

## MEMORANDUM

---

March 19, 2014

**To:** Honorable Mayor and City Commissioners

**Via:** Kenneth Fields, City Manager

**From:** Teresa Allen, Public/Support Services Administrator

**Subject:** Duke Energy Distribution Easement

**Synopsis:** The City Commission will consider granting Duke Energy Florida, Inc. a 10-foot easement for the City property located at 309 North 5<sup>th</sup> Street.

### RECOMMENDATION

Staff recommends that the City Commission grant Duke Energy Florida, Inc. a 10-foot distribution easement for the City property located at 309 North 5<sup>th</sup> Street (Crystal Lake Park).

### BACKGROUND

In January 2014, city staff submitted a request to Duke Energy for additional lighting to be installed and a guide wire be re-located for the installation of additional fencing at Crystal Lake Park.

Duke Energy Florida, Inc. informed the City that in order to move forward with the installation of the additional lighting and re-location of the guide wire, they are requiring a 10-foot distribution easement.

### FISCAL IMPACT

None.

### OTHER OPTIONS

None

### ATTACHMENTS

Easement document



<b>SITE REF: 113025</b>		<b>DLU:</b>			
<b>SEC: 01</b>	<b>TWP: 30S</b>	<b>RGE: 27E</b>	<b>COUNTY: POLK</b>	<b>PROJECT: 686577</b>	
<b>GRANTOR: THE CITY OF LAKE WALES</b>					
<b>SITE ADDRESS: SESSOMS AVENUE E, LAKE WALES 33853</b>				<b>CRYSTAL LAKE PARK</b>	
<b>TAX PARCEL NUMBER: 01-30-27-883000-065010</b>					

## DISTRIBUTION EASEMENT

**KNOW ALL MEN BY THESE PRESENTS**, that the undersigned, their heirs, successors, lessees and assigns ("**GRANTOR**"), in consideration of the mutual benefits, covenants and conditions herein contained, does hereby grant and convey to **DUKE ENERGY FLORIDA, INC., d/b/a DUKE ENERGY**, a Florida corporation ("**GRANTEE**"), Post Office Box 14042, St. Petersburg, Florida 33733, and to its successors, lessees, licensees, transferees, permittees, apportionees, and assigns, an easement to install, operate and maintain in perpetuity, such facilities as may be necessary or desirable for providing electric energy and service and communication systems, whether to or on behalf of telecommunication providers or other customers by **GRANTEE** or others, said facilities being located in the following described "Easement Area" within **GRANTOR'S** premises in Polk County, to wit:

A 10.00 foot wide Easement Area lying 5.00 feet on each side of **GRANTEE's** facilities to be installed at mutually agreeable locations over, under, across and through the following described property to accommodate present and future development:

**LAKES WALES, Plat 1, Book 88A, B Block, of the Public Records of Polk County, Florida. Known as Crystal Lake Park,**

The rights herein granted to **GRANTEE** by **GRANTOR** specifically include: (a) the right for **GRANTEE** to patrol, inspect, alter, improve, repair, rebuild, relocate, and remove said facilities; further **GRANTEE** hereby agrees to restore the Easement Area to as near as practicable the condition which existed prior to such construction, repairs, alteration, replacement, relocation or removal as a result of **GRANTEE's** safe and efficient installation, operation or maintenance of said facilities; (b) the reasonable right for **GRANTEE** to increase or decrease the voltage and to change the quantity and type of facilities; (c) the reasonable right for **GRANTEE** to clear the Easement Area of trees, limbs, undergrowth and other physical objects which, in the opinion of **GRANTEE**, endanger or interfere with the safe and efficient installation, operation or maintenance of said facilities; (d) the reasonable right for **GRANTEE** to trim or remove any trees and vegetation adjacent to, but outside the Easement Area which, in the reasonable opinion of **GRANTEE**, endangers or interferes with the safe and efficient installation, operation or maintenance of said facilities; (e) the reasonable right for **GRANTEE** to enter upon land of the **GRANTOR** adjacent to said Easement Area for the purpose of exercising the rights herein granted; and (f) all other rights and privileges reasonably necessary or convenient for **GRANTEE's** safe and efficient installation, operation and maintenance of said facilities and for the enjoyment and use of said easement for the purposes described above. The rights and easement herein granted are non-exclusive as to entities not engaged in the provision of electric energy and service and **GRANTOR** reserves the right to grant rights to others affecting said easement area provided

that such rights do not create an unsafe condition or unreasonably conflict with the rights granted to **GRANTEE** herein.

**GRANTOR** hereby covenants and agrees that no buildings, structures or obstacles (except fences) shall be located, constructed, excavated or created within the Easement Area. If the fences are installed, they shall be placed so as to allow ready access to **GRANTEE**'s facilities and provide a working space of not less than ten (10) feet on the opening side, six (6) feet on the back for working space and three (3) feet on all other sides of any pad mounted transformer. If **GRANTOR**'s future orderly development of the premises is in physical conflict with **GRANTEE**'s facilities, **GRANTEE** shall, within 60 days after receipt of written request from **GRANTOR**, relocate said facilities to another mutually agreed upon Easement Area in **GRANTOR**'s premises, provided that prior to the relocation of said facilities (a) **GRANTOR** shall pay to **GRANTEE** the full expected cost of the relocation as estimated by **GRANTEE**, and (b) **GRANTOR** shall execute and deliver to **GRANTEE**, at no cost, an acceptable and recordable easement to cover the relocated facilities. Upon the completion of the relocation, the easement herein shall be considered cancelled as to the portion vacated by such relocation. This legal description was provided by **GRANTOR**. In the event facilities are located outside of this legal description, **GRANTOR** shall pay for any relocation costs necessary or shall amend this legal description to cover the actual facilities.

**GRANTOR** covenants not to interfere with **GRANTEE**'s facilities within the Easement Area in **GRANTOR**'s premises, and **GRANTOR** further covenants to indemnify and hold **GRANTEE** harmless from any and all damages and injuries, whether to persons or property, resulting from interference with **GRANTEE**'s facilities by **GRANTOR** or by **GRANTOR**'s agents or employees.

**GRANTEE** agrees to indemnify and hold **GRANTOR** harmless for, from and against any and all losses, claims or damages incurred by **GRANTOR** arising directly from **GRANTEE**'s negligence or failure to exercise reasonable care in the construction, reconstruction, operation or maintenance of **GRANTEE**'s facilities located on the above described easement.

**GRANTOR** hereby warrants and covenants (a) that **GRANTOR** is the owner of the fee simple title to the premises in which the above described Easement Area is located, (b) that **GRANTOR** has full right and lawful authority to grant and convey this easement to **GRANTEE**, and (c) that **GRANTEE** shall have quiet and peaceful possession, use and enjoyment of this easement.

REST OF THE PAGE

INTENTIONALLY LEFT BLANK

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

**IN WITNESS WHEREOF**, the said **GRANTOR** has caused this easement to be signed in its corporate name by its proper officers thereunto duly authorized and its official corporate seal to be hereunto affixed and attested this \_\_\_\_ day of \_\_\_\_\_, 2014.

**GRANTOR:**

**THE CITY OF LAKE WALES**

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
Clara VanBlargan

\_\_\_\_\_  
Eugene Fultz

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

**Grantor(s) mailing address:**

\_\_\_\_\_  
Signature of First Witness

\_\_\_\_\_

\_\_\_\_\_  
Print or Type Name of First Witness

\_\_\_\_\_

\_\_\_\_\_  
Signature of Second Witness

\_\_\_\_\_  
Print or Type Name of Second Witness

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

The foregoing Easement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Eugene Fultz, its Mayor and Clara VanBlargan, its City Clerk, of **The City of Lake Wales, a Florida municipal corporation**, on behalf of the municipality who are personally known to me or who have produced \_\_\_\_\_ as identification and who did/did not take an oath.

CORPORATE SEAL

NOTARY SEAL

\_\_\_\_\_  
Name:  
Notary Public  
Serial Number:  
My Commission Expires: