



ARP EXECUTIVE COMMITTEE MEETING

AGENDA PACKAGE

November 15, 2018

9:30 a.m.

Committee Members

Howard McKinnon, Havana - Chairman

Lynne Tejeda, Key West – Vice Chairwoman

Jody Young, Bushnell

Lynne Mila, Clewiston

Fred Hilliard, Fort Meade

Paul Jakubczak, Fort Pierce

Robert Page, Green Cove Springs

Allen Putnam, Jacksonville Beach

Larry Mattern, Kissimmee

Glenn Spurlock, Leesburg

Bill Conrad, Newberry

Mike Poucher, Ocala

Robert Milner, Starke

Meeting Location

Florida Municipal Power Agency

8553 Commodity Circle

Orlando, FL 32819

(407) 355-7767



MEMORANDUM

TO: FMPA Executive Committee

FROM: Jacob A. Williams, General Manager and CEO

DATE: November 6, 2018

RE: FMPA Executive Committee Meeting
Thursday, November 15, 2018 at 9:30am
(or immediately following the Board of Directors meeting)

PLACE: Florida Municipal Power Agency
8553 Commodity Circle, Orlando, FL 32819
Fredrick M. Bryant Board Room

**NEW DIAL-IN: (877) 668-4493, Meeting Number (Access Code) 735 756 652
(If you have trouble connecting via phone or internet, call 407-355-7767)**

Chairman Howard McKinnon, Presiding

AGENDA

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- a. None.

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NOTE: One or more participants in the above referenced public meeting may participate by telephone. At the above location there will be a speaker telephone so that any interested person can attend this public meeting and be fully informed of the discussions taking place either in person or by telephone communication. If anyone chooses to appeal any decision that may be made at this public meeting, such person will need a record of the proceedings and should accordingly ensure that a verbatim record of the proceedings is made, which includes the oral statements and evidence upon which such appeal is based. This public meeting may be continued to a date and time certain, which will be announced at the meeting. Any person requiring a special accommodation to participate in this public meeting because of a disability, should contact FMPA at (407) 355-7767 or (888) 774-7606, at least two (2) business days in advance to make appropriate arrangements.

**AGENDA ITEM 1 – CALL TO ORDER,
ROLL CALL, DECLARATION OF QUORUM**

**Executive Committee
November 15, 2018**

AGENDA ITEM 2 – SET AGENDA (By Vote)

**Executive Committee
November 15, 2018**

**AGENDA ITEM 3 – RECOGNITION OF
GUESTS**

**Executive Committee
November 15, 2018**

**AGENDA ITEM 4 –PUBLIC COMMENTS
(INDIVIDUAL COMMENTS TO BE LIMITED
TO 3 MINUTES)**

**Executive Committee Meeting
November 15, 2018**

VERBAL REPORT

**AGENDA ITEM 5 – COMMENTS FROM THE
CHAIRMAN**

**Executive Committee
November 15, 2018**

VERBAL REPORT

**AGENDA ITEM 6 – REPORT FROM THE
GENERAL MANAGER**

**Executive Committee
November 15, 2018**

AGENDA ITEM 7 – CONSENT AGENDA

- a) Approval of Meeting Minutes – Meeting Held October 18, 2018; ARP Telephonic Rate Workshop Minutes – Workshop Held October 9, 2018**

**Executive Committee
November 15, 2018**

CLERKS DULY NOTIFIED..... September 11, 2018
 AGENDA PACKAGES SENT TO MEMBERS..... September 11, 2018

**MINUTES
 EXECUTIVE COMMITTEE
 THURSDAY, OCTOBER 18, 2018
 FLORIDA MUNICIPAL POWER AGENCY
 8553 COMMODITY CIRCLE
 ORLANDO, FL 32819**

PARTICIPANTS PRESENT:	Bushnell	-	Jody Young
	Clewiston	-	Lynne Mila (via telephone)
	Fort Pierce	-	Paul Jakubczak
	Green Cove Springs-		Robert Page
	Havana	-	Howard McKinnon* (via telephone)
	Jacksonville Beach	-	George Forbes
	Kissimmee	-	Larry Mattern
	Leesburg	-	Glenn Spurlock
	Newberry	-	Bill Conrad
	Ocala	-	Mike Poucher
	Starke	-	Bob Milner (via telephone)

*arrived after roll call.

PARTICIPANTS ABSENT	Fort Meade	-	Fred Hilliard
	Key West	-	Lynne Tejada

**OTHERS
PRESENT**

Paul Jakubczak, Fort Pierce
 Lynn Sand, Leidos
 Grant Lacerte, Kissimmee
 John Tompeck, Fort Pierce
 Jonathan Nuñez, nFront Consulting
 Doug Peebles, Ocala
 Elizabeth Columbo, Nixon Peabody LLP
 Barry Rothchild, Nixon Peabody LLP

**STAFF
PRESENT**

Jacob Williams, General Manager and CEO
 Jody Finklea, General Counsel and CLO
 Linda S. Howard, Chief Financial Officer
 Dan O'Hagan, Associate General Counsel
 Frank Gaffney, Chief Operating Officer
 Mark McCain, Assistant General Manager, Public Relations &
 Member Services
 Carol Chinn, Chief Information and Compliance Officer
 Sue Utley, Executive Assistant to the CEO/Asst. Secy. to the
 BOD
 Rich Popp, Treasury and Risk Director

Ed Nunez, Assistant Treasurer/Debt
Chris Gowder, Business Development and Planning Manager
Mike McCleary, Manager of Member Service Development
Carl Turner, Engineering Services Manager
Luis Cruz, IT Manager
Sharon Adams, Human Resources Director
Susan Schumann, Manager of External Affairs and Solar
Projects
David Schumann, Power Generation Fleet Director
Richard Montgomery, Business Development Administrator

ITEM 1 - CALL TO ORDER, ROLL CALL, AND DECLARATION OF QUORUM:

Chairman Bill Conrad, Newberry, called the FMPA Executive Committee Meeting to order at 11:48 a.m. on Thursday, October 18, 2018 in the Boardroom, Florida Municipal Power Agency, Orlando, Florida. The roll was taken and a quorum was declared with 10 members present out of a possible 13. Howard McKinnon, Havana, joined after roll call bringing total members present to 11.

ITEM 2 – SET AGENDA (BY VOTE):

MOTION: Glenn Spurlock, Leesburg, moved to set the agenda as amended by moving Item 8c to Information items. Paul Jakubczak, Fort Pierce, seconded the motion. Motion carried 11 – 0.

ITEM 3 – RECOGNITION OF GUESTS:

Mike Poucher, Ocala, introduced Doug Peebles, Supervisor, Electric Meter Division.

ITEM 4 – PUBLIC COMMENTS:

None.

ITEM 5 – COMMENTS FROM THE CHAIRMAN:

None.

ITEM 6 – REPORT FROM GENERAL MANAGER:

No items to report from the General Manager that weren't reported on during the Board of Directors meeting.

ITEM 7 – CONSENT AGENDA:

Item 7a – Approval of Meeting Minutes– Held September 20, 2018; ARP Telephonic Rate Workshop Minutes – Workshop Held September 7, 2018

Item 7b – Approval of Treasury Reports - As of August 31, 2018

Item 7d – Approval of the Agency and All-Requirements Project Financials as of August 31, 2018

Item 7e – Acceptance of Fuel Position Portfolio Report - July 2018

MOTION: Larry Mattern, Kissimmee, moved approval of the consent agenda as presented. Mike Poucher, Ocala, seconded the motion. Motion carried 11 – 0.

ITEM 8 – ACTION ITEMS:

Item 8a – Approval of Resolution 2018-EC5 – Approval of Spending Authority Modification for COO Vacancy

Resolution 2018-EC 5 was read by title:

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE FLORIDA MUNICIPAL POWER AGENCY: (I) AMENDING THE FINANCIAL COMMITMENT AUTHORITY AS PREVIOUSLY ADOPTED IN THE ANNUAL FLORIDA MUNICIPAL POWER AGENCY GENERAL BUDGET AND THE ALL-REQUIREMENTS POWER SUPPLY PROJECT BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2018, AND ENDING SEPTEMBER 30, 2019, AND THE CORRESPONDING BUDGET DOCUMENTS; (II) ADOPTING THE AMENDMENT TO THE FINANCIAL COMMITMENT AUTHORITY; AND (III) PROVIDING AN EFFECTIVE DATE.

MOTION: George Forbes, Jacksonville Beach, moved approval of Resolution 2018-EC5. Paul Jakubczak, Fort Pierce, seconded the motion. Motion carried 11 – 0.

Item 8b – Approval of Rate Schedule B-1 for FY2019

George Forbes, Jacksonville Beach, requested that all the rate riders be evaluated during the budget process and reported to the Executive Committee.

MOTION: George Forbes, Jacksonville Beach, moved approval of Rate Schedule B-1, effective October 1, 2018. Larry Mattern, Kissimmee, seconded the motion. Motion carried 11 – 0.

Item 8c – Approval of Resolution 2018-EC6 – Short-Term Hurricane-Related Financial Support

This item was removed due to lack of support by the Board of Directors.

ITEM 9 – INFORMATION ITEMS:

a. Discussion on Reducing Bill Volatility to Member Cities

Jason Wolfe gave a presentation on reducing bill volatility to Member cities.

b. Public Gas Partners (PGP) Update

Richard Montgomery presented an update on the progress of Public Gas Partners' sales efforts.

c. 3rd Party Gas Prepay Parameters and Update on Leading Prepay Transaction

Rich Popp presented the gas prepay parameters and an update on the considerations for leading a prepay transaction.

d. Committee Structure Discussion

Linda Howard discussed the structure of FMPA's Audit and Risk Oversight Committee and Business Planning and Budget Committee to see if the two Committees could be combined into one Finance Committee. The consensus was this was something that the Executive Committee wanted staff to pursue.

ITEM 12 – MEMBER COMMENTS

Howard McKinnon, Havana, thanked Beaches Energy for their help with restoration efforts in Havana from Hurricane Michael.

Larry Mattern, Kissimmee, complimented staff on bringing innovative items to the Board and encouraged staff to continue to provide suggestions on items in the future.

EXECUTIVE COMMITTEE MEETING MINUTES

October 18, 2018

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Jacob Williams, FMPA, informed the Executive Committee, that FMPA is in negotiations to provide Winter Park with 10 MW of power short-term and ultimately provide ~70 MW through 2027.

Jody Finklea, FMPA, informed the Executive Committee that FMPA filed an intervention and protest to JEA's proposal to have FERC take jurisdiction over their contract with MEAG for the Vogtle Nuclear Plant.

There being no further business, the meeting was adjourned at 12:41 p.m.

Howard McKinnon
Chairperson, Executive Committee

Sue Utley
Assistant Secretary

Approved: _____

Seal

PUBLIC NOTICE SENT TO CLERKS September 27, 2018
AGENDA PACKAGES SENT TO MEMBERS..... October 8, 2018

MINUTES
EXECUTIVE COMMITTEE
ALL-REQUIREMENTS POWER SUPPLY PROJECT
TELEPHONIC RATE WORKSHOP
TUESDAY, OCTOBER 9, 2018
FLORIDA MUNICIPAL POWER AGENCY
8553 COMMODITY CIRCLE
ORLANDO, FLORIDA 32819

COMMITTEE MEMBERS PRESENT

Fort Pierce	-	Paul Jakubczak (via telephone)
Green Cove Springs	-	Robert Page (via telephone)
Key West	-	Jack Wetzler for Lynne Tejeda (via telephone)
Kissimmee	-	Larry Mattern (via telephone)
Leesburg	-	Glenn Spurlock (via telephone)
Newberry	-	Bill Conrad (via telephone)
Ocala	-	Mike Poucher (via telephone)

COMMITTEE MEMBERS ABSENT

Bushnell	-	Jody Young
Clewiston	-	Lynne Mila
Fort Meade	-	Fred Hilliard
Havana	-	Howard McKinnon
Jacksonville Beach	-	Allen Putnam
Starke	-	Robert Milner

OTHERS PRESENT

Sabrina Hubbell, Leesburg (via telephone)

STAFF PRESENT

Jacob Williams, General Manager & CEO (via telephone)
Sue Utley, Executive Assistant to General Manager and CEO / Asst.
Secy. to the Board
Linda Howard, CFO
Joe McKinney, Systems Operation Manager
Jason Wolfe, Financial Planning and Analysis Manager
Jim Arntz, Senior Financial Analyst

Item 1 – Call to Order

FMPA Chairman Bill Conrad, Newberry, called the Executive Committee All-Requirements Telephonic Rate Workshop to order at 2:01 p.m. on Tuesday, October 9, 2018, via telephone. A speaker telephone for public attendance and participation was located in the 1st Floor Conference Room at Florida Municipal Power Agency, 8553 Commodity Circle, Orlando, Florida.

Item 2 – Information Items

Mr. Wolfe gave a verbal update on the natural gas markets; provided an overview of the September loads; provided a verbal report on Florida Municipal Power Pool Operations for September; and reviewed the September ARP rate calculation.

Item 3 – Member Comments

None.

There being no further business, the meeting was adjourned at 2:12 p.m.

Approved

JW/su

AGENDA ITEM 7 – CONSENT AGENDA

- b) Approval of Treasury Reports as of
September 30, 2018**

**Executive Committee
November 15, 2018**



AGENDA PACKAGE MEMORANDUM

TO: FMPA Executive Committee
FROM: Gloria Reyes
DATE: November 6, 2018
ITEM: EC 7(b) – Approval of the All-Requirements Project Treasury Reports as of September 30, 2018

- Introduction
- This report is a quick summary update on the Treasury Department’s functions.
 - The Treasury Department reports for September are posted in the member portal section of FMPA’s website.
-

Debt Discussion

The All-Requirements Project has fixed, variable, and synthetically fixed rate debt. The variable rate bonds and lines of credit portion is 1.49%. The fixed and synthetic fixed rate percentages of total debt are 83.24% and 15.27%, respectively. The estimated debt interest funding for fiscal year 2018 as of September 30, 2018 is \$40,723,005.35. The total amount of debt outstanding is \$979,473,000.¹

Hedging Discussion

The Project has 8 interest rate swap contracts. As of September 30, 2018, the cumulative market value of the interest rate swaps in the All-Requirements Project was (15,162,618).

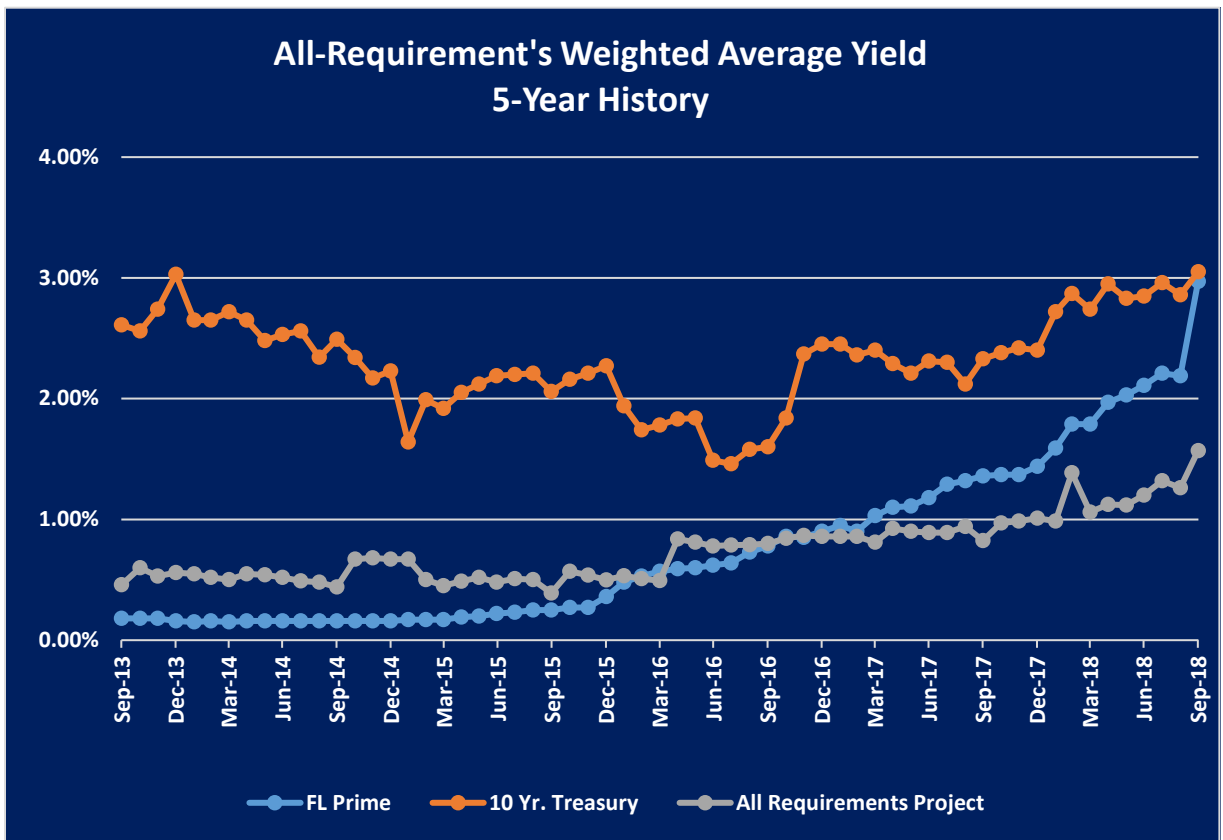
The Swap Valuation Report is a snap shot of the mark-to-market values at the end of the day on September 30, 2018. The report for September is posted in the “Member Portal” section of FMPA’s website.

Investment Discussion

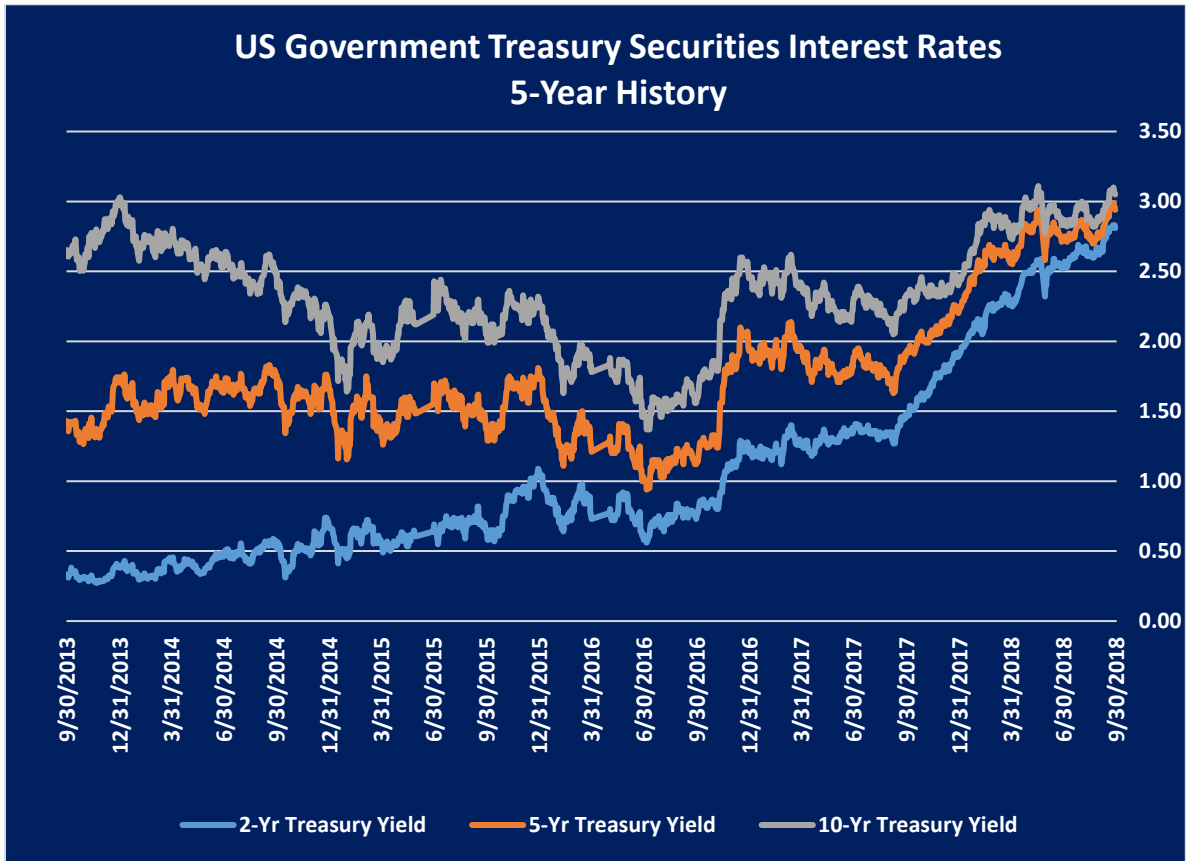
The investments in the Project are comprised of debt from the government-sponsored enterprises such as the Federal Farm Credit Bank, Federal Home Loan Bank, Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal National Mortgage Association (Fannie Mae), as well as investments in U.S. Treasuries, Municipal Bonds, Commercial Paper and Money Market Mutual Funds.

¹ Although still on deposit, the line of credit draw amount of \$5,000,000 is included in the total amount of debt outstanding.

As of September 30, 2018, the All-Requirements Project investment portfolio earned a weighted average rate of return of 1.57%, reflecting the All-Requirements Project need for liquidity given its 60-day cash position. The benchmarks (SBA’s Florida Prime Fund and the 10-year US Treasury Note) and the Project’s yields are graphed below:



Below is a graph of U.S. Treasury yields for the past 5 years.



The Investment Report for September is posted in the “Member Portal” section of FMPA’s website.

Recommended
Motion

Move for approval of the Treasury Reports for September 30, 2018

AGENDA ITEM 7 – CONSENT AGENDA

- c) Approval of the Agency and All-Requirements Project Financials as of September 30, 2018**

**Executive Committee
November 15, 2018**



AGENDA PACKAGE MEMORANDUM

TO: FMPA Executive Committee
FROM: Steve Ruppel
DATE: November 6, 2018
ITEM: EC 7c – Approval of the Preliminary Agency and All-Requirements Project Financials for the period ended September 30, 2018.

Discussion: The preliminary summary and preliminary detailed financial statements of the Agency and All-Requirements Project for the period ended September 30, 2018 are posted on the Document Portal section of FMPA's website.

Recommended Motion: Move approval of the preliminary Agency and All-Requirements Project Financial reports for the month of September 30, 2018.

SR/DF

AGENDA ITEM 8 – ACTION ITEMS

- a) Approval of Winter Park Power Purchase Agreement**

**Executive Committee
November 15, 2018**



EC 8a – City of Winter Park Power Purchase Agreement

Executive Committee

November 15, 2018

Winter Park Power Purchase Agreement

Begins January 1, 2019 through December, 31 2027

- Winter Park selected FMPA to serve a portion of their power supply needs for the next 9 years
 - FPL will be a supplier through 2019
 - Covanta will be a supplier through 2024
 - FMPA Solar Project will be a supplier beginning in 2020
 - OUC will be a supplier served through distribution
- ARP will provide 10 MW 24x7 during 2019
- ARP will provide about 70 MW of Partial Requirements service during 2020 through 2027

Wholesale Sales Lower the ARP Rate

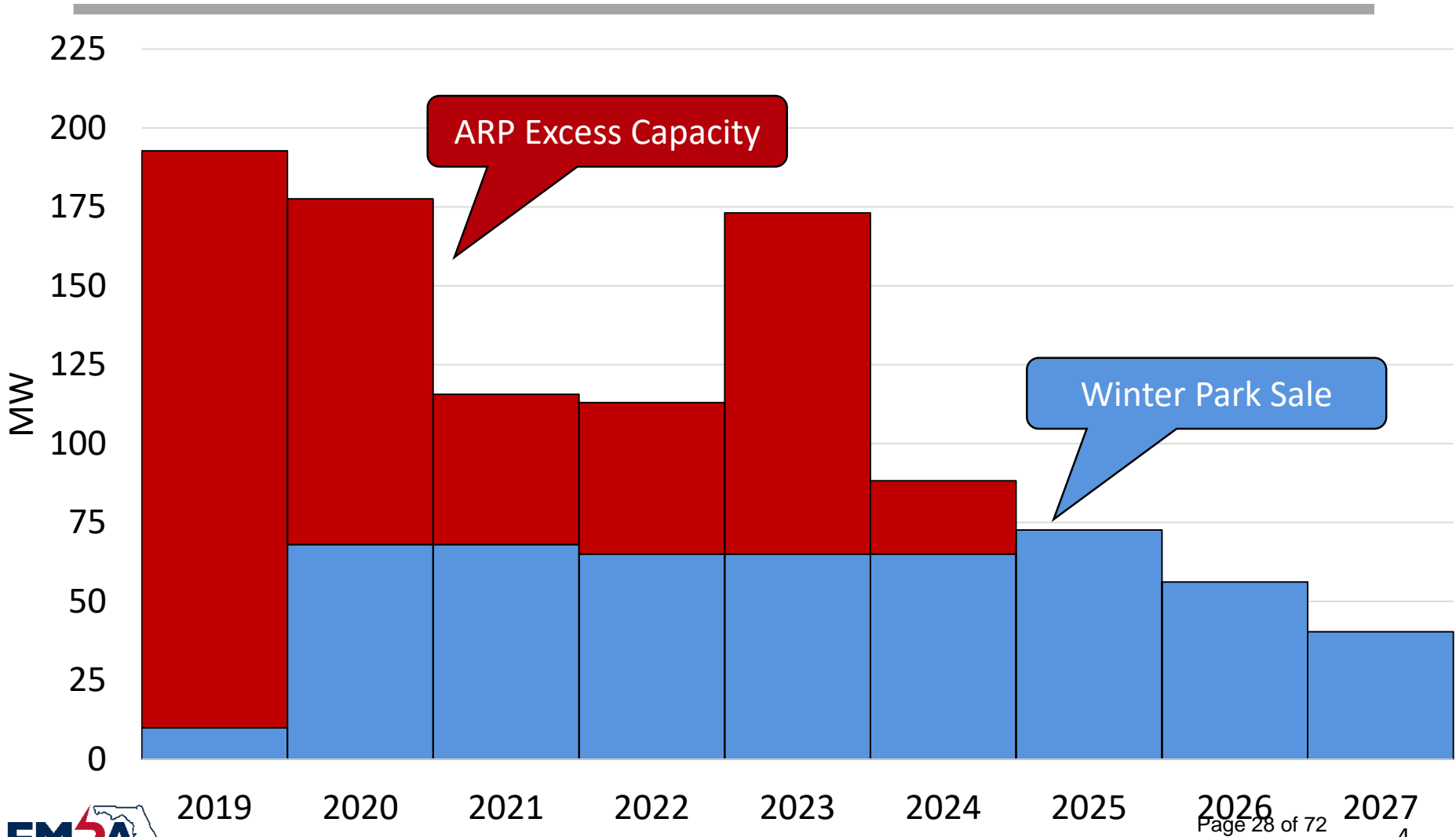
- Capacity charges provide return to ARP fixed costs
 - First year - \$.06/MWh ARP rate reduction
 - Next 8 years - \$.43/MWh average ARP rate reduction

- Energy charges indexed to natural gas
 - Fixed heat rate
 - Flat variable operations & maintenance charge

- Return from Bartow averaging \$.13/MWh reduction

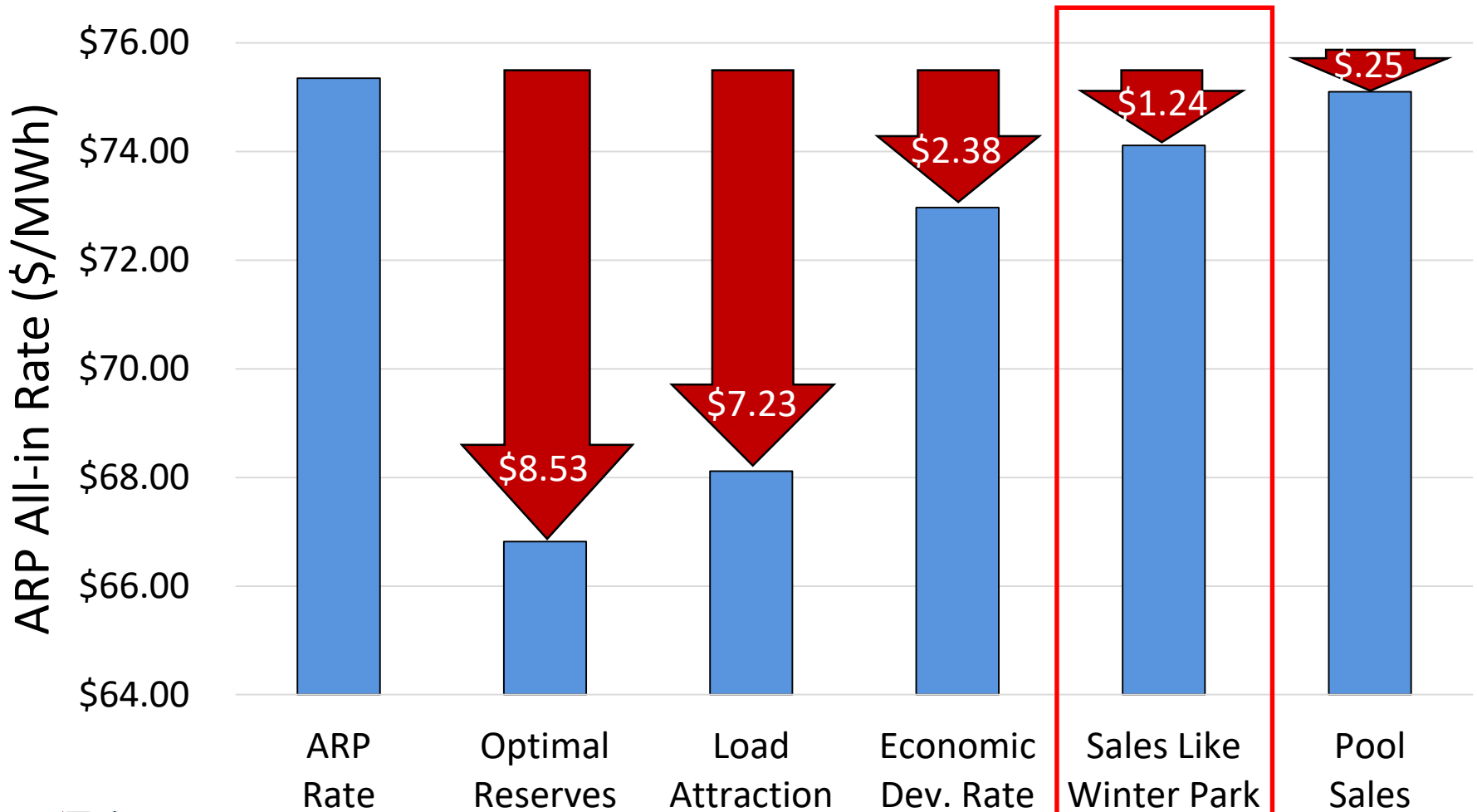
Winter Park a Significant Piece of Excess

Still long in the near-term



Opportunity Comparison

Based on 200 MW Excess Capacity



Recommended Action

- Move approval of the Agreement for Purchase and Sale of Electric Energy and Capacity between the City of Winter Park and Florida Municipal Power Agency All-Requirements Power Supply Project and authorize the General Manager to execute the agreement upon approval by the City of Winter Park Commission.

**AGREEMENT FOR
PURCHASE AND SALE OF ELECTRIC ENERGY AND CAPACITY,
BETWEEN
THE CITY OF WINTER PARK
AND
FLORIDA MUNICIPAL POWER AGENCY
(ALL-REQUIREMENTS POWER SUPPLY PROJECT)**

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**AGREEMENT FOR
PURCHASE AND SALE OF ENERGY AND CAPACITY**

This AGREEMENT FOR PURCHASE AND SALE OF ELECTRIC ENERGY AND CAPACITY (this "Agreement") is entered into as of the _____ day of _____, 2018, by and between THE CITY OF WINTER PARK, a municipal corporation in the State of Florida, duly constituted under Florida law ("Winter Park"), and FLORIDA MUNICIPAL POWER AGENCY , a governmental legal entity created and existing pursuant to Florida law ("FMPA"). Winter Park and FMPA are referred to also in this Agreement individually as a "Party," or collectively as the "Parties."

WHEREAS, FMPA was created pursuant to the Florida Interlocal Cooperation Act of 1969, § 163.01, Fla. Stat. (the "Interlocal Act"), and the Joint Power Act, Ch. 361, part II, Fla. Stat. (the "Joint Power Act"), and exercises power and authority granted to it under both or either provision pursuant to its enumerated powers set forth in the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended and supplemented to the date of this Agreement and as may be amended and supplemented afterwards (the "Interlocal Agreement," and collectively with the Interlocal Act and the Joint Power Act, the "Act") to, among other things, provide a means for Florida municipalities and other entities which are members of FMPA to cooperate with each other on a basis of mutual advantage to provide for the present and projected electric energy needs of such municipal corporations and other entities;

WHEREAS, FMPA is authorized and empowered, among other things, (1) to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend, or otherwise participate jointly in one or more electric projects; (2) to make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of FMPA under Florida law; (3) to issue bonds, notes, and other evidences of indebtedness to pay all or part of the costs of acquiring or participating in such electric projects; (4) to exercise all other powers which may be necessary and proper to further the purposes of FMPA which have been or may be granted to FMPA under the laws of the State of Florida; and (5) to market and dispose of its surplus capacity and energy for the economic benefit of the All-Requirements Power Supply Project;

WHEREAS, In order to secure an adequate, reliable, and economical supply of electric capacity and energy to supply, with certain exceptions, all of the needs for electric capacity and energy of the Project Participants contracting with FMPA, FMPA established the "All-Requirements Power Supply Project," which constitutes an "electric project" and a "project" as defined in the Interlocal Act and the Joint Power Act, respectively, and created the system to carry out the All-Requirements Power Supply Project. FMPA has implemented the All-Requirements Power Supply Project by acquiring electric capacity and energy and providing for dispatch, transmission, and other services included or to be included in the system for sale and delivery to Project Participants contracting with FMPA through whatever means it deems advisable, including, without limitation, the purchase of capacity and energy and dispatching, transmission, and other services, and the ownership or leasing of generation, dispatching, and transmission

facilities or any interest therein or output or services from such generation, dispatching, and transmission facilities;

WHEREAS, The actions taken and to be taken by FMPA to implement the All-Requirements Power Supply Project have been authorized by the Interlocal Act, the Joint Power Act and the Interlocal Agreement, which Interlocal Agreement, the All-Requirements Contract, and this Agreement each constitute an "agreement to implement a project" and a "joint power agreement," as such terms are used in the Joint Power Act;

WHEREAS, Winter Park is seeking wholesale power supplies to serve its customers and to that end has issued an invitation to negotiate for the provision by third parties of such power supplies;

WHEREAS, FMPA wishes to supply Wholesale Electric Service, as defined below, to Winter Park, and Winter Park desires to acquire such power supplies from FMPA, on the terms and conditions set forth herein;

WHEREAS, Winter Park is a member of FMPA, and the capacity and energy that FMPA is selling and delivering to Winter Park pursuant to the terms of this Agreement is surplus to the needs of the All-Requirements Power Supply Project;

NOW, THEREFORE, for and in consideration of the foregoing, the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth in this Article 1 unless the context clearly requires otherwise.

“Ancillary Services” shall mean interconnected operations services identified by the Federal Energy Regulatory Commission or other regulatory bodies or agreements as necessary to effect a transfer of capacity and energy from the Delivery Point(s) to Winter Park.

“Applicable Law” shall have the meaning set forth in Section 18.10.

“Billing Meter” shall have the meaning set forth in Section 6.1.

“Baseload Product” shall have the meaning set forth in Section 2.1(a).

“Baseload Product Term” shall have the meaning set forth in Section 2.1(a).

“Baseload Product Service Date” shall have the meaning set forth in Section 3.2.

“Capacity Charge” shall have the meaning set forth in Appendix A.

“Change in Law Costs” shall have the meaning set forth in Section 18.10.

“Charges” shall mean the Capacity Charge, Non-Fuel Energy Charge, and Fuel Energy Charge set forth in Appendix A.

“Claims” shall mean all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity under this Agreement, and the resulting losses, damages, expenses, third party attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Covanta Energy Purchase” means a block purchase of 10 MW by Winter Park from Covanta Energy commencing January 1, 2015 and expiring December 31, 2024.

“Covanta Replacement Service” shall have the meaning set forth in Section 2.3.

“DEF” means Duke Energy Florida, LLC.

“DEF Transmission Agreement” means a transmission agreement executed by and between Winter Park and DEF for the transmission of Wholesale Electric Service from the Delivery Point(s) to the Metering Point(s).

“Delivery Point(s)” shall mean the DEF transmission system.

“Due Date” shall have the meaning set forth in Section 5.1(c).

“Electronic Tag” or “e-Tag” means the electronic software mechanism used to schedule a physical Interchange Transaction and the parties to such transaction.

“Event of Default” shall have the meaning, with respect to FMPA set forth in Section 13.1, and with respect to Winter Park set forth in Section 13.2, of this Agreement.

“Firm Load” shall mean the load of FMPA’s All-Requirements Power Supply Project participants, to whom FMPA has a contractual obligation to sell and deliver firm wholesale power and energy.

“Florida PSC” or “PSC” shall mean the Florida Public Service Commission.

“Interchange Transaction” means an agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.

“Interest Rate” shall have the meaning set forth in Section 5.1(c).

“kWh” shall mean kilowatt-hour.

“Letter of Credit” shall mean one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U. S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form reasonably acceptable to the Party in whose favor the letter of credit is issued, the costs of which shall be borne by the applicant therefor.

“Loss Schedule” shall have the meaning set forth in Section 9.2(b).

“Losses” shall mean transmission line losses on the DEF transmission system for Wholesale Electric Service between the Delivery Point(s) and the Winter Parks electric system, as determined in accordance with DEF’s Open Access Transmission Tariff.

“Metering Point(s)” shall mean the points of interconnection between the DEF transmission system and the high side of the Winter Park substation transformers.

“MW” shall mean Megawatt or 1000 kilowatts.

“MWh” shall mean Megawatt-hour or 1000 kilowatt hours.

“Non-Fuel Energy Charge” shall have the meaning set forth in Appendix A.

“OATT” shall mean Open Access Transmission Tariff.

“OUC” shall mean the Orlando Utilities Commission.

“OUC Distribution Purchase” shall mean the portion of Winter Park’s retail load served by OUC under a separate power purchase agreement through direct distribution interconnections and disconnected from the portion of Winter Park’s retail load interconnected to the DEF transmission system.

“Partial Requirements Product Service” shall have the meaning set forth in Section 2.1(b).

“Partial Requirements Product Service Term” shall have the meaning set forth in Section 2.1(b).

“Partial Requirements Product Service Date” shall have the meaning set forth in Section 3.2.

“Party” and “Parties” shall have the meaning set forth in the first paragraph.

“Prudent Utility Practice” shall mean any of the applicable practices, methods and acts (i) required by the rules, regulations, policies and standards of state regulatory authorities having jurisdiction in relation to operations or otherwise required by Applicable Law; or (ii) otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period; which in each case in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with law, regulation, safety, environmental protection, economy, and expedition. Prudent Utility Practice is intended to be acceptable practices, methods or acts generally accepted and lawful in the region, and is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others.

“Requesting Party” shall have the meaning set forth in Section 16.2.

“Solar Purchases” shall mean Winter Park’s purchase of energy pursuant to the Solar Project Power Sales Contract between Florida Municipal Power Agency Solar Power Project and the City of Winter Park, Florida, dated as of May 16, 2018, as well as any Winter Park owned solar generating facilities and Winter Park wholesale purchases of solar energy from FMPA or third party suppliers, which shall not exceed 25 MWs cumulative.

“Term” shall have the meaning set forth in Article 3.

“Wholesale Electric Service” shall have the meaning set forth in Section 2.1.

ARTICLE 2 WHOLESALE ELECTRIC SERVICE

Section 2.1 Wholesale Electric Service.

Commencing on the Service Date and during the Term, in accordance with the terms and subject to the conditions hereof, FMPA shall provide and deliver Wholesale Electric Service and Winter Park shall purchase and receive Wholesale Electric Service, which services shall be referred to cumulatively as “Wholesale Electric Service” and consist of the following:

(a) Beginning January 1, 2019, at 12:00 a.m. EST, through December 31, 2019, at 11:59 p.m. EST (the “Baseload Product Term”), a fixed, partial-requirements schedule of ten (10) MWs of capacity and energy, and delivered twenty-four hours per day, seven days per week (such service referred to individually herein as the “Baseload Product”).

(b) Beginning January 1, 2020, at 12:00 a.m. EST, through December 31, 2027, at 11:59 p.m. EST (the “Partial Requirements Product Term”), a partial-requirements supply of capacity and energy required to serve all of Winter Park’s retail load plus Losses and associated Ancillary Services, but net of the

- i) Covanta Energy Purchase (not to exceed 10 MWs);
- ii) OUC Distribution Purchase (not to exceed 30 MWs);
- iii) Solar Purchases (not to exceed 25 MWs nameplate capacity); and
- iv) purchase of customer owned renewable energy generation output as set forth in Section 2.2(a) below.

(such service referred to individually herein as the “Partial Requirements Product”)

Section 2.2 Exclusivity of Supply.

(a) During the Partial-Requirements Product Term, except as allowed for in and contemplated by Section 2.1(b), Section 2.2(b), and Section 2.2(c), Winter Park shall not purchase or install electric capacity or energy, or energy storage, to serve any of its retail load requirements from any entity other than FMPA without the prior written consent of FMPA unless FMPA fails to furnish capacity or energy to Winter Park pursuant to the terms of this Agreement, except that this Section 2.2 is not intended, nor is it to be construed, to prohibit the interconnection and net metering of customer-owned renewable generation resources that are located on such customer's premises (*i.e.*, the load side of the customer meter) and sized primarily to offset part or all of the retail customer's electric requirements with renewable energy.

(b) Nothing in this Agreement shall prohibit any Winter Park customer from owning or operating back-up generating resources on the customer side of the retail meter, provided that the output of such back-up resources is used by the customer to serve their on-site load and is not used to deliver and sell energy to the Winter Park electric system.

(c) Winter Park may modify, amend or extend the term of its OUC Distribution Purchase provided that the amount of retail load served by the OUC Distribution Purchase does not exceed 30 MW at Winter Park's annual peak. Winter Park shall provide FMPA at least six (6) months prior written notice of its intention to reconfigure the distribution interconnection(s) with OUC to facilitate such modification so that Winter Park can make the appropriate changes to its designated network resources in the DEF Transmission Agreement.

Section 2.3. Covanta Replacement Service.

(a) FMPA shall use commercially reasonable efforts to provide replacement capacity and energy to Winter Park in an amount equal to the amount of Covanta Energy Purchase not delivered, or expected to not be delivered, in any hour ("Covanta Replacement Service").

(b) FMPA or its agent will use commercially reasonable efforts to arrange transmission service, if needed, to deliver the Covanta Replacement Service to the Metering Point(s) on the Winter Park system, however Winter Park will be responsible for all transmission costs associated with the Covanta Replacement Service actually incurred by FMPA or Winter Park.

(c) FMPA shall not be liable for any costs or penalties incurred by Winter Park or FMPA due to non-delivery of Covanta Replacement Service.

**ARTICLE 3
TERM**

Section 3.1. Effective Date.

This Agreement shall be in force and effect on the date indicated in the introductory paragraph of this Agreement (the "Effective Date").

Section 3.2. Service Date.

(a) The obligations of the Parties in respect to the supply, delivery, purchase and receipt of Baseload Product shall commence on January 1, 2019 at 12:00 a.m. E.S.T (the "Baseload Product Service Date").

(b) The obligations of the Parties in respect to the supply, delivery, purchase and receipt of Partial Requirements Product shall commence on January 1, 2020 at 12:00 a.m. E.S.T (the "Partial Requirements Product Service Date").

Section 3.3. Term.

This Agreement shall remain in effect through December 31, 2027 at 11:59 p.m. E.S.T. (the “Term”), unless terminated earlier under the terms of this Agreement. Termination or expiration of this Agreement shall not affect or excuse the performance of either Party under any provision of this Agreement that by its nature or terms survives any such termination or expiration.

**ARTICLE 4
SALE AND PURCHASE**

Section 4.1 Sale and Purchase

(a) FMPA shall, at its cost and expense, sell and deliver Wholesale Electric Service to the Delivery Point(s) and Winter Park shall purchase and receive Wholesale Electric Service at the Delivery Point(s) during the Term. The Charges for such sale and purchase shall be as set forth in Section 5.1.

(b) FMPA is responsible for delivering Wholesale Electric Service to the Delivery Point(s).

(c) The Wholesale Electric Capacity and Wholesale Electric Energy sold and delivered by FMPA to Winter Park hereunder shall be three phase, 60 hertz alternating current having a nominal voltage as specified by and otherwise in accordance with interconnection protocols.

(d) Winter Park acknowledges and agrees that FMPA, or its agent(s), shall have the absolute authority, which FMPA or its agent(s) may exercise in their sole discretion, to manage, control, operate and maintain the electricity resources used to supply Wholesale Electric Service to Winter Park under this Agreement. FMPA may serve Winter Park with energy from any resource(s) available to it without limitation.

(e) The sale of Wholesale Electric Service by FMPA under this Agreement does not constitute either: (1) a sale, lease, transfer, or conveyance of an ownership interest or contractual right in or to any specific generation facility or resource(s); or (2) a dedication of ownership or an entitlement to the capacity or output of any specific generation facility or resource.

(f) Winter Park shall reasonably cooperate with FMPA in connection with FMPA’s effort to obtain historical and anticipated demand and energy data for Winter Park during the Term of this Agreement. Winter Park shall notify FMPA promptly upon becoming aware of any material change in Winter Park’s service territory or after receipt of a written request for service from any large commercial or residential development that has a planned demand of 1 MW or greater of capacity that is reasonably expected to be completed before the end of the Term or require electric service that will materially impact Winter Park’s electricity needs.

(g) Winter Park shall, at its own expense, comply with the DEF Transmission Agreement and DEF OATT which may include, without limitation, applicable power factor requirements and underfrequency load shedding requirements.

**ARTICLE 5
PRICE AND BILLING**

Section 5.1 Billing and Payment.

(a) On or before the 10th day following the last day of each month during the Term, FMPA shall provide to Winter Park an invoice showing the total amount due to FMPA for the preceding month, which invoice shall itemize (1) the monthly Capacity Charge; (2) the monthly Non-Fuel Energy Charge; (3) the monthly Fuel Charge; and (4) any other payment amounts for which Winter Park is responsible under this Agreement for the previous month. FMPA shall provide monthly invoices to Winter Park electronically via email.

(b) In addition to the payments set forth in Section 5.1(a) (Billing and Payment), each FMPA invoice shall include the following adjustments, as applicable:

(1) any billing corrections or adjustments, including charges or credits, or both, identified by either of the parties subsequent to the last invoice, which are not subject to interest;

(2) any billing corrections, including charges or credits, that the parties have mutually agreed upon or otherwise resolved in accordance with Section 5.4 (Billing Adjustments) subsequent to the last invoice, which are subject to interest in accordance with Section 5.4 (Billing Adjustments); and

(3) any delinquent amounts, which are subject to interest in accordance with Section 5.1(c) (Billing and Payment).

(c) Each monthly payment by Winter Park shall be due and payable on or before the 15th day after the date the invoice is transmitted to Winter Park, or the next business day if such day falls on a non-business day (the "Due Date"). Winter Park shall make payment to FMPA in accordance with Section 5.2 (ACH Deposit). If payment in full has not been received by FMPA on or before the Due Date, then Winter Park shall pay interest on the amount of Winter Park's monthly invoice not paid, in whole or in part, by the Due Date, from the Due Date until such amount is paid in full, together with all accrued interest. Such interest shall be compounded daily at the prime interest rate as published in the Wall Street Journal (the "Interest Rate").

Section 5.2 ACH Deposit.

Payment shall be made by the transfer of funds from Winter Park's bank account, using an ACH Push or domestic Wire Transfer. No other payment methods are accepted, including cash, mailed check, or electronic check.

ALL REQUIREMENTS O&M:

SunTrust Bank, Atlanta, GA

ABA #061000104

A/C #1000020213558

Section 5.3 Disputed Bills Must be Paid.

(a) If, after receiving an invoice (or any other statement or bill pursuant to this Agreement), Winter Park reasonably questions or disputes the amount or propriety of any payment or amount claimed by FMPA to be due pursuant to this Agreement, Winter Park shall provide FMPA with written notice of such disputed invoice amount. FMPA and Winter Park shall cooperate in good faith to resolve any question or dispute prior to the Due Date. However, notwithstanding the notice of a disputed invoice amount, Winter Park shall make all payments in full in accordance with all invoices issued by FMPA. Adjustments with interest shall subsequently be made, if appropriate, as set forth in Section 5.4 (Billing Adjustments).

Section 5.4 Billing Adjustments.

(a) Winter Park shall have twelve (12) months after the receipt of any invoice (or any other statement or bill made pursuant to this Agreement) to question or contest the amount or propriety of any charge or credit, or both, on such invoice, statement, or bill. In the event that Winter Park questions or disputes any such charge or credit, or both, FMPA shall, within 60 days of its receipt of any such question or dispute, review the subject charge or credit and notify Winter Park of the findings of its review. Any error in the amounts reflected on such disputed invoice, statement, or bill and the amount of any adjusted payment that either party is required to make as a result of such re-determination will be identified by FMPA in writing.

(b) If, within twelve (12) months of issuance, FMPA discovers an error in any invoice issued pursuant to this Agreement, FMPA shall have the right to correct such invoice. Any invoice correction shall be in writing and shall state the specific basis for the correction. An invoice correction shall constitute a new invoice for all purposes of this Agreement.

(c) Not later than the 15th day after receipt by Winter Park of written notification from FMPA of a billing adjustment pursuant to this Section 5.4 (Billing Adjustments), the party required to make such payments, if any, shall make payment to the other party in immediately available funds. If a billing adjustment made pursuant to this Section 5.4 (Billing Adjustments) results in a payment by FMPA to Winter Park, such amount shall include interest, compounded daily, at the Interest Rate from the date payment was received by FMPA until the date such payment together with all added interest is paid.

Section 5.5 Availability of Records.

Until the end of twelve (12) months after the receipt of any invoice, each party shall, at its own expense with respect to any invoice submitted or payment requested under this Agreement for Wholesale Electric Service provided to Winter Park, make available to the other party and each party may audit, such books and records of the other party (or other relevant information to which such party has access) as are reasonably necessary to calculate and determine the accuracy of amounts shown on such invoice to verify the appropriateness of the invoiced amounts. Upon written request and reasonable notice, each party shall make available to the other party copies of or access to such books and records during normal business hours, at such requesting party's sole expense for purposes of conducting such an audit. In the event either party determines that an

invoice was not accurate or appropriate, it shall notify the other party in writing of the alleged discrepancy and, in its opinion, the necessary correction. Within 15 days following receipt of such notice, the party receiving such notice shall make such payments or take such other actions as are necessary to correct or dispute the alleged discrepancy.

ARTICLE 6 SERVICE FACILITIES AND METERING

Section 6.1 Metering Points

The Partial Requirements Product and (if applicable) Ancillary Services shall be measured by primary and back-up metering equipment at or adjacent to the Metering Point(s) ("Billing Meters"), which metering equipment shall constitute the basis of measuring demand and energy and the computation of bills for demand charges and energy consumption charges. Winter Park has arranged for Billing Meters to be installed by DEF pursuant to the terms of the DEF Transmission Agreement. In the event that DEF removes such meters, Winter Park shall, at its sole expense, furnish and install the Billing Meters, or arrange for them to be furnished and installed.

Section 6.2 Witness Rights

The Parties intend, subject to the extent of their rights under agreements with third-party meter owners, that each Party shall have the right in the presence of a representative of the Billing Meter owner and the other Party, to read and check the Billing Meters and associated metering equipment, for any reason, including when there is any dispute or disagreement as to the correctness of the readings or the accuracy of the Billing Meters or metering equipment. In the event of such dispute or disagreement, the Parties shall, subject to the applicable rights and obligations of Winter Park under the DEF Transmission Agreement, within five (5) business days of notice of such dispute, retain a mutually agreeable independent inspector to test the Billing Meters and metering equipment per industry standards. The fees, costs and expenses of such test and inspection shall be borne equally by the Parties. The determination of the independent inspector as to the correctness of the reading of the Billing Meter and adjustments, if any, that are required to be made thereto, shall be rendered within thirty (30) days of referral of the dispute or disagreement, shall be in writing and shall be accepted by the Parties as final. The Parties agree that the Billing Meters and metering equipment will be considered accurate for purposes of billing and invoicing hereunder provided calibration is within the meter accuracy threshold set forth in the DEF Transmission Agreement as of the date of this Agreement, or as the DEF Transmission Agreement may be amended from time to time, fast or slow, of accuracy. Should any meter be beyond this range of accuracy, an adjustment shall be made pursuant to Section 6.6

Section 6.3 Ownership and Maintenance of Meters

Billing Meters owned by Winter Park shall be maintained in accordance with Prudent Utility Practice and the terms of the DEF Transmission Agreement, which may be amended from

time to time. Winter Park will use reasonable commercial efforts under the DEF Transmission Agreement to cause Billing Meters owned by DEF to be maintained in accordance with Prudent Utility Practice and the terms of such agreement.

Section 6.4 Meter Testing

Billing Meters used to measure the delivery of the Partial Requirements Product hereunder will be tested and maintained in accordance with the applicable terms and conditions of the DEF Transmission Agreement. Winter Park shall, to the extent of its rights under the DEF Transmission Agreement, extend to FMPA the rights of Winter Park to observe meter testing and inspection.

Section 6.5 Check Meters

If no DEF meters are available for use as back-up Billing Meters, Winter Park shall have the right to install at its own expense, check metering devices (“Winter Park’s Check Metering”) which installation shall be reasonably acceptable to FMPA and shall be maintained consistent with Prudent Utility Practice. FMPA, at its own expense, shall have the right to inspect and test Winter Park’s Check Metering upon installation and at least annually thereafter. FMPA shall provide Winter Park with reasonable advance notice of, and permit a representative of Winter Park to witness and verify, such inspections and tests, provided that Winter Park shall not unreasonably interfere with or disrupt the inspection and testing activities of FMPA and FMPA shall comply with all of Winter Park’s safety standards.

Section 6.6 Accuracy of Meters; Billing Adjustments

If a Billing Meter fails to register, or if the measurement made by a Billing Meter is found upon testing to be inaccurate by more than the meter accuracy threshold set forth in the DEF Transmission Agreement, as the DEF Transmission Agreement may be amended from time to time, an adjustment shall be made correcting all measurements by the inaccurate or defective Billing Meter, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(a) In the event that the primary Billing Meter is found to be defective or inaccurate, the Parties shall use the back-up Billing Meter or Winter Park’s Check Metering, if installed, to determine the amount of such inaccuracy, provided that Winter Park’s Check Metering has been tested and maintained in accordance with the provisions of Section 6.4. In the event that the Billing Meter, the back-up Billing Meter and the Winter Park Check Meters fail, the Parties shall estimate the amount of the necessary adjustment during periods of similar operating conditions when the Billing Meter was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(b) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Billing Meter to the test that found the Billing Meter to be defective or inaccurate, or (ii) the ninety (90) days immediately preceding the test that found the Billing Meter to be defective or inaccurate.

(c) To the extent that the adjustment period covers a period of deliveries for which billings have already been made by FMPA, FMPA shall use the corrected measurements as determined in accordance with this Article 6 to compute the adjustment necessary for the period of the inaccuracy and shall adjust billing for this period from such recomputed amount in the next monthly bill after the error is identified, and to the extent that FMPA has overbilled Winter Park for the Partial Requirements Product hereunder, accrued interest on the amount of any overpayments by Winter Park shall be computed at the Interest Rate from the date FMPA received such overpayment by Winter Park until refunded or (if requested by Winter Park, credited) against future payment.

Section 6.7 Data Acquisition Equipment.

(a) Real time data acquisition equipment required for FMPA to provide service to Winter Park pursuant to the terms and conditions of this Agreement shall be determined by DEF and FMPA, in their sole discretion, as deemed reasonably necessary for reliability, security, economics, and necessary or desirable monitoring of system operations. Telemetry and data requirements include real and reactive loads at the Metering Point(s). Winter Park shall be responsible for all costs of any additional equipment and communications circuits deemed necessary.

(b) All data acquisition equipment, wires, and other electrical equipment or systems furnished or installed by DEF or Winter Park pursuant to this Agreement will remain the property of DEF or Winter Park, respectively. Winter Park agrees that FMPA shall have no liability whatsoever for data acquisition equipment, wires, and other electrical equipment or systems owned by Winter Park or DEF.

**ARTICLE 7
CONTINUITY OF SERVICE**

Section 7.1. Interruptions.

FMPA shall supply and deliver Wholesale Electric Service hereunder to the Delivery Point(s) on a firm basis equal to FMPA's Firm Load. FMPA shall not be responsible for any failure to deliver Wholesale Electric Service due to (a) transmission system operations beyond the Delivery Point(s) or (b) interruptions of transmission service necessary to deliver Wholesale Electric Service to Winter Park if initiated by the Florida Reliability Coordinating Council security coordinator. FMPA disclaims any liability for third-party claims arising out of any failure to supply Wholesale Electric Service hereunder, or for interruption, reversal or abnormal voltage of the supply.

Section 7.2. Capacity Shortfalls.

During the Term, in the event of a capacity shortfall that requires load interruption, FMPA shall take such action as set forth in Section 9.4 showing no adverse distinction between Winter Park and FMPA's Firm Load.

Section 7.3. Shortfall Notification.

FMPA will promptly inform Winter Park as soon as possible under the circumstances upon becoming aware of any event, occurrence or circumstance that will result in load shedding or otherwise cause a material reduction or an interruption or suspension of delivery of the Wholesale Electric Service to Winter Park.

**ARTICLE 8
DELIVERY VOLTAGE**

Section 8.1 Delivery Voltage

The delivery voltage at each Delivery Point(s) shall be as agreed between DEF and FMPA. FMPA and Winter Park shall maintain close coordination with respect to future delivery points in the interests of system reliability. Each party shall endeavor, to the extent practicable, to keep the other party advised of significant developments related to their respective power supply facilities.

**ARTICLE 9
DELIVERY, LOSSES, AND SCHEDULING**

Section 9.1. Delivery.

(a) Wholesale Electric Service shall be delivered by FMPA to Winter Park at the Delivery Point(s). Title to and risk of loss related to the Wholesale Electric Service shall transfer from FMPA to Winter Park at the Delivery Point(s) free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point(s). FMPA shall not incur any expense or risk beyond the Delivery Point(s) and Winter Park shall not incur any expenses or risk up to and at the Delivery Point(s). Winter Park shall be responsible for all costs associated with delivery of Wholesale Electric Service from the Delivery Point(s) to Winter Park's electric distribution system, which costs may include, without limitation, transmission studies, upgrades to the DEF transmission system, or any other costs pursuant to the DEF OATT.

(b) Notwithstanding Section 2.3, Winter Park acknowledges and agrees that FMPA shall have no responsibility or liability for capacity and energy associated with the OUC Distribution Purchase or the Covanta Energy Purchase. FMPA shall not be responsible for any transmission charges, energy imbalance penalties or other costs as a result of any failure to deliver the contractual amounts under either such agreements.

Section 9.2. Losses.

(a) Baseload Product Losses. Baseload Product Losses will be accounted for in the Electronic Tag whereby the amount of Baseload Product received by Winter Park at the Winter Park electric distribution system in each hour will be less than the Baseload Product delivered by FMPA at the Delivery Point(s) by the amount of Losses. Winter Park is responsible for supplying capacity and energy to serve Losses.

(b) Partial Requirements Product Losses. FMPA will provide capacity and energy for Partial Requirements Product Losses on the DEF transmission system associated with the delivery of the Partial Requirements Product between the Delivery Point(s) and the Metering Point(s) on the Winter Park system. Losses for the Partial Requirements Product between the Delivery Point(s) and Winter Park's electric distribution system shall be determined in accordance with DEF's approved transmission tariff using DEF's published real power loss factor. Losses will be paid back to DEF in-kind via an interchange schedule ("Loss Schedule"), and such schedule will be subject to energy imbalance service (Schedule 4) under the DEF OATT. Any differences between the Loss Schedule and the actual energy supplied by FMPA for Losses in the corresponding month will be trued-up on the following month's bill and reflected on the invoice to Winter Park.

Section 9.3 Scheduling.

(a) Baseload Product Scheduling. FMPA, or its agent, will schedule the Baseload Product for delivery at the Delivery Point(s) every hour during the Baseload Product Term using an Electronic Tag.

(b) Partial Requirements Product Scheduling. There is no scheduling required for the Partial Requirements Product except for the Loss Schedule. Winter Park's electric load shall be included as a dynamically transferred load in the same Balancing Authority Area as FMPA.

Section 9.4 Constancy of Service; Load Shedding; BA Operator Instructions.

(a) FMPA shall provide Wholesale Electric Service with a priority and firmness equal to FMPA Firm Load.

(b) Notwithstanding any other provision of this Agreement, during the Partial Requirements Product Term, in the event that FMPA, or one of its agents, determines in its sole discretion that it is necessary or appropriate for FMPA or the FMPA's control area to shed, interrupt, or curtail Firm Load due to an emergency situation (including for reason that adequate resources are not available), and FMPA or the control area operator does shed, interrupt or curtail such loads, then Winter Park's similar firm loads or interruptible/curtailable loads shall share, on a pro rata basis among Winter Park and FMPA's Firm Load, in such interruption, curtailment or load shedding. Thereafter, Winter Park may restore service to such shed, interrupted or curtailed loads consistent with the restoration of service to FMPA's and the control area similar firm or interruptible/curtailable loads. For actions taken pursuant to this Section 9.4(b), neither FMPA, nor its agents shall be in breach of this Agreement by reason of, and shall have no liability whatsoever to Winter Park, and FMPA hereby expressly disclaims all third party liability for, any failure to make capacity available under this Agreement, or for any failure to deliver or any interruption in the delivery of energy under this Agreement or for any deficiency in the quality of service under this Agreement unless such failure is the sole result of the gross negligence or willful misconduct of FMPA.

(c) Winter Park shall follow Balancing Authority operator instructions regarding load shedding. If Winter Park does not follow the instructions of the system operations agent, and

Winter Park's inaction results in FMPA having to purchase emergency or other energy, or results in any imbalance, unreserved use or other penalties to either FMPA or Winter Park, or any other penalties or costs, FMPA shall not be responsible for any such costs incurred by FMPA or Winter Park, or both.

Section 9.5 Balancing Authority Area

(a) During the Baseload Product Term, unless otherwise agreed to by the Parties, Winter Park's electric load shall remain in its existing Balancing Authority Area.

(b) During the Partial Requirements Product Term, Winter Park's electric load shall be dynamically transferred into the same Balancing Authority Area as FMPA's Firm Load. FMPA will work with Winter Park and DEF to facilitate changes to operating agreements, telemetry, calculations, or other data needed to effectuate the transfer prior to the Partial Requirements Product Service Date.

Section 9.6 Ancillary Services

(a) Baseload Product Ancillary Services. Winter Park shall secure transmission service on DEF's transmission system, and any required Ancillary Services, necessary to accept the Baseload Product.

(b) Partial Requirements Product Ancillary Services. FMPA will provide all Ancillary Services associated with the delivery of Partial Requirements Product capacity and energy to Winter Park except for Schedules 1 (Scheduling, System Control & Dispatch Service) and Schedule 2 (Reactive Supply and Voltage Control Service) associated with energy transfers through the DEF Control Area (note that Winter Park, as a NITS customer of DEF is required to purchase Schedule 1 and 2 from DEF as operator of the DEF Control Area and transmission service provider). The costs for the FMPA provided Ancillary Services are included in the Capacity Charge.

**ARTICLE 10
CONDITIONS PRECEDENT**

Section 10.1. Conditions to Obligations of Winter Park.

The obligations of Winter Park under this Agreement to purchase and receive Wholesale Electric Service shall commence on the Baseload Product Service Date, and such obligations are subject to the fulfillment and satisfaction of each of the following conditions on or before December 31, 2018, any one of more of which may be waived only in writing, in whole or in part, by Winter Park:

- (a) Representations, Warranties and Covenants True at the Effective Date.
(i) All representations and warranties of FMPA contained in this Agreement shall be true and correct in all material respects as of the date when made and at and as of the Effective Date as though such representations and warranties had been made or given on such date (except

to the extent such representations and warranties specifically pertain to an earlier date), except (A) for changes contemplated by this Agreement and (B) where the failure to be true and correct will not have a material adverse effect on Winter Park's rights, remedies or benefits under this Agreement; and (ii) FMPA shall have performed and complied with, in all material respects, its obligations that are to be performed or complied with by it hereunder prior to or on the Effective Date.

(b) No Material Adverse Change. No change in the business, properties, assets, generating resources, transmission system, financial condition, results of operations or prospects of FMPA shall have occurred and be continuing or with the passage of time, the giving of notice or both, shall be reasonably likely to occur which have a material adverse effect on FMPA's ability to perform its obligations under this Agreement.

(c) Absence of Litigation. No claims, actions, suits, investigations, grievances, arbitrations or proceedings shall be pending or threatened against Winter Park or FMPA with respect to the transactions contemplated hereunder or the adverse outcome of which would have a material adverse effect on the ability of Winter Park or FMPA to perform its respective obligations under this Agreement.

(d) Required Approvals. This Agreement shall have been approved by the FMPA Executive Committee and the Winter Park City Commission.

(e) PSC Regulation. No new law shall be pending or passed which would cause FMPA to become regulated by the Florida PSC by virtue of its service duties under this Agreement or increase the cost to FMPA of providing Wholesale Electric Service to Winter Park.

(f) Transmission Service. Winter Park has obtained transmission service from DEF necessary to deliver Wholesale Electric Service from the Delivery Point(s) to Winter Park's electric system.

(g) Each Party shall notify the other Party promptly if any information comes to its attention prior to the Effective Date or prior to the Service Date, as applicable that it believes will potentially excuse such Party from the performance of its obligations under this Agreement or might reasonably cause any condition set forth in this Article 10 not to be satisfied on or prior to the Service Date.

Section 10.2. Conditions to Obligations of FMPA.

The obligations of FMPA under this Agreement to sell and deliver Wholesale Electric Service shall commence on the Service Date, and such obligations are subject to the fulfillment and satisfactions, on or before the dates indicated, of each of the following conditions, any one or more of which may be waived only in writing, in whole or in part, by FMPA:

(a) Representations, Warranties and Covenants True at the Effective Date. (i) All representations and warranties of Winter Park contained in this Agreement shall be true and correct in all material respects when made and at and as of the Effective Date and at and as of the Service Date as though such representations and warranties had been made or given on such date (except

to the extent such representations and warranties specifically pertain to an earlier date), except (A) for changes contemplated by this Agreement and (B) where the failure to be true and correct will not have a material adverse effect on FMPA's rights, remedies or benefits under this Agreement; and (ii) Winter Park shall have performed and complied with, in all material respects, its obligations that are to be performed or complied with by it hereunder prior to or on the Effective Date.

(b) Required Approvals. This Agreement shall have been approved by the FMPA Executive Committee and the Winter Park City Commission.

(c) No Material Adverse Change. No material adverse change in Winter Park's electric facilities, electric business, financial condition, results of operations or prospects of Winter Park shall have occurred and be continuing, or with the passage of time, the giving of notice or both, shall be reasonably likely to occur as of the Service Date.

(d) Absence of Litigation/Legislative Action. No claims, actions, suits, grievances, investigations, arbitrations or proceedings shall be pending or threatened against Winter Park or FMPA with respect to this Agreement which might have a material adverse effect on the ability of Winter Park or FMPA to perform its respective obligations under this Agreement.

(e) PSC Regulation. No new law shall be pending or passed which would cause FMPA to become regulated by the Florida PSC by virtue of its service duties under this Agreement or increase the cost to FMPA of providing Wholesale Electric Service to Winter Park.

(f) Transmission Service. Winter Park has obtained transmission service from DEF necessary to deliver Wholesale Electric Service from the Delivery Point(s) to Winter Park's electric system.

(g) Each Party shall notify the other Party promptly if any information comes to its attention prior to the Effective Date or prior to the Service Date, as applicable that it believes will potentially excuse such Party from the performance of its obligations under this Agreement or might reasonably cause any condition set forth in this Article 10 not to be satisfied on or prior to the Service Date.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

Section 11.1. General Representation and Warranties.

Each Party hereby represents and warrants to the other that:

(a) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to do business in all jurisdictions where such qualification is required.

(b) Winter Park's payment obligations under this Agreement are costs of operation and maintenance pursuant to Winter Park's existing Bond Resolution 1898-05, adopted May 9, 2005.

(c) It has or will have prior to the Effective Date full power and authority to enter this Agreement and perform its obligations hereunder. The execution, delivery and performance of the Agreement have been duly authorized by all necessary municipal and other action and do not and will not contravene its organization documents or conflict with, result in a breach of, or entitle any party (with due notice or lapse of time or both) to terminate, accelerate or declare a default under, any agreement or instrument to which it is a party or by which it is bound.

(d) The execution, delivery and performance by it of this Agreement will not result in any violation by it of any law, rule or regulation applicable to it. It is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with the performance of this Agreement by it or may materially and adversely affect the business, property, financial condition, results of operations or prospects of such Party.

(e) This Agreement is a valid and binding obligation, enforceable against it in accordance with its terms, except as (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) the remedy of specific performance and injunctive relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(f) Except for approvals by the FMPA Executive Committee and the Winter Park City Commission, no consent, waiver, order, approval, authorization or order of, or registration, qualification of filing with, any court or other governmental agency or authority or other person is required for the execution, delivery and performance by such Party of this Agreement and the consummation by such Party of the transactions contemplated hereby. No consent or waiver of any party to any contract to which such Party is a party or by which it is bound is required for the execution, delivery and performance such Party of this Agreement that has not been or will by the Effective Date have been duly obtained.

(g) There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of such Party, threatened against or affecting such Party at law or in equity, before any federal, state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality which prohibits or impairs its ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby. Such Party has not received written notice of and otherwise is not aware of any such pending or threatened investigation, inquiry or review by any governmental entity.

Section 11.2. Disclaimers.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROVISION OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROVISIONS OR RECEIPT OF WHOLESALE ELECTRIC SERVICE HEREUNDER, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

**ARTICLE 12
SECURITY**

Section 12.1. Winter Park Credit Rating.

Winter Park shall maintain a rating on senior unsecured debt securities of Winter Park by Standard and Poor's Corporation, Moody's Investors Service, Inc., Fitch IBCA or another nationally recognized rating service reasonably acceptable to FMPA of BBB+ (Standard and Poor's), Baa1 (Moody's) or BBB+ (Fitch) or its equivalent, or a rating equivalent to FMPA senior unsecured debt securities, whichever is lower. In the event that Winter Park's credit rating fails to meet said credit rating standard and Winter Park fails to restore its credit rating to such specified minimum rating standing within 12 months after its rating has fallen, Winter Park shall notify FMPA thereof and shall upon request by FMPA provide a Letter of Credit, cash or bond sufficient to assure Winter Park's due performance of its purchase and payment obligations under this Agreement in an amount equal to the amount that FMPA reasonably estimates that the Winter Park would owe to FMPA for the three months of the calendar year in which the Winter Park's bills are expected to be the highest. This requirement does not create or imply that any amounts owed under this Agreement by Winter Park are secured by a pledge of electric revenues or ad valorem taxes. This Agreement does not create a lien or a right to place a lien against any property of Winter Park. Further, this Agreement does not pledge Winter Park's electric revenues, ad valorem taxes or any other revenue source of Winter Park.

Section 12.2. FMPA Credit Rating

FMPA shall maintain a rating on senior unsecured debt securities of FMPA by Standard and Poor's Corporation, Moody's Investors Service, Inc., Fitch IBCA or another nationally recognized rating service reasonably acceptable to Winter Park of BBB+ (Standard and Poor's), Baa1 (Moody's) or BBB+ (Fitch) or its equivalent, or a rating equivalent to FMPA's senior unsecured debt securities, if any, whichever is lower. In the event that FMPA's credit rating fails to meet said credit standing and FMPA fails to restore its credit rating to said standing within 12 months after its rating has fallen, FMPA shall notify Winter Park thereof and shall upon request by Winter Park provide a Letter of Credit, cash or bond sufficient to assure FMPA's due performance under this Agreement in an amount equal to the amount that FMPA reasonably

estimates that the Winter Park would owe to FMPA for the three months of the calendar year in which the Winter Park's bills are expected to be the highest.

ARTICLE 13 EVENTS OF DEFAULT

Section 13.1. Events of Default by FMPA.

Any one or more of the following shall constitute an "Event of Default" hereunder with respect to FMPA:

(a) FMPA shall fail to pay any amounts to be paid by FMPA hereunder to Winter Park and such failure shall continue for a period of more than ten (10) days after notice by Winter Park.

(b) A default shall occur in the performance of any other material covenant or condition to be performed by FMPA hereunder (other than a default specified in Section 13.1(a), which shall be subject the ten (10) day cure period specified therein) and such default shall continue unremedied for a period of thirty (30) days after notice from Winter Park specifying the nature of such default; provided, however, that if such default (other than the failure to make payments when due) cannot reasonably be remedied by FMPA within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, FMPA shall have up to an additional ninety (90) days to remedy the default.

(c) A custodian, receiver, liquidator or trustee of FMPA or of all or substantially all of the property of either, is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or FMPA makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or FMPA is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against FMPA; or all or substantially all of the material property of either is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against FMPA under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing.

(d) FMPA files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of FMPA or all or substantially all of the property of either.

Section 13.2. Events of Default by Winter Park.

Any one or more of the following shall constitute an "Event of Default" hereunder with respect to Winter Park:

(a) Winter Park shall fail to pay any amounts to be paid by Winter Park hereunder to FMPA and such failure shall continue for a period of more than ten (10) days after notice by FMPA.

(b) Default shall occur in the performance of any material covenant or condition to be performed by Winter Park hereunder (other than a default specified in Section 13.2(a), which shall be subject to the ten (10) day cure period specified therein) and such default shall continue unremedied for a period of thirty (30) days after notice from FMPA specifying the nature of such default; provided, however, that if such default cannot reasonably be remedied by Winter Park within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, Winter Park shall have up to additional ninety (90) days to remedy the default.

Section 13.3. Remedies.

The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

(a) Upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right to (i) invoice and collect all amounts then due to it from the defaulting Party hereunder (subject to any applicable limitation of liability or cap on damages), and (ii) terminate this Agreement at any time during the continuation of such Event of Default upon written notice to the defaulting Party. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default and for so long as the Event of Default is continuing and has not been cured, the non-defaulting Party shall have the right, upon written notice to the defaulting Party, to suspend all performance under this Agreement until such Event of Default has been cured. In addition, if FMPA is the defaulting Party, then Winter Park shall have the right in addition to its other rights and remedies, but not the obligations, during the continuation of such default and prior to any termination of this Agreement, to purchase energy and capacity, in a commercially reasonable manner considering the circumstances of such default, from third parties and have such delivered to the Delivery Point(s) in quantities sufficient to cover any shortfall in Wholesale Electric Service resulting from such default, and FMPA shall reimburse Winter Park for all costs, including both out-of-pocket and internal costs, incurred by Winter Park related to such third-party purchase in excess of the cost that Winter Park would otherwise have incurred for Wholesale Electric Service hereunder. The foregoing sentence shall not prevent Winter Park from seeking and recovering monetary damages against FMPA in the event Winter Park terminates this Agreement due to FMPA's breach of this Agreement, including without limitation, similar damages as specified above. If Winter Park is the defaulting Party and, by reason of Winter Park's default, FMPA is not receiving all or a portion of the payments in accordance with the terms hereof, then FMPA shall have the right, but not the obligation, during the continuation of such default and prior to any termination of this Agreement to discontinue Wholesale Electric Service to Winter Park upon five (5) days prior notice of such intent.

(b) In addition to the remedies set forth in Section 13.3(a), either Party may pursue against the other Party any legal rights and remedies made available under Florida Law.

ARTICLE 14
LIMITATION OF LIABILITY

Section 14.1. No Consequential Damages.

NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COST OF CAPITAL; LOSS OF USE, LOSS OF GOODWILL, REPLACEMENT POWER OR CLAIMS OF CUSTOMERS, UNLESS SUCH DAMAGES ARE A COMPONENT OR ELEMENT OF A CLAIM THAT IS SUBJECT TO INDEMNIFICATION HEREUNDER AND COVERED UNDER A PRIMARY POLICY OF LIABILITY INSURANCE, IF ANY ISSUED BY A THIRD PARTY SURETY.

ARTICLE 15
INDEMNIFICATION

Section 15.1. Indemnification by FMPA.

To the extent permitted by Florida law and subject to the limitations set out in Article 13, and subject to and as limited by the waiver of sovereign immunity recovery limits provided for in section 768.28(5), Florida Statutes regardless of the type or basis of the claim, FMPA shall indemnify, defend and hold harmless Winter Park and its respective officials, officers, directors, agents, representatives and employees from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

- (a) any willful misconduct or illegal acts of FMPA;
- (b) any damages awarded against Winter Park in a Claim by a third party to the extent arising from the negligence acts or omissions of FMPA or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Effective Date.

Section 15.2. Indemnification by Winter Park.

To the extent permitted by Florida law and subject to the limitations set out in Article 13, and subject to and as limited by the waiver of sovereign immunity recovery limits provided for in section 768.28(5), Florida Statutes regardless of the type or basis of the claim, Winter Park shall indemnify, defend and hold harmless FMPA, its officers, directors, agents, employees and Affiliates from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

- (a) any willful misconduct or illegal acts of Winter Park;

(b) any damages awarded against FMPA in a Claim by a third party to the extent arising from the negligent acts or omissions of Winter Park or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Effective Date.

ARTICLE 16 DISPUTE RESOLUTION

Section 16.1. Resolution by Officers of the Parties.

Except as otherwise expressly, specifically set forth herein, in the event of any dispute between the Parties as to a matter referred to herein or as to the interpretation of any part of this Agreement, including this Section 16.1 or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement or as to the calculation of any amounts payable under this Agreement, the Parties shall refer the matter to their respective duly authorized representatives, for resolution. Should such representatives of the respective Parties fail to resolve the dispute within twenty (20) days from such referral, the Parties agree that any such dispute shall be first referred to non-binding mediation in accordance with Section 16.2. Should mediation be unsuccessful within the time specified in Section 16.2, the Parties may pursue any legal or equitable remedies available under Florida law.

Section 16.2. Mediation Procedures.

A Party submitting a dispute to non-binding mediation pursuant to the procedures set forth in Florida Statutes, Section 44.101 (the “Requesting Party”) shall do so by delivering to the other Party a notice demanding or requesting, as the case may be, mediation of the dispute and naming three acceptable mediators. Within ten (10) days after the receipt of the notice from the Requesting Party, the other Party shall, in writing, serve upon the Requesting Party a notice of acceptance of one of the three mediators provided or offer three alternate mediators for consideration. Within five (5) days, the Parties shall confer and mutually agree and appoint a mediator from the lists provided. To the extent practicable, the mediator shall have special competence and experience with respect to the subject matter of the dispute(s). No mediator appointed shall have the power to render any binding or enforceable award, order, decree or disposition or amend or add to this Agreement. Within ten (10) days after the mediator is appointed, a time and date for the mediation shall be scheduled and documented in writing. The mediator thereupon shall proceed promptly to hear and facilitate an amiable resolution of the controversy. If mediation is successful, any settlement achieved through mediation shall be confidential to the extent permissible under Florida law and not in violation of Chapter 119, Florida Statutes, and made in writing and in duplicate, and one copy shall be delivered to each of the Parties. Each Party shall pay the costs of its own counsel and share equally the fee and cost of the mediator.

Section 16.3 Settlement.

If the resolution of the dispute and the terms of any settlement agreement, amendment to the Agreement or other document or instrument executed in connection therewith will require the approval of the governing board of a Party, a request for such approval shall be promptly submitted for the governing board’s consideration. Once accepted by the Parties, the decision of mediator

and any award made hereunder shall be binding upon each Party and the successors and assigns and any trustee or receiver of each Party.

Section 16.4. Legal Remedies.

If mediation is unsuccessful, either Party may pursue any legal rights and remedies made available under Florida Law. The Parties agree that the exclusive venue for any dispute arising hereunder that is not resolved through the dispute resolution procedures set forth in Section 16.1 and 16.2 shall be the appropriate federal, state, or county court located in Orange County Florida.

Section 16.5. Continued Performance.

Except to the extent a Party has the right to suspend performance under Section 13.3 hereof, no dispute shall interfere with the Parties' continued fulfillment of their obligations under this Agreement pending the outcome of the mediation process or a decision by the Florida courts.

**ARTICLE 17
FORCE MAJEURE**

Section 17.1. Force Majeure Standard.

A Party shall be excused from performing its obligations under this Agreement and shall not be liable in damages or otherwise, if and only to the extent that it is unable to so perform or is prevented from performing by an event of Force Majeure.

Section 17.2. Force Majeure Definition.

An event of "Force Majeure" means an event of circumstance that prevents or unduly frustrates the performance by a Party of its obligations under this Agreement (other than the duty to make payments when due, which shall not be excused by Force Majeure) which is not within the reasonable control of, or the result of the negligence of, such Party and which by the exercise of due diligence such Party is unable to overcome or avoid. Force Majeure includes, without limitation, hurricanes, tornadoes, flood, lightning, drought, earthquake, fire, explosion, terrorist attack, civil disturbance, strikes, acts of God, acts of the public enemy, orders, directives (including the state security coordinator), restraints and requirements of the government and governmental agencies, either federal, state or local, civil or military, or any other cause beyond a Party's control. Force Majeure shall not include (i) events affecting the cost of operating any generating facility, (ii) changes in market conditions which cause the price of energy or capacity to fluctuate including without limitation, weather, fuel prices and supply and demand, or (iii) the inability of a Party to make a profit or avoid a loss in performing its obligations under this Agreement.

Section 17.3. Obligation to Diligently Cure Force Majeure.

If a Party shall rely on the occurrence of an event of Force Majeure as a basis for being excused from performance of its obligations under this Agreement, then such Party shall:

(a) Provide written notice to the other Party promptly but in no event later than three (3) days after the occurrence of the event or condition giving an estimate of the expected duration and the probable impact on the performance of its obligations hereunder;

(b) Exercise all reasonable efforts to continue to perform its obligations hereunder;

(c) Expeditiously take reasonable action to correct or cure the event or condition excusing performance, provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of the affected Party; and

(d) Exercise all reasonable efforts to mitigate or limit damages to the other Party. FMPA's reasonable efforts to mitigate or limit damage to Winter Park upon the occurrence of a Force Majeure impacting FMPA's power generation and transmission systems includes a diligent effort to purchase on the open market from other power generators and deliver electricity to Winter Park at the Delivery Point(s), the costs of which shall be shared on a pro rata basis among Winter Park and FMPA's Firm Load.

ARTICLE 18 MISCELLANEOUS

Section 18.1. Assignment; Successors and Assigns.

This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the Parties, including any successor to any Party by consolidation, merger, or acquisition of all or substantially all of the assets of such Party. No assignment by any Party (or any successor or assignee thereof) of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained (which in the case of an assignment by FMPA shall include approval by the City Commission of Winter Park), which consent shall not be unreasonably withheld, conditioned or delayed. Any assignments by any Party shall be in such form as to ensure that such Party's obligations under this Agreement will be assumed, accepted and honored fully and timely by any transferee, assignee or successor party.

Section 18.2. Notices.

With the exception of communications within the ordinary course of the day to day performance and administration of this Agreement, all notices, requests and other communications hereunder (herein collectively a "notice" or "notices") shall be deemed to have been duly delivered, given or made to or upon any Party if in writing and delivered by hand against receipt, or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next business day delivery or sent by telecopy (with confirmation by return telecopy) to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 18.2.

IF TO FMPA:

Business Development and Planning Manager
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819
Tel. 407-355-7767
Email: chris.gowder@fmpa.com

With required copy to:

Office of the General Counsel
Florida Municipal Power Agency
2061-2 Delta Way
Tallahassee, FL 32303-4240
P.O. Box 3209
Tel. 850-297-2011
Fax. 850-297-2012
Email: jody.finklea@fmpa.com
dan.ohagan@fmpa.com

IF TO WINTER PARK:

City of Winter Park
Attn: City Manager
401 South Park Avenue
Winter Park, Florida 32789
Tel: (407) 599-3235
Email: city_manager@cityofwinterpark.org

The date of delivery of any such notice, request or other communication shall be the earlier of (i) the date of actual receipt or (ii) three (3) business days after such notice, request or other communication is sent by certified or registered mail, (iii) if sent by courier who guarantees next business day delivery, the business day next following the day such notice, request or other communication is actually delivered to the courier or (iv) the day actually telecopied (with confirmation by return telecopy if on a business day, and if not, then the first business day thereafter).

Section 18.3. Governing Law.

The rights and obligations of the Parties shall be construed and interpreted in accordance with the substantive law of the State of Florida without giving effect to its principles for choice of law.

Section 18.4. Confidentiality.

Each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's Affiliates) or use for any purpose other than the performance, administration, management and enforcement of this Agreement (except with the written authorization of the other Party), any information received from the other that is designated as confidential or proprietary by the other Party unless legally compelled by the Florida Sunshine Law (Chapter 119, Florida Statutes) disclosure requirements, deposition, inquiry, request for documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction or in order to comply with applicable rules or requirements of any government department or agency or other regulatory authority, or other legal requirement or as necessary to enforce the terms of this Agreement. This Section 18.4 shall survive the termination of this Agreement for a period of two (2) years. If any Party is compelled to disclose any confidential information of the other Party that is exempt from the disclosure requirements of the Florida Sunshine Law, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party, at such other Party's costs and expense, to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resist or narrow the scope of any required disclosure. The Parties shall reasonably coordinate in the preparation and issuance of all publicity relating to this Agreement.

Section 18.5. No Partnership.

Nothing contained in this Agreement shall be construed to create a partnership, joint venture or other legal relationship that may invoke fiduciary obligations between the Parties.

Section 18.6. Captions.

The captions to sections throughout this Agreement and attachments and appendices hereto are intended solely for ease of reference and to facilitate reading and reference to all sections and provisions of this Agreement and such attachments and appendices. Such captions shall not affect the meaning or interpretation of this Agreement or such attachment or appendices.

Section 18.7. Entire Agreement and Amendments.

This Agreement and all of the attachments and appendices referred to herein sets forth the entire agreement of the Parties with respect to the subject matter herein and takes precedence over all prior discussions or understandings. This Agreement may not be amended, modified or changed except by an agreement in writing signed by the Parties.

Section 18.8. Severability.

The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced to the minimum extent necessary to conform such provision to Applicable Law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein. If necessary to preserve the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

Section 18.9 Further Assurances.

In connection with this Agreement and the transactions contemplated hereby, upon the request of either Party the other Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provision of this Agreement and such transactions and the intention of the Parties.

Section 18.10 Laws and Regulations.

(a) This Agreement and the rights, obligations, and performances of the Parties under this Agreement are subject to all applicable state and federal laws, and to all duly promulgated orders and other duly authorized actions of governmental authorities having jurisdiction (“Applicable Laws”). Each Party hereto shall be responsible for taking all necessary actions to satisfy any regulatory and other requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such Party hereunder.

(b) If FMPA's activities hereunder become subject to or affected by a change in Applicable Law that is promulgated after the Effective Date of this Agreement and that results in any additional or new costs, expenses, charges, fees and/or assessments that are attributable or related (in whole or in part) to the production and/or provision of Wholesale Electric Service, including environmental-related costs, renewable portfolio standards (only if applicable to wholesale contracts), tax adjustments, charges, fees, or expenses incurred by FMPA to supply the Wholesale Electric Service and such costs, whether incurred as part of a voluntary or compulsory measure, are to be recovered through FMPA's wholesale electric rates (“Change in Law Costs”), FMPA shall as promptly as reasonably practicable after becoming aware of the Change in Law Costs notify in writing Winter Park of such change in Applicable Law and shall meet in person or via teleconference to discuss such Change in Law Costs. If the Change in Law Costs for any change in Applicable Law exceeds \$2/MWh, the Parties shall negotiate in good faith to restructure the Charges set forth in this Agreement in a manner intended to place the Parties in the same position as if the change in Applicable Law had not occurred. If the Parties are unable to reach

agreement on a mutually acceptable restructuring within sixty (60) days after Winter Park's receipt of FMPA's written notice of the change in Applicable Law in excess of \$2/MWh, the Charges shall automatically be amended to reflect the Change in Law Costs as of date those Change in Law Costs take effect, and:

(1) Winter Park shall have the right to:

- (i) during the first one-hundred and fifty (150) days following the sixty (60) day negotiation period, upon written notice to FMPA, terminate this Agreement as of the date specified in such notice; or
- (ii) after the first one-hundred and fifty (150) days following the sixty (60) day negotiation period, upon thirty (30) days prior written notice to FMPA at any time during the remainder of the Term, terminate this Agreement as of the date specified in such notice.

(2) FMPA shall have the right, upon no less than one-hundred and fifty (150) days' prior written notice to Winter Park, to terminate this Agreement as of the date specified in such notice, provided such written notice is delivered by FMPA to Winter Park within ten (10) days from the end of the aforesaid sixty (60) day good faith negotiating period

(c) If neither Party timely terminates this Agreement in accordance with the Section 18.10(b)(1) or Section 18.10(b)(2) above, this Agreement shall continue until the expiration of the Partial Requirements Product Term with the amended Charges reflecting the Change in law Costs.

(d) Any termination under this Section 18.10 shall be without any further liability or obligations owing between the Parties except concerning liabilities and obligations incurred up until the effective date of termination.

Section 18.11. Counterparts.

This Agreement and any amendment or modification hereto may be executed simultaneously in two or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement or instrument.

Section 18.12. Interpretation.

In the event of any dispute concerning the construction or interpretation of this Agreement or any ambiguity hereof, there shall be no presumption that this Agreement or any provision hereof be construed against the Party who drafted this Agreement. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa; the term “includes” or “including” shall mean including, without

limitation; references to an Article, Section, Appendix or Schedule shall mean an Article, Section, Appendix or Schedule of this Agreement; and the terms “hereof”, “herein”, “hereto”, “hereunder”, and “herewith” refer to this Agreement as a whole. Reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated through the date as of which such reference is made.

Section 18.13. Independent Relationship.

Unless specifically and expressly set forth herein to contrary, nothing in this Agreement shall be construed or interpreted to make a Party of its employees or agents, the agent, representative or employees of the other Party.

Section 18.14. No Third-Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any third party hereto, except designated indemnitees and permitted assignees and successors.

Section 18.15. Waivers.

The failure of a Party hereto to exercise any right or remedy or enforce at any time any provision of this Agreement shall not be construed to be a waiver of such right, remedy or provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to exercise such right or remedy or enforce each and every such provision. In order to be enforceable, a waiver under this Agreement must be in writing, state that it is a waiver and be signed by an authorized representative of the Party to be bound thereby. Any waiver shall be subject to the terms, conditions and limitations thereof, and no waiver of any breach, default or non-performance of this Agreement shall be held to constitute a waiver of any other or subsequent breach, default or non-performance of this Agreement.

Section 18.16. Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts consistent with Prudent Utility Practice to minimize any damages it may incur as a result of any other Party’s breach, default or non-performance of this Agreement.

Section 18.17. All-Requirements Project Responsibility.

For FMPA, this Agreement is a liability and obligation of the All-Requirements Power Supply Project only. No FMPA liability or obligation under this Agreement inures to or binds any of the funds, accounts, monies, property, instruments, or rights of the Florida Municipal Power Agency generally or any of any other "project" of FMPA as that term is defined in the Interlocal Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE(S) FOLLOW]

IN WITNESS WHEREOF, and intending to be legal bound hereby, the Parties have caused this Agreement for Purchase and Sale of Electric Energy and Capacity to be duly executed as an instrument under seal by their respective duly authorized representatives as of the date and year first above written.

**FLORIDA MUNICIPAL POWER AGENCY
(ALL-REQUIREMENTS POWER SUPPLY PROJECT)**

By: _____

Jacob Williams, General Manager and CEO

CITY OF WINTER PARK

By: _____

Steve Leary, Mayor

Attest: _____

Cynthia Bonham, City Clerk

**APPENDIX A
PRICING FOR WHOLESALE ELECTRIC SERVICE**

A. Baseload Product Pricing

- 1. Capacity Charge:** [REDACTED]/MW-month

The monthly billing determinant is 10 MW.

- 2. Non-Fuel Energy Charge:** [REDACTED]/MWh

The billing determinant is 10 MW times the number of hours in the billing month.

- 3. Fuel Energy Charge:** [REDACTED] MMBtu/MWh x Gas Index*

The billing determinant is 10 MW times the number of hours in the billing month.

*Gas Index: [REDACTED]

B. Partial Requirements Product Pricing

- 1. Capacity Charge:**

The billing determinant is the highest metered energy amount, integrated over an hour and grossed up for DEF transmission losses using DEF's published real power loss factor, provided during any one hour of the billing month as measured at the Metering Point(s) (not including Winter Park's distribution interconnection points with OUC), less the actual energy delivered by the Covanta Energy Purchase and Solar Purchases during the same hour.

Year	\$/MW-month
2020	█
2021	█
2022	█
2023	█
2024	█
2025	█
2026	█
2027	█

2. Non-Fuel Energy Charge: █/MWh

The billing determinant is the total metered energy for the billing month as measured at the Metering Point(s) (not including Winter Park's distribution interconnection points with OUC), plus the Loss Schedule, less the actual energy delivered by the Covanta Energy Purchase and Solar Purchases during the same month.

3. Fuel Energy Charge: █ MMBtu/MWh x Gas Index*

The billing determinant is the total metered energy for the billing month as measured at the Metering Point(s) (not including Winter Park's distribution interconnection points with OUC), plus the Loss Schedule, less the actual energy delivered by the Covanta Energy Purchase and Solar Purchases during the same month.

*Gas Index: █

APPENDIX B
FORM OF INVOICE



FMPA Invoice Date M/DD/YYYY

City of Winter Park
Sample Invoice
For the Month Of
MMM, YYYY

Total Amount Due for MMM Invoice	\$000,000
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Capacity Charge	Billing Demand Monthly Peak (kW)	Rate (\$/kW-mo)	Total Charge
	00,000	\$ [REDACTED]	\$00,000
Total Capacity Charge			\$00,000

Energy Charges	Billing Energy (kWh)	Rate (\$/kWh)	Total Charge
Non-Fuel Energy Charge	0,000	\$ [REDACTED]	\$00,000
Fuel Energy Charge	0,000	\$ [REDACTED]	\$000,000
Total Energy Charges			\$000,000

Prior Period Adjustments (if applicable)	\$ -
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Other Charges (if any)	\$ -
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Total Charges for this Billing Month	\$000,000
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<u>Amounts Outstanding</u> (Details on Page 2, if applicable)	
Total Amounts Due on Unpaid Balance	\$0

Supporting information is included as an Attachment, as applicable.

Payment due on	mm/dd/yyyy	Invoice No. - 123456
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AGENDA ITEM 9 – INFORMATION ITEMS

a) None

**Executive Committee
November 15, 2018**

AGENDA ITEM 10 – OTHER INFORMATION

- a) FYI – Invoice Summary Report from Spiegel and McDiarmid**

**Executive Committee
November 15, 2018**



AGENDA PACKAGE MEMORANDUM

TO: FMPA Executive Committee
FROM: Accounting Department
DATE: November 6, 2018
ITEM: EC 10(a) – Invoice Summary Report of Spiegel & McDiarmid for October 2018.

- Introduction
- Historically, the paid invoices for Spiegel & McDiarmid were included in the Agenda packages for review at the request of the members. At the July 30, 2002 FMPA Executive Committee Meeting at the Breakers Hotel in Palm Beach, Florida, it was requested that a summary be developed and used in the Agenda package.
 - At the December 12, 2003 FMPA Executive Committee and Board Meeting it was requested that a brief description of the invoice charges be included in this summary.
 - The following summary schedule is the result of those requests.

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Description</u>	<u>Amount Paid</u>
210211689	September 18, 2018	PEF Transmission	\$ 5,138.19
		Ft. Pierce/Vero Beach	2,918.96
		Jacksonville Beach	5,277.82
		FPL Transmission	6,550.53
TOTAL PAID			\$ 19,885.50

AGENDA ITEM 11 – Member Comments

**Executive Committee
November 15, 2018**

AGENDA ITEM 12– ADJOURNMENT

**Executive Committee
November 15, 2018**