

1 **SECTION 2 - Short Title**

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3 This Ordinance shall be known and may be cited as the "Duke Energy Rights of
4 Way Utilization Franchise."

5
6 **SECTION 3 - Definitions**

7
8 For the purposes of this Ordinance, the following terms, phrases, words, and
9 their derivatives shall have the meaning given herein. When not inconsistent with
10 the context, words in the present tense include the future, words in the plural
11 number include the singular number, and words in the singular number include the
12 plural number. The word "shall" is always mandatory and not merely permissive.

13
14 (A) "Adversely Affected" - For the Company, a loss of one percent (1%) or
15 more of Base Revenues within the corporate City limits due to Retail Wheeling. For
16 the City, a loss of one percent (1%) or more of franchise fees due to Retail
17 Wheeling.

18
19 (B) "Agreement" or "Ordinance" or "Franchise" or "Franchise Agreement" -
20 This Ordinance, where appropriate based on the context.

21
22 (C) "Base Revenues" - All Company's revenues from the retail sale of
23 electricity, net of customer credits, to residential, commercial, and industrial
24
25

1 customers and City-sponsored street lighting all within the corporate limits of
2 the City.

3
4 (D) "Company" or Grantee" - Duke Energy Florida, LLC d/b/a Duke Energy,
5 its successors and assigns.

6
7 (E) "City" or "Grantor" - The City of Belle Isle, Florida.

8
9 (F) "Electric Energy Provider" - Every legal entity or association of any
10 kind (including their lessees, trustees or receivers), including any unit of
11 state, federal or local government (including City herein), which owns, maintains,
12 or operates an electric generation, transmission, or distribution system or
13 facilities, or which otherwise provides, arranges for or supplies electricity or
14 electric energy to the public, or which supplies electricity to itself utilizing
15 Company's distribution or other facilities. Without limitation or the foregoing,
16 "Electric Energy Provider" shall also include every Electric Utility, electric
17 power marketer, or electric power aggregator. It shall also include every entity
18 providing such services as metering, customer billing, payment collection and
19 processing, and customer information and data processing.

20
21 (G) "Electric Utility" -- Shall have the meaning set out in Section
22 366.02(2), *Florida Statutes* (2010), and shall also include every electric "Public
23 Utility" as defined in Section 366.02(1), *Florida Statutes* (2010). "Electric
24 Utility" shall further include every investor-owned, municipally, or

1 governmentally owned or cooperatively owned electric utility (including their
2 lessees, trustees, or receivers), which owns, maintains, or operates an electric
3 generation, transmission, or distribution system in any State or County.

4
5 (H) "Electric Utility System" - An electric power system installed and
6 operated in the Franchise Area in accordance with the provisions of the Florida
7 Public Service Commission establishing technical standards, service areas, tariffs
8 and operating standards, which shall include but not to limited to electric light,
9 heat, power and energy facilities, and a generation, transmission, and
10 distribution system, with such extensions thereof and additions hereto as shall
11 hereafter be made.

12
13 (I) "Franchise Area" - That area for which the Company provides electric
14 utility service within the corporate City limits of the City.

15
16 (J) "Facilities" - The meaning set forth in Section 4.

17
18 (K) "Person" - Any person, firm, partnership, association, corporation,
19 company, or organization of any kind.

20
21 (L) "Public Service Commission" - The Florida Public Service Commission.

22
23 (M) "Rights of Way" - All of the public streets, alleys, highways,
24 waterways, easements authorizing electric utilities, bridges, sidewalks and parks

1 (subject to City's further written approval), and any other public ways or places
2 owned by the City, as they now exist or may be hereafter constructed, opened, laid
3 out or extended within the present limits of the City, or in such territory as may
4 hereafter be added to, consolidated or annexed to the City.

5
6 (N) "Retail Wheeling" - A customer/supplier arrangement whereby an
7 Electric Energy Provider utilizes transmission and/or distribution facilities of
8 Company to make energy sales directly to an end-use customer located within the
9 Franchise Area.

10
11 **SECTION 4 - Grant of Authority**

12
13 (A) This grant of authority is limited to the provision by Company to
14 have, maintain, or place its Facilities within the Rights of Way for its electric
15 utility services. Accordingly, the City hereby grants to the Company, its
16 successors and assigns the non-exclusive right, authority, and Franchise to lay,
17 erect, construct, maintain, repair and operate its Facilities in, under, upon,
18 over and across the present and future Rights of Way, as they now exist or may be
19 hereafter constructed, opened, laid out or extended within the present limits of
20 the City, including but not limited to conduits, cables, poles, wires, supports,
21 and such other structures or appurtenances as may be reasonably necessary for the
22 construction, maintenance and operation of an electric generation, transmission
23 and distribution system, including information, telecommunication, and video
24 transmission used solely for the provision of electric service (collectively the

1 "Facilities"), provided that all portions of the same shall conform to accepted
2 industry standards, including but not limited, to the National Electrical Safety
3 Code, and any applicable City ordinance and other laws. Nothing in this Ordinance
4 shall require Grantee to remove, de-energize, or cease using any poles, wires, or
5 other things or Facilities identified hereinabove that were in place under
6 previous ordinances or permits prior to the Effective Date of this Ordinance,
7 regardless of whether such poles, wires or other Facilities are located outside
8 "Rights of Way" as defined herein, provided that such poles, wires, or other
9 things or Facilities were lawfully erected in accordance with any applicable
10 authorizations, permits, or laws. Nor shall anything in this Ordinance prohibit
11 Company from performing upgrades, replacements, maintenance, or servicing of such
12 poles, wires, or other Facilities after the Effective Date of this Ordinance,
13 provided that such activities do not cause undue interference with the use of the
14 public Rights of Way. Rather, all such lawfully erected preexisting poles, wires,
15 or other Facilities shall be authorized under this Ordinance. Because this
16 Franchise is intended to grant Company the non-exclusive, but unrestricted right
17 to place its Facilities within the Rights of Way, the City expressly acknowledges
18 and agrees that Company shall not be required to pull or pay for permits to place
19 its Facilities or perform any work maintenance activities on or related to its
20 Facilities within the Rights of Way, except as may be required by governmental
21 entities other than the City.

22
23 (B) Annexation or Contraction. City and Company agree that the Franchise
24 Area is subject to expansion or reduction by annexation and contraction of
25

1 municipal boundaries. If City approves any Franchise Area expansion or reduction
2 by annexation or contraction, City shall provide written notice to Company's
3 Annexation Coordinator, at the address provided below, within sixty (60) days of
4 such approval and this Franchise shall automatically extend to include any such
5 annexed areas.

6
7 Additionally, within sixty (60) days of any such annexation or contraction,
8 City shall provide to Company an updated list containing the new or removed street
9 names, known street name aliases, street addresses, and zip codes associated with
10 each street name. All notices of annexation or contraction and address listings
11 shall be addressed to the Annexation Coordinator as follows with the address
12 subject to change:

13
14 Duke Energy
15 **Tax Team DT02-V**
16 **9700 David Taylor Drive**
17 **Charlotte NC 28262**

18
19 Or by email to TaxTeam@duke-energy.com

20 Company must revise its payments due to any expansion or reduction by
21 annexation within a reasonable time after Company has received such notice and
22 updated list from City, but no later than sixty (60) days after receipt of notice
23 and the list. City understands and affirmatively acknowledges that the Company
24 will exclusively rely upon the City to provide timely and accurate information to
25 the Company regarding any such annexations or contractions, and that failure to do

1 so will impair, inhibit, and/or preclude the Company's ability to revise any
2 payments due to the City that are impacted by such annexations or contractions.
3 Further, City acknowledges that if such information is not timely furnished to
4 Company as required herein, any related obligation to collect payments shall be
5 suspended during the period of delay.

6
7 (C) Non-Exclusive Use. The Company's right to use and occupy Rights of Way
8 for the purposes herein set forth shall be non-exclusive as to entities not
9 engaged in the provision of electric energy and service, and the City reserves the
10 right to grant to others the right to utilize the Rights of Way, to any person at
11 any time during the period of this Franchise so long as such grant does not create
12 an unsafe condition or unreasonably conflict with the rights granted to Company
13 herein.

14
15 **SECTION 5 - Notice of Acceptance and Term of Franchise**

16
17 This Ordinance shall become effective upon being legally passed and adopted
18 ("Effective Date") by the City Commission and executed by Grantee, and it is
19 further agreed that Grantee shall accept this Franchise as of the date of the
20 passage and adoption by the City Commission and shall signify its acceptance in
21 writing within thirty (30) days after the City Commission's approval of this
22 Ordinance by filing its written acceptance with the City Clerk. If Grantee fails
23 to accept and execute this Franchise within thirty (30) days of its date of
24 passage and adoption, then this Ordinance shall be null and void, and of no force

1 and effect of any kind. Commencing on the Effective Date, the term of the
2 Franchise granted herein shall be for a period of thirty (30) years.

3
4 **SECTION 6 - Payment to City**

5
6 (A) Effective the first day of the second month beginning after the
7 Effective Date of this Ordinance, City shall be entitled to receive from Company a
8 monthly franchise amount that will equal three percent (3%) of Company's Base
9 Revenues (the "Franchise Fee") for the preceding month, which amount shall be the
10 total compensation due City for any and all rights, authority, and privileges
11 granted by this Franchise, including compensation for any required permits,
12 parking fees, or any other fee or cost related to the rights granted hereunder.
13 Any franchise amounts that will be paid to the City will be collected by the
14 Company from Company's customers in the Franchise Area and passed through to the
15 City in the manner described herein. The City expressly acknowledges that no
16 additional or other amounts shall be due or remitted by Company for the exercise
17 of its rights granted hereunder.

18
19 Payment shall be made to City for each month no later than the twentieth
20 (20th) day of the following month. The monthly payment shall be made by wire
21 transfer. Any monthly payment or any portion thereof made twenty (20) days after
22 the due date without good cause shall be subject to interest at the rate of ten
23 percent (10%) per annum.

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

4
5 (C) The City acknowledges that all classifications and categories of
6 retail customers of Company shall be subject to the payment of the Franchise Fee
7 due hereunder.

8
9 SECTION 7 - Favored Nations

10
11 (A) In the event Grantee shall hereafter accept an electric utility
12 franchise ordinance from any municipality providing for the payment of a franchise
13 fee in excess of that provided for in Section 6 above, Grantee shall notify
14 Grantor, and Grantor reserves the right to amend this Franchise to increase the
15 franchise fee payable under this Ordinance to no more than the greater franchise
16 fee that Grantee has agreed to pay to such other municipality. Grantee's
17 obligation to pay such greater franchise fee to Grantor shall apply prospectively
18 beginning with the next monthly franchise fee payment following Grantor's timely
19 notice of its exercise of its amendment right to which Grantee may collect such
20 increased fee from its customers. Grantee's failure to notify Grantor of such
21 additional payments does not limit Grantor's right to amend to require such
22 additional franchise fees.

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

12
13 (C) If Grantor imposes a lesser fee, or no fee, or is unable to impose a
14 fee on another Electric Utility or Electric Energy Provider providing or seeking
15 to provide services in competition with Grantee to customers within Grantor's
16 municipal boundaries, whether utilizing Grantor's Rights of Way or not utilizing
17 Grantor's Rights of Way, Grantee's fee under Section 6 for such services shall be
18 automatically reduced to the lesser fee charged the other Electric Utility or
19 Electric Energy Provider (or to zero (0), if no fee is charged such other Electric
20 Utility or Electric Energy Provider). In all events, City shall not grant more
21 favorable treatment to other Electric Energy Providers than is granted to Company
22 under this Ordinance, it being the intent of the parties that no future provider
23 of electric service, be it generation, transmission or distribution service, to
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1 customers within the corporate limits of City shall be given a competitive
2 advantage over Company.

3
4 **SECTION 8 - Grantor Rights**

5
6 The right is hereby reserved to the City to adopt such regulations as it
7 shall find necessary or advisable in the exercise of its police power, provided
8 that such regulations, by Ordinance or otherwise, shall be reasonable as
9 determined by Grantor in its discretion, and shall not be in conflict with the
10 laws of the State of Florida or the lawful regulations of any state agency
11 possessing the power to regulate the activities of the Company, or conflict with
12 or otherwise interfere with the benefits conferred on the Company hereunder. In
13 the event of a conflict between this Franchise Agreement and any other ordinance
14 or regulation adopted by the City relating to Company's rights to perform work in
15 and/or occupancy of the Rights of Way as permitted hereunder, the rights under
16 this Franchise Agreement shall govern and control to the extent allowable under
17 the law.

18
19 **SECTION 9 - Work In Rights of Way**

20
21 The Company is hereby granted the right, authority, and privilege to perform
22 all necessary work and excavations in said Rights of Way of the City related to
23 its Facilities and necessary or incidental to carrying out such rights and
24 obligations as permitted hereunder. The Company shall have the right to fasten and
25

1 to stretch and lay along the lines of said poles, conduits, pipes and cables
2 necessary for transmitting and conveying the electric current to be used in the
3 Company's business, together with all the rights and privileges necessary or
4 convenient for the full use including the right to trim, cut and keep clear all
5 trees and limbs near or along with Company's Facilities that may in any way
6 endanger the proper operation of same. With respect to trees, the Company is
7 authorized only to trim branches to the extent necessary to keep such branches
8 clear from the Company's Facilities. Absent permission from the City, the Company
9 shall not remove any tree or take any action that results in the death of a tree.
10 Moreover, the Company shall have the right to construct, erect, operate and
11 maintain within the City an electric system consisting of its Facilities for
12 carrying on the Company's business; provided that, in accomplishing these
13 purposes, the streets of said City shall not be unnecessarily obstructed for an
14 unreasonable amount of time and work in connection therewith shall be done and
15 carried on in conformity with such reasonable rules, standards, regulations and
16 local ordinances with reference thereto as may be adopted by the City for the
17 protection of the public and which are not in conflict with or otherwise interfere
18 with the benefits conferred on the Company hereunder.

19
20 **SECTION 10 - Indemnification**

21
22 (A) The acceptance and execution of this Franchise by Company shall be
23 deemed an agreement on the part of Company to indemnify and hold harmless the City
24 and its elected and appointed officials, employees, officers, and agents against
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1 any and all direct damages, claims, expenses, reasonable attorneys' fees
2 (including appellate fees) and costs that City may incur to the extent arising out
3 of or resulting from the negligence, willful misconduct, or any other act or
4 omission of Company, its contractors, subcontractors, employees, officers, and
5 agents in the construction, repair, operation, or maintenance of its electric
6 utility Facilities hereunder or any other of the Company's activities related to
7 this Ordinance. In no event shall Company be liable to City for any consequential,
8 incidental, punitive, exemplary, multiple, or indirect damages, lost profits or
9 other business interruption damages, by statute, in tort (including negligence or
10 strict liability), in contract, or under any indemnity provision or otherwise.
11 This indemnification and hold harmless provision survives termination, expiration,
12 repeal, or invalidation of this Ordinance.

13

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

17

18 (i) \$1,000,000 for bodily injury or death to a person;
19 \$3,000,000 for bodily injury or death resulting from any one
20 accident.

21 (ii) \$50,000 for property damage resulting from any one accident.

22 (iii) \$1,000,000 for all other types of liability.

23

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

25

1
2 (D) Company shall take all necessary precautions to protect public and
3 private property from damage and debris caused by its operations under this
4 Agreement. Company shall promptly and at its sole cost repair or replace, or
5 remove debris from, any private or public property that is damaged by or affected
6 by debris from Company or any of its agents, officers, employees, contractors, or
7 subcontractors. If Company does not perform such repair or replacement within 48
8 hours of knowledge or notice thereof, or such longer period as approved by the
9 City, then the City may but is not obligated to perform any such repair or
10 replacement, and the City may bill Company for any such expenditures.
11

12 **SECTION 11 - Records and Reports**
13

14 (A) Company Rules and Regulations. The following documents shall be
15 available to City upon City's reasonable request: copies of rules, regulations,
16 and procedures adopted by Company that relate to Company's use of City's Rights of
17 Way.
18

19 (B) Accounting. Company shall use the system of accounts and the form of
20 books, accounts, records, and memoranda prescribed by the Florida Public Service
21 Commission or such other applicable governing agency having jurisdiction over
22 Company as determined by Company.
23
24
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1 (C) Reports. Company will submit monthly a statement of its estimated Base
2 Revenues for the period on which such payment is based. The acceptance of any
3 statement or payment shall not prevent the City from asserting that the amount
4 paid is not the amount due, or from recovering any deficit by any lawful
5 proceeding, including interest to be applied at the rate set forth in Section 6
6 (A).

7
8 (D) Availability of Records and Reports. Company shall supply information
9 that City or its representatives may, from time to time reasonably request
10 relative to the calculation of franchise fees. Such records shall, on written
11 request of City, be open for examination and audit by City and City's
12 representatives at Company's headquarters in St. Petersburg, Florida, during
13 ordinary business hours, and such records shall be retained by Company for a
14 period of three (3) years.

15
16 (E) Audit. City may require, upon prior written notice and during
17 Company's normal business hours, an audit of Company's books related to this
18 Agreement not more than once every three (3) years and then only for the preceding
19 three (3) years. Company will reimburse City's audit costs if the audit
20 identifies errors in Company's franchise Base Revenues of five percent (5%) or
21 more for the period audited. If an underpayment of franchise fees has occurred due
22 to the Company's error, interest will be calculated at the rate of ten percent
23 (10%) per annum. Both the underpayment and interest shall be paid within ninety
24 (90) days from completion of the audit.

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

7
8 (G) Public Records. To the extent that Florida's public records laws and
9 regulations apply to Company, Company shall comply with all such laws and
10 regulations.

11
12 **SECTION 12 - Retail Wheeling**

13
14 In the event the appropriate governmental authorities authorize Retail
15 Wheeling, then either party, if Adversely Affected thereby, may provide written
16 notice to the other of its desire to renegotiate the Franchise Fee payments between
17 the Company and the City. If the parties are unable to agree within ninety (90)
18 days of such written notice, either party may declare an impasse, at which time this
19 Ordinance shall be of no further force or effect, and the parties' rights and
20 obligations hereunder shall terminate except as provided in this Ordinance.

1 **SECTION 13 - Severability**

2
3 Should any section or provision of this Franchise ordinance or any portion
4 thereof, the deletion of which would not adversely affect the receipt of any
5 material benefits or, substantially increase the burden of any party hereunder, be
6 declared by a court of competent jurisdiction to be invalid, such decision shall
7 not affect the validity of the remainder, as a whole or any part thereof, other
8 than the part declared to be invalid. In the event of any such partial
9 invalidity, City and Company shall meet and negotiate in good faith to obtain a
10 replacement provision that is in compliance with the judicial authority's
11 decision.

12
13 **SECTION 14 - Governing Law and Venue**

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

16
17
18 (B) In the event that any legal proceeding is brought to enforce the terms
19 of this Franchise, the same shall be brought in Orange County, Florida, or, if a
20 federal claim, in the U.S. District Court in and for the Middle District of
21 Florida, Orlando Division.

1 **SECTION 15 - Merger**

2
3 This Franchise agreement is the full, complete and entire understanding and
4 agreements of the parties as to its subject matter, and the written terms
5 supersede all prior, contemporaneous representations, discussions, negotiations,
6 understanding and agreements relating to the subject matter of this agreement. The
7 parties shall not be bound or liable for any statement, prior negotiations,
8 correspondence, representation, promise, draft agreements, inducements, or other
9 understanding of any kind or nature not set forth or provided herein.
10

11 **SECTION 16 - Notices**

12
13 Except in exigent circumstances, all notices by either City or Company to
14 the other shall be made by depositing such notice in the United States Mail,
15 Certified Mail return receipt requested, or by recognized commercial delivery,
16 e.g., FedEx, UPS or DHL or facsimile. Any notice served by certified mail return
17 receipt shall be deemed delivered five (5) days after the date of such deposit in
18 the United States mail unless otherwise provided. Any notice given by facsimile
19 is deemed received by the next Business Day. "Business Day" for purposes of this
20 section shall mean Monday through Friday, with Saturday, Sunday and City and
21 Company observed holidays excepted. All notices shall be addressed as follows:
22
23
24
25

1 To City:

2 City Clerk

3 1600 Nela Avenue

4 Belle Isle, FL 32809

5 Phone: (407) 851-7730

6 Facsimile: (407) 240-2222

7 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

8
9 **SECTION 17 - Non-Waiver Provision**

10
11 The failure of either party to insist in any one or more instances upon the
12 strict performance of any one or more of the terms or provisions of this Franchise
13 shall not be construed as a waiver or relinquishment for the future of any such
14 term or provision, and the same shall continue in full force and effect. No waiver
15 or relinquishment shall be deemed to have been made by either party unless said
16 waiver or relinquishment is in writing and signed by the parties.

17
18 **SECTION 18 - Repealer and Superseding Provision**

19
20 This Ordinance shall supersede, as to the rights, privileges, and
21 obligations between City and Company, all ordinances and parts of ordinances in
22 conflict with the terms of this Ordinance. Ordinance No. 556-30 and any amendments
23 thereto, are hereby deemed null and void and/or repealed upon the effective date

1 of this Ordinance, and none of the provisions of such repealed Ordinance No. 556-
2 30 and any amendments thereto shall have any further force and effect.

3
4 **SECTION 19 - Dispute Resolution**

5
6 The parties to this Franchise agree that it is in each of their respective
7 best interests to avoid costly litigation as a means of resolving disputes which
8 may arise hereunder. Accordingly, the parties agree that prior to pursuing their
9 available legal remedies, they will meet in an attempt to resolve any differences.
10 If such informal effort is unsuccessful, then the Parties may exercise any of
11 their available legal remedies.

12
13 **SECTION 20 - Default and Termination.**

14
15 (A) In the event that:

16
17 (i) the Grantee shall fail to keep, perform, and observe each and every
18 promise, covenant, and agreement set forth in this Franchise Agreement, and such
19 failure shall continue for a period of more than thirty (30) days after delivery
20 to the Grantee of a written notice of such breach or default; or

21
22 (ii) the Grantee shall become insolvent, or shall take the benefit of any
23 present or future insolvency statute, or shall make a general assignment for the
24 benefit of creditors, or file a voluntary petition in bankruptcy or a petition or

1 answer seeking an arrangement for its reorganization, or the readjustment of its
2 indebtedness under the Federal Bankruptcy laws, or under any other law or statute
3 of the United States or any State thereof, or shall consent to the appointment of
4 a receiver or trustee or liquidation of all or substantially all of its property;
5 or

6
7 (iii) the Grantee shall have a petition under any part of the Federal
8 Bankruptcy laws, or an action under any present or future insolvency laws or
9 statute, filed against it, which petition is not dismissed within thirty days
10 after the filing thereof; then in any of such events, the City, in its discretion,
11 shall have the right to:

12
13 1. seek specific performance of this Franchise Agreement,

14
15 2. terminate this Franchise Agreement for default, which
16 termination shall be effective twenty-four hours after written
17 notice of such termination is given to the Grantee, or

18
19 3. pursue such other actions and remedies as may be permitted by
20 law. In the event the City elects to terminate this Franchise
21 Agreement, the City may specify the termination date on the
22 written notice of termination.

1 (B) In the event that a dispute arises between the City and the
2 Grantee, or any interested party, in any way relating to this Franchise
3 Agreement, the Grantee shall continue to render service in full
4 compliance with all terms and conditions of this Franchise Agreement
5 regardless of the nature of the dispute.
6

7 **SECTION 21 - Sovereign Immunity / Status of Grantee.**
8

9 (A) Nothing contained in this Agreement and no actions or inactions by the
10 City or its officers, elected and appointed officials, agents, and representatives
11 shall be considered or deemed a waiver of the City's sovereign immunity or any
12 other privilege, immunity, or defense available to the City or its officers,
13 elected and appointed officials, agents, and representatives.
14

15 (B) Neither Grantee nor any of its officers, agents, employees,
16 contractors, or sub-contractors shall constitute agents or employees of the City
17 for any purpose. Grantee shall have no power or authority to bind the City to any
18 obligation, agreement, or in any manner whatsoever.
19

20 **SECTION 22 - Assignment/Delegation**
21

22 Company shall not assign or transfer this Agreement or any right hereunder,
23 or delegate the performance of any obligation under this Agreement, to any other
24
25

1 person or entity without prior written consent of the City in the City's sole
2 discretion.

3
4 **SECTION 23 - Headings; Interpretation**

5
6 The headings used in this Agreement are solely for the purpose of
7 convenience and should not be construed to interpret the substance of this
8 Agreement. The Parties have thoroughly read and reviewed the terms of this
9 Agreement, acknowledge that it has been prepared after negotiations between the
10 Parties, and agree that if any ambiguity is contained herein, then in resolving
11 such ambiguity, no weight shall be given in favor of or against either party on
12 account of its drafting of this Agreement.

13
14 **SECTION 24 - Subcontractors**

15
16 In the event that Company, during the course of the services under this
17 Agreement, requires the services of any subcontractors or other professional
18 associates in connection with the work covered by this Agreement, Contractor must
19 first secure the prior written approval of City. The City reserves the right to
20 accept or reject the Company's use and selection of a particular subcontractor
21 and to inspect all facilities of any subcontractor in order to determine as to
22 the capability of the subcontractor to properly perform under this Agreement.
23 Should a subcontractor fail to perform as required by this Agreement, and it

1 becomes necessary to replace the subcontractor, the Company shall promptly do so,
2 subject to acceptance of the new subcontractor by the City.

3
4 **SECTION 25 - No Liens**

5
6 Company acknowledges and agrees that the City is a Florida municipality, and
7 as such, the City's public property and various work site(s) involved are not
8 subject to construction or mechanic's liens pursuant to Chapter 713, Florida
9 Statutes, and any other liens. Company and its subcontractors shall not file or
10 record claims of lien or any other liens against any project or property owned by
11 the City. Company hereby agrees to indemnify, defend, and hold the City harmless
12 from all liens filed by the Company and its subcontractors and all others
13 claiming through Company against any project, work, or property owned by the
14 City, including for the City's attorneys' fees and costs.

15
16 **SECTION 26 - No Pledge.**

17
18 In no event shall any obligation under this Agreement result in, be or
19 constitute: (i) a general obligation or indebtedness of the City within the
20 meaning of the Constitution of the State of Florida, the City's charter and
21 ordinances or any other applicable laws, (ii) a pledge of ad valorem taxes or
22 taxing power, non-ad Valorem revenue or any other revenue source of the City, or
23 (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__.

YES NO ABSENT

Ed Gold _____

Anthony Carugno _____

Karl Shuck _____

Mike Sims _____

Harvey Readey _____

Jim Partin _____

Sue Nielsen _____

ATTEST: _____

Yolanda Quiceno, CMC
City Clerk

Nicholas Fouraker, Mayor

Kurt Ardaman, City Attorney

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

Catherine Stempien, State President

Duke Energy Florida, LLC d/b/a Duke
Energy

1 STATE OF FLORIDA

2 COUNTY OF ORANGE

3 I, Yolanda Quiceno, City Clerk of the City of Belle Isle do hereby certify that
4 the above and foregoing document ORDINANCE 20-08 was duly and legally passed by
5 the Belle Isle City Council, in session assembled on the ____ day of _____,
6 20____, at which session a quorum of its members were present.

7

8

9 Yolanda Quiceno, CMC-City Clerk

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