

ORDINANCE # 20- ~~01~~

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 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 of 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* (2019), and shall also include every electric “Public Utility” as defined in Section 366.02(1), *Florida Statutes* (2019). “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 (including those easements authorizing utilities in general), bridges, sidewalks and parks, 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; provided, however, for public parks in which there are no existing Facilities, Company shall seek City's written approval for the installation of new Facilities in such parks.

(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 and future 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, 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. Company's rights under this Section 4 shall include the right to utilize limited distributed generation facilities, including solar and battery storage facilities, upon or appurtenant to Company's facilities, ~~for the purpose of providing power for the operation of Company's Facilities within the rights of way.~~ 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. 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 unreasonably interfere with use of the public Rights of Way. Rather, all such preexisting poles, wires, or other Facilities which are located within the Rights of Way or are otherwise lawfully placed shall be authorized under this Ordinance. Because this Franchise is intended to grant Company the non-exclusive 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 not controlled by City. Company shall notify the City at least 48 hours before performing any work that will cause the closing of one or more lane of traffic, a traffic detour, or other substantial impact on the flow of traffic, except in the case of emergency, in which case Company shall notify the City of the work as soon as is practicable. In performing any work in the Rights of Way, Company shall comply with the Florida Department of Transportation's ("FDOT") Design Standards Indexes 600 through 670 (latest editions) for Temporary Traffic Control. Company shall coordinate with the City on any project that will cause the closing of one or more lane of traffic or which may otherwise unreasonably interfere with the use of the public Rights of Way.

Comment [LDK1]: This deletion by Duke is of concern. Further discussion with Duke is recommended to add limiting language here.

~~except in case of emergency, in which case Company shall inform the City of any work performed as soon as is practicable.~~

(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 annexation or contraction 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 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.

Notwithstanding anything to the contrary herein, City may adjust the Franchise Fee by giving written notice to the Company of the adjusted fee in a manner consistent with Section 16; provided that (i) in no event shall the Franchise Fee exceed six percent (6%) of Company's Base Revenues for the preceding month (the "Franchise Cap"), unless the Franchise Cap is increased pursuant to Section 7(A) below, and (ii) City may not provide Company with notification of an adjustment to the Franchise Fee until at least twelve (12) months has elapsed since the prior Adjustment Date (as defined herein), unless such adjustment is made pursuant to Section 7(A) below. Grantee's obligation to pay such adjusted franchise fee to Grantor shall apply prospectively beginning with the next monthly franchise fee payment following Grantor's notice of its exercise of its adjustment right to which Grantee may collect such adjusted fee from its customers. The "Adjustment Date" shall be the date on which Grantee makes the first payment to City which incorporates an adjusted franchise fee requested by City under this paragraph.

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 the Franchise Cap provided for in Section 6 above, Grantee shall notify Grantor, and Grantor reserves the right to amend this Ordinance to increase the Franchise Cap and 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 the public 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 the public 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, 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 substantially 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. This paragraph shall not be construed to limit the City's exercise of its legislative authority with respect to the adoption of ordinances for a valid public purpose; provided, however, for the avoidance of doubt, in the event of a conflict between this Franchise Agreement and any other law, ordinance or regulation adopted by the City, the terms of this Franchise Agreement shall control, and the rights granted to Company hereunder shall govern 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. Company represents that its tree trimming procedures meet or exceed the standards promulgated in ANSI A300 and that its standards will continue to meet or exceed those standards unless ordered to modify its standards by the Florida Public Service Commission or other authority to which Company's operations are subject. The Company agrees to provide City notice of scheduled vegetation maintenance work, including tree maintenance, pruning and/or removal, on a quarterly basis. ~~The Company shall, upon request from the City, promptly furnish the City with any information that the City may reasonably request regarding planned, ongoing, or previously performed work related to tree and vegetation maintenance, pruning, and/or removal in the right of way.~~ 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 (i) 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 and (ii) other applicable laws adopted by government entities not under the control of City.

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, and officers, against any and all direct damages, claims, expenses, reasonable attorneys' fees (including trial and appellate fees) and costs that City may incur to the extent arising out of or resulting from the negligence, recklessness, or willful misconduct of, ~~or directly caused by,~~ Company, its contractors, subcontractors, employees, officers, and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. 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) Whenever Company shall cause any opening, excavation, or alteration to be made in Right of Way in the construction, operation, or maintenance of any of its Facilities, Company shall cause such portions of the Right of Way to be restored to the same condition in which it found them as nearly as reasonably practicable. Additionally, if Company shall fail to restore (or commence to restore) the area to its approximate former condition within a reasonable period of time, but no less than thirty days after written notification by the City, the City may proceed to restore such Right of Way as nearly as reasonably practicable to its original condition, and the City shall submit a statement of the reasonable costs for this restoration to Company. Company shall pay the City for such reasonable costs within thirty days.

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, and may file an action in the Circuit Court in Orange County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail Wheeling.

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 including any previously enacted electric franchise by the City to the Company or its predecessors in interest. 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. In the event that a dispute arises between the City and the Grantee in any way relating to this Ordinance, regardless of the nature of the dispute, the Grantee shall continue to endeavor to provide safe and reliable electric service to its customers within the City.

SECTION 20 – 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 21 – Assignment/Delegation

Company shall not assign or transfer this Agreement or any right hereunder to any other person or entity without prior written consent of the City in the City's sole discretion; provided, however, Company may assign this Agreement without the consent of the City if such assignment is to an entity that purchases all or substantially all of the assets of Company, an entity affiliated with Company or any assignment pursuant to a merger or re-organization of Company or any affiliate of Company.

SECTION 22 – 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 23 – 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 or other liens to the extent prohibited or limited by Chapter 713, Florida Statutes.

SECTION 24 – No Pledge.

In no event shall any obligation under this Agreement be or constitute: (i) 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

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