

ORDINANCE # 20-__

AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC. d/b/a DUKE ENERGY, A NON-EXCLUSIVE ELECTRIC UTILITY RIGHTS OF WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE USE AND OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS OF WAY IN THE CITY OF BELLE ISLE, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR FINDINGS, SHORT TITLE, DEFINITIONS, GRANT OF AUTHORITY, PAYMENTS, FAVORED NATION CLAUSE, INDEMNIFICATION, RECORDS AND REPORTS, PROVISIONS IN THE EVENT OF RETAIL WHEELING, SEVERABILITY OF PROVISIONS, GOVERNING LAW, DISPUTE RESOLUTION, ASSIGNMENT/DELEGATION, DEFAULT AND TERMINATION, SOVEREIGN IMMUNITY, STATUS OF GRANTEE, LIENS, INDEMNIFICATION, INSURANCE, AND OTHER TERMS; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF BELLE ISLE, FLORIDA:

SECTION 1 - Findings

The City deems it necessary, desirable and in the interest of its citizens to establish by ordinance a rights of way utilization franchise (sometimes referred to herein as the “Franchise”) granting the Company permission to occupy the Rights of Way in the City of Belle Isle, Florida, for the purpose of providing electric services.

SECTION 2 - Short Title

This ordinance shall be known and may be cited as the “Duke Energy Rights of Way Utilization Franchise.”

SECTION 3 – Definitions

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely permissive.

(A) “Adversely Affected” – For the Company, a loss of one percent (1%) or more of Base Revenues within the corporate City limits due to Retail Wheeling. For the City, a loss of one percent (1%) or more of franchise fees due to Retail Wheeling.

(B) “Agreement” or “Ordinance” or “Franchise” or “Franchise Agreement” – This Ordinance, where appropriate based on the context.

(C) “Base Revenues” – All Company’s revenues from the retail sale of electricity, net of customer credits, to residential, commercial and industrial customers and City sponsored street lighting all within the corporate limits of the City.

(D) “Company” or “Grantee” – Duke Energy Florida, LLC d/b/a Duke Energy, its successors and assigns.

(E) “City” or “Grantor” – The City of Belle Isle, Florida.

(F) “Electric Energy Provider” – Every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including City herein), which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing Company’s distribution or other facilities. Without limitation or the foregoing, “Electric Energy Provider” shall also include every Electric Utility, electric power marketer or electric power aggregator. It shall also include every entity providing such services as metering, customer billing, payment collection and processing, and customer information and data processing.

(G) “Electric Utility” -- Shall have the meaning set out in Section 366.02(2), *Florida Statutes* (2010), and shall also include every electric “Public Utility” as defined in Section 366.02(1), *Florida Statutes* (2010). “Electric Utility” shall further include every investor owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers), which owns, maintains, or operates an electric generation, transmission, or distribution system in any State or County.

(H) “Electric Utility System” – An electric power system installed and operated in the Franchise Area in accordance with the provisions of the Florida Public Service Commission establishing technical standards, service areas, tariffs and operating standards, which shall include but not be limited to electric light, heat, power and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions hereto as shall hereafter be made.

(I) “Franchise Area” – That area for which Company provides electric utility service within the corporate City limits of the City.

(J) “Facilities” – The meaning as set forth in Section 4.

(K) “Person” – Any person, firm, partnership, association, corporation, company or organization of any kind.

(L) “Public Service Commission” – The Florida Public Service Commission.

(M) “Rights of Way” – All of the public streets, alleys, highways, waterways, easements authorizing electric utilities, bridges, sidewalks and parks (subject to City’s further written approval), and any other public ways or places owned by the City, as they now exist or

may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

(N) “Retail Wheeling” – A customer/supplier arrangement whereby an Electric Energy Provider utilizes transmission and/or distribution facilities of Company to make energy sales directly to an end use customer located within the Franchise Area.

SECTION 4 - Grant of Authority

(A) This grant of authority is limited to the provision by Company to have, maintain, or place its Facilities within the Rights of Way for its electric utility services. Accordingly, the City hereby grants to the Company, its successors and assigns the non-exclusive right, authority, and franchise to lay, erect, construct, maintain, repair and operate its Facilities in, under, upon, over and across the present and future Rights of Way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, including but not limited to conduits, cables, poles, wires, supports and such other structures or appurtenances as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system, including information, telecommunication, and video transmission used solely for the provision of electric service (collectively the “Facilities”), provided that all portions of the same shall conform to accepted industry standards, including but not limited, to the National Electrical Safety Code, and any applicable City ordinance and other laws. Nothing in this Ordinance shall require Grantee to remove, de-energize, or cease using any poles, wires, or other things or Facilities identified hereinabove that were in place under previous ordinances or permits prior to the Effective Date of this Ordinance, regardless of whether such poles, wires or other Facilities are located outside “Rights of Way” as defined herein, provided that such poles, wires, or other things or Facilities were lawfully erected in accordance with any applicable authorizations, permits, or laws. Nor shall anything in this Ordinance prohibit Company from performing upgrades, replacements, maintenance or servicing of such poles, wires, or other Facilities after the Effective Date of this Ordinance, provided that such activities do not cause undue interference with use of the public Rights of Way. Rather, all such lawfully erected preexisting poles, wires, or other Facilities shall be authorized under this Ordinance. Because this Franchise is intended to grant Company the non-exclusive, but unrestricted right to place its Facilities within the Rights of Way, the City expressly acknowledges and agrees that Company shall not be required to pull or pay for permits to place its Facilities or perform any work maintenance activities on or related to its Facilities within the Rights of Way, except as may be required by governmental entities other than the City.

(B) Annexation or Contraction. City and Company agree that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If City approves any Franchise Area expansion or reduction by annexation or contraction, City shall provide written notice to Company’s Annexation Coordinator, at the address provided below, within sixty (60) days of such approval and this Franchise shall automatically extend to include any such annexed areas.

Additionally, within sixty (60) days of any such annexation or contraction, City shall provide to Company an updated list containing the new or removed street names, known street name aliases, street addresses, and zip codes associated with each street name. All notices of

annexation or contraction and address listings shall be addressed to the Annexation Coordinator as follows with the address subject to change:

Duke Energy
Tax Team DT02-V
9700 David Taylor Drive
Charlotte NC 28262
Or by email to: TaxTeam@duke-energy.com

Company must revise its payments due to any expansion or reduction by annexation within a reasonable time after Company has received such notice and updated list from City, but no later than sixty (60) days after receipt of notice and the list. City understands and affirmatively acknowledges that the Company will exclusively rely upon the City to provide timely and accurate information to the Company regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any payments due to the City that are impacted by such annexations or contractions. Further, City acknowledges that if such information is not timely furnished to Company as required herein, any related obligation to collect payments shall be suspended during the period of delay.

(C) Non-Exclusive Use. The Company's right to use and occupy Rights of Way for the purposes herein set forth shall be non-exclusive as to entities not engaged in the provision of electric energy and service, and the City reserves the right to grant to others the right to utilize the Rights of Way, to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Company herein.

SECTION 5 - Notice of Acceptance and Term of Franchise

This ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the City Commission and executed by Grantee; and it is further agreed that Grantee shall accept this Franchise as of the date of the passage and adoption by the City Commission and shall signify its acceptance in writing within thirty (30) days after the City Commission's approval of this ordinance by filing its written acceptance with the City Clerk. If Grantee fails to accept and execute this franchise within thirty (30) days of its date of passage and adoption, then this Ordinance shall be null and void, and of no force and effect of any kind. Commencing on the Effective Date, the term of the Franchise granted herein shall be for a period of thirty (30) years.

SECTION 6 - Payment to City

(A) Effective the first day of the second month beginning after the Effective Date of this ordinance, City shall be entitled to receive from Company a monthly franchise amount that will equal **three percent (3%)** of Company's Base Revenues (the "Franchise Fee") for the preceding month, which amount shall be the total compensation due City for any and all rights, authority and privileges granted by this Franchise, including compensation for any required permits, parking fees, or any other fee or cost related to the rights granted hereunder. Any franchise amounts that will be paid to the City will be collected by the Company from

Company's customers in the Franchise Area and passed through to the City in the manner described herein. The City expressly acknowledges that no additional or other amounts shall be due or remitted by Company for the exercise of its rights granted hereunder.

Payment shall be made to City for each month no later than the twentieth (20th) day of the following month. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof made twenty (20) days after the due date without good cause shall be subject to interest at the rate of ten percent (10%) per annum.

(B) Only disputed amounts shall be allowed to be withheld by Company, and any such amount shall not accrue any interest during the pendency of any such dispute.

(C) The City acknowledges that all classifications and categories of retail customers of Company shall be subject to the payment of the Franchise Fee due hereunder.

SECTION 7 - Favored Nations

(A) In the event Grantee shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee in excess of that provided for in Section 6 above, Grantee shall notify Grantor, and Grantor reserves the right to amend this Franchise to increase the franchise fee payable under this ordinance to no more than the greater franchise fee that Grantee has agreed to pay to such other municipality. Grantee's obligation to pay such greater franchise fee to Grantor shall apply prospectively beginning with the next monthly franchise fee payment following Grantor's timely notice of its exercise of its amendment right to which Grantee may collect such increased fee from its customers. Grantee's failure to notify Grantor of such additional payments does not limit Grantor's right to amend to require such additional franchise fees.

(B) It is the intent and agreement of Grantor and Grantee that Grantee shall not be required to pay Grantor a franchise fee under Section 6 of a percentage greater than that paid to Grantor by any other Electric Utility or Electric Energy Provider utilizing Grantor's Rights of Way on such Electric Utility's or Electric Energy Provider's revenues attributable to services that are the same or substantially the same as those performed by Grantee. It is further the intent and agreement of Grantor and Grantee that Grantee should not be placed at a competitive disadvantage by the payments required by Section 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide services in competition with Grantee without utilizing Grantor's Rights of Way.

(C) If Grantor imposes a lesser fee, or no fee, or is unable to impose a fee on another Electric Utility or Electric Energy Provider providing or seeking to provide services in competition with Grantee to customers within Grantor's municipal boundaries, whether utilizing Grantor's Rights of Way or not utilizing Grantor's Rights of Way, Grantee's fee under Section 6 for such services shall be automatically reduced to the lesser fee charged the other Electric Utility or Electric Energy Provider (or to zero (0), if no fee is charged such other Electric Utility or Electric Energy Provider). In all events, City shall not grant more favorable treatment to other Electric Energy Providers than is granted to Company under this ordinance, it being the intent of the parties that no future provider of electric service, be it generation, transmission or distribution

service, to customers within the corporate limits of City shall be given a competitive advantage over Company.

SECTION 8 - Grantor Rights

The right is hereby reserved to the City to adopt such regulations as it shall find necessary or advisable in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable as determined by Grantor in its discretion, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, or conflict with or otherwise interfere with the benefits conferred on the Company hereunder. In the event of a conflict between this Franchise Agreement and any other ordinance or regulation adopted by the City relating to Company's rights to perform work in and/or occupancy of the Rights of Way as permitted hereunder, the rights under this Franchise Agreement shall govern and control to the extent allowable under the law.

SECTION 9 - Work In Rights of Way

The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights of Way of the City related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the rights and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation of same. With respect to trees, the Company is authorized only to trim branches to the extent necessary to keep such branches clear from the Company's Facilities. Absent permission from the City, the Company shall not remove any tree or take any action that results in the death of a tree. Moreover, the Company shall have the right to construct, erect, operate and maintain within the City an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said City shall not be unnecessarily obstructed for an unreasonable amount of time and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the City for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

SECTION 10 – Indemnification

(A) The acceptance and execution of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify and hold harmless the City and its elected and appointed officials, employees, officers, and agents against any and all direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs that City may incur to the extent arising out of or resulting from the negligence, willful misconduct, or any other act or omission of Company, its contractors, subcontractors, employees, officers, and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder or any other of the Company's activities related to this Ordinance. In no event shall Company be liable

to City for any consequential, incidental, punitive, exemplary, multiple, or indirect damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise. This indemnification and hold harmless provision survives termination, expiration, repeal, or invalidation of this Ordinance.

(B) Company shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring City and Company with regard to all damages set forth in Section 10 (A) in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person;
\$3,000,000 for bodily injury or death resulting from any one accident.
- (ii) \$50,000 for property damage resulting from any one accident.
- (iii) \$1,000,000 for all other types of liability.

(C) City acknowledges that Company provides its own liability insurance (self-insured).

(D) Company shall take all necessary precautions to protect public and private property from damage and debris caused by its operations under this Agreement. Company shall promptly and at its sole cost repair or replace, or remove debris from, any private or public property that is damaged by or affected by debris from Company or any of its agents, officers, employees, contractors, or subcontractors. If Company does not perform such repair or replacement within 48 hours of knowledge or notice thereof, or such longer period as approved by the City, then the City may but is not obligated to perform any such repair or replacement and the City may bill Company for any such expenditures.

SECTION 11 - Records and Reports

(A) Company Rules and Regulations. The following documents shall be available to City upon City's reasonable request: copies of rules, regulations, and procedures adopted by Company that relate to Company's use of City's Rights of Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company as determined by Company.

(C) Reports. Company will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the City from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6 (A).

(D) Availability of Records and Reports. Company shall supply information that City or its representatives may from time to time reasonably request relative to the calculation of

franchise fees. Such records shall, on written request of City, be open for examination and audit by City and City's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary business hours and such records shall be retained by Company for a period of three (3) years.

(E) Audit. City may require, upon prior written notice and during Company's normal business hours, an audit of Company's books related to this Agreement not more than once every three (3) years and then only for the preceding three (3) years. Company will reimburse City's audit costs if the audit identifies errors in Company's franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of franchise fees has occurred due to the Company's error, interest will be calculated at the rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

(F) Customer Report. In addition to City's obligations in Section 4 (B), within ninety (90) days of the Effective Date of this Agreement, City shall provide to Company a report in a format acceptable to Company setting forth a listing of all addresses within the corporate limits of the City and annually thereafter a report identifying any changes to the address listing provided the previous year.

(G) Public Records. To the extent that Florida's public records laws and regulations apply to Company, Company shall comply with all such laws and regulations.

SECTION 12 - Retail Wheeling

In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may provide written notice to the other of its desire to renegotiate the Franchise Fee payments between the Company and the City. If the parties are unable to agree within ninety (90) days of such written notice, either party may declare an impasse, at which time this Ordinance shall be of no further force or effect, and the parties' rights and obligations hereunder shall terminate except as provided in this Ordinance.

SECTION 13 - Severability

Should any section or provision of this Franchise ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid. In the event of any such partial invalidity, City and Company shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

SECTION 14 - Governing Law and Venue

(A) This Franchise ordinance shall be construed and interpreted according to the laws of the State of Florida.

(B) In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Orange County, Florida, or, if a federal claim, in the U.S. District Court in and for the Middle District of Florida, Orlando Division.

SECTION 15 – Merger

This Franchise agreement is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this agreement. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set forth or provided herein.

SECTION 16 – Notices

Except in exigent circumstances, all notices by either City or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. “Business Day” for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and City and Company observed holidays excepted. All notices shall be addressed as follows:

To City:

City Clerk
1600 Nela Avenue
Belle Isle, FL 32809
Phone: (407) 851-7730
Facsimile: (407) 240-2222
yquiceno@belleislefl.gov

To Company:

Gov’t and Community Relations
Duke Energy
P.O. Box 14042
St. Petersburg, FL 33733-4042
Phone: (727) 820-5474
Facsimile: (727) 820-5715

SECTION 17 - Non-Waiver Provision

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

SECTION 18 - Repealer and Superseding Provision

This ordinance shall supersede, as to the rights, privileges and obligations between City and Company, all ordinances and parts of ordinances in conflict with the terms of this ordinance. Ordinance No. 556-30 and any amendments thereto, are hereby deemed null and void and/or

repealed upon the effective date of this ordinance and none of the provisions of such repealed Ordinance No. 556-30 and any amendments thereto shall have any further force and effect.

SECTION 19 - Dispute Resolution

The parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

SECTION 20 – Default and Termination.

(A) In the event that:

(i) the Grantee shall fail to keep, perform, and observe each and every promise, covenant, and agreement set forth in this Franchise Agreement, and such failure shall continue for a period of more than thirty (30) days after delivery to the Grantee of a written notice of such breach or default; or

(ii) the Grantee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver or trustee or liquidation of all or substantially all of its property; or

(iii) the Grantee shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute, filed against it, which petition is not dismissed within thirty days after the filing thereof; then in any of such events, the City, in its discretion, shall have the right to:

1. seek specific performance of this Franchise Agreement,
2. terminate this Franchise Agreement for default, which termination shall be effective twenty-four hours after written notice of such termination is given to the Grantee, or
3. pursue such other actions and remedies as may be permitted by law. In the event the City elects to terminate this Franchise Agreement, the City may specify the termination date on the written notice of termination.

(B) In the event that a dispute arises between the City and the Grantee, or any interested party, in any way relating to this Franchise Agreement, the Grantee shall continue to render service in full compliance with all terms and conditions of this Franchise Agreement regardless of the nature of the dispute.

SECTION 21 – Sovereign Immunity / Status of Grantee.

(A) Nothing contained in this Agreement and no actions or inactions by the City or its officers, elected and appointed officials, agents and representatives shall be considered or deemed a waiver of the City's sovereign immunity or any other privilege, immunity, or defense available to the City or its officers, elected and appointed officials, agents, and representatives.

(B) Neither Grantee nor any of its officers, agents, employees, contractors, or sub-contractors shall constitute agents or employees of the City for any purpose. Grantee shall have no power or authority to bind the City to any obligation, agreement, or in any manner whatsoever.

SECTION 22 – Assignment/Delegation

Company shall not assign or transfer this Agreement or any right hereunder, or delegate the performance of any obligation under this Agreement, to any other person or entity without prior written consent of the City in the City's sole discretion.

SECTION 23 – Headings; Interpretation

The headings used in this Agreement are solely for the purpose of convenience and should not be construed to interpret the substance of this Agreement. The Parties have thoroughly read and reviewed the terms of this Agreement, acknowledge that it has been prepared after negotiations between the Parties, and agree that if any ambiguity is contained herein, then in resolving such ambiguity, no weight shall be given in favor of or against either party on account of its drafting of this Agreement.

SECTION 24 – Subcontractors

In the event that Company, during the course of the services under this Agreement, requires the services of any subcontractors or other professional associates in connection with the work covered by this Agreement, Contractor must first secure the prior written approval of City. The City reserves the right to accept or reject the Company's use and selection of a particular subcontractor and to inspect all facilities of any subcontractor in order to make a determination as to the capability of the subcontractor to properly perform under this Agreement. Should a subcontractor fail to perform as required by this Agreement and it becomes necessary to replace the subcontractor, the Company shall promptly do so, subject to acceptance of the new subcontractor by the City.

SECTION 25 – No Liens

Company acknowledges and agrees that the City is a Florida municipality, and as such, the City's public property and various work site(s) involved are not subject to construction or mechanic's liens pursuant to Chapter 713, Florida Statutes, and any other liens. Company and its subcontractors shall not file or record claims of lien or any other liens against any project or property owned by the City. Company hereby agrees to indemnify, defend, and hold the City harmless from all liens filed by the Company and its subcontractors and all others claiming through Company against any project, work, or property owned by the City, including for the City's attorneys' fees and costs.

SECTION 26 – No Pledge.

In no event shall any obligation under this Agreement result in, be or constitute: (i) a general obligation or indebtedness of the City within the meaning of the Constitution of the State of Florida, the City's charter and ordinances or any other applicable laws, (ii) a pledge of ad valorem taxes or taxing power, non-ad valorem revenue or any other revenue source of the City, or (iii) a lien on any real or personal property of the City.

FIRST READING AND PUBLIC HEARING: _____ 20__.

SECOND READING, ADOPTION, AND PUBLIC HEARING: _____ 20__.

ATTEST:

Yolanda Quiceno, City Clerk

Nicholas Fouraker, Mayor

Approved as to form and legality
for the use and reliance of the
City of Belle Isle, Florida, only.

A. Kurt Ardaman, City Attorney

Catherine Stempien, State President
Duke Energy Florida, LLC d/b/a Duke Energy

