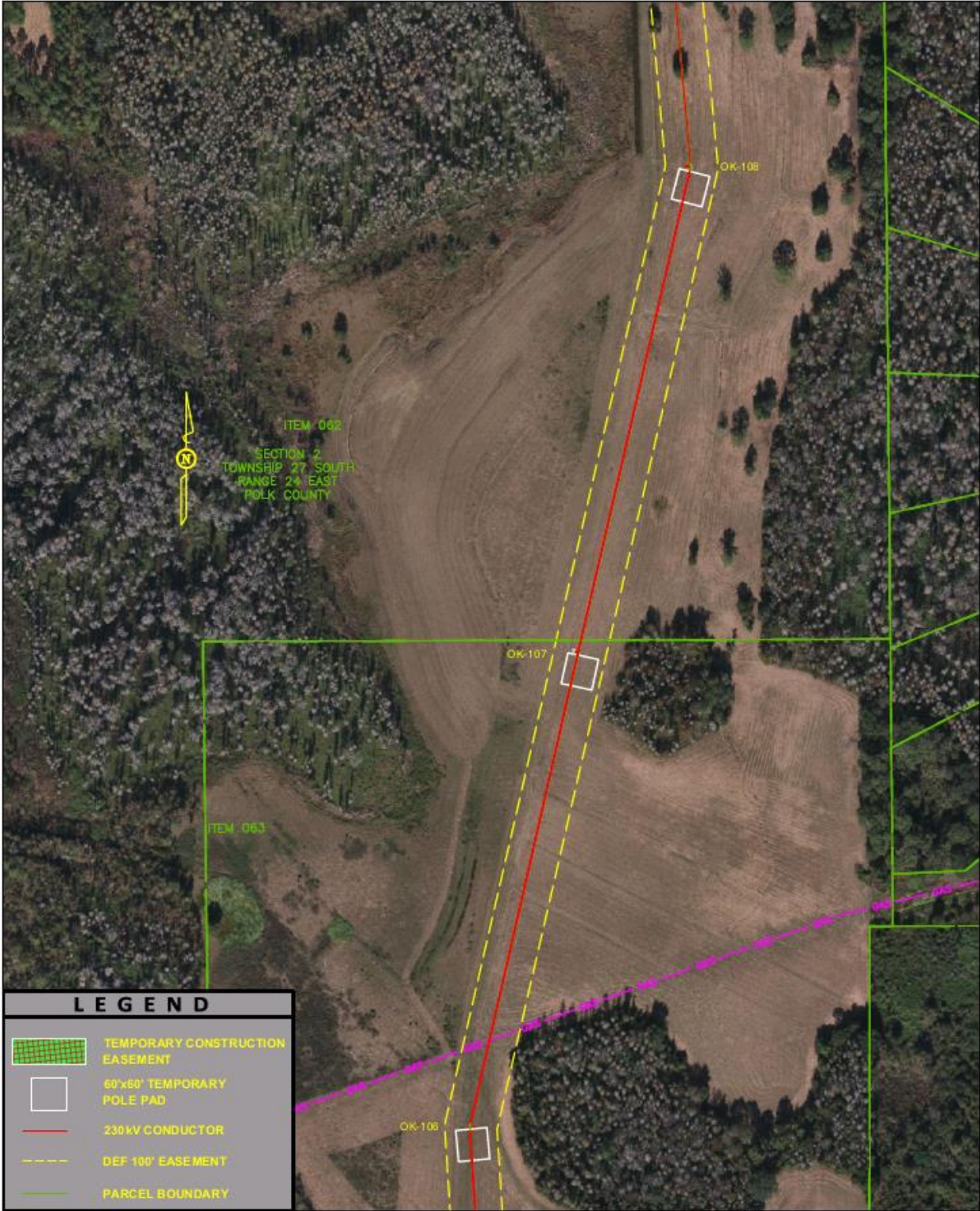







LEGEND	
	TEMPORARY CONSTRUCTION EASEMENT
	60'x60' TEMPORARY POLE PAD
	230KV CONDUCTOR
	DEF 100' EASEMENT
	PARCEL BOUNDARY

REV.#	REVISION DESCRIPTION	BY	DATE
A	ISSUED FOR REVIEW	RD	6/23

OSPREY TO KATHLEEN
 LAKELAND CITY WATERSHED
 REROUTE ENLARGED PLAN
 OPTION 6B


	APPROVED	TS	SHEET
	DATE	6/23	1 OF 1
SCALE: 1"=250'	DWG.	OK8023	








LEGEND	
	TEMPORARY CONSTRUCTION EASEMENT
	60'x60' TEMPORARY POLE PAD
	230KV CONDUCTOR
	DEF 100' EASEMENT
	PARCEL BOUNDARY

A	ISSUED FOR REVIEW	RD	6/23
REV.#	REVISION DESCRIPTION	BY	DATE

OSPREY TO KATHLEEN
 LAKELAND CITY WATERSHED
 REROUTE ENLARGED PLAN
 OPTION 6B


	APPROVED	TS	SHEET
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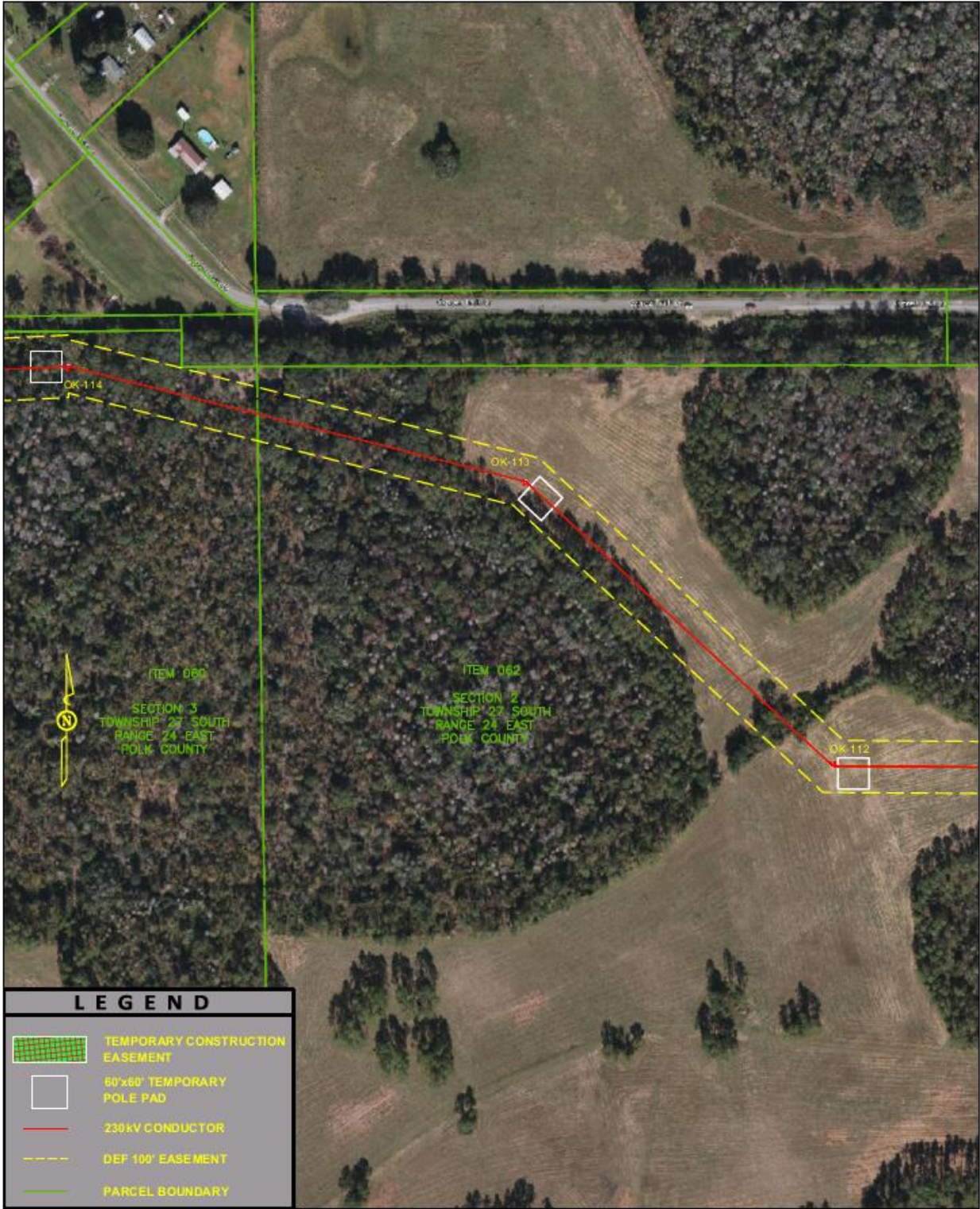


LEGEND	
	TEMPORARY CONSTRUCTION EASEMENT
	60'x60' TEMPORARY POLE PAD
	230 kV CONDUCTOR
	DEF 100' EASEMENT
	PARCEL BOUNDARY

REV.#	REVISION DESCRIPTION	BY	DATE
A	ISSUED FOR REVIEW	RD	6/23

OSPREY TO KATHLEEN
 LAKELAND CITY WATERSHED
 REROUTE ENLARGED PLAN
 OPTION 6B


	APPROVED	TS	SHEET
	DATE	6/23	1 OF 1
SCALE: 1"=250'	DWG.	OK8025	

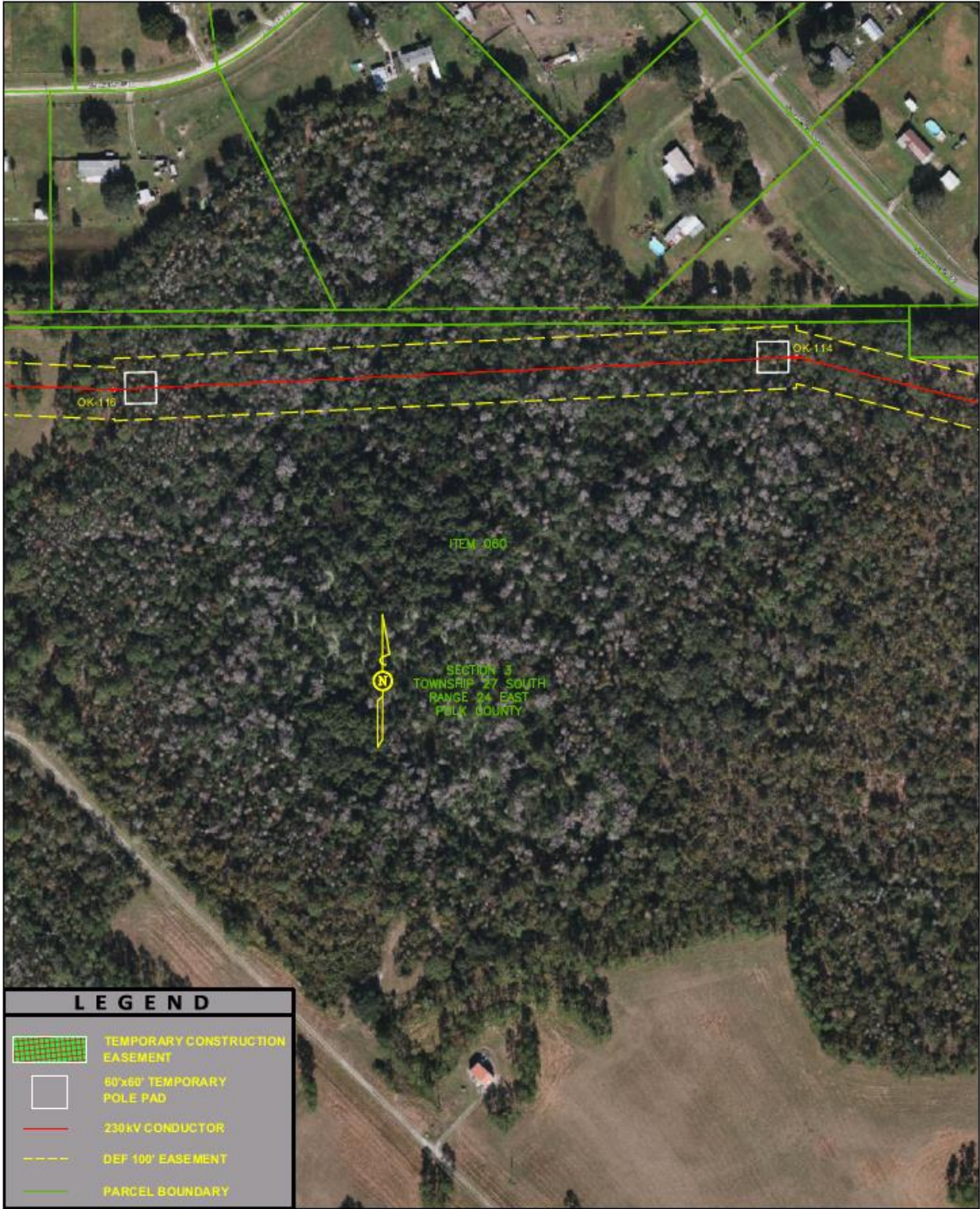


LEGEND	
	TEMPORARY CONSTRUCTION EASEMENT
	60'x60' TEMPORARY POLE PAD
	230kV CONDUCTOR
	DEF 100' EASEMENT
	PARCEL BOUNDARY

REV.#	REVISION DESCRIPTION	BY	DATE
B	REVISED PER COL COMMENTS	RD	8/23
A	ISSUED FOR REVIEW	RD	6/23

OSPREY TO KATHLEEN
 LAKELAND CITY WATERSHED
 REROUTE ENLARGED PLAN
 OPTION 6B


	APPROVED	TS	SHEET
	DATE	6/23	1 OF 1
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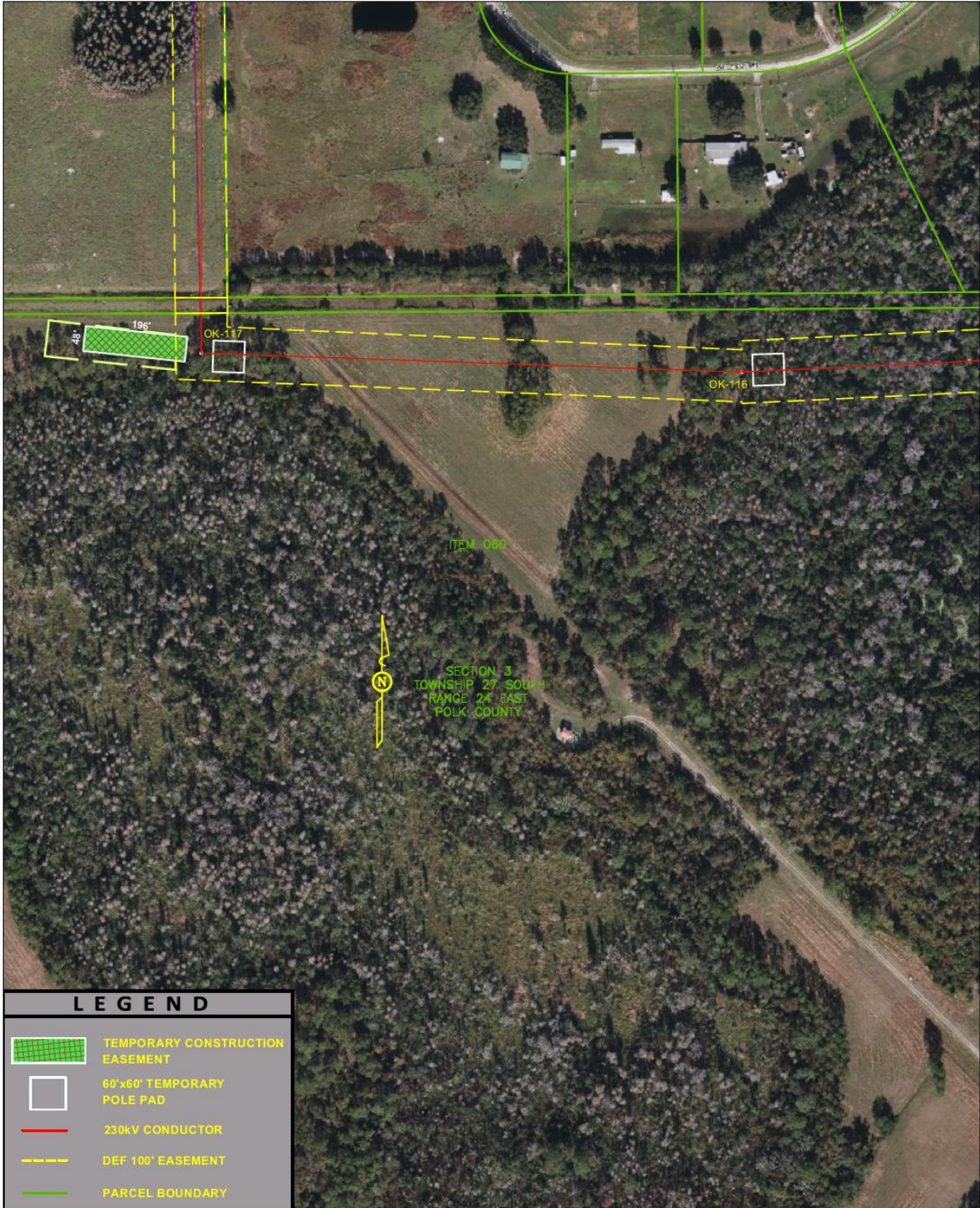


LEGEND	
	TEMPORARY CONSTRUCTION EASEMENT
	60'x60' TEMPORARY POLE PAD
	230kV CONDUCTOR
	DEF 100' EASEMENT
	PARCEL BOUNDARY

REV.#	REVISION DESCRIPTION	BY	DATE
B	REVISED PER COL COMMENTS	RD	8/23
A	ISSUED FOR REVIEW	RD	6/23

OSPREY TO KATHLEEN
 LAKELAND CITY WATERSHED
 REROUTE ENLARGED PLAN
 OPTION 6B

	APPROVED	TS	SHEET
	DATE	6/23	1 OF 1
SCALE: 1"=250'		DWG.	OK8027



LEGEND	
	TEMPORARY CONSTRUCTION EASEMENT
	60'x60' TEMPORARY POLE PAD
	230kV CONDUCTOR
	DEF 100' EASEMENT
	PARCEL BOUNDARY

REV.#	REVISION DESCRIPTION	BY	DATE
B	REVISED PER COL COMMENTS	RD	8/23
A	ISSUED FOR REVIEW	RD	6/23

OSPREY TO KATHLEEN
 LAKELAND CITY WATERSHED
 REROUTE ENLARGED PLAN
 OPTION 6B

	APPROVED	TS	SHEET
	DATE	6/23	1 OF 1
SCALE: 1"=250'	DWG.	OK8028	

Exhibit B
Duke Energy Transmission Pole Foundation Design
August 3, 2023

A. Foundation Design

- The transmission pole foundations to be constructed at the NEWF shall follow the “FDOT Standard Specifications for Road and Bridge Construction, July 2022,” to the extent they apply to the work to be performed by Duke Energy on the NEWF.
- A short/shallow temporary casing may be used, to be determined by Duke Energy
- The tower foundations will be constructed in an augered borehole, to a total depth not to exceed fifty (50) feet below land surface, depending on span length and other factors, to be mutually agreed by the parties.
- The foundation will be created by:
 - continuous fill of augered hole with bentonite mineral slurry (without added attapulgite or polymer) meeting the specifications in Sections 455-15.8 *Slurry and Fluid in Excavation*, 455-15.8.1 *General*, and 455-15.8.2 *Mineral Slurry* in FDOT Requirements
 - installing into the augered hole a rebar steel cage and anchor bolt assembly to be designed by Duke Energy
 - using a tremie pipe at the bottom of the hole to install a concrete mixture meeting Duke Energy concrete specifications presented in Duke Energy document *Concrete Installation Specification for Transmission Line & Substation Foundations*, Section 8.4 Table 2 (#57 aggregate, high slump, sulfate resistant, Type 2 cement)
 - implementing FDOT specifications in section 346 as applicable for testing of materials, to the extent they apply to the work to be performed by Duke Energy on the NEWF.
 - Place concrete in accordance with the applicable portions of Section 346 and 400, 455-15.2, 455-15.3, 455-15.4, 455-15.5, 455-15.8, and 455-15.9
 - when placing concrete with a tremie pipe, the concrete fill level shall be maintained at approximately 10 feet above the end of the tremie pipe
 - placing concrete from the bottom to top of the augered hole such that the augered hole will be completely filled with concrete
 - The temporary casing will then be removed and Duke Energy will finish fill with concrete
- Bentonite slurry will be collected using slurry tank (Baker container) to minimize surrounding surface soil impacts.
- Any slurry that makes contact with surface soils will be cleaned up and the area restored to the condition before any work was performed
- The Foundation Design Detail is depicted in Attachment 1, “NEWF Foundation Design & Installation Guidance” and incorporated herein

B. Foundation Construction Protocols

- Duke Energy will follow FDOT Specifications under Section 455 for drilled shaft installation
- Under 455-15.1.2, *Drilled Shaft Installation Plan* (to the extent it applies to the work to be performed by Duke Energy on the NEWF), Duke Energy will use a construction contractor with five or more years of experience in drilled shaft installations. The

superintendent or foreman of such contractor shall also have five or more years of experience in drilled shaft installations.

- Duke Energy will provide a “Construction Training and Qualification Program” (“CTQP”) certified drilled shaft inspector to oversee construction
- The City will provide an inspector to be present during all construction activities
- All drilling work to install the foundations shall be conducted during the dry season, which work is to begin no earlier than December 1 and completed no later than May 31st of any given year, or as otherwise agreed by the parties. If site conditions allow, at the request of Duke, and with the written consent of the City, drilling work and foundation installation may commence as early as November 1
- Erosion and sedimentation best management practices shall be used, inspected, and maintained when working in proximity to wetlands, ditches, or other surface waters to prevent any sedimentation from entering these areas.
- Dewatering activities shall be conducted so no water from the dewatering activities reaches wetlands, ditches, or other surface waters. Any dewatering that does not meet this constraint must be trucked offsite.
- Use of temporary mats for equipment access during construction is allowed as needed; the temporary mats will be removed once construction is completed.
- No later than 2 weeks prior to the commencement of construction, Duke will provide a step-by-step construction schedule (sequence of construction) for the entire project to be constructed on the NEWF, ranging from the construction of entrance gates, to any required work to access each tower foundation location, to restoring the NEWF property to pre-construction conditions, at a minimum.
- During installation of the cement /aggregate concrete mix, Duke shall ensure that any entrapped air in the mix is removed; the bore hole is entirely filled; all voids to the native soil are filled; entrained air shall be between 4.5 and 7.5 percent (%) per ASTM C260, as provided by Duke on July 5, 2023
- Duke Energy will endeavor to complete slurry and concrete installation on the same day, when possible
- Duke Energy agrees to prevent adverse construction impacts to wetland areas, and to restore any impacted wetlands to their pre-construction condition.

C. Modification of Terms

The parties recognize that the anticipated soil core borings to be performed by Duke at the approved tower locations listed elsewhere in this Agreement may necessitate modifications of the terms of A and B listed above. No modifications of the Foundation Design, Foundation Construction Protocols, or Foundation Detail drawings in Attachment 1, “NEWF Foundation Design & Installation Guidance” shall be implemented unless specifically agreed to by the City of Lakeland in writing.

NEWF Foundation Design & Installation Guidance

From Settlement Meeting on
Thursday, August 3, 2023

Duke's Freed Report Drilled Shaft

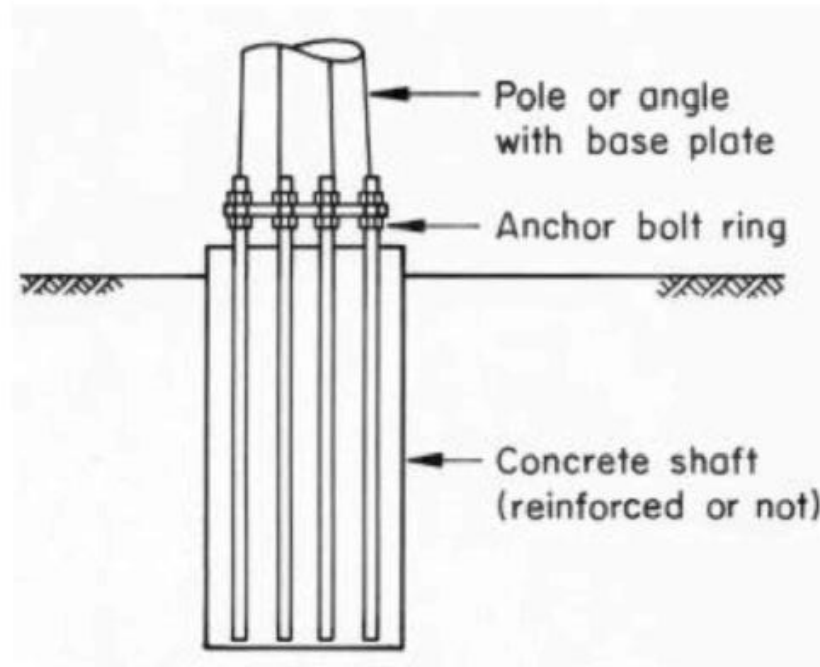


FIG. 10. DRILLED SHAFT

Report Figure 2 – Drilled Pier (Shaft)
(Kulhway and Hirany, 2010)

Drilled Shaft Foundation

- ❖ Shaft Diameter and Depth per Duke's requirements
- ❖ Rebar/Anchor bolt assembly per Duke's requirements
- ❖ Follow FDOT Specifications
 - Drilled Shaft Section 455
 - Duke High Slump Concrete with Type II cement
- ❖ Specified Methods and Procedures

Images from FDOT Video:
<https://www.youtube.com/watch?v=GhGPTI9vrPg>

High-Level Requirements

1) Foundation Design

- Meets FDOT Requirements with approval by a qualified P.E.

2) Construction Contractor

- 5+ years experience with drilled shaft installation

3) Construction Methods

- Follow FDOT procedures

4) Inspection during Construction

- Certified drilled shaft inspector overseeing construction



INDEXAZ

Search FDOT...

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Home / Construction / Engineers / Specialty

FDOT Approved Specialty Engineers (List for Contractor use on Projects with Structures)



INDEXAZ

Search FDOT...

QSearch

OFFICES MAPS & DATA CONTACT ABOUT PROJECTS RES

Home / Construction / Training / CTQP / Approved Providers / Providers

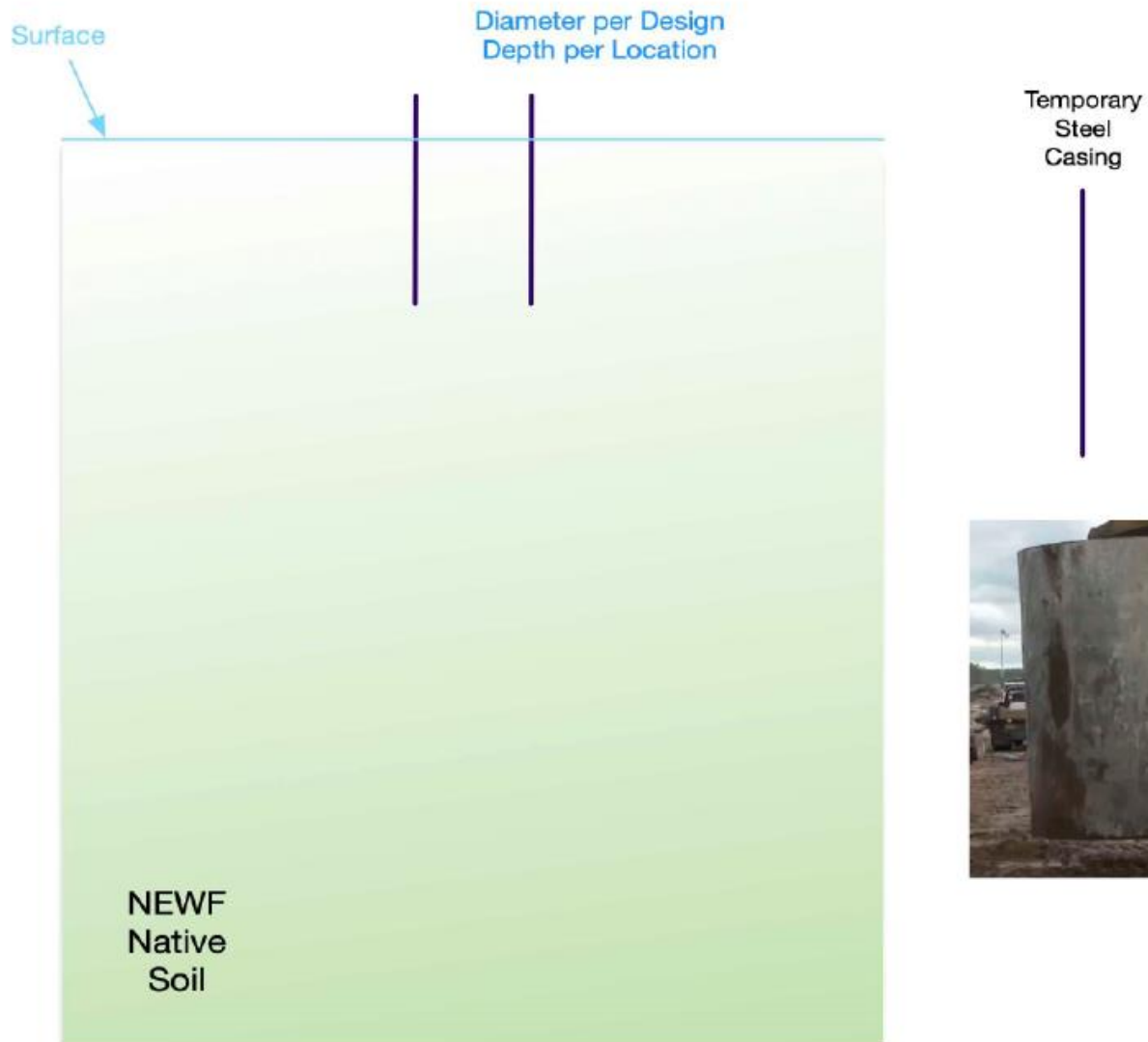
Approved CTQP Providers - Drilled Shaft Inspection

Drilled Shaft Inspection

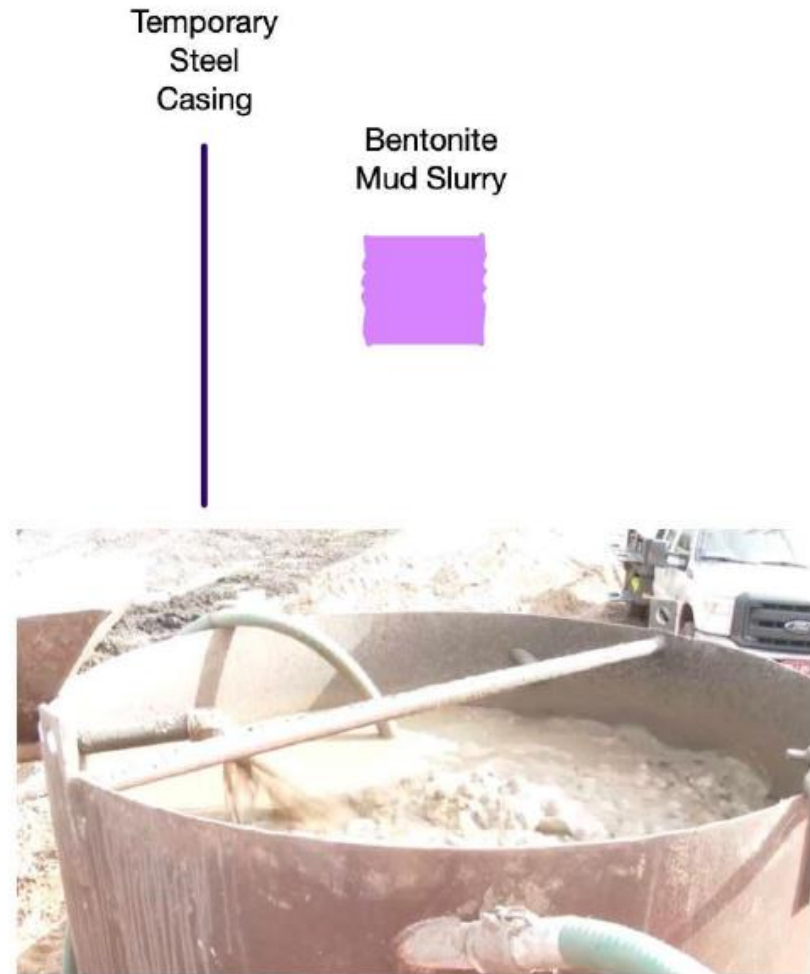
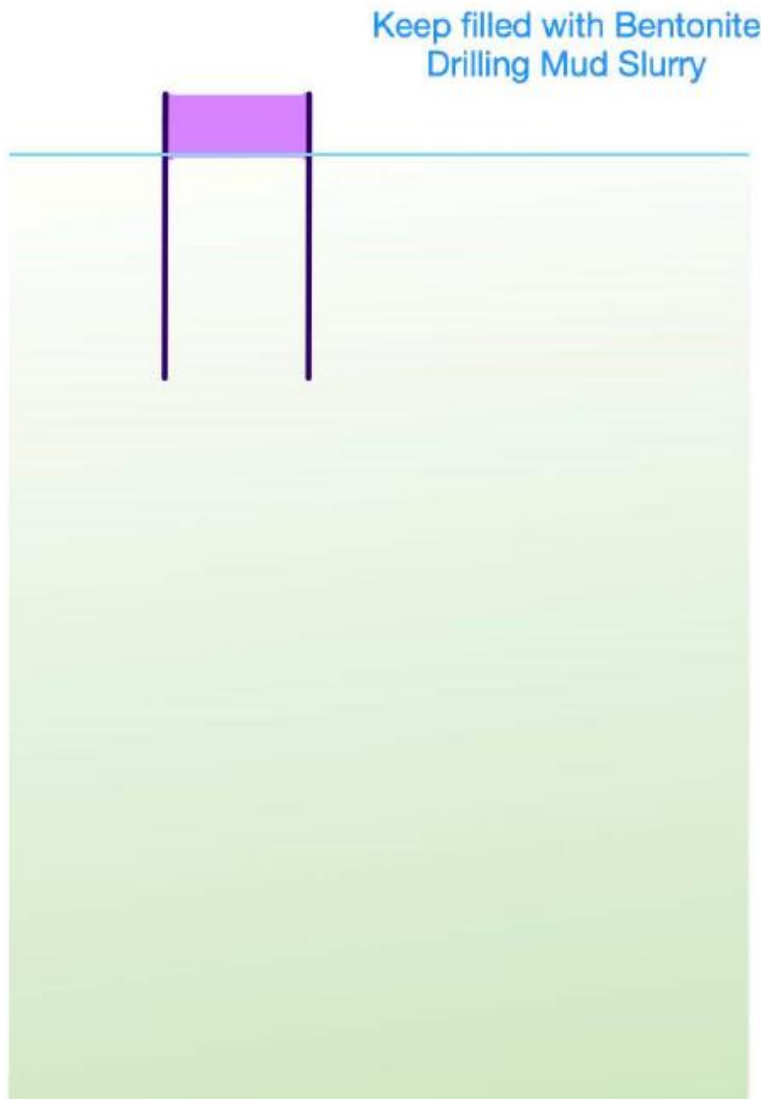
Work Sequence General Outline

- 1) Short/shallow temporary casing determined by Duke
- 2) Continuous fill of Bentonite-based drilling slurry
- 3) Auger hole to required depth
- 4) Installation of rebar/anchor bolt assembly
- 5) Installation of tremie pipe to the bottom of the hole
- 6) Concrete placement from the bottom up
- 7) Slurry collection with concrete fill
- 8) Completely fill with concrete
- 9) Remove casing and finish fill with concrete

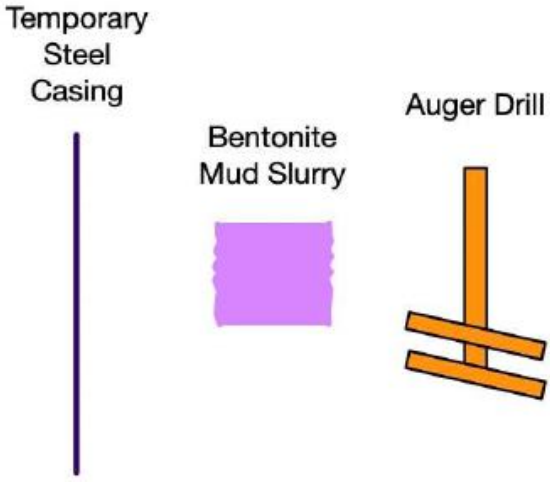
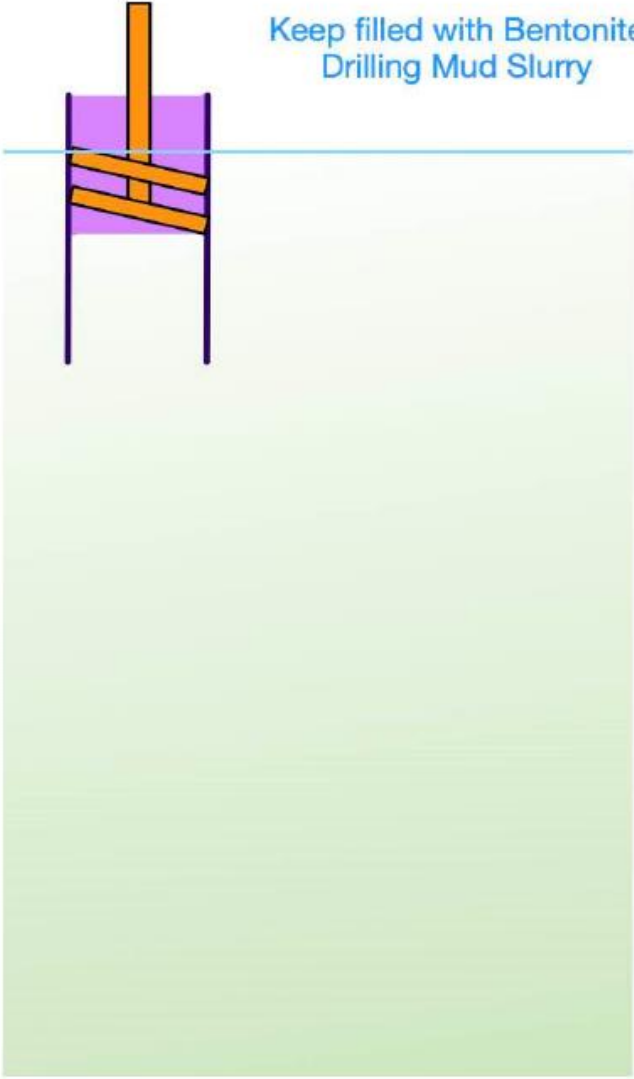
1) Casing Installation



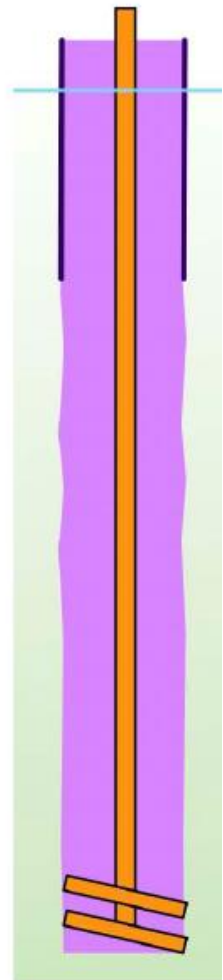
2) Bentonite Drilling Slurry: Continuous Fill



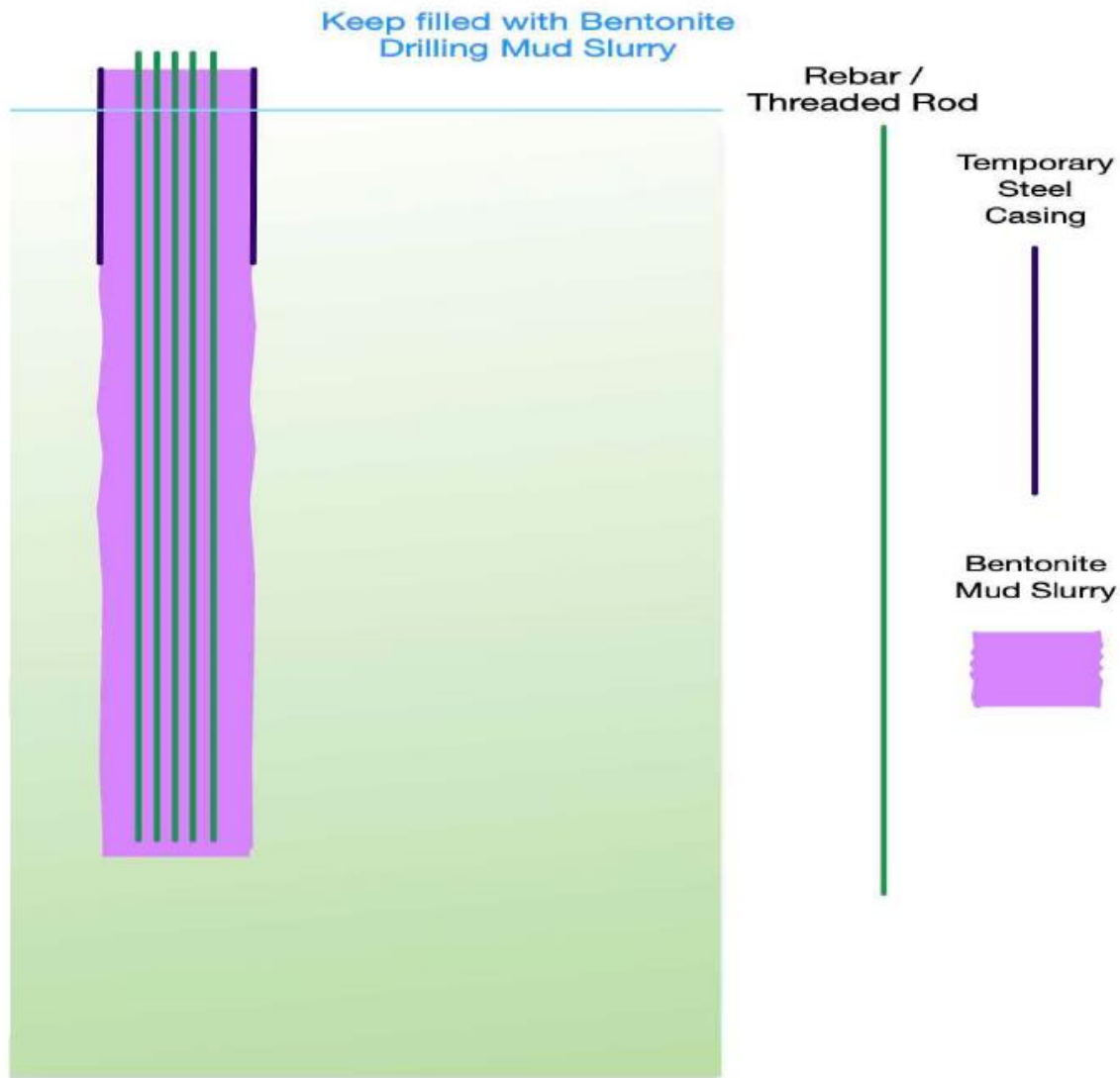
3) Auger Hole



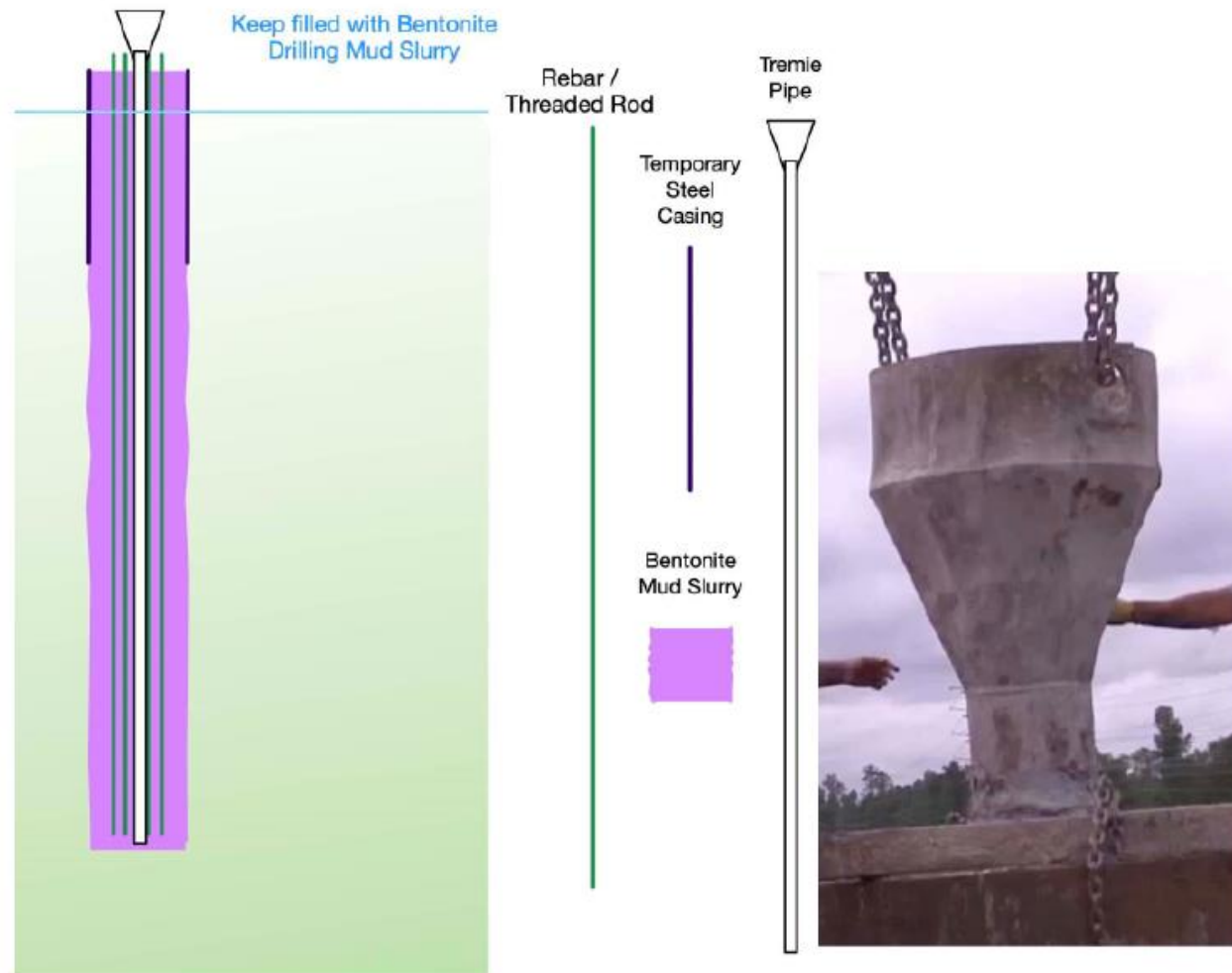
Auger to Depth



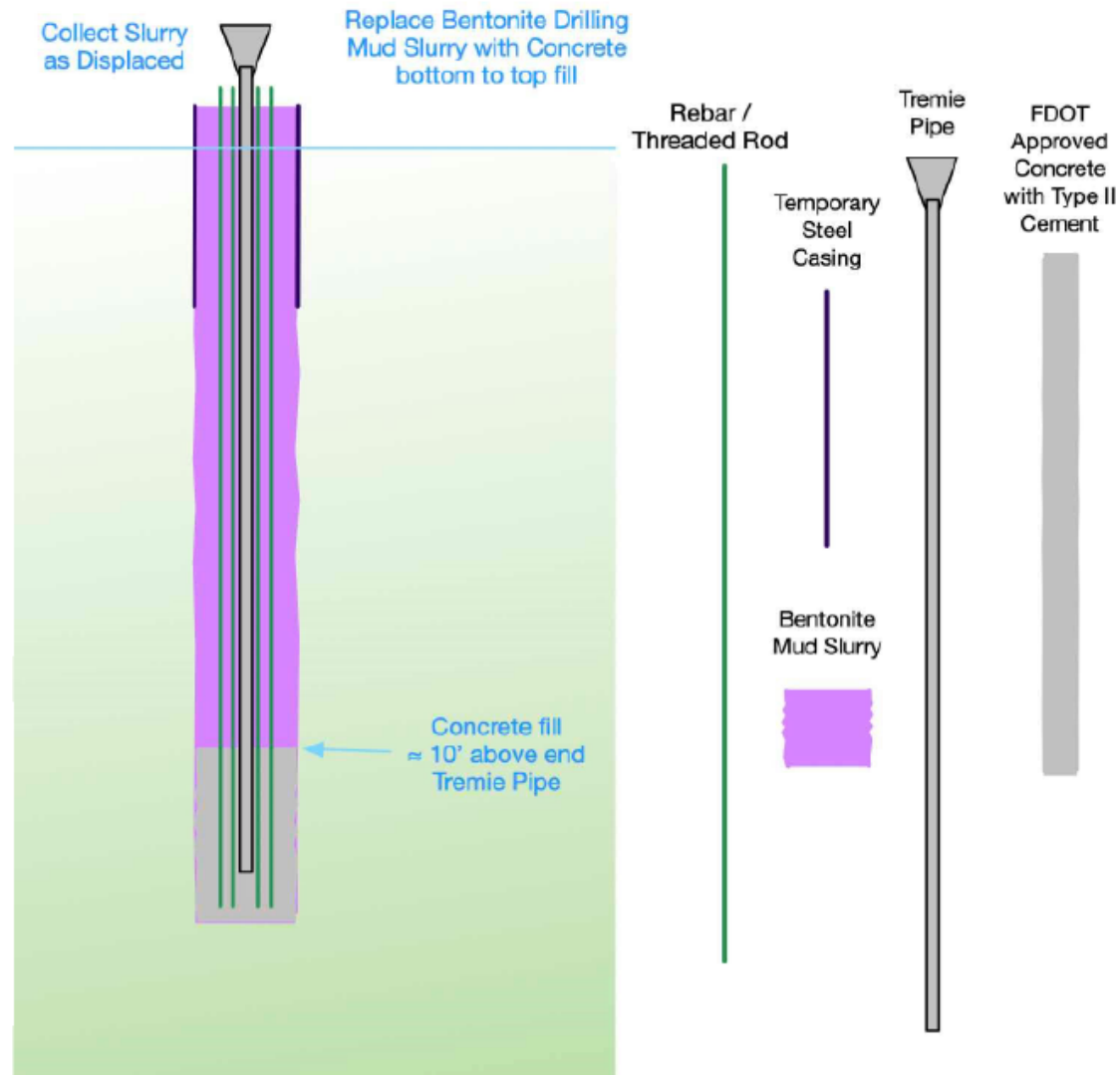
4) Install Rebar/Anchor Bolt Assembly



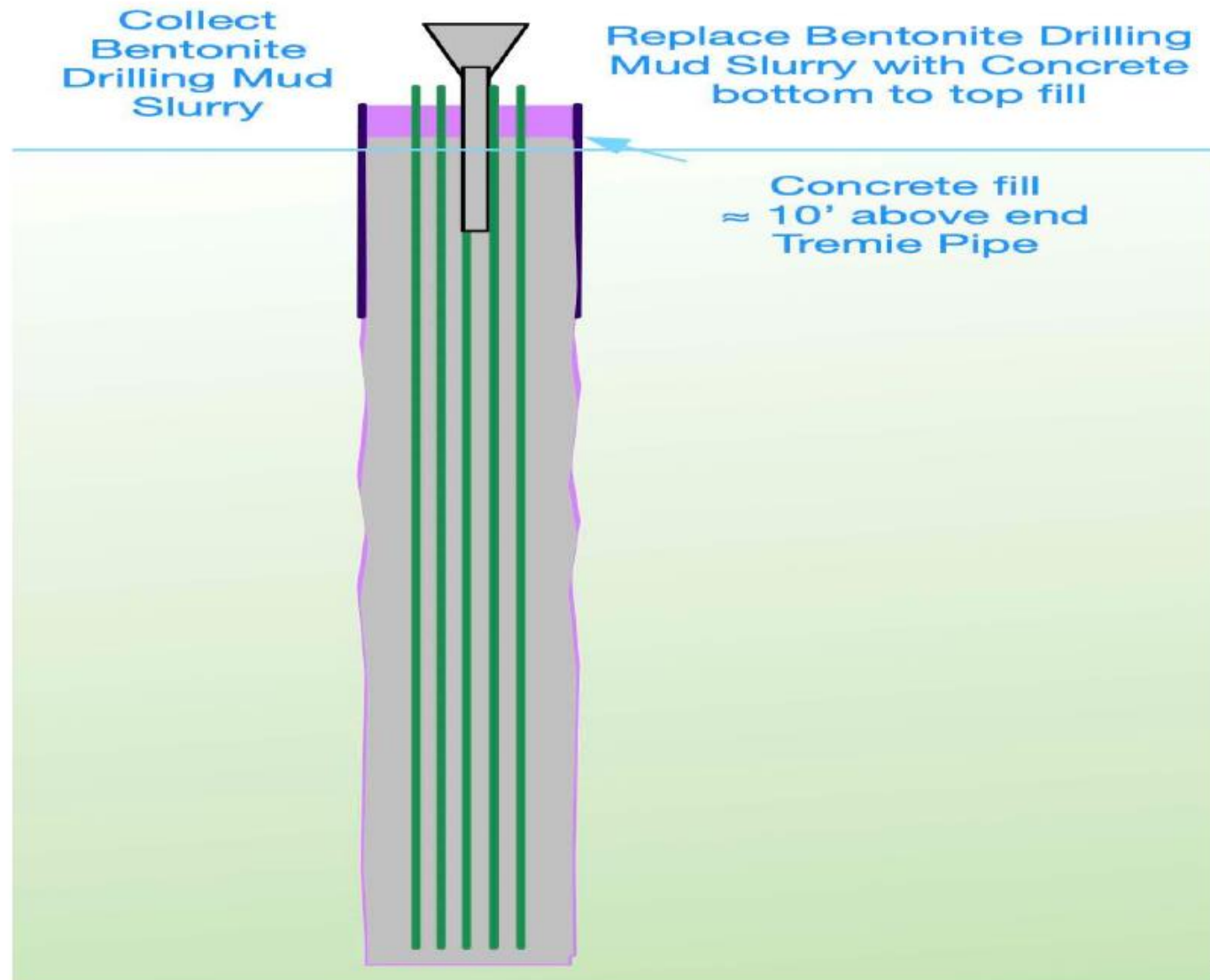
5) Installation of Tremie Pipe to Bottom of Hole



6) Concrete Placement from Bottom to Top

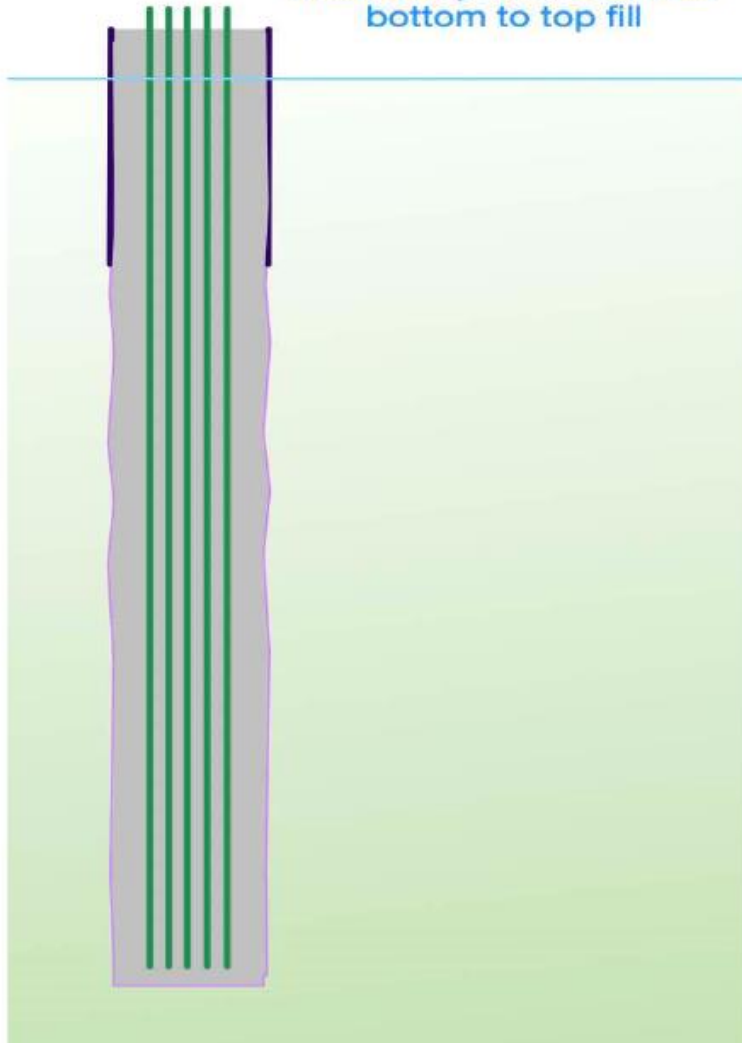


7) Slurry Collection During Concrete Placement

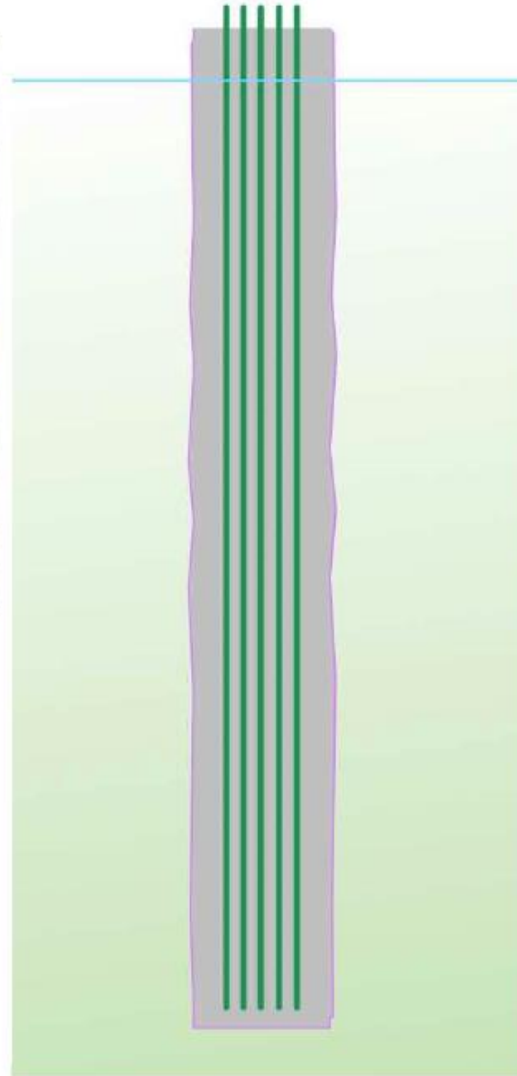


8) Complete Fill with Concrete

Replace Bentonite Drilling
Mud Slurry with Concrete
bottom to top fill



9) Remove Casing and Finish Filling with Concrete



Duke's Freed Report Drilled Shaft



Page 9

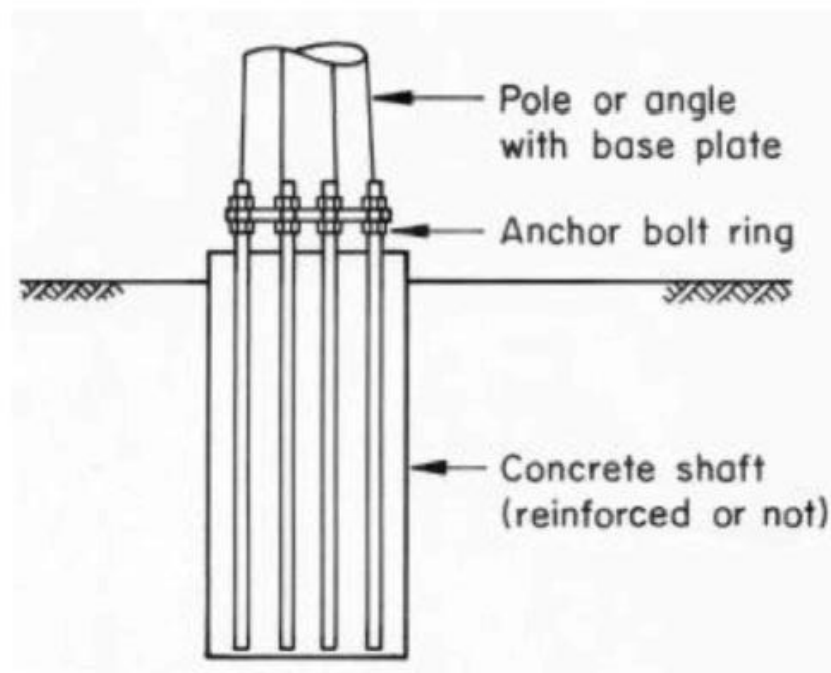


FIG. 10. DRILLED SHAFT

Report Figure 2 – Drilled Pier (Shaft)
(Kulhway and Hirany, 2010)

Exhibit C





EXHIBIT "D"

City of Lakeland
Items #60, 62, 63, 64
Osprey to Kathleen – New 230kV Line
Thor #: 2826T1 Oracle #: FLOSPRK01
Site #: 115703



Prepared By:
Manny R. Vilaret, Esq.
Vilaret Law, PLLC
10901 Danka Circle, Suite C
Saint Petersburg, Florida 33716

EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, the undersigned, successors, and assigns (GRANTOR herein), in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, grant and convey to **DUKE ENERGY FLORIDA, LLC, a Florida limited liability company d/b/a DUKE ENERGY** (GRANTEE herein), Post Office Box 14042, St. Petersburg, Florida 33733, its successors, assigns, lessees, licensees, transferees, permittees, and apportionees, the non-exclusive right, privilege and easement to construct, remove, reconstruct, operate, and maintain in perpetuity a single circuit 230 kV overhead electric transmission line, along with directly associated communication systems and related facilities, for providing electric energy services, all of which may be installed or constructed over, upon, across, through and within the following described lands in Polk County, Florida, and referred to hereinafter as the Easement Area to wit:

See Exhibit "A", attached hereto, incorporated herein, and by this reference made a part hereof.

Tax Parcel Numbers: **24-27-11-000000-031050; 24-27-02-000000-041010; 24-27-02-000000-031010; 24-27-03-000000-011010;**

Together with the right to construct, install, operate, utilize, patrol, inspect, alter, improve, repair, rebuild or remove such lines, systems and poles and related facilities. GRANTEE commits to limit the number and location of poles as set out in **Exhibit "B"**, the pole location map(s). Once the support structures (poles) have been installed the poles may be replaced in the same location but cannot be relocated without prior written authorization from GRANTOR, which shall not be unreasonably withheld.

GRANTEE does not have the right to build, maintain or protect any roadways within the Easement Area but may utilize temporary matting or improve the City's existing roads in accordance with the Settlement Agreement referenced herein, and shall be restricted to the use of the natural upland ground within the Easement Area unless alternative access is agreed to in writing by the GRANTOR.

GRANTEE shall have all other rights and privileges reasonably necessary or convenient for the safe and efficient operation and maintenance of said electric transmission lines and related facilities, including but not limited to: (i) the right to trim, cut, and keep clear trees, limbs and undergrowth within said Easement Area (ii) the right to install gates a minimum of sixteen (16') feet in width in any fence line that crosses the Easement Area, along with GRANTEE's lock linked with GRANTOR's lock; and (iii) the right to relocate any listed or protected plant or animal species found within the Easement Area to another location within the Easement Area in accordance with applicable laws and regulations. In connection with the exercise of any of the foregoing rights, GRANTEE hereby agrees to restore the Easement Area within thirty (30) days of disturbing any portion of the Easement Area to the same condition as near as practicable to the original condition.

GRANTOR shall have all other rights in and to said Easement Area, including but not limited to all rights of access across, under and through the Easement Area, so long as such rights are consistent with GRANTEE's right to the safe and efficient construction, operation and maintenance of said electric transmission lines and related facilities, including its clear, continuous access within the Easement Area.

Return to: Duke Energy
Attn: Data and Document Management
3300 Exchange Place, NP4A
Lake Mary, FL 32746

GRANTOR further covenants and agrees that no new trees, buildings, structures, ponds, or obstacles will be located or constructed within the Easement Area, that no landscaping will be planted within the Easement Area, and that the ground elevation of the Easement Area will not be altered more than four (4') feet.

GRANTOR reserves to itself the right to perform the activities set forth in **Exhibit "C"** on, over, under and across the Easement Area on the condition that they do not unreasonably interfere with GRANTEE's operations or facilities, that none of GRANTOR's permanent improvements shall exceed eight (8) feet in height, that GRANTOR's permanent improvements shall be located at least 25 feet away from Duke Energy's pole locations except as otherwise agreed by the parties and that none of GRANTOR's activities or equipment shall encroach within the minimum separation required by the federal Occupational Safety and Health Administration guidelines concerning single circuit 230 kV transmission lines.

For all other activities by GRANTOR within the Easement Area, as a condition precedent to the exercise of any right beyond the rights set forth in the preceding paragraph, GRANTOR covenants and agrees to obtain from GRANTEE ((800) 700-8744, www.prgnprojectsolutions.com, or P.O. Box 14042, St. Petersburg, Florida 33733, Attention: Asset Protection Right-of-Way Specialist) a prior written determination that any other use or improvement within the Easement Area is not inconsistent with the safe and efficient operation and maintenance of said electric transmission lines or applicable laws. GRANTEE shall provide a response to GRANTOR within forty-five (45) days of GRANTOR's request, or such request shall be deemed approved.

GRANTOR warrants and covenants that they have the right to convey to GRANTEE this easement, and that GRANTEE shall have quiet and peaceful possession, use and enjoyment of same. GRANTEE acknowledges that GRANTOR retains possession and control over the Easement Area.

GRANTOR and GRANTEE specifically acknowledge that this grant of easement is subject to that certain Settlement Agreement dated September 18, 2023, recorded at Book ____, Page ____, in the Official Records for Polk County, Florida and that all terms, conditions, obligations, specifications, rights and indemnifications set forth therein are hereby incorporated into this grant of easement as if specifically set forth herein, and shall be binding on all successors and assigns of the parties hereto as set forth in the Agreement. This Easement and the rights, and privileges granted hereunder shall terminate upon (a) the date that is two (2) years after the date upon which the Easement Area is no longer being used by GRANTEE for the provision of power services to the surrounding Polk County, Florida area (excluding any period of non-use due to casualty so long as GRANTEE is diligently pursuing restoration of the Transmission Line), or (b) the date GRANTEE acknowledges in writing that the Easement Area is no longer being used primarily for the provision of power services to the surrounding Polk County, Florida area and does not intend to use the Easement Area primarily for the provision of power services to the surrounding Polk County, Florida area during the following two (2) years. In the event of any such termination, GRANTEE shall execute and deliver to GRANTOR a release of this Easement in recordable form and remove all of its poles and equipment and restore the surface of GRANTOR's property within one hundred and eighty (180) days.

All covenants, terms, provisions and conditions herein contained shall inure and extend to and be obligatory upon the successors and assigns of the respective parties hereto. This Easement is being acquired under the threat of GRANTEE's power of eminent domain.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY, SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the said GRANTOR and GRANTEE have caused this Easement Agreement to be signed in its company name by its proper representative thereunto duly authorized and attested this day.

GRANTOR:
CITY OF LAKELAND, a municipal corporation
existing under the laws of State of Florida

Execution Date: _____

H. WILLIAM MUTZ, MAYOR

ATTEST:

KELLY S. KOOS, CITY CLERK

**APPROVED AS TO FORM AND
CORRECTNESS:**

**PALMER C. DAVIS
CITY ATTORNEY**

STATE OF FLORIDA
COUNTY OF POLK

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2023, by H. William Mutz, as Mayor of the **City of Lakeland, a municipal corporation existing under the laws of the State of Florida**, on behalf thereof, who is personally known to me, or produced _____ as identification.

[AFFIX NOTARY SEAL]

Notary Public Signature
Print Notary Name: _____
My commission expires: _____

GRANTEE:

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

ATTEST:

Print or Type Name

Print or Type Name

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Signature of First Witness

Print or Type Name of First Witness

Signature of Second Witness

Print or Type Name of Second Witness

Grantee's mailing address:

CORPORATE SEAL

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by _____, _____ of **Duke Energy Florida, LLC, a Florida limited liability company, d/b/a Duke Energy**, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped

My Commission Expires: _____

Exhibit "A"
Insert legal description

Exhibit "B"

Insert pole location exhibit

Exhibit "C"

All regulatory and inspection activities associated with the use of the servient property as an active wellfield, including but not limited to access, inspection, testing and any other activities which are associated with the continuing wellfield operation and which are reasonably necessary for the wellfield to comply with all current and future regulatory obligations.

Possible activities include, but are not limited to:

- Installation of Monitoring Wells
- Maintenance and Repair of Monitoring Wells
- Mowing or other maintenance of vegetation (up to 15ft high for tree trimming with boom and saw attachment)
- General Vehicle Traffic
- Maintenance, Repair, or Installation of Water Control Structure(s), i.e. culverts, ditch blocks, spillways, etc.
- Maintenance or restoration of land surface elevations, which is defined as anything that needs to be done in order to protect, maintain or restore the flow of surface water into the surrounding wetlands
- Installation and maintenance of additional or replacement Water Production Wells
- Installation and maintenance of Raw Water Mains
- Installation and maintenance of Power Feeds
- Installation and maintenance of Communication Cabling
- Installation or Repair of Fencing
- Drainage Improvements to any road or access path
- Installation and Maintenance of Injection Wells

After application and notice by the GRANTOR as set forth in this Easement, GRANTEE agrees to coordinate with GRANTOR related to the activities including, in GRANTEE's sole discretion, deenergizing its transmission line during the GRANTOR's activities and at no cost to the GRANTOR.

EXHIBIT "E"

City of Lakeland
Items #60, 62, 63, 64
Osprey to Kathleen – New 230kV Line
Thor #: 2826T1 Oracle #: FLOSPRK01
Site #: 115703



Prepared By:
Manny R. Vilaret, Esq.
Vilaret Law, PLLC
10901 Danka Circle, Suite C
Saint Petersburg, Florida 33716

TEMPORARY ACCESS AND CONSTRUCTION EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned owner(s) of real property (hereinafter referred to as "Grantor," whether one or more), hereby bargains, sells, grants and conveys to **DUKE ENERGY FLORIDA, LLC, a Florida limited liability company d/b/a DUKE ENERGY**, and to Duke Energy's affiliates, employees, agents, representatives, contractors, successors and assigns, the temporary right, privilege, easement and authority to enter upon, occupy and utilize, for the term and upon the conditions set forth below, a temporary access and construction easement ("TCE") for use as workspace, staging or storage of equipment, supplies or materials, as restricted by the terms of the Settlement Agreement referenced below, to construct and install, and initially inspect, test, repair, replace, remove, and place into initial operation a single circuit 230 kV overhead transmission line, conductors, additional support structures and wires, and all other related appurtenances necessary to enable Duke Energy's provision of electric power (the same ultimately to be situated on other lands), together with the right of ingress and egress to, from, on, over, above, through, within and across the following-described tract of land located in Polk County, Florida ("Easement Area"):

See Exhibit "A", attached hereto, incorporated herein, and by this reference made a part hereof.

Duke Energy shall have the right and privilege to use the Easement Area on a non-exclusive basis, as set forth below:

1. This TCE shall be in effect for a term of _____ **months** beginning _____, **2023** and ending _____, **2025**. However, should Duke Energy fully and finally complete its necessary access and construction activities prior to the expiration of the foregoing term or extension thereof, then this TCE, and all of Duke Energy's rights hereunder, shall terminate as of that earlier date of completion.
2. Duke Energy shall have the right of ingress to and egress from the Easement Area by means of any and all adjacent public or private roadways, easements or rights-of-way owned, held or lawfully available to Duke Energy, including any other property over which Duke Energy has access rights, for any of the purposes herein specified, as Duke Energy deems necessary or appropriate. Duke Energy also shall have the right to use any of Grantor's driveways, streets, roads or pathways located within the Easement Area.
3. Duke Energy shall have the right and privilege to trim any and all trees down to ground level by hand, and to establish gates within any existing fences within the Easement Area as may be required for Duke Energy's exercise of the access and construction activities for which this grant is made.

4. Duke Energy assumes all on-site liability for damage or injury caused by or resulting from Duke Energy's negligence occurring during the effective period of this temporary access and construction easement, and Duke Energy will hold Grantor harmless from any such liability to the extent the same does not arise directly from Grantor's negligent use of the Easement Area, or from the negligence of any third party unrelated to Duke Energy.

5. Grantor retains the right and may continue to use the Easement Area for any and all lawful purposes that do not interfere with Duke Energy's rights acquired hereunder. Duke Energy agrees to provide Grantor, either upon Grantor's request or at Duke Energy's own initiative, a prior written determination that any particular exercise of Grantor's right to use the Easement Area does not directly interfere with the safe and efficient exercise of Duke Energy's rights, which determination shall not be arbitrarily or unreasonably delayed, withheld or conditioned.

6. Upon the full and final completion of Duke Energy's use of the Easement Area, Duke Energy shall restore the surface of all damaged and disturbed areas within the Easement Area as near as reasonably practicable to its condition existing upon the commencement of Duke Energy's undertaking of activities thereon, pursuant to the rights herein granted, provided the need for any such restoration shall have resulted from or been caused by Duke Energy's activities, and further provided that Duke Energy shall not replace any trees removed.

7. Grantor warrants and covenants to Duke Energy that Grantor has the lawful right and ability to convey to Duke Energy this temporary access and construction easement, and that Duke Energy shall have quiet and peaceful possession, use and enjoyment of same.

8. All covenants, terms, provisions and conditions herein contained as may be applicable to either Grantor, Duke Energy, or both of them, shall inure and extend to, and be obligatory upon, both Grantor and Duke Energy, and their respective heirs, successors, lessees and assigns. This Easement is being acquired under the threat of GRANTEE's power of eminent domain.

9. GRANTOR and GRANTEE specifically acknowledge that this grant of temporary easement is subject to that certain Settlement Agreement dated September 18, 2023, recorded at Book ____, Page ____, in the Official Records for Polk County, Florida and that all terms, conditions, obligations, specifications, rights and indemnifications set forth therein are hereby incorporated into this grant of temporary easement as if specifically set forth herein, and shall be binding on all successors and assigns of the parties hereto.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Grantor has hereunto affixed their hand and seal this _____ day of _____, 2023.

GRANTOR:

CITY OF LAKELAND, a municipal corporation existing under the laws of State of Florida

Execution Date: _____

H. WILLIAM MUTZ, MAYOR

ATTEST:

KELLY S. KOOS, CITY CLERK

**APPROVED AS TO FORM AND
CORRECTNESS:**

**PALMER C. DAVIS
CITY ATTORNEY**

STATE OF FLORIDA
COUNTY OF POLK

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2023, by H. William Mutz, as Mayor of the **City of Lakeland, a municipal corporation existing under the laws of the State of Florida**, on behalf thereof, who is personally known to me, or produced _____ as identification.

[AFFIX NOTARY SEAL]

Notary Public Signature
Print Notary Name: _____
My commission expires: _____

Exhibit "A"
Legal description to be inserted prior to execution