



CITY OF BELLE ISLE RIGHT-OF-WAY POLICY

1. Purpose

The purpose of this policy is to establish methods of managing and controlling private use of public streets, roads, and easements. The City has a responsibility to protect public access and use of city rights-of-way, easements and other public thoroughfares.

2. Right-of-Way Permits

Right of way is City property, and certain improvements are not allowed without first obtaining City approval. A right of way permit gives you legal access to work within a City-owned right of way or easement. A permit ensures that work is done safely and meets codes and regulations.

A ROW Permit is a revocable license that authorizes the use of the City's right of way. With exception of utilities and governmental entities, a ROW Permit may be revoked at any time and without cause. Applicants should keep this in mind when proposing to expend significant monies in the City's right of way. Furthermore, issuance of a ROW Permit does not convey any interest or vested right in the right of way or obligate the City to ensure that the right of way is available for an applicant's proposed improvements or use.

A city right of way permit is required for work or activities in the right of way including maintenance or repair of existing facilities, new construction, installation or repair of an underground or overhead utility, installation of non-utility items (planters, retaining walls, mailbox, newspaper box, irrigation system, landscaping or placing a construction waste container, etc.). This permit lets the city know what work is being done and provides a way for it to monitor, coordinate, and inspect every aspect of the work.

Pre-existing encroachments may be allowed to remain in place as non-conforming encroachments, without requiring a review by the City or require a ROW Permit, as long as they are not: (a) deemed to be a safety hazard or nuisance, (b) modified, (c) damaged, (d) removed or relocated, and/or (e) the subject of a complaint. City staff will determine whether the encroachment meets these conditions and whether it may remain in place without a permit; if the conditions are met, the encroachment shall have "grandfathered" rights to remain in place. Regardless of whether an encroachment meets any or all of these conditions, the City Engineer may require a full review of the encroachment, a complete permit application, and/or removal of the existing encroachment.

All applicants are required to agree to the limiting conditions in Exhibit A and in the ROW Permit and will execute a ROW Agreement (Exhibit B) with the City, which includes, among other things, responsibility for all liability and indemnification on behalf of the City in the event of damage or injury. Use of the City's right of way without having first obtained a ROW Permit is a violation of law and may result in removal of the improvements in the right of way, the imposition of civil penalties, or both.

3. Guarantee and Responsibility for Compliance

Permits shall be issued with the understanding that the applicant shall guarantee all work performed under the terms of the permit. The applicant shall be responsible for all repair costs incurred due to damages to existing utilities by failure to use due care, including errors in locating existing utilities during construction.

It is expressly stipulated that the permit is a license for permissive use only and that the placing of facilities upon public property pursuant to the permit shall not operate to create or vest any property right in said holder.

It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the City's right, title and interest in the land to be entered upon and used by the holder, and the holder will, at all times, assume all risk of and indemnify, defend and save harmless the City from and against any and all loss, damage, cost or expense arising in any manner on account of the exercise or attempted exercises by said holder of the aforesaid rights and privileges.

In the case of noncompliance with the City's requirements, the permit will be void and the facility will be brought into compliance or removed from the right-of-way at no cost to the City.

The City may issue "Stop Work" order(s) upon any permittee committing or creating an unsafe act which may create a public hazard or who is not complying with the permit or the applicable codes. The order shall remain in effect until such time as these matters are corrected. Any failures shall be repaired by the applicant, at the direction of the City, within five (5) days, unless the urgency of the problem requires a quicker reaction time.

Removal/Relocation of Improvements: Upon ten (10) days written notice, the applicant shall be required to remove and/or relocate the improvements placed within the right-of-way at the applicant's sole expense.

Protecting the public right-of-way is one of the primary responsibilities of the Public Works Department. All work performed in the public right-of-way requires a Right-of-Way (ROW) Permit of one of the following types:

1. Utility Work - this includes all utility companies (Duke Energy, AT&T, Spectrum and other telecommunications utilities, OUC, Orange County, etc.), as well as private contractors hired by property owners to do the trenching or boring for the placement of these facilities.
2. R-1 Residential - minor frontage work for existing single family home, must be home owner occupied. A signed Agreement between the City and the Property Owner is required prior to the R-1 ROW permit being issued.

3. Land Development - construction of frontage improvements required by a Building or Planning permit.
4. Miscellaneous Work - temporary use of the right-of-way for activities not listed above

Examples of work requiring an ROW Permit include:

- Installation of utility mains and services (water, sewer, storm, gas, electric, telecommunications, etc.)
- Installation of street trees or other City-approved landscaping
- Construction of sidewalks, curbs, gutters, and driveway approaches
- Installation of street lights, traffic signals
- Traffic lane and/or sidewalk closures (some routine maintenance activities exempted)
- Installation of hardscape (Fences, retaining walls, bollards and barricades, benches, bicycle racks, trash receptacles, planter boxes, etc.)
- Public Art, Public Memorials, Historic Markers and Plaques
- Transit Shelters
- Street Banners

4. ROW Permit Information

ROW Permits typically require that contractors procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the contractor, his agents, representatives, employees, or subcontractors. Insurance meeting the City's minimum insurance requirements must be in place prior to issuance of a ROW Permit.

ROW Permits may also require a cash deposit or bonds to ensure that the work done in the public right-of-way is completed in accordance with the City's requirements and the permit that has been issued.

Please note that all ROW Permits must be on the job site at all times.

5. R-1 Permit

All work within the public right-of-way requires a ROW Permit. Placement of hardscape and landscape items may also require a variance approved by the Planning and Zoning Commission prior to the ROW permit being approved. The R-1 ROW Permit is a simplified permit intended to assist owners of single family homes perform minor work in the right-of-way in front of their primary residence. In addition to the R-1 Permit, the property owner is also required to execute a ROW Agreement with the City prior to the R-1 Permit being issued (Exhibit A). The R-1 ROW Permit is issued to the owner of the abutting property and runs with the land, unless stated otherwise.

Minor work is defined as improvements performed by a homeowner (or their selected contractor) in front of the homeowner's single family residence. This type of permit would be required for any homeowner who wishes to remove/replace curbs, gutters, sidewalks, driveways, or install street trees and other City-approved landscaping in front of their primary residence. If the home is not occupied by the owner (i.e. a rental property, etc.) then the property owner will have to apply for the ROW Permit and execute the ROW Agreement.

6. R-1 Permit Application Package

An application for a R-1 ROW Permit must include the following items:

- a. One (1) copy of a drawing showing the location, extent and dimensions of the work. The drawing shall show the relation of the proposed work to existing improvements. When approved by the City Engineer said drawing becomes a part of this permit.
- b. Photos of hardscaping (benches, bollards, bike racks, plaques, etc.)
- c. An Agreement signed by both the City and the property owner.
- d. Proof of residence / owner occupied status.
- e. Copy of Homeowners insurance.
- f. Payment of fee.
- g. Faithful Performance Deposit (refunded upon completion of work) (If required by the City)
- h. Approved variance from Planning & Zoning Commission (if applicable).

The application packet will be submitted to the City Manager, or City Manager's Designee. Upon receipt of the complete permit application package, the staff will review all of the information for completeness. A minimum of ten (10) working days should be allowed for this preliminary review. Following the preliminary staff review, comments will be returned to the applicant for any changes. Comments may ask that additional information be submitted for review, or that additional information be shown on the drawings. If the application is approved, the City Manager, or the City Manager's Designee, will issue the permit. If the application is denied, the City Manager will provide a written response to the applicant. The decision of the City Manager is final. **Prior to beginning any construction, the applicant must request and arrange a field meeting with the Public Works Director.**

7. Exception Process

If a proposal for a right-of-way encroachment does not meet the policy as described in this document, the proposal may be reviewed by the City Manager on a case-by-case basis. The applicant should include the reasons for the exception request and an explanation of how the proposal meets the intent of City Code and adopted policies. The City Manager will review the request and consult with staff and the City Engineer as needed. The applicant may be contacted for additional information. A written response will be provided to the applicant, explaining the reasons for approval or denial of the request. The timeline for a response may vary depending on the complexity of the issue. Decisions made by the City Manager regarding proposed right-of-way encroachments are final.

EXHIBIT A
Limiting Conditions

(1) All structures constructed by permittee shall remain the property of permittee, who shall be solely responsible for ensuring that such structures and other uses remain in good and safe condition. Permittees are advised that other federal, state, county, and local safety standards may govern the occupancy and use of the City's ROW. The City assumes no duty with regard to ensuring that such uses are so maintained and assumes no liability with regard to injuries caused to others by any such failure.

(2) Permittee agrees to abide by all of the terms and conditions of this permit, including any representations made on the permit application and related documents. Permittee agrees to pay all removal and restoration costs, investigative costs, court costs and reasonable attorney's fees, including appeals, resulting from any action taken by the City to obtain compliance with the conditions of the permit or removal of the permitted use.

(3) This permit does not create any vested rights, and except for governmental entities and utilities, is revocable at will upon reasonable prior written notice. Permittee bears all risk of loss as to monies expended in furtherance of the permitted use. Upon revocation, the permittee shall promptly modify, relocate or remove the permitted use and properly restore the right of way to the City's satisfaction. In the event of failure to so comply within the specified time, the City may remove the permitted use and permittee shall be responsible for all removal and restoration costs.

(4) This permit does not convey any property rights nor any rights or privileges other than those specified herein and this permit shall not, in any way, be construed as abandonment or any other such impairment or disposition of the City's property rights. Permittee shall obtain all other necessary permits and approvals prior to the start of any construction or alteration authorized by the permit.

(5) Unless specifically prohibited or limited by statute, Permittee agrees to indemnify, defend and save the City (which used herein includes the City and its past, present and/or future employees, agents, representatives, officers and/or Governing Board members and any of their successors and assigns) from and against any and all lawsuits, actions, claims, demands, losses, expenses, costs, attorney's fees, judgments and liabilities which arise from or may be related to the ownership, construction, maintenance or operation of the permitted use or the possession, utilization, maintenance, occupancy or ingress and egress of the City's right of way which arise directly or indirectly and are caused in whole or in part by the acts, omissions or negligence of the Permittee or of third parties. Permittee agrees to provide legal counsel acceptable to the City if requested for the defense of any such claims.

(6) The City does not waive sovereign immunity in any respect.

(7) Permittee shall allow the City to inspect the permitted use at any reasonable time.

(8) Permittee shall allow, without charge or any interference, the City, its employees, agents, and contractors, to conduct the City's, routine and emergency, operation, maintenance, and construction activities. To the extent there is any conflicting use, the City's use shall have priority over the permittee's use.

(9) This permit is a non-exclusive revocable license. Permittee shall not interfere with any other existing or future permitted uses or facilities authorized by the City.

(10) Permittee shall provide prior written notice to their successors in title of the permit and its terms and conditions.

(11) Permittee authorizes the City to record a Notice of Permit through filing the appropriate notice in the public records of Orange County. Governmental entities and utilities are not subject to this provision.

(12) Permittee shall be responsible for the repair or replacement of any existing facilities located within the City's right of way which are damaged as a result of the installation or maintenance of the Permittee.

(13) Special Conditions that are site specific shall be incorporated into every Permit as may be necessary in the best interest of the City.

(14) The City is not responsible for the repair of or claims of damage to any facilities and uses which may incur damage resulting from the City's utilization of its rights of way or use by third parties. Improvements placed within the right of way are done so at the sole risk of the owner.

Applicant

Signature

Print

EXHIBIT B

Prepared by and after recording return to:
City of Belle Isle
Attn: City Clerk
1600 Nela Avenue
Belle Isle, FL 32809

**RIGHT-OF-WAY UTILIZATION LICENSE
AGREEMENT**

THIS RIGHT-OF-WAY UTILIZATION LICENSE AGREEMENT, is made and entered into this _____ day of _____, 2022, by and between the CITY OF BELLE ISLE, a Florida municipal corporation, whose address is 1600 Nela Avenue, Belle Isle, FL 32809, hereinafter referred to as “City”, and _____, whose address is _____, Belle Isle, Florida 32812, hereinafter referred to as ”Applicant”.

WITNESSETH:

WHEREAS, the City has responsibility and authority over the (Name of Street) Right-of-Way located at (Street Address); and

WHEREAS, the Applicant is the fee simple owner of that certain property located at (Street Address) having Orange County Tax Parcel Identification Number _____ (“Applicant Property”), which is adjacent to the (Street Name) Right-of-Way at the address or location listed above; and

WHEREAS, Applicant seeks permission from the City in order to place _____, which will encroach into the [Name of Right-of-Way] public right of way (“Right-of-Way”) in the location shown in the construction plans (or landscaping plans) submitted by the Applicant and reviewed and approved by City which are on file at the City (“Approved Plans”); and

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and conditions provided for in this Agreement and other good and valuable consideration, the receipt of which is acknowledged by both parties, the parties hereto do mutually agree as follows:

1. City hereby grants a non-exclusive revocable license to the Applicant for the installation and maintenance of (Describe the Improvements) as more specifically described or depicted in the Approved Plans (“Improvements”) within the Right-of-Way in the area specified in the Approved Plans subject to the issuance of a permit and variance (if needed) by the City.

The Improvements shall be installed, maintained and repaired by Applicant, at Applicant’s expense, consistent with the size, length, height, configuration and materials as set forth in the Approved Plans and related documentation on file with the City. No additional encroachments upon the Right-of-Way are being authorized by this Agreement nor shall be installed or constructed. No portion of the Improvements shall be installed or maintained in

such a manner as may interfere with the use of the Right-of-Way or adjacent roads by the public or create a safety hazard, as determined by the City in the City's sole discretion. Applicant shall be responsible for securing all necessary applicable government permits including variances prior to the installation of the Improvements.

Applicant understands that if the Improvements have to be removed, relocated, etc. during any construction or modifications, and that such relocation or replacement of the Improvements will be done at the Applicant's expense. The City agrees to notify the Applicant sixty (60) days in advance of such modifications.

2. Applicant agrees to ensure that the Applicant and its contractors and agents and the Improvements do not damage or interfere with the use and operation of the road, utilities and other improvements located in the Right-of-Way or within adjacent public rights-of-way ("Right-of-Way Improvements"). In the event Applicant or the Improvements do in fact damage said Right-of-Way Improvements, Applicant must repair said damage immediately and at Applicant's expense; or at the option of the City, City will repair said damage and Applicant must immediately thereafter reimburse City for said cost and expense. In addition, Applicant must reimburse City for any and all additional cost and expense incurred by City to the extent such additional cost and expense was necessitated by reason of the Improvements encroachment, including in regards the City removing the Improvements and restoring the Right-of-Way in the event Applicant does not do so.

3. In the event that the Improvements are destroyed, removed or demolished, this Agreement shall automatically terminate unless otherwise agreed to in writing by the City. Applicant assumes the full risk of loss and damage to the Improvements regardless of the cause of such loss or damage. Applicant, for itself and its successors in interest in the Applicant Property, agrees that any replacement Improvements installed or built on the Applicant Property will not encroach into the Right-of-Way without the prior written consent of the City.

4. In no event shall the City ever be responsible for the repair, maintenance or reconstruction of the Improvements regardless of the cause of the damage, destruction or deterioration of the Improvements. The City will not be restricted in any manner from operating, accessing, maintaining, repairing or reconstructing the Right-of-Way Improvements or making further changes and improvements to the Right-of-Way. To the fullest extent permitted by law, the City shall have the right to remove the Improvements from the Right-of-Way at any time the City deems needed to accommodate any improvements the City desires to make or any maintenance activities the City desires to conduct within the Right-of-Way.

5. To the fullest extent permitted by law, Applicant hereby indemnifies and agrees to release, hold harmless the City, its officers, agents and employees, from and against all claims, damages, losses and expenses, including reasonable attorney's fees (at trial and appellate levels), arising out of or resulting from (i) the construction, location, and maintenance of the Improvements on and within the Right-of-Way; (ii) damage to, removal of, or destruction of the Improvements regardless of the cause; (iii) any claims of lien or liens

recorded against the Right-of-Way, City or the City's property interests, and (iv) for any risk assumed by Applicant under this Agreement. The indemnification and hold harmless provisions in favor of the City as set forth in this Agreement shall survive termination of this Agreement.

6. If, in the sole discretion of the City, all or any portion of the Improvements or maintenance thereof: (a) interferes with the operation of the Right-of-Way or with any desired construction, widening, reconstruction, alteration or improvement or operation or maintenance activity which the City desires to perform on, around, over, through or under the Right-of-Way; or (b) said Improvements or maintenance thereof, unreasonably interferes in any way with the convenient, safe, or continuous use of the Right-of-Way; or (c) the removal of any or all Improvements is necessary to serve the health, safety or general welfare of the citizens of Belle Isle; upon sixty (60) days written notice to Applicant, the City may terminate this Agreement and require the Applicant to remove the Improvements and restore the Right-of-Way to its previous condition at Applicant's expense, except as otherwise instructed by the City.

7. If the Applicant or its successors or assigns defaults under terms and conditions of this Agreement, the City shall have the right to immediately terminate this Agreement and require removal of the Improvements and restoration of the Right-of-Way to its previous condition by the Applicant, at Applicant's expense, except as otherwise instructed by the City.

8. Applicant shall procure and maintain general liability insurance in an aggregate sum of not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00) combined single limit insuring against bodily injury or property damage occurring on or arising from the use by Applicant of the Right-of-Way for the Improvements. Such insurance shall name City as an additional insured and shall not be cancelable by Applicant without at least thirty (30) days prior written notice to City.

9. All work required or permitted to be performed by Applicant under this Agreement on, under, across, over or through the Right-of-Way shall be performed free and clear of all materialman's liens, mechanic's liens and other liens. In the event any such lien is recorded or filed, Applicant shall, within thirty (30) days after notice that said lien has been filed, pay the claims secured by such lien or remove such lien by bond. The City and its property interests (including the Right-of-Way) are exempt and immune from construction and mechanics liens; nothing herein shall be construed as waiving such exemption or immunity or otherwise granting any rights to lien.

10. Applicant acknowledges that at all times during the term of this Agreement, its rights shall be subject to all lawful exercise of the police power of the City, and to such reasonable regulation of the public rights-of-way as the City shall hereafter by resolution or ordinance provide in the interests of health, safety and welfare of the public. Nothing herein shall be construed as or be deemed a restriction on the City's home rule authority, police power or zoning authority. Any inconsistency or ambiguity between the provisions of this Agreement and the lawful exercise of the City's police power shall be resolved in favor of the latter. Additionally, this Agreement and the privileges granted hereunder to Applicant are

subject to the general ordinance provisions now in effect and hereinafter made effective by the City.

11. The City shall retain all legal rights it enjoys in the Right-of-Way. This Agreement does not grant any property rights in the Right-of-Way to Applicant. This Agreement shall inure to the benefit of and be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto. The City may record this Agreement in the Public Records of Orange County, Florida and may require the Applicant to reimburse the City for the cost of the same. Further, upon its termination, the City shall have the right to record a notice of termination of this Agreement in the public records which shall conclusively establish its termination without the need to obtain written approval or consent from Applicant.

12. If the Applicant fails to reimburse the City for any costs or expense due pursuant to this Agreement, the City shall have the right to file a notice of lien against the Applicant Property for the amount owed plus interest accruing at a rate of twelve percent (12%) per annum. The recorded notice of lien shall constitute a lien upon the Applicant Property and the lien may be foreclosed upon for the benefit of the City any time after fifteen (15) days after the Notice of Lien has been recorded in the public records. City may foreclose the lien in accordance with the procedures established in Chapter 702, Florida Statutes, or successor or other statute providing for lien foreclosure procedures. The Applicant may obtain a release from the lien by paying the amount stated in the lien, plus accrued interest, plus attorney's fees and costs incurred by the City in filing and collecting upon the lien.

13. Before transferring its interest in the Applicant Property to a third party, Applicant has the affirmative duty to disclose and inform any potential buyer of the Applicant Property and the actual buyer (grantee) of the Applicant Property of this Agreement and Applicant's responsibilities and duties under this Agreement. The City shall have the right to require any new owner of the Applicant Property to sign a similar agreement as this Agreement as a condition of keeping the Improvements in place; the failure of such new owner to do so, shall be grounds for immediate termination of this Agreement and removal of the Improvements from the Right-of-Way.

14. Nothing herein shall be deemed or constitute a waiver of any privilege, immunity or defense under the law by the City or any City official, officer, agents and employees, including without limitation, sovereign immunity protections. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Exclusive venue in any action to construe or enforce the provisions of this Agreement shall be in the circuit court of and for Orange County, Florida.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the day and year above first written

**City of Belle Isle, a Florida
municipal corporation**

By: _____
Bob Francis, City Manager

ATTEST:

Yolanda Quiceno, City Clerk

Date: _____

Witnesses

Signature

Print

Signature

Print

Applicant

Signature

Print

Signature

Print

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by physical presence this _____ day of _____, 2022 by _____ and _____ who are personally known to me or who have produced _____ identification.

Signature of Notary Public – State of Florida

Printed Notary Name

My Commission expires:

Map and description of the Improvements