



## **FMPA BOARD OF DIRECTORS AGENDA PACKAGE**

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**December 12, 2019**

**9:00 a.m. [NOTE TIME]**

**Dial-in Info 877-668-4493 or 650-479-3208**

**Meeting Number 730 030 316#**

**PASSWORD - 8553**

### **Board of Directors**

Barbara Quiñones, Homestead –Chair  
Lynne Tejeda, Key West – Vice Chair  
Larry Mattern, Kissimmee – Secretary  
Allen Putnam, Jacksonville Beach – Treasurer  
Rodolfo Valladares, Alachua  
Bradley Hiers, Bartow  
Vacant, Blountstown  
Jody Young, Bushnell  
Robert Presnell, Chattahoochee  
Lynne Mila, Clewiston  
Fred Hilliard, Fort Meade  
John Tompeck, Fort Pierce  
Tom Brown, Gainesville  
Robert Page, Green Cove Springs  
Howard McKinnon, Havana  
Ed Liberty, Lake Worth Beach

Michael Beckham, Lakeland  
Brad Chase, Leesburg  
Vacant, Moore Haven  
Steve Langley, Mount Dora  
Bill Conrad, Newberry  
Joe Bunch, New Smyrna Beach  
Sandra Wilson, Ocala  
Claston Sunanon, Orlando  
Vacant, Quincy  
Bill Sturgeon, St. Cloud  
Robert Milner, Starke  
Rob McGarrah, Tallahassee  
James Braddock, Wauchula  
Scott Lippmann, Williston  
Dan D'Alessandro, Winter Park

### **Meeting Location**

**Florida Municipal Power Agency  
8553 Commodity Circle  
Orlando, FL 32819  
(407) 355-7767**



# MEMORANDUM

**TO:** FMPA Board of Directors  
**FROM:** Jacob A. Williams, General Manager and CEO  
**DATE:** December 3, 2019  
**RE:** **FMPA Board of Directors Meeting – 9:00 a.m., December 12, 2019 [NOTE TIME]**  
**PLACE:** Florida Municipal Power Agency  
8553 Commodity Circle, Orlando, FL 32819  
**DIAL-IN:** **DIAL-IN INFO 877-668-4493 or 650-479-3208, Meeting Number 730 030 316#  
PASSWORD - 8553**  
(If you have trouble connecting via phone or internet, call 407-355-7767)

## AGENDA

**Chairperson Barbara Quiñones, Presiding**

1. **Call to Order, Roll Call, Declaration of Quorum** ..... 4
2. **Recognition of Guests**..... 5
3. **Public Comments (Individual public comments limited to 3 minutes)**..... 6
4. **Set Agenda (by vote)** ..... 7
5. **Report from the General Manager (Jacob Williams)**..... 9
6. **Sunshine Law Update (Dan O'Hagan)**..... 19
7. **Consent Agenda**
  - a. **Approval of the Minutes for the Meeting Held October 17, 2019** ..... 21
  - b. **Approval of the Projects' Preliminary Financials as of September 30, 2019 and October 31, 2019**..... 27
  - c. **Approval of the Treasury Reports as of September 30, 2019 and October 31, 2019** ..... 29
  - d. **Acceptance of the Annual Report of Late Fees Payments** ..... 36

## 8. Action Items

- a. Approval of FY 2020 Management Goals \* (Jacob Williams)..... 40
- b. Approval of Board of Directors Meeting Schedule for Calendar Year 2020 \*  
(Jacob Williams) ..... 43
- c. Approval of Resolution 2019-B12 Establishing the Solar II Project \* (Susan  
Schumann) ..... 46
- d. Approval of the St. Lucie Audit Report (Liyuan Woerner) ..... 181
- e. Approval of Selection of Bond Counsel \* (Linda S. Howard)..... 199

## 9. Information Items

- a. Guidelines for a Significant Amount of Staff Time for an Individual Member  
Project (Mark McCain)..... 207
- b. FY 2019 Preliminary Financial Results \* (Danyel Sullivan-Marrero)..... 222
- c. Summary of Finance Committee Items \* (Linda S. Howard) ..... 234
- d. Solar Phase I Poinsett PPA Revisions \* (Chris Gowder)..... 238
- e. Parliamentary Procedure to Suspend the Rules for Reading Resolution Titles \*  
(Jody L. Finklea) ..... 353

10. Member Comments..... 359

11. Adjournment..... 360

**\*Also on the Executive Committee agenda.**

JW/su

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**

**Board of Directors Meeting  
December 12, 2019**

**AGENDA ITEM 2 – RECOGNITION OF  
GUESTS**

**Board of Directors Meeting  
December 12, 2019**

**AGENDA ITEM 3 – PUBLIC  
COMMENTS (Individual Public  
Comments Limited to 3 Minutes)**

**Board of Directors Meeting  
December 12, 2019**

**AGENDA ITEM 4 – SET AGENDA (By  
Vote)**

**Board of Directors Meeting  
December 12, 2019**

**AGENDA ITEM 5 – REPORT FROM  
THE GENERAL MANAGER**

**Board of Directors Meeting  
December 12, 2019**

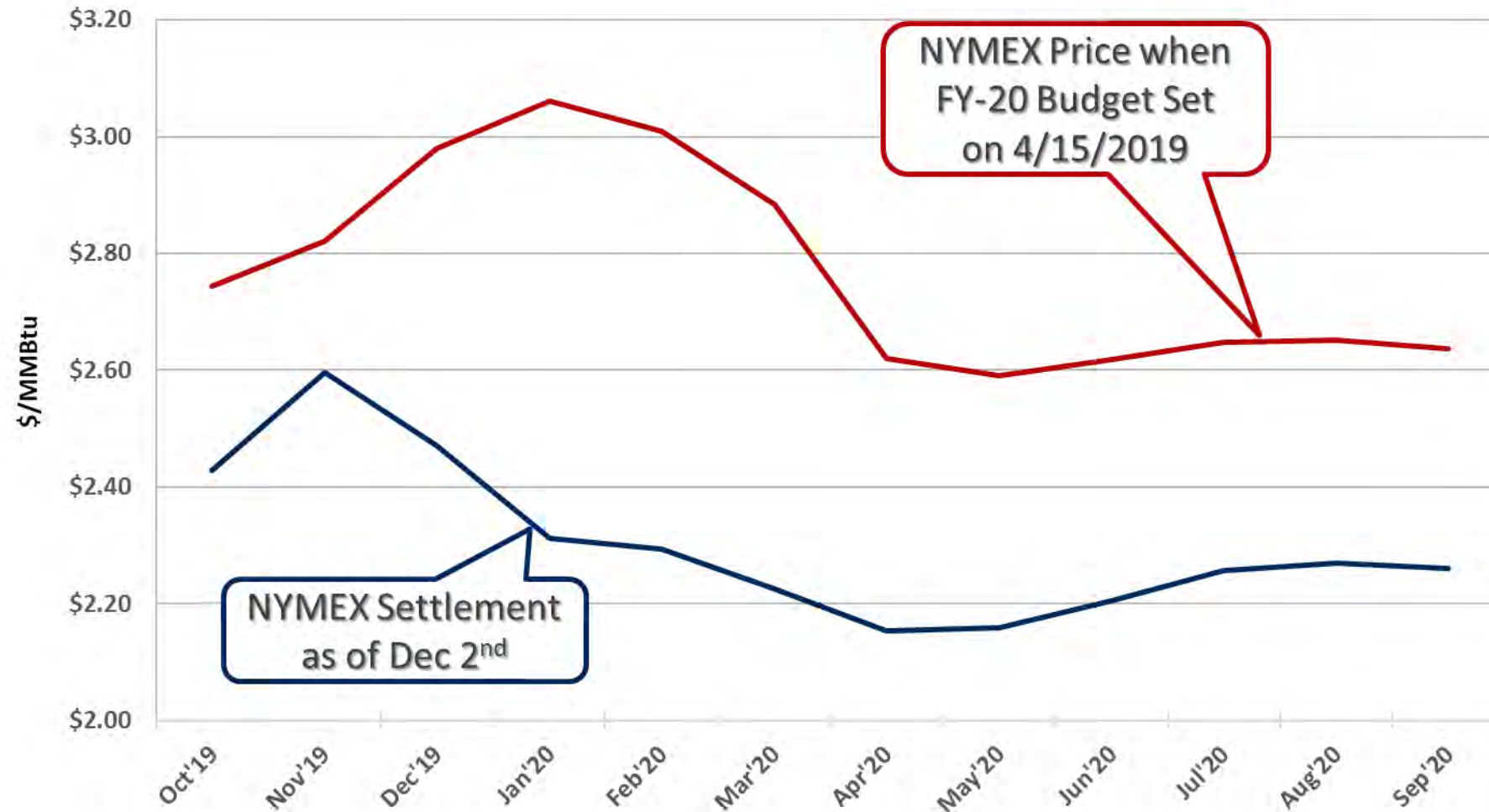


# Fiscal 2020 Management Goals Scorecard, as of November 30, 2019

Goal		Status	Actual	YTD Actual	YTD Target	FY'20 Target	Comment
1. <b>Safety</b> (no lost-time accidents for employees/agents)			0	0	0	0	Zero lost time accidents.
2. <b>Compliance</b> (no violations that are not self-reported)	Environ.		0	0	0	0	
	Financial		0	0	0	0	
	Regulatory		0	0	0	0	
3. <b>Cyber Security</b> (zero cyber breaches: Corp IT & Plant Ops)			0	0	0	0	
Members APPA Scorecard			1	1	2	12	
Phishing Testing			2.9%	10.1%	5% or <	5% or <	Oct - 12 People Clicked, Budget Report Email; Nov - 2 people clicked, Vacation Payout Email
4. <b>Low Costs</b> (\$/MWh)	Non-Fuel		\$39.75	\$39.75	\$49.00	\$48.55	Data through October. MWh sales 13% > budget primary driver of 16% all-in costs < target, with additional significant drivers from gas costs 17% < budget, A&G-related costs 52% < budget
	Fuels		\$22.70	\$22.70	\$24.98	\$24.09	
	All-in		\$62.45	\$62.45	\$73.98	\$72.64	
5. Reliability	CC EAF		99%	99%	98%	88%	99% reliability for all base load units in October. SI CT3 in forced outage. Less forced outage hours than expected YTD. 5 cities have met SAIDI target.
	KWS Blk Start		0	0	100%	100%	
	SAIDI Reduction		5	5	7 @ 15%	7 @ 15%	

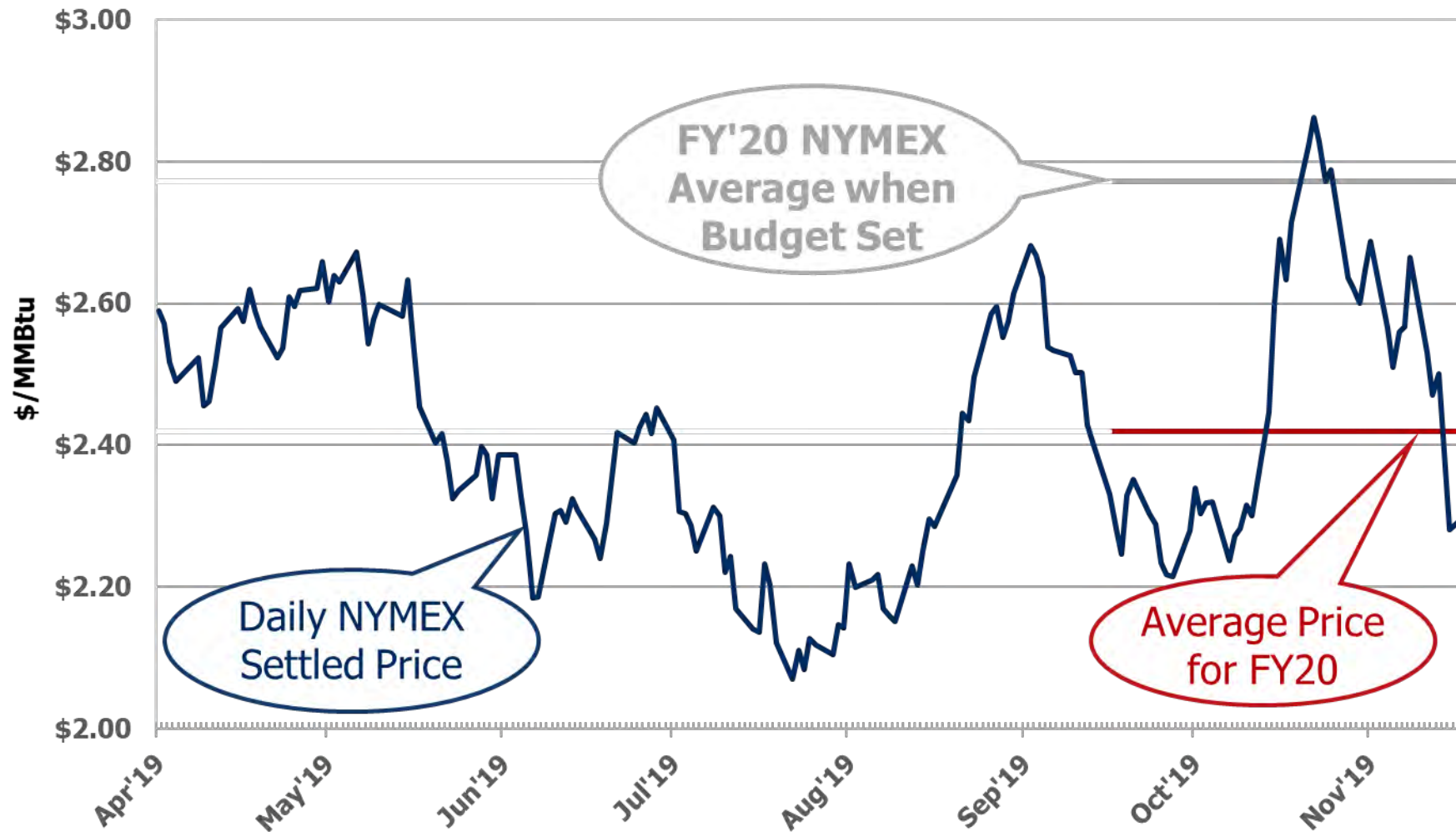
# FY 2020 NYMEX Contract \$0.47/MMBtu Below Budget

*NYMEX Natural Gas Settlement (as of 12/02/19)*



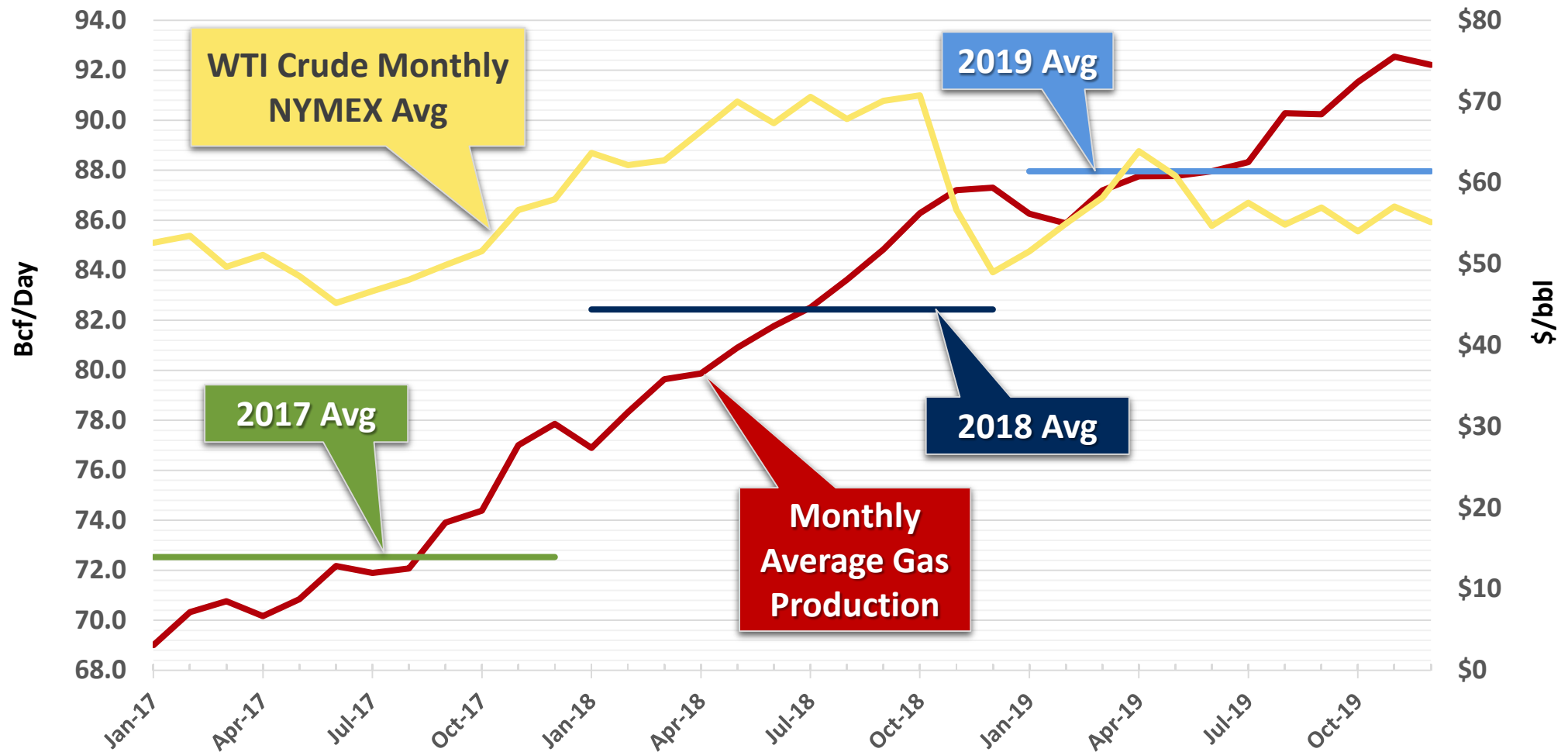
# Daily NYMEX Strip Action for since FY19 Budget Set

*Daily Settled Price \$0.35 Below Budget as of Dec 2<sup>nd</sup> Settlement*



# Natural Gas Production Following Changes in Oil Prices

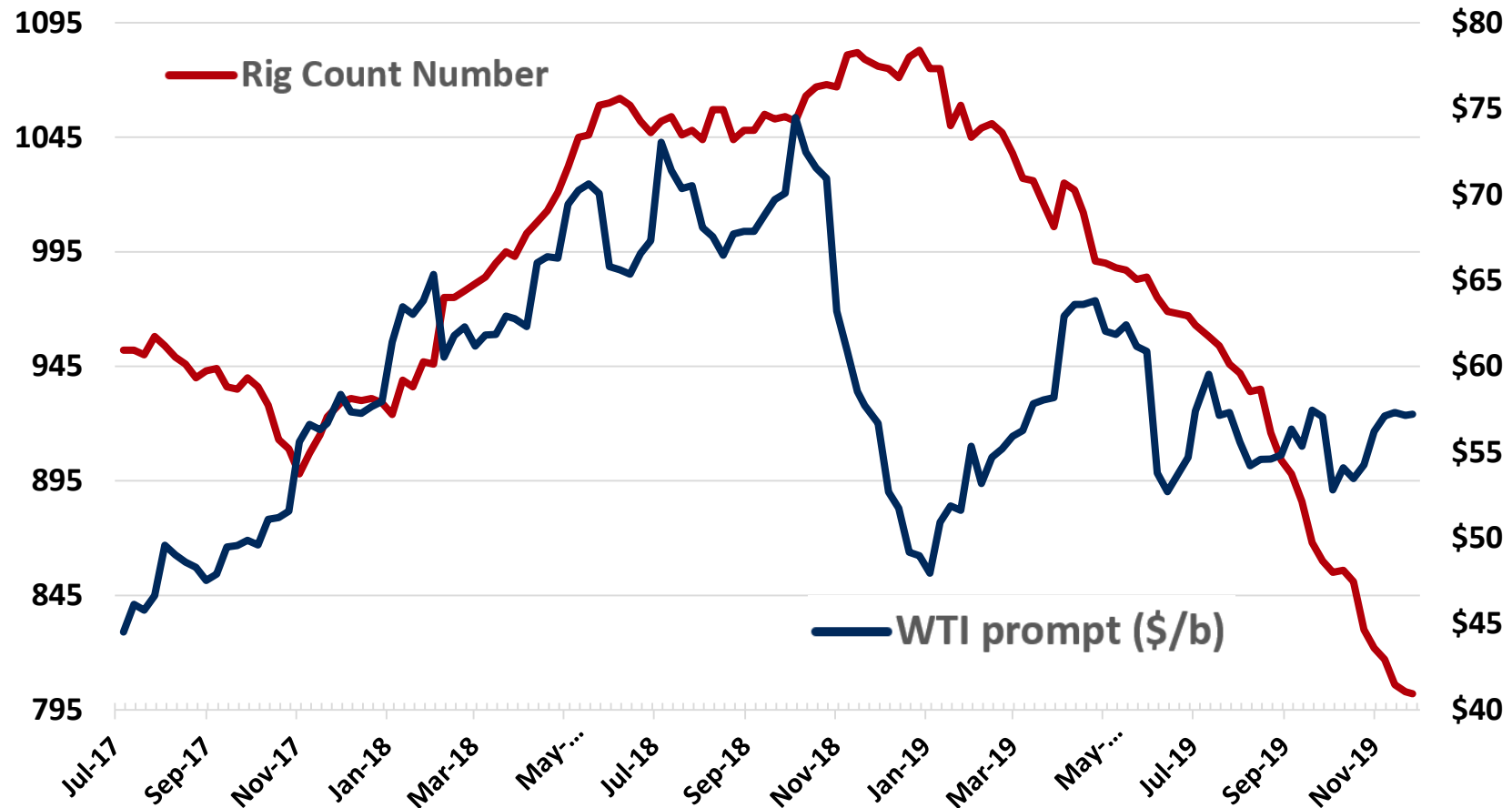
*Average Monthly Change Since 2017 to Date (12/02/19)*



# Drilling Rig Count Continues Decline with Oil Price Decline

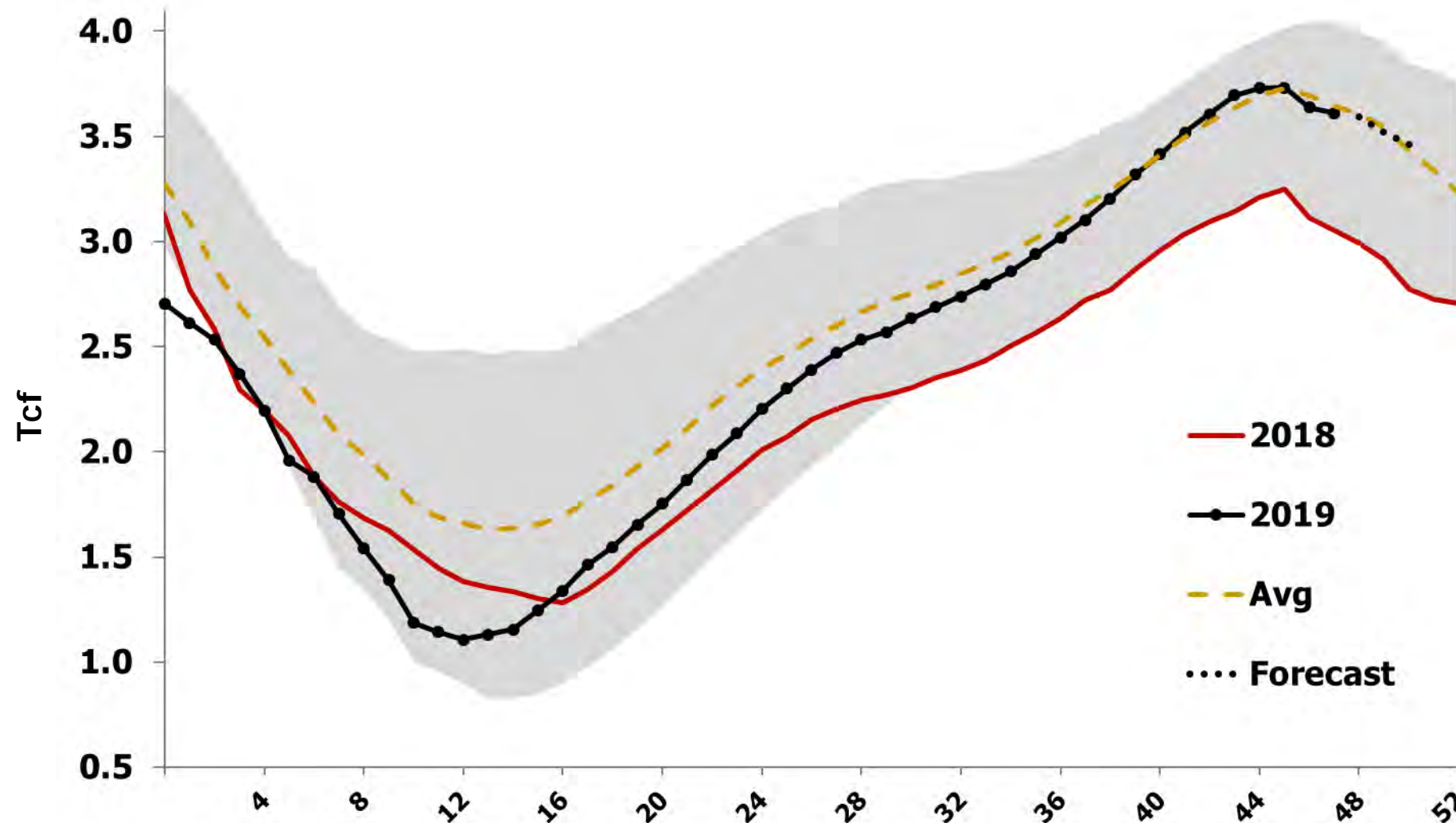
*Drilling Rig Expansion impacted by the changes in WTI Price (as of Dec 2<sup>nd</sup>)*

**US Drilling Rig Count vs WTI Prompt**



# Gas Storage Inventory as of Week Ending November 22<sup>nd</sup>

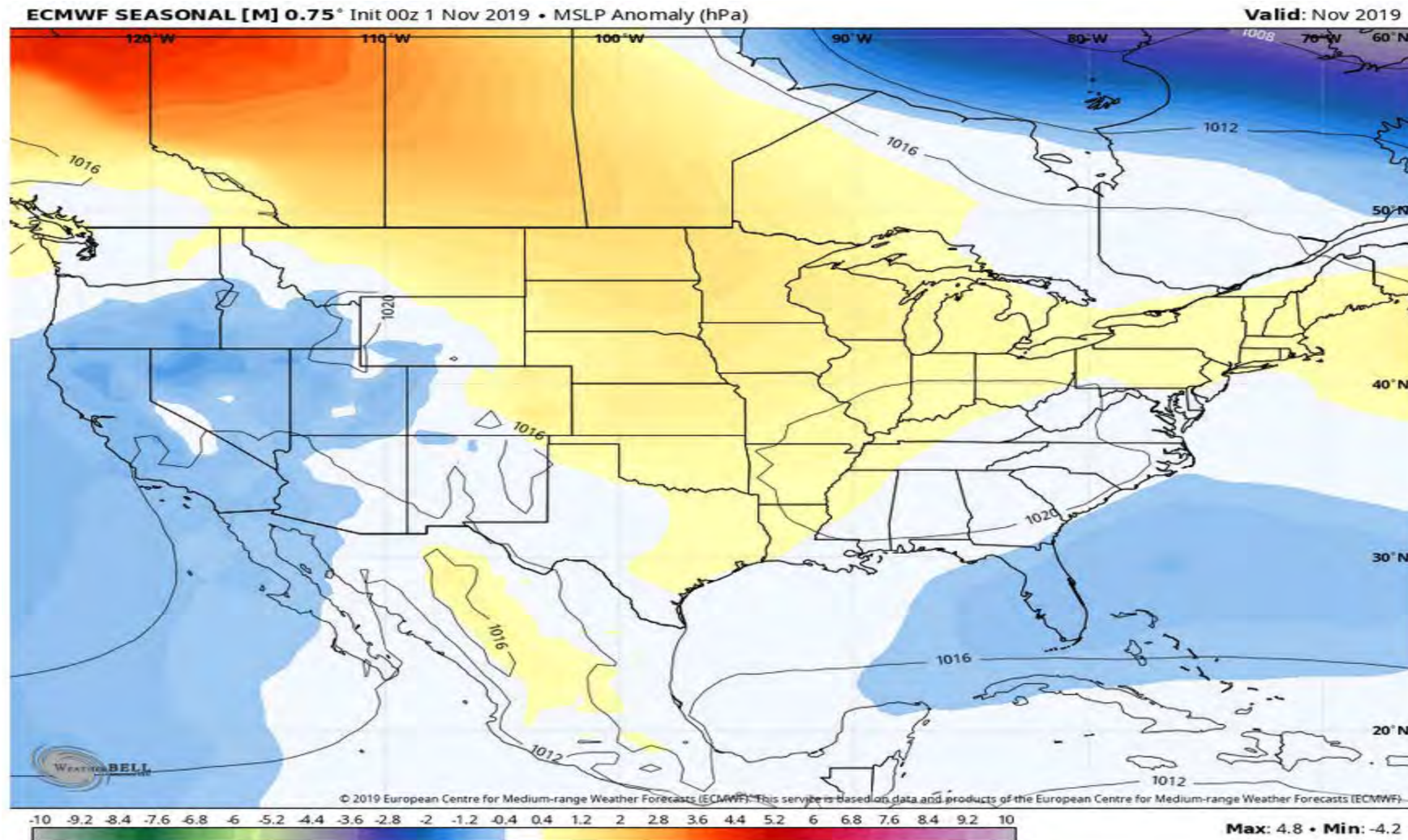
*Withdrawal Season following the 5 Year Average*





# Winter Season (November-March) Temperature Projection

## *Major Population Gas Consuming Regions Above Normal*



# Fixed Price Nat Gas Transactions Comparison to Alternatives

The fixed price natural transactions were physical purchases reflective of delivery at the FGT Zone 3 Location

	①	②	③	④	⑤	⑥
	Month	Daily Volume Mmbtu/Day	Budget Price \$/Mmbtu	Secured Fixed Price \$/Mmbtu	FOM* Benchmark \$/Mmbtu	Difference vs. FOM Benchmark \$ Dollars for month**
<b>Comparison of Secured Price vs. First-of- Month Index</b>	August	39,000	\$2.645	\$2.284	\$2.19	\$(113,646)
	September	47,000	\$2.630	\$2.283	\$2.30	\$ 23,970
	October	39,000	\$2.755	\$2.398	\$2.51	\$ 135,408
	November	32,000	\$2.806	\$2.507	\$2.64	\$ 127,680
	December	31,000	\$2.955	\$2.505	\$2.47***	\$ (33,635)
	<b>Net:</b>					<b>\$ 139,777</b>

	Month	Daily Volume Mmbtu/Day	Budget Price \$/Mmbtu	Secured Fixed Price \$/Mmbtu	Gas Daily Benchmark \$/Mmbtu	Difference vs. GD Benchmark \$ Dollars for month**
<b>Comparison of Secured Price vs. Gas Daily Index</b>	August	39,000	\$2.645	\$2.284	\$2.23	\$( 65,286)
	September	47,000	\$2.630	\$2.283	\$2.58	\$ 415,950
	October	39,000	\$2.755	\$2.398	\$2.35	\$( 60,450)
	November	32,000	\$2.806	\$2.507	\$2.58	\$ 73,920
	<b>Net:</b>					<b>\$364,134</b>

\* FOM: First-of-Month Published Index Price for FGT Zone 3

\*\* \$() Negative numbers represent lost opportunity, positive \$ represent securing a price below comparative index.

\*\*\* December is an estimate based on Nymex close, FOM not available at time of publication



# (Continued) Management Goals Scorecard, as of November 30, 2019

Goal		Status	Comment
6. <b>Energy/Capacity Sales</b> - Execute wholesale agrmts. with projected margin value \$3.5M for FY2020-2024			Homestead selected FMPP ARP to supply 15 MW beginning 2020 through 2026, draft contract provided for their review. TECO selected all 3 of our seasonal capacity offers, draft confirmation agreements provided for their review. Submitted ITN to Mount Dora Nov. 26.
7. <b>Enhance Pool – for future significant solar resources</b> - Hire new Exec. Dir. - Devel. practices for future needs - Devel. mkt. compensation for new products			Recruiter selected for Executive Director search. FMPP developing new policy on reserves and energy firmness. FMPP reviewing solar implications on pool. Likely needing experts from other national markets.
8. <b>Member Services</b> <b>Visits by Leadership Team (75 visits)</b>			7 visits in October, 4 visits in November – total 11 visits YTD.
<b>Member Services</b>	15 project oversight	3	Newberry DOT roadway expansion, Fort Meade Operations Peer Review, Clewiston AMI
	Assist solar subscription service - 6		In process.

# (Continued) Management Goals Scorecard, as of November 30, 2019

Goal	Status	Comment
<b>9. Promoting Value of Utilities</b> Update Member Reports – 16 Public Presentations by Members or FMPA - 10		In process.
<b>10. Solar Project</b> - Execute Phase 2 Solar Agreements - Assist Members marketing Phase 1 groundbreaking & energize Phase 1		Solar II Member approvals in progress for 13 members and 149MW. Successful Solar I Groundbreaking Ceremony Nov. 18.
<b>11. ARP New Resource Process</b> Reach agreement on desired path of Members		Workshop scheduled for Dec. 11, 2019
<b>12. People</b> - Development opportunities/cross training/Back-Up – at least 8		Identifying needs within the Agency. Back up for AP has been identified.
- FMPA Fleet Team Sharing – 80 days		Total of 1 day FYTD. FMPA staff to Treasure Coast 1 Day in October.

# **VERBAL REPORT**

## **AGENDA ITEM 6 – SUNSHINE LAW UPDATE**

**Board of Directors Meeting  
December 12, 2019**

**AGENDA ITEM 7 – CONSENT  
AGENDA**

- a. Approval of the Minutes for the  
Meeting Held October 17, 2019**

**Board of Directors Meeting  
December 12, 2019**

CLERKS DULY NOTIFIED ..... OCTOBER 8, 2019  
AGENDA PACKAGES POSTED ..... OCTOBER 8, 2019

**MINUTES**  
**FMPA BOARD OF DIRECTORS MEETING**  
**FLORIDA MUNICIPAL POWER AGENCY**  
**8553 COMMODITY CIRCLE**  
**ORLANDO, FL 32819**  
**THURSDAY, OCTOBER 17, 2019**  
**8:30 A.M.**

**MEMBERS PRESENT** Brad Hiers, Bartow (via telephone)  
Lynne Mila, Clewiston (via telephone)  
Fred Hilliard, Fort Meade  
John Tompeck, Fort Pierce  
Bob Page, Green Cove Springs  
Howard McKinnon, Havana  
Barbara Quinones, Homestead  
Allen Putnam, Jacksonville Beach  
Larry Mattern, Kissimmee  
Ed Liberty, Lake Worth (via telephone)  
Steve Langley, Mount Dora  
Bill Conrad, Newberry  
Joe Bunch, New Smyrna Beach  
Mike Poucher, Ocala \*  
Claston Sunanon, Orlando \* (via telephone)  
Robert Milner, Starke (via telephone)  
Dan D'Alessandro, Winter Park

\*joined after roll call.

**OTHERS PRESENT** Paul Jakubczak, Fort Pierce  
Karen Nelson, Jacksonville Beach  
Brian Horton, Kissimmee (via telephone)  
Kevin Crawford, Kissimmee (via telephone)  
Jim Williams, Leesburg  
Craig Dunlap, Dunlap & Associates, Inc.  
Jonathan Nunes, nFront Consulting  
Bill Herrington, WHH Enterprises  
Ivette Sanchez, Power Engineers

**STAFF PRESENT** Jacob Williams, General Manager and CEO  
Jody Finklea, General Counsel and CLO  
Ken Rutter, Chief Operating Officer  
Linda S. Howard, Chief Financial Officer  
Carol Chinn, Chief Information and Compliance Officer  
Mark McCain, Assistant General Manager, Member Services  
and Public Relations

Dan O'Hagan, Assistant General Counsel and Regulatory Compliance Counsel  
Rich Popp, Treasurer and Risk Director  
Sue Utley, Executive Asst. /Asst. Secy. to the Board  
Liyuan Woerner, Audit Manager  
Mike McCleary, Manager of Member Services Development  
Sharon Adams, Human Resources Director  
Cairo Vanegas, Manager of Member Services Development  
Chris Gowder, Business Development and Planning Manager  
Jason Wolfe, Financial Planning, Rates and Budget Director  
Ed Nunez, Assistant Treasurer/Debt  
Luis Cruz, Information Technology Manager  
Jesse Rivera, Information Technology Support Specialist  
Isabel Montoya, Information Technology Intern  
Susan Schumann, Manager of External Affairs and Solar Projects  
David Schumann, Power Generation Fleet Director

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

Chairperson Barbara Quiñones, Homestead, called the Board of Directors meeting to order at 8:30 a.m. on Thursday, September 19, 2019, in the Frederick M. Bryant Board Room at Florida Municipal Power Agency, 8553 Commodity Circle, Orlando, Florida. The roll was taken and a quorum was declared with 16 members present representing 27 votes out of a possible 47.5. Fred Hilliard, Fort Meade, arrived after Information Item 9b, bringing the number of members present to 17 representing 29 votes out of a possible 47.5.

### **ITEM 2 – Recognition of Guests**

Chairperson Quiñones welcomed Michelle Johnson, FMPA's new Manager of Regulatory Compliance and Bill Herrington of WHH Enterprises.

### **ITEM 3 – PUBLIC COMMENTS (Individual Public Comments Limited to 3 Minutes)**

None

### **ITEM 4 – SET AGENDA (by vote)**

Chairperson Barbara Quiñones said staff wanted to add Item 9e – Regulatory Compliance Update.

**MOTION:** Allen Putnam, Jacksonville Beach, moved approval of the agenda as amended to add Item 9e. Howard McKinnon, Havana, seconded the motion. Motion carried 27 – 0.

### **ITEM 5 – REPORT FROM THE GENERAL MANAGER**

Jacob Williams reported on the following items:

1. Goals Scorecard
2. City of Bushnell expansion to double their electric load cutover is going well

3. Fitch's Rating Agency upgraded the FMPA credit rating to AA- from A+
4. FMPA is changing depository banks and we will keep you and your staff updated with the new information
5. Winter Park's response from the City Manager to the Orlando Sentinel article
6. Tour of the Citrus Ridge Solar Facility at Reedy Creek
7. Solar Phase I groundbreaking is scheduled for November 18 at the Harmony site

#### **ITEM 6 – SUNSHINE LAW UPDATE**

Dan O'Hagan reported on partnerships between local police stations and Ring video doorbells, and potential public record implications. He discussed a public records law exemption that applies to any record that would reveal a security system, including those located on private property.

#### **ITEM 7 – CONSENT AGENDA**

- a. Approval of Minutes – Meeting Held September 19, 2019
- b. Approval of the Projects' Financials as of August 31, 2019
- c. Approval of the Treasury Reports as of August 31, 2019

**MOTION:** Larry Mattern, Kissimmee, moved approval of the Consent Agenda as presented. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 27 – 0.

#### **ITEM 8 – ACTION ITEMS**

##### **a. Approval of Solar Project Development Fund Usage**

Chris Gowder presented an action item on using the Development Fund for additional Solar Project items.

**MOTION:** Mike Poucher, Ocala, moved approval of: Authorization of an additional \$1,000,000 in funding from the FMPA Development Fund for joint-action solar projects, which, with previously authorized amounts, results in a total authorization of \$1,200,000 and Funding FERC legal counsel expenses related to the solar transmission service request denial complaint filing of \$68,669.40 out of the FMPA Development Fund authorized amounts with such expenses being allocated to the Solar Project Participants based on their solar entitlement ratio share to be reimbursed over 20 years as an adder to the energy charge for each MWh received from the Harmony Solar and Poinsett Solar facilities. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 27 – 0.

##### **b. Approval of the Recommended Risk Policy Changes**

Liyuan Woerner presented the proposed changes to the Risk Policy.

**MOTION:** Howard McKinnon, Havana, moved approval of the recommended Risk Policy changes. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 27 – 0.

**c. Approval of Municipal Finance Disclosure Procedure Changes**

Linda S. Howard presented the Municipal Finance Disclosure Procedure Changes.

**MOTION:** Larry Mattern, Kissimmee, moved approval of adopting the new reporting events into the Municipal Finance Disclosure Procedures. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 27 – 0.

**ITEM 9 – INFORMATION ITEMS**

**a. FY 2020 Management Goals**

Jacob Williams reported on the draft FY 2020 Management Goals developed by staff from the Board of Directors and Executive Committee Strategic Planning Session held in February 2019.

Staff will finalize the goals from the input from members and bring back in December for approval.

**b. Update on Bond Counsel RFP \***

Linda S. Howard and Jody Finklea updated the Board on the outcome of the RFP evaluations for Bond Counsel and will make a recommendation for the Board to approve in December.

**c. FMPA Electric Vehicle Charging Station**

Susan Schumann reported on FMPA's installation of electric vehicle charging stations for members and visitors who drive to FMPA and can charge their vehicles while in meetings at FMPA.

**d. Solar Phase II Project Recommendation**

Susan Schumann reported on the Solar Phase II Project.

**e. Quarterly Regulatory Compliance Update**

Michelle Johnson introduced herself and gave the Board information on her background. She presented the quarterly regulatory compliance update.



## **ITEM 10 – MEMBER COMMENTS**

Chairperson Barbara Quiñones, Homestead, said the individual costs charts FMPA staff gave to the members are great and shows the municipalities are doing a great job on lowering rates to their customers over the past 8 to 10 years.

The December 12 Board of Directors meeting was moved to 9:00 a.m. due to several meetings and workshops being held on December 11.

## **ITEM 11 – ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:46 a.m.

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Barbara Quiñones  
Chairperson, Board of Directors

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Larry Mattern  
Secretary

Approved: \_\_\_\_\_

Seal

BQ/LM/su

**AGENDA ITEM 7 – CONSENT  
AGENDA**

- b. Approval of the Projects’  
Financials as of September 30 &  
October 31, 2019**

**Board of Directors Meeting  
December 12, 2019**



Linda S. Howard, CPA, CTP  
Chief Financial Officer

## AGENDA PACKAGE MEMORANDUM

**TO:** FMPA Board of Directors  
**FROM:** Linda Howard  
**DATE:** December 3, 2019  
**ITEM:** 7b – Approval of Projects’ Financials as of October 31, 2019

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**Discussion:** The summary financial statements and detailed financial statements of the Projects for the period ended October 31, 2019 are posted on the Document Portal section of FMPA’s website.

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**Recommended:** Move approval of the Projects’ Financial Reports for the month ended October 31, 2019.

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LH/GF

**AGENDA ITEM 7 – CONSENT  
AGENDA**

- c. Approval of the Treasury  
Reports as of September 30 &  
October 31, 2019**

**Board of Directors Meeting  
December 12, 2019**



## AGENDA PACKAGE MEMORANDUM

TO: FMPA Board of Directors  
FROM: Gloria Reyes  
DATE: December 3, 2019  
ITEM: BOD 7(c) – Approval of Treasury Reports as of September 30, 2019

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**Introduction** This agenda item is a quick summary update of the Treasury Department's functions.

The Treasury Department reports for September are posted in the member portal section of FMPA's website.

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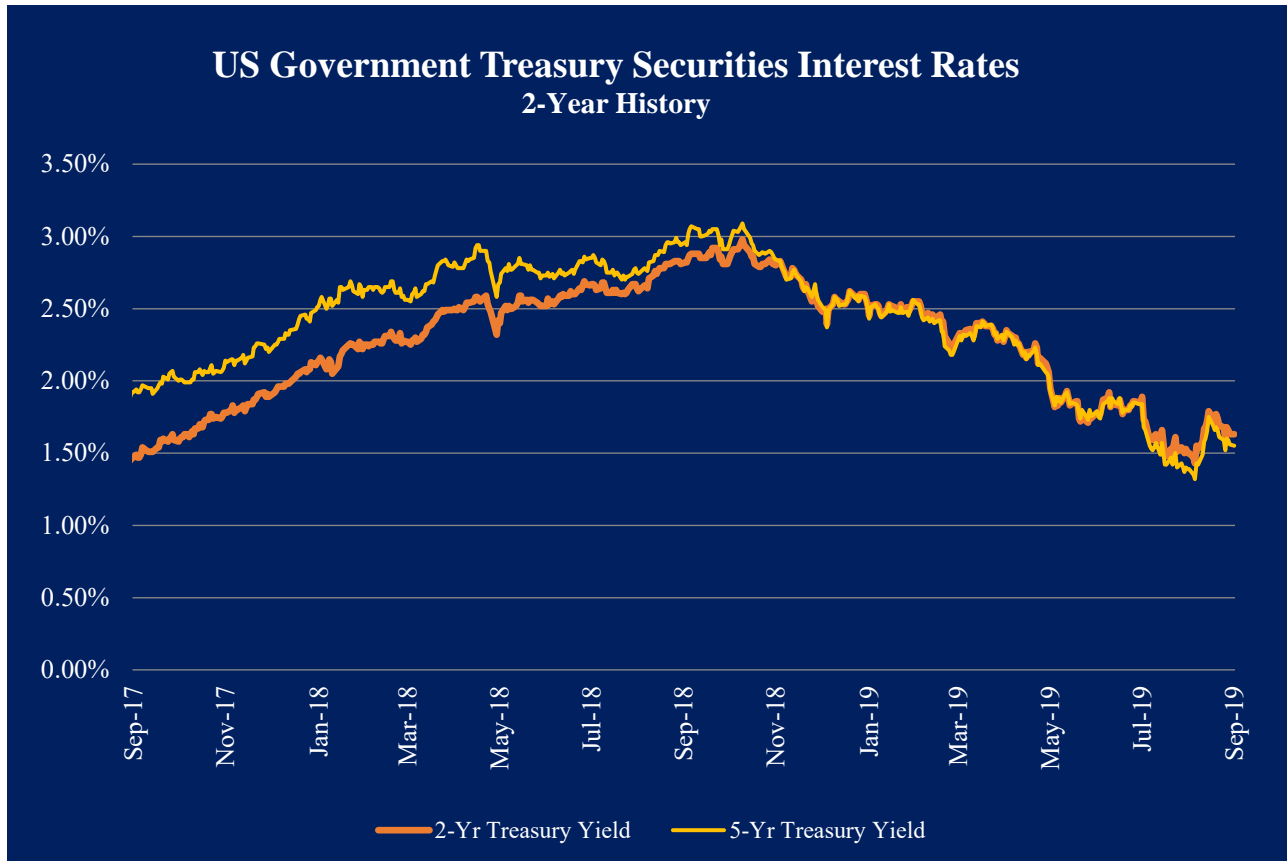
**Debt Discussion** Below is a summary of the total debt outstanding and the percentage of debt that was fixed, variable or synthetically fixed with interest rate swaps as of September 30, 2019.

	Total debt Outstanding	Fixed Rate	Variable Rate	Synthetically Fixed
Agency	0.00	0%	0%	0%
St Lucie	134,850,000	100%	0%	0%
Stanton	8,985,000	100%	0%	0%
Stanton II	122,801,000	100%	0%	0%
Tri City	3,290,000	100%	0%	0%

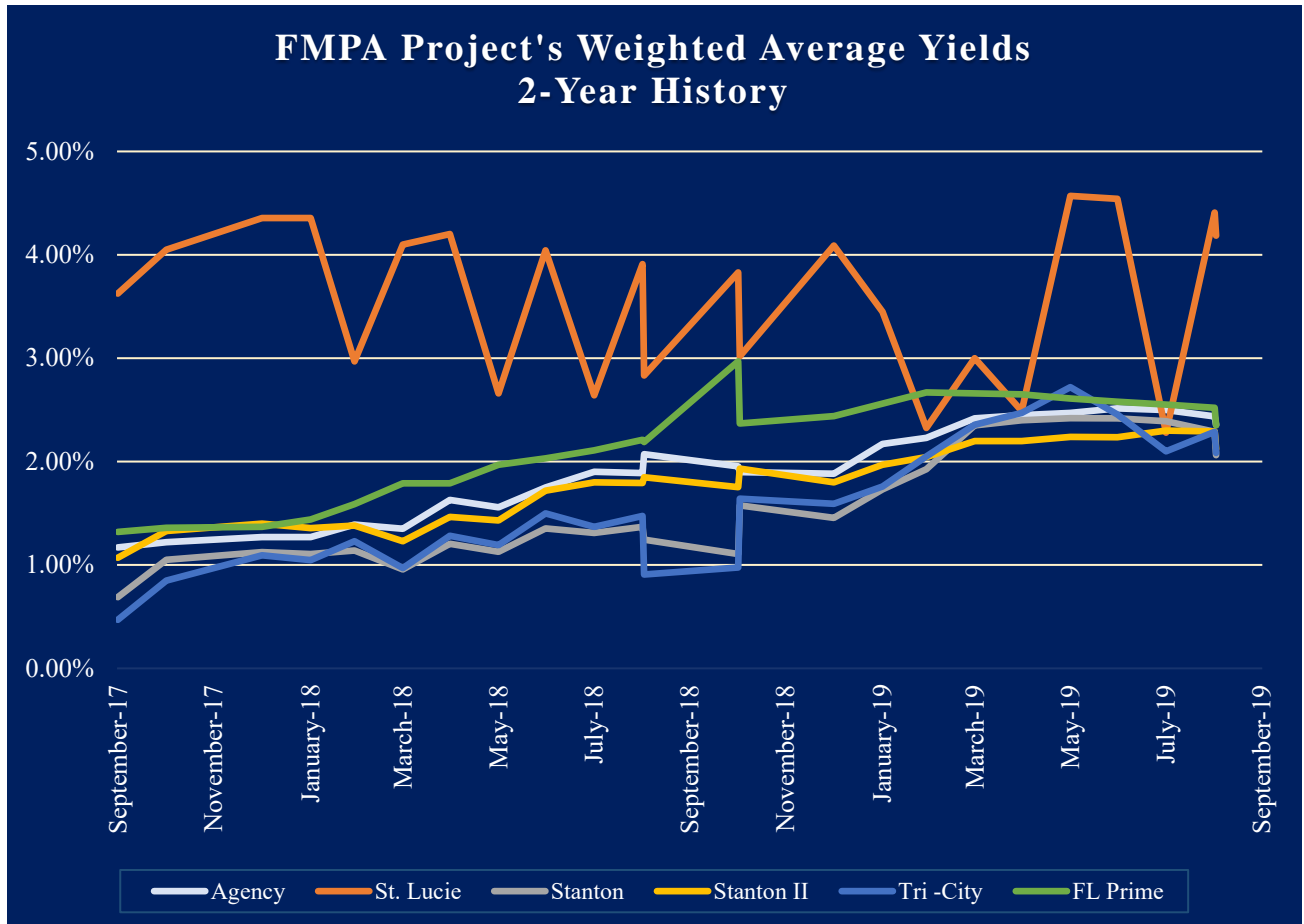
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**Investment Discussion** The investments in the Projects are comprised of debt from the government-sponsored enterprises such as the Federal Farm Credit Bank, Federal Home Loan Bank, Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal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

Below is a graph of US Treasury yields for the past 2 years. The orange line is the 2-year Treasury which closed the month of September at 1.63%. The yellow line is the 5-year Treasury which was 1.55%.



The weighted average yields on investments earned as of September 30, 2019 in the Projects, along with their benchmark (SBA's Florida Prime Fund), are as follows:



Recommended  
Motion

Move approval of the Treasury Reports for September 30, 2019.



## AGENDA PACKAGE MEMORANDUM

TO: FMPA Board of Directors  
FROM: Gloria Reyes  
DATE: December 3, 2019  
ITEM: BOD 7(c) – Approval of Treasury Reports as of October 31, 2019

---

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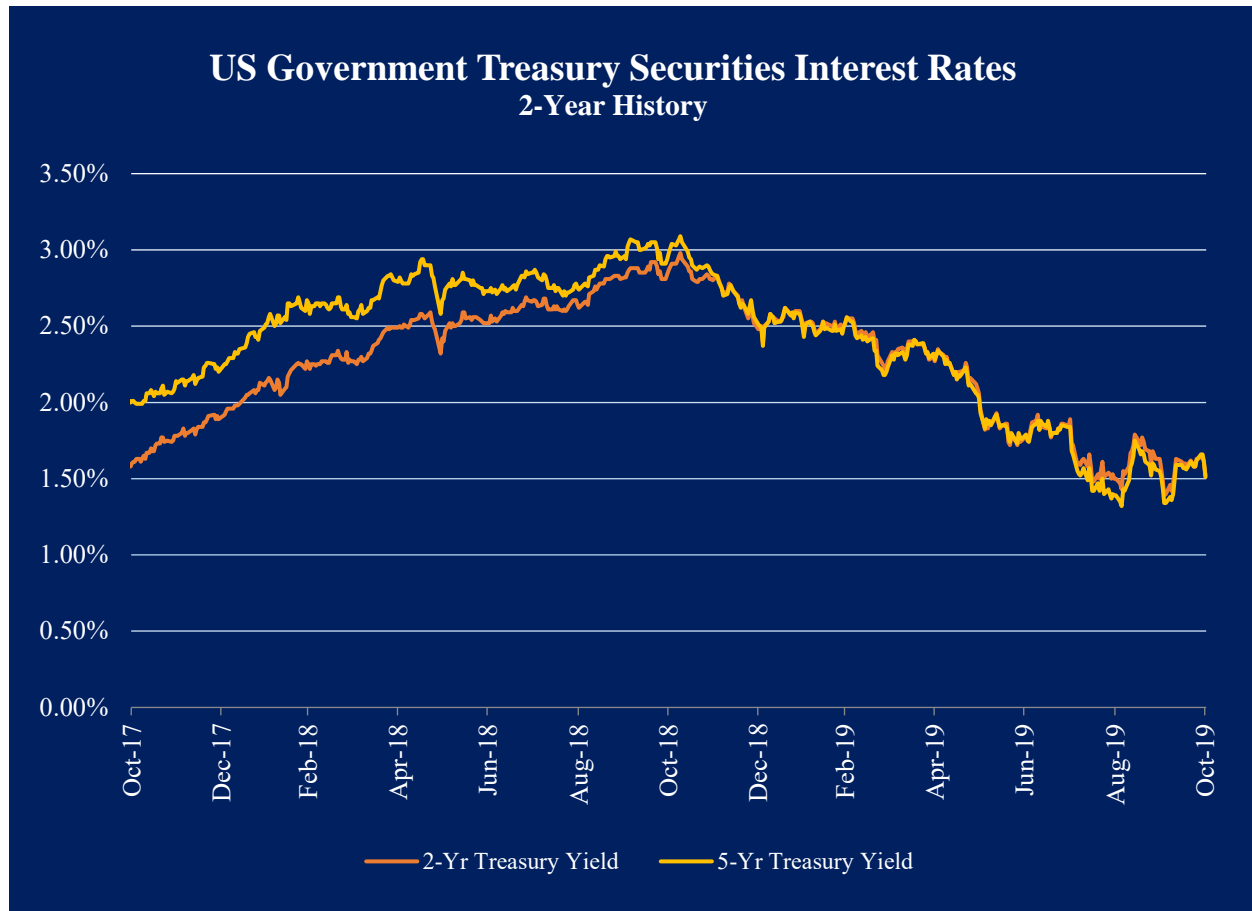
	Total debt Outstanding	Fixed Rate	Variable Rate	Synthetically Fixed
Agency	0.00	0%	0%	0%
St Lucie	117,135,000	100%	0%	0%
Stanton	0.00	0%	0%	0%
Stanton II	112,054,000	100%	0%	0%
Tri City	0.00	0%	0%	0%

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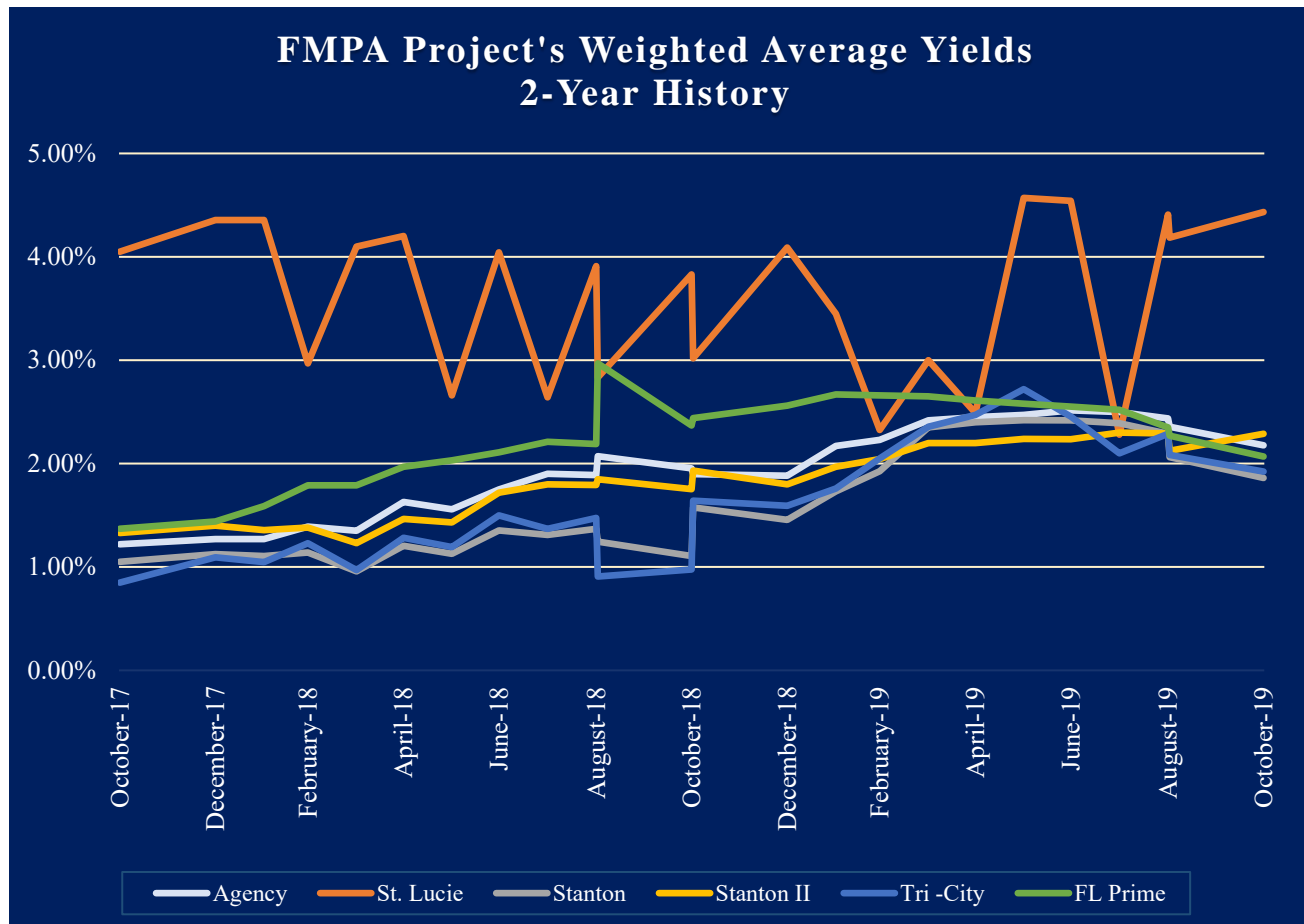
**Investment Discussion** The investments in the Projects are comprised of debt from the government-sponsored enterprises such as the Federal Farm Credit Bank, Federal Home Loan Bank, Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal National Mortgage Association (Fannie Mae), as well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



Below is a graph of US Treasury yields for the past 2 years. The orange line is the 2-year Treasury which closed the month of October at 1.52%. The yellow line is the 5-year Treasury which was 1.51%.



The weighted average yields on investments earned as of October 31, 2019 in the Projects, along with their benchmark (SBA's Florida Prime Fund), are as follows:



Recommended  
Motion

Move approval of the Treasury Reports for October 31, 2019.

**AGENDA ITEM 7 – CONSENT  
AGENDA**

- d. Acceptance of the Annual  
Report of Late Fees Payments**

**Board of Directors Meeting  
December 12, 2019**



# **BOD 7d – Acceptance of the Annual Report of Late Fees Payments FYE September 30, 2019**

Board of Directors  
December 12, 2019

# Late Fees Reporting Policy

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- In accordance with the Accounting and Internal Controls Policy, Section 7.0 Reporting
- The policy requires that the CFO shall cause to be reported to the Executive Committee the total amount of interest paid for late fees during the proceeding fiscal year
- Late Fees Paid \$45.98

## Recommended Action

Move approval of the Late Payment report for fiscal year 2019

# Detail of Late Fees Paid

Vendor	Period	Late Fee Amount	Explanation
Sam's Club Credit Card	03-2019	15.99	Did not receive November Statement
Sam's Club Credit Card	04-2019	29.99	Mailed payment which was posted one day after the due date
Total		\$45.98	

## **AGENDA ITEM 8 – ACTION ITEMS**

- a. Approval of FY 2020 Management Goals**

**Board of Directors Meeting  
December 12, 2019**

## AGENDA PACKAGE MEMORANDUM

TO: Board of Directors  
FROM: Jacob Williams  
DATE: December 3, 2019  
ITEM: 8a – Approval of FMIPA's 2020 Top 12 Management Goals

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### FY 2020 Management Goals

1. **Safety** No Lost Time Accidents
2. **Compliance -**
  - Financial No Violations not Self-Reported
  - Environmental No Violations not Self-Reported
  - NERC Compliance No Violations not Self-Reported
3. **Cyber Security** FMIPA – Breaches IT or OT – None
  - Phishing 5% or less click Rate
  - Members APPA Scorecard 12 additional
4. **Low Cost** - Total All-in Cost \$72.64 MWh (2 ½% below budget)
5. **Reliability**
  - Combined Cycle EAF 88%
  - Keys Black Start 100% Successful
  - Member – Obtain 15% SAIDI improvement for 7 Members
6. **Energy/Capacity Sales** – Execute New Agreements Projected Margin Value of \$3.5M
7. **Enhance Pool**
  - For Future with Significant Solar Resources Challenging Existing Operating Practices
  - Hire New Executive Director to Lead Pool of the Future
  - Develop Practices for Extra Reserves and Fast Start Needs
  - Develop tools to manage Significant new Solar resources
8. **Member Services**
  - Leadership Team Visits – 75
  - New Member Projects Managed – 15
  - Assist Solar Subscription Service Reviews – 6
9. **Promoting Value of Utilities** – Update Member Reports – 16
  - Public Presentations by Member or FMIPA – 10



- 10. **Solar Project**
  - Execute Phase 2 Solar Agreements
  - Phase 1 Groundbreaking
  - Successfully Energize Phase 1 site
- 11. **ARP Restructuring**
  - Reach Agreement on Desired Path of Members
- 12. **People**
  - Developmental Opportunities/Cross Training/Back-up – at least 8
  - FMPA Fleet Team Sharing - 80 Days

---

Recommended  
Action

Move approval of FMPA's FY 2020 Top 12 Management Goals.

---

JW/su

**AGENDA ITEM 8 – ACTION ITEMS**

**b. Approval of Board of Directors  
Meeting Schedule for Calendar  
Year 2020**

**Board of Directors Meeting  
December 12, 2019**

## AGENDA PACKAGE MEMORANDUM

**TO:** FMPA Board of Directors and Executive Committee  
**FROM:** Jacob A. Williams  
**DATE:** December 3, 2019  
**ITEM:** BOD 8b / EC 8b—Approval of the Board of Directors and Executive Committee Calendar Year 2020 Meeting Schedule

---

**Executive Summary** Pursuant to previous years' practice, Board of Directors and Executive Committee meetings are held on the third Thursday of each month, except for the annual conference held in coordination with FMEA's annual conference or as otherwise noted in the recommended schedule.

As a result, having the meetings on the third Thursday, the financial reports will not be included in the agenda packages due to the incompleteness of the month end reconciliation. However, it will be posted to the Member Portal prior to the meeting dates.

---

### Recommended Schedule

Following is the recommended schedule for continuing the monthly meetings of the Board of Directors and Executive Committee on the third Thursday.

#### 2020 Monthly Schedule

- ❖ Thursday, January 16, 2020
- ❖ Thursday, February 13, 2020 (2<sup>nd</sup> Thursday due to APPA Legislative Rally in DC February 24-26, 2020)
- ❖ Thursday, March 19, 2020
- ❖ Thursday, April 16, 2020
- ❖ Thursday, May 21, 2020
- ❖ Thursday, June 18, 2020 (APPA's National Conference is June 5-10, 2020 in Long Beach, CA)
- ❖ Wednesday, July 29, 2020 (FMEA Annual Conference – The Breakers, Palm Beach, FL)
- ❖ Thursday, August 20, 2020

- ❖ Thursday, September 17, 2020
- ❖ Thursday, October 15, 2020
- ❖ Thursday, November 19, 2020 (subject to cancelation)
- ❖ Thursday, December 10, 2020 (2<sup>nd</sup> Thursday due to Holidays)

**Location**

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The meetings will be held in the Frederick M. Bryant Board Room, 8553 Commodity Circle, Orlando, Florida with the exceptions noted above.

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**Recommended Motion**

Move approval of the Calendar Year 2020 Board of Directors and Executive Committee meeting dates as presented.

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JAW/su

**AGENDA ITEM 8 – ACTION ITEMS**

- c. Approval of Resolution 2019-B12  
Establishing the Solar II Project**

**Board of Directors Meeting  
December 12, 2019**



# **BOD 8c – EC 8c**

## **Solar Phase II Project Recommendation**

December 12, 2019

# Project Approval Information

## *FMSP Phase II Details*

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- FMSP Phase II Participants and Project Structure
- Approvals Required
  - Members
  - FMPA Board and EC
- FMPA Solar II Project – Board Approvals
- ARP Solar II Participants – EC Approvals
- Recommended Motions

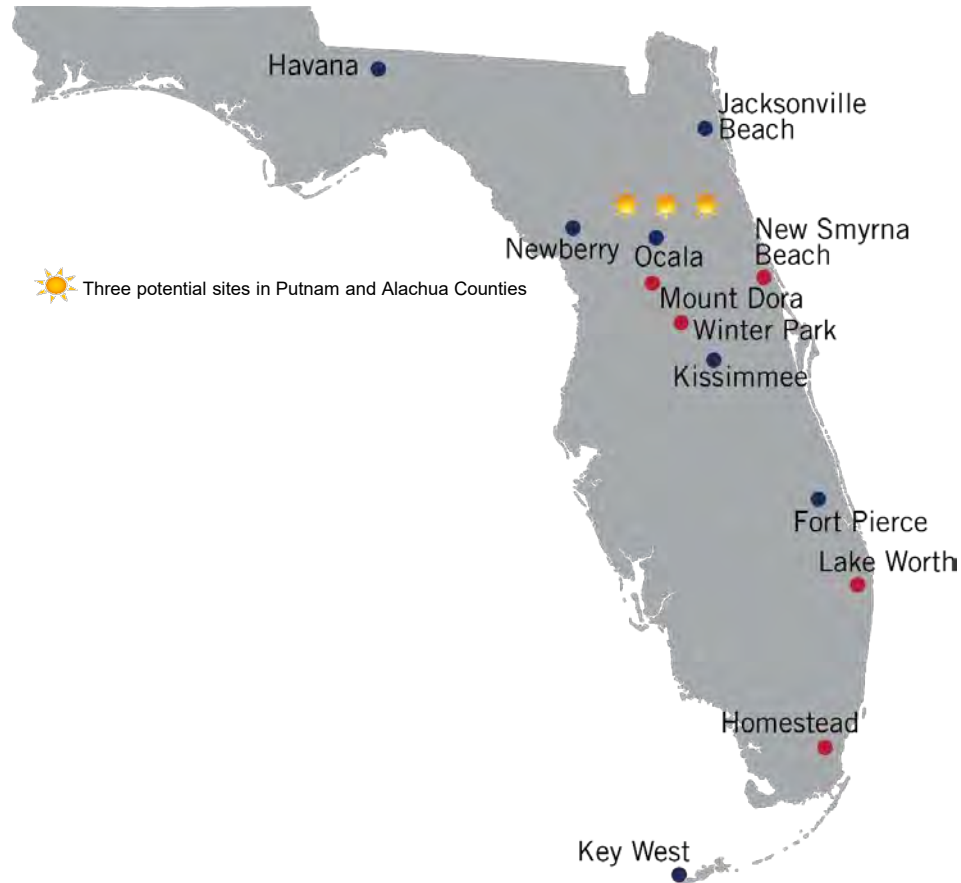


# **FMSP Phase II Participants and Project Structure**



# Final Participation from 12 Member Cities

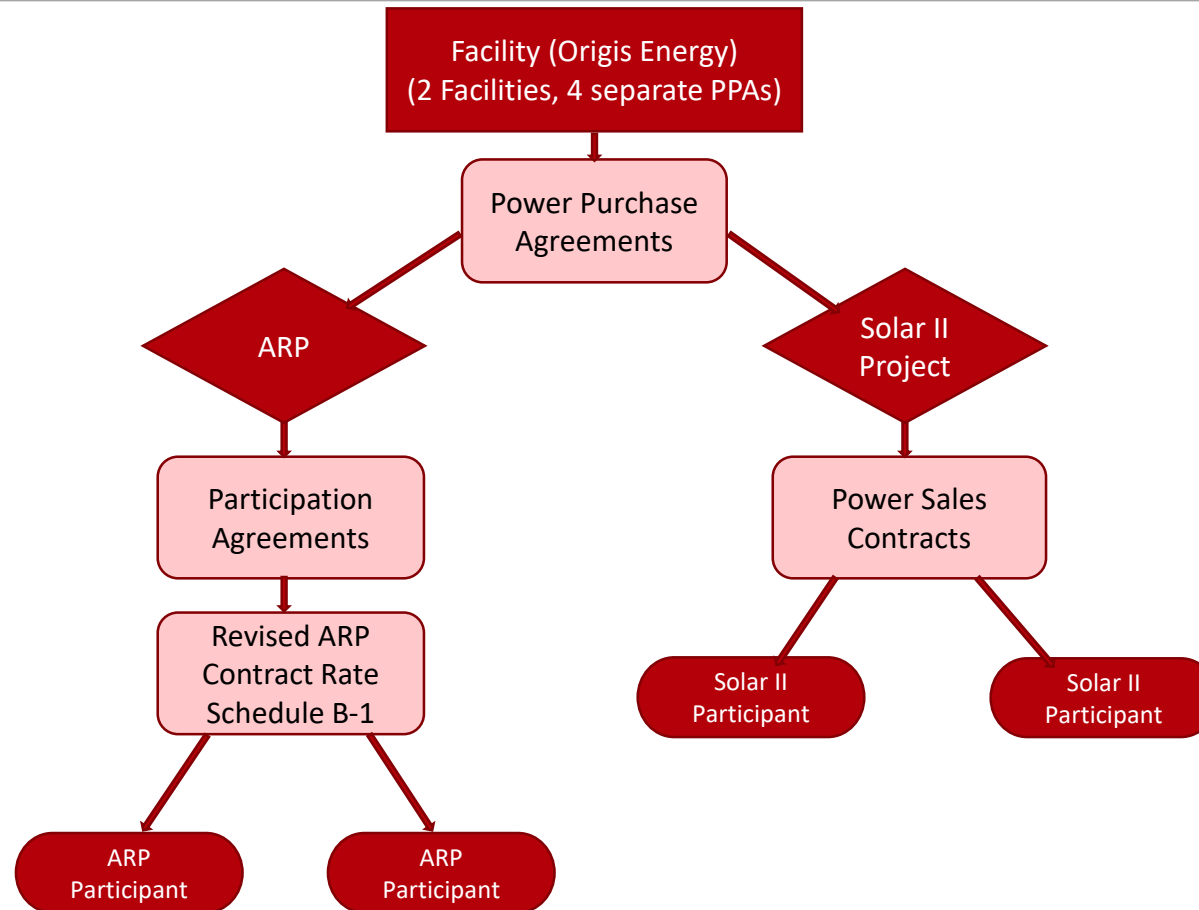
## *148.25 MW Total – Two 74.9 MW Facilities*



Member	Megawatts-AC
Fort Pierce	15
Havana	0.25
Homestead	5
Jacksonville Beach	15
Key West	25
Kissimmee	20
Lake Worth Beach	25
Mount Dora	2
New Smyrna Beach	10
Newberry	1
Ocala	20
Winter Park	10
<b>Total</b>	<b>148.25 MW</b>
Two Facilities equals 149.8 MW. 1.55 MW still available!	

# Project PPA Structure

*Member Agreements approved at local level*





## Approvals Required

# Member Approvals

## *Required Prior to FMPA Board and EC Approval*

---

- Each Participant's Governing Board has approved:
  - Solar Project II Participants (5)
    - Power Sales Contract between FMPA and Solar Project II Participants
  - ARP Solar Project II Participants (7)
    - Solar II Participation Agreement between FMPA ARP and Solar II Participants



# **FMIPA Solar II Project – Board Approvals**

# FMPA Board Approvals

## *Documents Required for Final Approval on December 12*

---

Board Approvals:

- **Power Purchase Agreements** between FMPA Solar Project II and Origis
- Solar Project **Power Sales Contracts** between FMPA and Solar Project II Participants (indiv. Member approvals received)
- **Resolution** 2019-B12 to form FMPA Solar Project II

# PPA Key Terms

## *Pricing Terms Confidential*

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20-Year Term	Options for two 5-year extensions at predetermined prices
Delivery Points	1 facility Duke Interconnect; 1 facility FPL Interconnect
Commercial Operation Date (COD)	December 31, 2023 with permitted extensions; Origis pays for delays after permitted COD extensions
Production Guarantee	Damages paid for under-performance measured over rolling 2 years
Network Upgrades	Cost not included in price; If Network Upgrades are required, payment will be refunded by DEF and/or FPL
Energy Price	<\$28/MWh (exact pricing confidential); 2% escalation over 20 year PPA term; adjustment provision for loss of Investment Tax Credit (ITC) due to Interconnection study delays.

# Solar II Project Power Sales Contract Terms

## *Approval by Board of Directors*

Power Entitlement Share	% of solar energy produced by the facility
Term of Agreement	Date of signature until termination of the PPA with Origis
Costs	Participant pays PPA energy costs plus project related A&G costs (projected to be less than \$.50/MWh)
Step-up Provision	In the event a Participant defaults, the non-defaulting Participants may agree to take and pay for a pro-rata share of defaulting Participant's Power Entitlement
Exit Provision	If a Participant wishes to exit the Solar II Project, FMPA will facilitate transfer of energy to other willing Participants or sell to others. Participant remains responsible for costs not covered.
Solar II Project Committee	Will be created, consisting of one representative from each Solar II Participant. All recommendations are subject to approval by the Board of Directors.



# Board Resolution 2019-B12

## *Approval by Board of Directors*

---

Designating Solar II Project as a Project under the Interlocal Agreement

Establishing Solar II Project Participants' power entitlement share in the Solar II Project

Approving the Solar II Project Power Purchase Agreements between FMPA (Solar II Project) and Origis Energy

Approving separate Power Sales Contracts between FMPA and each of the eight Solar II Project Participants

Designating authorized officers

Providing for severability

Providing an effective date



# **ARP Solar II Participation Agreement Executive Committee Approvals**

# FMPA EC Approvals

## *Documents Required for Final Approval on December 12*

---

ARP Approvals:

- **Power Purchase Agreements** between FMPA ARP and Origis
- Solar II **Participation Agreements** between ARP and Solar Project II Participants (indiv. Member approvals received)
- **ARP Rate Schedule B-1**

# PPA Key Terms

## *Pricing Terms Confidential*

---

20-Year Term	Options for two 5-year extensions at predetermined prices
Delivery Points	1 facility Duke Interconnect; 1 facility FPL Interconnect
Commercial Operation Date (COD)	December 31, 2023 with permitted extensions; Origis pays for delays after permitted COD extensions
Production Guarantee	Damages paid for under-performance measured over rolling 2 years
Network Upgrades	Cost not included in price; If Network Upgrades are required, payment will be refunded by DEF and/or FPL
Energy Price	<\$28/MWh (exact pricing confidential); 2% escalation over 20 year PPA term; adjustment provision for loss of Investment Tax Credit (ITC) due to Interconnection study delays.

# ARP Solar II Participation Agreement Terms

## *Approval by Executive Committee*

---

Power Entitlement Share	% of solar energy produced by the facility
Term of Agreement	Date of signature until termination of the PPA with Origis
Costs	Participant pays PPA energy cost plus nominal project related costs (A&G)
Exit Provision	If a Participant wishes to exit the Solar Participation Agreement, FMPPA will facilitate transfer of energy to other willing Participants or sell to others. Participant remains responsible for costs not covered.
ARP Solar Participants Advisory Committee	Consists of one representative from each ARP Solar Participant. All recommendations will be subject to approval of the Executive Committee

# Rate Schedule B-1

## *Approval by Executive Committee*

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- Solar Energy Surcharge shall equal the difference between the adjusted energy rate and the actual monthly cost per MWh of the solar energy plus associated costs.
  - Language revised to distinguish between Phase I and Phase II Projects and Participants



## Recommended Motions

# Recommended Motion

## *Board of Directors*

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Move approval of Resolution 2019-B12, the Power Purchase Agreement, and the Power Sales contract, and authorize FMPA's CEO and General Manager to execute the agreements.



# Recommended Motion

## *ARP Executive Committee*

---

Move approval of the Power Purchase Agreement, the ARP Solar II Participation Agreement, and revised Rate Schedule B-1, and authorize FMPA's CEO and General Manager to execute the agreements.

## **RESOLUTION 2019-B12**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF FLORIDA MUNICIPAL POWER AGENCY (I) DESIGNATING THE SOLAR II PROJECT AS A PROJECT UNDER THE INTERLOCAL AGREEMENT; (II) ESTABLISHING THE SOLAR II PROJECT PARTICIPANTS' POWER ENTITLEMENT SHARES IN THE SOLAR II PROJECT; (III) APPROVING THE SOLAR II PROJECT POWER PURCHASE AGREEMENTS BETWEEN FLORIDA MUNICIPAL POWER AGENCY (SOLAR II PROJECT) AND ORIGIS ENERGY; (IV) APPROVING SEPARATE POWER SALES CONTRACTS BETWEEN FLORIDA MUNICIPAL POWER AGENCY AND EACH OF THE SOLAR II PROJECT PARTICIPANTS; (V) DESIGNATING AUTHORIZED OFFICERS; (VI) APPROVING AND TAKING CERTAIN OTHER ACTIONS; (VII) PROVIDING FOR SEVERABILITY; AND (VIII) PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FLORIDA MUNICIPAL POWER AGENCY:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of Chapter 361, Part II, Florida Statutes, as amended, Chapter 163, Part I, Florida Statutes, as amended, and Chapter 166, Part II, Florida Statutes, as amended (collectively the "Act").

**SECTION 2. DEFINITIONS.** When used in this Resolution, capitalized terms shall have the same meaning as that specified in the Power Sales Contracts, a form of which is attached hereto as Exhibit A, unless otherwise provided for herein or unless the context clearly requires otherwise.

**SECTION 3. FINDINGS.** It is hereby found, determined, and declared as follows:

3.01 Florida Municipal Power Agency ("FMPA") was formed pursuant to the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended (the "Interlocal Agreement"), and the findings, determinations and declarations made in the preambles thereof are hereby reaffirmed and ratified.

3.2. FMPA was created to, among other things, provide a means for the Florida municipal corporations and other entities which are members of FMPA to cooperate with each other on a basis of mutual advantage to provide electric capacity and energy.

3.3. FMPA is authorized by the terms of the Act and the Interlocal Agreement, among other things (i) to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate jointly in any electric power supply project or projects or to acquire an interest in any such project or facilities (ii) to issue its bonds, notes, or other evidences of indebtedness to pay all or part of the cost of acquiring joint electric power supply projects; and (iii) to exercise all other powers which have been or may be granted to FMPA under the laws of the State of Florida which may be necessary and proper to further the

purposes of FMPA.

3.4 It is necessary and desirable and in the best interests of FMPA, the Project Participants (as defined in the Power Sales Contracts, a form of which is annexed hereto as Exhibit A) and the residents of the State of Florida (the “State”) to whom the Project Participants furnish, supply or distribute electrical energy that FMPA enter into the Solar II Power Purchase Agreement between FMPA Solar II Project and Origis Energy, dated as of \_\_\_\_\_, (the “Solar II Project PPA”), a form of which is annexed hereto as Exhibit B), pursuant to which FMPA will purchase the Solar Product derived from the Solar Facility (as those terms are defined in the Power Sales Contracts).

3.5 It is necessary and desirable and in the best interests of FMPA, the Project Participants and the residents of the State to whom the Project Participants furnish, supply or distribute electrical energy, that FMPA take or cause to be taken all steps necessary for the execution and delivery of the Solar II Project PPA, for the supply of Solar Product to the Project Participants and sell the Solar Product from the Solar II Project PPA pursuant to the Power Sales Contracts with the Project Participants.

3.6 It is necessary and desirable and in the best interests of FMPA, the Project Participants and the residents of the State to whom the Project Participants furnish, supply or distribute electrical energy and the Board of Directors of FMPA desires to specify the Power Entitlement Share of each of the Project Participants in the Solar II Project, and to approve the terms of and authorize the execution and delivery of the Power Sales Contracts and the Solar II Project PPA.

#### **SECTION 4. DESIGNATION OF PROJECT, ESTABLISHMENT OF POWER ENTITLEMENT SHARES; PROJECT AGREEMENT.**

4.1 There is hereby authorized the undertaking by FMPA of all actions necessary or desirable to enter into a power purchase agreement for the purchase of approximately **xx.xx%** of the electric energy generated by the Solar Facility, as well as the associated Renewable Attributes, and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Solar Facility, to be located in **xx or xx or xx** County, Florida.

4.2 The Solar II Project is hereby designated as a project under the Interlocal Agreement.

4.3 The Power Entitlement Share of each of the Project Participants is established as follows:

- Homestead Public Services – **xx%**
- City of Lake Worth Beach Utilities – **xx%**
- City of Mount Dora – **xx%**
- Utilities Commission, City of New Smyrna Beach – **xx%**
- Winter Park Electric Utility – **xx%**

4.4 This Resolution shall constitute a supplement to the Interlocal Agreement and shall be maintained by the Secretary of FMPA among the permanent records of FMPA.

4.5 The Interlocal Agreement, as supplemented by this Resolution, shall (with respect to the Solar II Project) constitute “an agreement to implement a project” and a “joint power agreement”, as those terms are used in Chapter 361, Part II, Florida Statutes, as amended.

**SECTION 5. APPROVAL OF SEPARATE POWER SALES CONTRACTS.**

5.01 The terms of the separate Power Sales Contracts to be entered into between FMPA and the Project Participants, in the form annexed hereto as Exhibit A, are hereby expressly approved.

**SECTION 6. APPROVAL OF THE SOLAR II PROJECT POWER PURCHASE AGREEMENT.** The terms of the Solar II Project PPA, to be entered in between FMPA and Origis Energy, in substantially the form annexed hereto as Exhibit B, with such additions and changes as any Authorized Officer of FMPA shall deem necessary or appropriate, are hereby expressly approved, such approval of such final form to be presumed by the execution thereof by any Authorized Officer of FMPA.

**SECTION 7. DESIGNATION OF AUTHORIZED OFFICERS OF FMPA.** The Chairman and Vice Chairman of FMPA’s Board of Directors, the Secretary-Treasurer, the Assistant Secretary-Treasurer, the General Manager & CEO and the Chief Operating Officer are each hereby designated as an Authorized Officer of FMPA for the purpose of executing and delivering the Power Sales Contract, and Solar II Project PPA and taking any other actions authorized by this Resolution.

**SECTION 8. FURTHER ACTIONS.** Each Authorized Officer of FMPA is hereby authorized and empowered (i) to execute and deliver the Power Sales Contracts and the Solar II PPA, and (ii) to execute and deliver, in the name of and on behalf of FMPA such other documents, certificates or papers, not specifically referred to in this Resolution, as are required or contemplated by the provisions of the Power Sales Contracts and the Solar II Project PPA and take all such further action as may be necessary or desirable in carrying out the terms and provisions of the Power Sales Contracts and the Solar II Project PPA.

**SECTION 9. SEVERABILITY.** If any one or more provisions of this Resolution should be determined by a court of competent jurisdiction to be contrary to law, such provisions shall be deemed to be severable from the remaining provisions hereof and shall in no way affect the validity or

enforceability of such remaining provisions.

**SECTION 10.            EFFECTIVE DATE.**            This Resolution shall take effect immediately upon its adoption.

APPROVED AND ADOPTED by the Florida Municipal Power Agency on  
\_\_\_\_\_.

Florida Municipal Power Agency

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman

**Solar II Project**

**Power Sales Contract**

**Between**

**Florida Municipal Power Agency,  
Solar II Power Project**

**and**

**[Member name]**

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**SOLAR II PROJECT**  
**POWER SALES CONTRACT**

This POWER SALES CONTRACT is made and entered into as of \_\_\_\_\_, 2019, by and between FLORIDA MUNICIPAL POWER AGENCY, a legal entity organized under the laws of the State of Florida ("FMPA") and [Member name], a [describe Member], a member of FMPA (the "Project Participant").

**WITNESSETH:**

**WHEREAS**, FMPA was created to, among other things, provide a means for the Florida municipal corporations and other entities which are members of FMPA to cooperate with each other on a basis of mutual advantage in the generation of Electric Energy; and

**WHEREAS**, FMPA is authorized and empowered, among other things, (i) to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate jointly in one or more electric projects; (ii) to issue its bonds, notes or other evidences of indebtedness to pay all or part of the costs of acquiring such electric projects; and (iii) 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;

**WHEREAS**, Origis Energy, including its successors or assigns, ("Seller") is developing solar photovoltaic single-axis tracking electric generating facilities having nameplate capacities of 74.9 MW alternating current ("ac"), which will be designed, financed, constructed and operated by Seller in Alachua and Putnam Counties, Florida ("Solar Facility"); and

**WHEREAS**, FMPA has entered into Power Purchase Agreements between Seller and FMPA on behalf of the Solar II Project ("Solar PPA"), a copies of which are attached to this Power Sales Contract as "Attachment A," and FMPA will purchase and receive a portion of the as-available net Electric Energy output and associated Renewable Energy Attributes and Facility Attributes produced by Solar Facility (referred to cumulatively in this Power Sales Contract as the "Solar Product"); and

**WHEREAS**, FMPA will take or cause to be taken all steps necessary for delivery to Project Participant and the other Project Participants of their respective share of the Solar Product produced from or attributable to the Solar Facility and delivered to FMPA under the Solar PPA, and will sell the Solar Product from the Solar Facility pursuant to this Power Sales Contract and pursuant to contracts substantially similar to this contract with such other Project Participants; and

**WHEREAS**, the execution of the Solar PPA for the supply of Solar Product produced by or attributable to the Solar Facility to the Project Participant and the other Project Participants contracting with FMPA therefore is authorized by the Interlocal Agreement creating the Florida Municipal Power AgencyFMPA, as amended to date and as such Interlocal Agreement has been supplemented by a resolution adopted by the Board of FMPA at a meeting duly called and duly held on December 12, 2019, which Interlocal Agreement, as so amended and supplemented, constitutes "an agreement to implement a project" and a "joint power agreement" for the Solar II Project, as such terms are used in Chapter 361, Part II, Florida Statutes, as amended; and

**WHEREAS**, in order to pay the cost of acquiring the Solar Product produced by or attributable to the Solar Facility under the Solar PPA, it is necessary for FMPA to have substantially similar binding contracts with the Project Participant and such other Project Participants purchasing Solar Product produced by or attributable to the Solar Facility.



**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

**SECTION 1. Definitions and Explanations of Terms. As used herein:**

Allocable A&G Costs shall mean administrative and general costs incurred by FMPA that have been allocated to the Solar II Project by the FMPA Board of Directors. The initial allocation of Allocable A&G Costs is attached to this Power Sales Contract as "Attachment B," as it may be amended from time to time at the discretion of the FMPA Board of Directors.

Annual Budget means the budget adopted by the Board of FMPA pursuant to paragraph (a) of SECTION 4 hereof which itemizes the estimated Monthly Energy Costs and Project Related Costs for the following Contract Year, or, in the case of an amended Annual Budget adopted by the Board of FMPA, during the remainder of a Contract Year, and the Project Participant's share, if any, of each.

Board shall mean the Board of Directors of FMPA, or if said Board shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof.

Contract Year shall mean the twelve (12) month period commencing at 12:01 a.m. on October 1 of each year, except that the first Contract Year shall commence on 12:01 a.m. on **December 12, 2019**, and shall expire at 12:00 a.m. the next succeeding October 1.

Discretionary Term Decision shall have the meaning set forth in SECTION 7(a) of this Power Sales Contract.

Downgrade Event shall have the meaning set forth in the Solar PPA.

Effective Date shall have the meaning set forth in SECTION 2 of this Power Sales Contract.

Electric Energy shall mean kilowatt hours (kWh).

Energy Price means the price (\$/MWh) to be paid by FMPA under the Solar PPA for Solar Product produced by the Solar Facility and delivered by Seller to FMPA.

Energy Share shall mean FMPA's **xx** MW share under the Solar PPA in the Solar Product produced by or associated with the Solar Facility.

Facility Attributes has the meaning given in the Solar PPA.

Initial Energy Delivery Date shall have the meaning provided for in the Solar PPA.

Interlocal Agreement means the Interlocal Agreement creating the Florida Municipal Power Agency, as amended and supplemented to date, and as the same may be amended or supplemented in the future.

Month shall mean a calendar month.

Monthly Energy Costs shall mean, with respect to each Month of each Contract Year, the product of (i) the Energy Price and (ii) the quantity of Solar Product delivered by Seller to FMPA.

Point of Delivery shall mean the high side of the generator step-up transformer of the Solar Facility.

Power Sales Contracts shall mean this Power Sales Contract and the other Power Sales Contracts, dated the date hereof, between FMPA and the other Project Participants, all relating to the Solar PPA and Solar Facility, as the same may be amended from time to time, and any substantially similar contract entered into by FMPA in connection with any transfer or assignment in accordance with this Power Sales Contract.

Project Development Fund Costs shall mean those costs incurred by FMPA and funded by the FMPA Project Development Fund used for the establishment of the FMPA Solar II Project. The Project

Development Fund Costs as of the Effective Date are set forth in “Attachment D” of this Power Sales Contract.

Project Related Costs shall mean the costs incurred under the Solar PPA other than Monthly Energy Costs, as well as any other costs incurred by FMPA directly attributable to the Solar II Project, including, without limitation, Allocable A&G Costs, any amounts to reimburse FMPA Project Development Fund Costs, a Working Capital Allowance, any costs associated with real-time monitoring of the output from the Solar Facility to facilitate Project Participants’ transmission scheduling requirements, any credit or payment assurance amounts that may be required under the Solar PPA due to a Downgrade Event, as such term is defined in the Solar PPA, among others.

Project Participants shall mean the parties, including the Project Participant, other than FMPA, to Power Sales Contracts substantially similar hereto.

Renewable Attributes has the meaning given in the Solar PPA.

Schedule of Project Participants shall mean the Schedule of Project Participants contained in Schedule 1 attached hereto, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

Seller shall have the meaning set forth in the Recitals of this Power Sales Contract.

Solar Entitlement Share shall mean, with respect to each project Participant, that percentage of FMPA's Energy Share from the Solar Facility shown opposite the name of such Project Participant in the Schedule of Project Participants as the same may be adjusted from time to time in accordance with the provisions hereof.

Solar II Project shall mean the contractual arrangements and agreements for the purchase of Solar Product by FMPA pursuant to the Solar PPA and sale of the Solar Product to Project Participant pursuant to this Power Sales Contract.

Solar II Project Committee has the meaning set forth in SECTION 7 of this Power Sales Contract.

Solar Facility shall have the meaning set forth in the recitals of this Power Sales Contract.

Solar Product shall have the meaning set forth in the recitals of this Power Sales Contract.

Solar PPA shall have the meaning set forth in the recitals of this Power Sales Contract.

Transmission Service Provider shall mean the transmission service provider(s) to which the Solar Facility is interconnected.

Uniform System of Accounts shall mean the Federal Energy Regulatory Commission (or its successor in function) Uniform Systems of Accounts prescribed for Class A and Class B Public Utilities and Licensees, as the same may be modified, amended or supplemented from time to time.

Working Capital Allowance shall mean funds acquired by the Solar II Project in such amounts as shall be deemed reasonably necessary by the FMPA Board of Directors to provide for any working capital needs, including providing for the Solar II Project’s ability to pay the Seller in the event of non-payment by one or more Project Participants. The initial Working Capital Allowance and the method of funding is described in “Attachment C” to this Power Sales Contract.

## **SECTION 2. Term & Termination.**

(a) Effective Date. This Power Sales Contract shall become effective upon the last date of execution and delivery of all Power Sales Contracts by all Project Participants originally listed in the Schedule of Project Participants and by FMPA (the “Effective Date”) and shall, unless this Power Sales

Contract is terminated early pursuant hereto, continue until the expiration or earlier termination of the Solar PPA. Unless a Project Participant terminates this Agreement pursuant to Section 19(a) by paying all stranded cost obligations, neither termination nor expiration of this Power Sales Contract shall affect any accrued liability or obligation hereunder. Notwithstanding the foregoing, in the event it is ultimately determined that any other Project Participant failed to duly and validly execute and deliver its Power Sales Contract, or if any other Power Sales Contract, or any portion thereof, shall be deemed invalid or unenforceable for any other reason whatsoever, such determination shall in no way affect the commencement, term or enforceability of this Power Sales Contract or the Project Participant's obligations hereunder.

(b) Early Termination. Project Participant may terminate this Power Sales Contract pursuant to SECTION 19 of this Power Sales Contract.

### **SECTION 3. Sale and Purchase.**

Commencing on the Initial Energy Delivery Date of the Solar Facility, FMPA shall purchase from Seller in accordance with the terms and conditions of the Solar PPA, and FMPA agrees to and does sell, and the Project Participant agrees to and does hereby purchase, the Project Participant's Solar Entitlement Share. The Project Participant shall, in accordance with and subject to the provisions of SECTION 5 hereof, pay FMPA (i) for its Solar Entitlement Share, an amount determined by multiplying Monthly Energy Costs by the Project Participant's Solar Entitlement Share, and (ii) for its share of monthly Project Related Costs, an amount determined by multiplying the Project Related Costs for such Month by Project Participant's Solar Entitlement Share. FMPA shall provide documentation evidencing the conveyance of the Renewable Attributes associated with the Solar Product to Project Participant in a form acceptable to FMPA and Project Participant.

### **SECTION 4. Project Budget.**

(a) In accordance with the FMPA Board of Directors' annual schedule for budget development, the Solar II Project Committee shall develop and approve a budget for the Solar II Project and submit the same to the FMPA Board of Directors for approval. As part of the budget process, the Solar II Project Committee will review Project Related Costs, including the Allocable A&G and the Working Capital Allowance, to ensure the appropriate amount of resources are allocated the Solar II Project.

(b) On or before **August 1, 2020**, and on or before August 1 prior to the beginning of each Contract Year thereafter, the Board of FMPA shall review the proposed Solar II Project budget submitted by the Solar II Project Committee, and shall adopt and submit to the Project Participant an Annual Budget for the following Contract Year which shall provide an estimate of the Project Participant's monthly payments hereunder and serve as a basis for Project Participants' payments hereunder for Monthly Energy Costs and Project Related Costs for such Contract Year.

(c) During each Contract Year, the Solar II Project Committee or Board may review its Annual Budget for the remainder of the Contract Year at any time as it shall deem desirable. In the event such or any other review indicates that such Annual Budget will not substantially correspond with actual Monthly Energy Costs, or actual Project Related Costs, or if at any time during such Contract Year there are or are expected to be extraordinary receipts, credits or costs substantially affecting the Monthly Energy Costs, or Project Related Costs, the Solar II Project Committee shall recommend and the Board of FMPA shall adopt and submit to each Project Participant an amended Annual Budget applicable to the remainder of such Contract Year which shall provide an estimate of the Project Participant's monthly payments hereunder for the remainder of such Contract Year and serve as the basis for the Project Participant's monthly payments for Monthly Energy Costs and Project Related Costs hereunder for the remainder of such Contract Year.

## **SECTION 5. Billing, Payment, Disputed Amounts.**

(a) On or before the 10th day of each Month beginning with the second Month of the first Contract Year following the Effective Date, FMPA shall render to the Project Participant a monthly statement showing, in each case with respect to the prior Month, the amount of energy delivered for each hour and the amounts payable by Project Participant in respect of the following (i) the Monthly Energy Costs; (ii) the Project Related Costs; and (iii) any amount, if any, to be credited to or paid by the Project Participant pursuant to the terms of this Power Sales Contract.

(b) Monthly payments required to be paid to FMPA pursuant to this SECTION 5 shall be due and payable to FMPA on the 25th day of the Month in which the monthly statement was rendered. The Project Participant shall make payment to FMPA by the transfer of funds from the Project Participant's bank account, using an ACH Push or domestic Wire Transfer, through instructions to be provided by FMPA to the Project Participant.

(c) If payment in full is not made on or before the close of business on the due date, a delayed payment charge on the unpaid amount due for each day overdue will be imposed at a rate equal to the annual percentage prime rate of interest plus 5%, or the maximum rate lawfully payable by the Project Participant, whichever is less. If said due date is Saturday, Sunday or a holiday, the next following business day shall be the last day on which payment may be made without the addition of the delayed payment charge.

(d) In the event of any dispute that is known by Project Participant, or should have reasonably been known, as to any portion of any monthly statement, the Project Participant shall nevertheless pay the full amount of such disputed charges when due and shall give written notice of such dispute to FMPA not later than the date such payment is due. Such notice shall identify the disputed bill, state the amount in dispute and set forth a full statement of the grounds on which such dispute is based. No adjustment shall be considered or made for disputed charges unless notice is given as aforesaid. FMPA shall give consideration to such dispute and shall advise the Project Participant with regard to its position relative thereto within thirty (30) days following receipt of such written notice. Upon final determination (whether by agreement, adjudication or otherwise) of the correct amount, any difference between such correct amount and such full amount shall be properly reflected in the statement next submitted to the Project Participant after such determination. If it is determined that the disputed amount is in the favor of the Participant, to the extent that FMPA earned any interest on the amount withheld, then interest actually earned shall be applied to the overpaid amount.

(e) The obligation of the Project Participant to make the payments under this SECTION 5 shall constitute an obligation of the Project Participant payable as an operating expense of the Project Participant's electric utility system solely from the revenues and other available funds of the electric utility system. The obligation of the Project Participant to make payments under this Power Sales Contract shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be otherwise conditioned upon performance of FMPA or Seller under the Solar PPA or the performance by FMPA under this or any other agreement or instrument or the validity or enforceability of any other Power Sales Contract or any other agreement between FMPA and any other Project Participant; provided, however, that the Monthly Energy Costs payable by Project Participant shall reflect the Project Participant's Solar Entitlement Share of the quantity of Solar Product made available by the Seller at the Point of Delivery, and payable by FMPA under the Solar PPA, during that month. The obligation of the Project Participant to make payments under this SECTION 5 shall not constitute a debt of the Project Participant within the meaning of any constitutional or statutory provision or limitation or a general obligation of or pledge of the full faith and credit of the Project Participant, and neither the Project Participant nor the State of Florida or any agency or political subdivision thereof shall ever be obligated or compelled to levy ad valorem taxes to make the revenues provided for in this SECTION 5, and the obligation of the Project Participant to make

payments pursuant to this SECTION 5 shall not give rise to or constitute a lien upon any property of the Project Participant or any property located within its boundaries or service area.

#### **SECTION 6. Scheduling of Deliveries; Transmission.**

(a) FMPPA shall cause Seller, or Seller's agent, to schedule and deliver FMPPA's Energy Share to the Point(s) of Delivery in accordance with standard scheduling and dispatching procedures. Unless otherwise agreed to in writing by FMPPA and Project Participant, Project Participant shall be responsible for scheduling the delivery of its Solar Entitlement Share of Electric Energy, as well as the associated transmission service, from the Point(s) of Delivery to Project Participant's electric system. Upon request, FMPPA, or its agent, shall provide such Project Participant with the Seller's daily forecasted output of the Solar Facility as provided by Seller pursuant to the Solar PPA. FMPPA, or its agent, shall maintain communication with the Project Participant regarding Solar Facility forecasts and real-time output in order to enable Project Participant to modify its transmission schedules with its transmission service provider to align with the Solar Facility's actual output.

(b) Project Participant shall be responsible for securing transmission service necessary to deliver the Solar Energy from the Point of Delivery to Project Participant's electric system. To the extent this transmission service requires upgrades to Project Participant's transmission service provider's transmission system, Project Participant shall be responsible for ensuring all upgrades are complete and Project Participant is able to receive its Solar Entitlement Share prior to the Initial Energy Delivery Date, as defined in the Solar PPA, or otherwise arrange for alternative transmission arrangement for, or disposal of, its Solar Entitlement Share until such time as Project Participant can receive it. Project Participant shall be responsible for enforcing its rights under its transmission service agreement(s) and its transmission service provider's Open Access Transmission Tariff ("OATT") regarding the transmission service provider's obligation to make such upgrades.

(c) All of the provisions of this SECTION 6 are subject to the provisions of the Solar PPA, and in the event of any inconsistencies between this SECTION 6 and the provisions of the Solar PPA governing scheduling, the terms of the Solar PPA shall govern.

#### **SECTION 7. Solar PPA Early Termination and Term Extension, other Solar PPA Business Matters, and Solar II Project Committee.**

(a) The Solar PPA includes several provisions that allow the Solar II Project to exercise discretion regarding whether to extend the Term of the Solar PPA or to continue the existing Term of the Solar PPA despite a triggering event under the terms of the Solar PPA that permit early termination (hereinafter referred to as "Discretionary Term Decisions"). Such Discretionary Term Decisions may include, for example but without limitation, options for extension of the Term of the Solar PPA beyond the Initial Term, options for continuing or terminating obligations related to portions of the solar capacity that do not make commercial operation deadlines, and options for early termination of the Solar PPA if certain conditions precedent are not met. Project Participant and all other Project Participants will each designate a representative to serve on the Solar II Project Committee. The Committee will meet in advance of any Discretionary Term Decisions provided for under the Solar PPA, and as FMPPA or any Project Participant may request, with 30 day advance Notice (or less if the matter at hand so requires). The Solar II Project Committee shall meet not less than 180 days prior to the expiration of the Initial Term or a Renewal Term, as defined in the Solar PPA, if any, to decide whether to extend the Term of the Solar PPA. In making any Discretionary Term Decision, the Solar II Project Committee will vote on the matter. If the Solar II Project Committee unanimously decides to exercise a Discretionary Term Decision, then such unanimous consent shall be presented to the FMPPA Board of Directors as a recommendation for action on the matter. If one or more Solar II Project Participants do not wish to exercise a Discretionary Term Decision, then the other Solar II Project Participants may elect to assume the Solar Entitlement Share of those Project Participant(s)

that do not wish to exercise the Discretionary Term Decision. In such event, the non-exercising Project Participant(s)' Solar II Project Power Sales Contract shall be terminated, and the Power Sales Contract of the assuming Project Participant(s)' shall be amended to reflect the revised Solar Entitlement Shares. In the event that the Project Participant(s) that wish to exercise the Discretionary Term Decision cannot agree to assume 100% of the terminating Project Participant(s)' Solar Entitlement Share, then the Discretionary Term Decision shall not be exercised.

(b) All other, non-Discretionary Term Decisions made by the Solar II Project Committee shall be by a simple majority, with each Project Participant having one equally-weighted vote on Solar II Project matters. After formation of the Solar II Project, each Project Participant shall designate a representative to serve on the Solar II Project Committee. The Solar II Project Committee shall develop a Solar II Project Committee Charter for review and approval of the Board of Directors.

#### **SECTION 8. Availability of Entitlement Shares.**

Except as provided otherwise by this Power Sales Contract, and subject to the provisions of the Solar PPA, the Project Participant's Solar Entitlement Share shall be made available for delivery to each Project Participant by FMPPA in accordance with this Power Sales Contract during the term of this Power Sales Contract; provided, however, that, regardless of the amount of Solar Product actually delivered in any given month, Project Participant shall be obligated to make its payments under SECTION 5 hereof all for non-energy related Project Related Costs.

#### **SECTION 9. Accounting.**

(a) FMPPA agrees to keep accurate records and accounts relating to the Solar II Project and relating to Monthly Energy Costs, and Project Related Costs, in accordance with the Uniform System of Accounts, separate and distinct from its other records and accounts. Said accounts shall be audited annually, which audit may be conducted as part of and in connection with the normal year-end audit of FMPPA, by a firm of certified public accountants, experienced in public finance and electric utility accounting and of national reputation, to be employed by FMPPA. A copy of each annual audit, including all written comments and recommendations of such accountants, shall be furnished by FMPPA to the Project Participant not later than 120 days after the end of each Contract Year.

(b) The Project Participant shall supply to FMPPA upon request a copy of the Project Participant's annual financial audit. Project Participant shall notify FMPPA in writing immediately upon becoming aware of any event that may negatively affect the Project Participant's credit rating or cause a Downgrade Event, as defined in the Solar PPA.

#### **SECTION 10. Information to be Made Available.**

(a) Based, in each case, upon the data most recently available to FMPPA pursuant to the Solar PPA, at intervals requested by Project Participant, FMPPA will prepare and issue to the Project Participant the following reports:

- (1) status of the Solar II Project annual budget,
- (2) status of construction of the Solar Facility during construction, as received from Seller, and
- (3) operating statistics relating to Solar II Project, as received from Seller

(b) Upon request, FMPPA shall furnish or otherwise make available to the Project Participant all other information which FMPPA receives from Seller pursuant to the Solar PPA.

(c) FMPPA shall promptly provide Project Participant copies of any notices made or received by FMPPA pursuant to the Solar PPA.

(d) Project Participant shall, upon request, furnish to FMPA all such information as is reasonably required by FMPA to carry out its obligations under this Power Sales Contract and the Solar PPA. As the Solar II Project is obligated to demonstrate creditworthiness as a requirement of the Solar PPA and report to Seller any Downgrade Event, Project Participants will cooperate with FMPA and will promptly notify FMPA of any event experienced by Project Participant that may cause or contribute to a Downgrade Event.

#### **SECTION 11. Covenants.**

(a) Project Participant Covenants. Project Participant agrees (1) to maintain its electric utility system in good repair and operating condition; (2) to cooperate with FMPA in the performance of the respective obligations of such Project Participant and FMPA under this Power Sales Contract; (3) to establish, levy and collect rents, rates and other charges for the products and services provided by its electric utility system, which rents, rates, and other charges shall be at least sufficient (i) to meet the operation and maintenance expenses of such electric utility system, (ii) to comply with all covenants pertaining thereto contained in, and all other provisions of, any resolution, trust indenture, or other security agreement relating to any bonds or other evidences of indebtedness issued or to be issued by the Project Participant, (iii) to generate funds sufficient to fulfill the terms of all other contracts and agreements made by the Project Participant, including, without limitation, this Power Sales Contract, and (iv) to pay all other amounts payable from or constituting a lien or charge on the revenues of its electric utility system; and (4) take such action and execute and deliver all documents and information reasonably necessary to enable FMPA to perform its obligations under the Solar PPA.

Project Participant agrees that any power purchase agreement entered into by Project Participant after the Effective Date of this Power Sales Contract, including, without limitation, any full-requirements power supply agreement, with any third party shall permit Project Participant to purchase and receive Solar Product pursuant to this Power Sales Contract.

(b) FMPA Covenants. FMPA covenants that it shall administer and enforce against the Seller the terms and conditions of the Solar PPA, including complying with any covenants required therein, as advised by the Solar II Project Committee and directed by the FMPA Board of Directors.

#### **SECTION 12. Event of Default – Project Participant.**

(a) Failure of the Project Participant to make to FMPA when due any of the payments for which provision is made in this Power Sales Contract shall constitute an immediate default on the part of the Project Participant.

(b) Continuing Obligation, Right to Discontinue Service. In the event of any default referred to in this SECTION 12 hereof, the Project Participant shall not be relieved of its liability for payment of the amounts in default, plus reasonable attorney's fees and costs, and FMPA shall have the right to recover from the Project Participant any amount in default. In enforcement of any such right of recovery, FMPA may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to enforce any covenant, agreement or obligation to make any payment for which provision is made in this Power Sales Contract against the Project Participant, and FMPA shall, upon ten (10) days written notice to the Project Participant, cease and discontinue, either permanently or on a temporary basis, providing all or any portion of the Project Participant's Solar Entitlement Share, at the discretion of the Solar II Project Committee.

(c) Transfer of Solar Entitlement Shares Following Default. In the event of a default by any Project Participant and permanent discontinuance of service pursuant to this SECTION 12 of such Project Participant's Power Sales Contract, FMPA is hereby appointed the agent of such Project Participant for the

purpose of disposing of such Project Participant's Solar Entitlement Share and as such agent, FMPA shall proceed to dispose of such defaulting Project Participant's Solar Entitlement Share as follows:

(1) FMPA shall first offer to transfer to all other non-defaulting Project Participants a pro rata portion of the defaulting Project Participant's Solar Entitlement Share which shall have been discontinued by reason of such default. Any part of such Solar Entitlement Share of a defaulting Project Participant which shall be declined by any non-defaulting Project Participant shall be reoffered pro rata to the non-defaulting Project Participants which have accepted in full the first such offer; such reoffering shall be repeated until such defaulting Project Participant's Solar Entitlement Share has been reallocated in full or until all non-defaulting Project Participants have declined to take any portion or additional portion of such defaulting Project Participant's Solar Entitlement Share.

(2) In the event less than all of a defaulting Project Participant's Solar Entitlement Share shall be accepted by the other non-defaulting Project Participants pursuant to clause (1), FMPA shall, to the extent permitted by law, use commercially reasonable efforts to sell the remaining portion of a defaulting Project Participant's Solar Entitlement Share for the remaining term of such defaulting Project Participant's Power Sales Contract with FMPA. The agreement for such sale shall contain such terms and conditions, including provisions for discontinuance of service upon default, and as are otherwise acceptable to the Solar II Project Committee.

(3) Any portion of the Solar Entitlement Share of a defaulting Project Participant transferred pursuant to SECTION 12(c)(1) to a non-defaulting Project Participant shall become a part of and shall be added to the Solar Entitlement Share of such Project Participant(s), and each such Project Participant(s) shall be obligated to pay for its Solar Entitlement Share increased as aforesaid, as if the Solar Entitlement Share of such Project Participant(s), increased as aforesaid, had been stated originally as the Solar Entitlement Share of such Project Participant(s) in its Power Sales Contract with FMPA; provided, however, that the Project Participant assuming the defaulting Project Participant's Power Entitlement share shall not be liable for, and the defaulting Project Participant shall remain liable for, any amounts owed by the defaulting Project Participant prior to the assignment and assumption of the defaulting Project Participant's Power Entitlement Share.

(4) The defaulting Project Participant shall remain liable for all payments to be made on its part pursuant to the Power Sales Contract, except that the obligation of the defaulting Project Participant to pay FMPA shall be reduced to the extent that payments shall be received by FMPA, net of any administrative and reasonable attorney's fees and costs incurred by FMPA that is caused by the default, for that portion of the defaulting Project Participant's Solar Entitlement Share which may be transferred or sold or for the Solar Product associated therewith which may be sold as provided in clauses (1), (2), or (3) of this SECTION 12. Notwithstanding the foregoing, to the extent a defaulting Project Participant has failed to pay its Solar II Project invoice, in order to prevent FMPA from defaulting under the Solar PPA, the non-defaulting Project Participants' monthly Solar II Project invoices shall be increased on a pro rata basis, based on such Project Participants Solar Entitlement Shares, unless and until FMPA shall recover from the defaulting Project Participants amounts owed, upon which FMPA shall reimburse the non-defaulting Project Participants.

(d) Other Default by Project Participant. In the event of any default by the Project Participant under any other covenant, agreement or obligation of this Power Sales Contract which has not been cured within thirty (30) days after receipt of notice by FMPA, FMPA may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to enforce any covenant, agreement or obligation



of this Power Sales Contract against the Project Participant. Such remedies shall be in addition to all other remedies provided for herein.

#### **SECTION 13. Default by FMPA.**

In the event of any default by FMPA under any other covenant, agreement or obligation of this Power Sales Contract, Project Participant may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction, specific performance, declaratory judgment, or any combination thereof, as may be necessary or appropriate to enforce any covenant, agreement or obligation of this Power Sales Contract against FMPA. Such remedies shall be in addition to all other remedies provided for herein.

#### **SECTION 14. Abandonment of Remedy.**

In case any proceeding taken on account of any default shall have been discontinued or abandoned for any reason, the parties to such proceedings shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of FMPA and the Project Participant shall continue as though no such proceedings had been taken.

#### **SECTION 15. Waiver of Default.**

Any waiver at any time by either FMPA or the Project Participant of its rights with respect to any default of the other party hereto, or with respect to any other matter arising in connection with this Power Sales Contract, shall not be a waiver with respect to any subsequent default, right or matter.

#### **SECTION 16. Relationship to and Compliance with Other Instruments.**

The performance of FMPA under this Power Sales Contract is made subject to the terms and provisions of the Solar PPA.

#### **SECTION 17. Measurement of Electric Energy.**

FMPA will or will cause Seller to install, maintain, and operate the metering equipment, required to measure the quantities of Electric Energy produced and delivered from the Solar Facility in accordance with the Solar PPA. Each meter used pursuant to this SECTION 17 shall be tested and calibrated in accordance with the Solar PPA.

#### **SECTION 18. Liability of Parties.**

Any liability which is incurred by FMPA pursuant to the Solar PPA and not covered, or not covered sufficiently, by insurance shall be paid solely from the revenues of FMPA derived from the Solar II Project, and any payments made by FMPA, or which FMPA is obligated to make, to satisfy such liability shall become part of Monthly Energy Costs, as required in order to satisfy the obligation of FMPA to make such payments as provided in the Solar PPA.

#### **SECTION 19. Assignment or Sale of Project Participant's Solar Entitlement Share.**

(a) Project Participant may terminate this Power Sales Contract upon 90 days advance written notice to FMPA and provided that Project Participant pay, prior to the termination date, the amounts set forth in this SECTION 19(a). Prior to the termination date, Project Participant shall pay to FMPA all stranded cost obligations, as determined by FMPA, to hold the other, non-terminating, Project Participants harmless from the costs associated with Project Participant's termination. For purposes of this SECTION 19(a), stranded cost obligations are defined as an estimate of the solar energy costs that FMPA will pay for the terminating Project Participant's Solar Entitlement Share during each remaining month of the remaining Initial Term of the Solar PPA based on a forecast of expected solar production. The forecast of expected solar production is defined as a P50 (probability of exceedance is 50 percent) production estimate under typical meteorological year conditions using an industry standard modeling tool (PVsyst or its

successor/peer products) reflective of a degradation rate of 0.5% per year relative to the original nominal alternating current capacity of the solar resource in the current year (prorated over a partial year as applicable) and each subsequent remaining year of the Solar PPA Initial Term. Upon such payment and termination, Project Participant shall have no further obligation to the Solar II Project or other Project Participants under this Power Sales Contract. The terminating Project Participant's Solar Entitlement Share shall be allocated to the remaining Project Participants on a pro rata basis based on their Solar Entitlement Shares.

(b) Project Participant may assign this Power Sales Contract to another Project Participant or another FMPA member, provided that such assignee agrees to fully assume, and fully accept all terms and conditions of, this Power Sales Contract for the Term hereof. If assigned to a FMPA member that is not a Project Participant, such assuming FMPA member shall become a Project Participant upon its assumption of the Power Sales Contract. Upon such assignment and assumption, this Power Sales Contract shall terminate, and Project Participant shall have no further obligation to the Solar II Project or other Project Participants under this Power Sales Contract.

(c) In the event the Project Participant shall determine that all or any amount of the Solar Product which can be produced from the Project Participant's Solar Entitlement Share are in excess of the requirements of the Project Participant, or Project Participant no longer desires to purchase and receive its Solar Entitlement Share, at the written request of the Project Participant, FMPA shall use commercially reasonable efforts to sell and transfer on behalf of such Project Participant for any period of time all or any part of such excess Solar Product to such other Project Participant or Participants as shall agree to take such Solar Product at such prices as may be agreed to, provided, however, that in the event the other Project Participants do not agree to take the entire amount of such excess, FMPA shall have the right, to the extent permitted by law, to dispose of such excess to other utilities. If all or any portion of such excess of the Project Participant's Solar Entitlement Share is sold pursuant to this SECTION 19(c), then the Project Participant's Solar Entitlement Share shall not be reduced, and the Project Participant shall remain liable to FMPA to pay the full amount due as if such sale had not been made; except that such liability shall be discharged to the extent that FMPA shall receive payment for such excess from the purchaser or purchasers thereof and that any amounts received by FMPA as payment for such excess which is greater than the liability owed by the Project Participant to FMPA in respect of such excess shall be promptly paid or credited by FMPA to the Project Participant.

## **SECTION 20. Consent to Assignment of Power Sales Contract, Sale of Project Participant's System.**

(a) This Power Sales Contract shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Power Sales Contract; provided, however, that, except as provided in (1) SECTION 12 hereof in the event of a default; (2) SECTION 19(a), and (3) SECTION 20(b), neither this Power Sales Contract nor any interest herein shall be transferred or assigned by either party hereto except with the consent in writing of the other party hereto, which consent shall not be unreasonably withheld. The Solar II Project Committee shall make a recommendation on any assignment of a Power Sales Contract hereunder to the FMPA Board of Directors for their action.

(b) Project Participant agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all of its electric utility system except upon ninety (90) days prior written notice to FMPA and, in any event, will not sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Project Participant shall, subject to the Solar PPA, assign this Power Sales Contract and its rights and interest hereunder to the purchaser or lessee of said electric system, if any, and any such purchaser or lessee shall assume all obligations of the Project Participant under this Power Sales Contract; and (ii) FMPA shall by affirmative vote of the FMPA Solar II Project Committee reasonably determine that such

sale, lease, abandonment or other disposition will not materially adversely affect FMPA's ability to meet its obligations under the Solar PPA.

**SECTION 21. Termination or Amendment of Contract.**

(a) This Power Sales Contract shall not be terminated by either party under any circumstances, whether based upon the default of the other party under this Power Sales Contract or any other instrument or otherwise except as specifically provided in this Power Sales Contract.

(b) This Power Sales Contract may be terminated by FMPA by notice to the Project Participant upon an event of default by Project Participant that has not been cured in accordance with this Power Sales Contract.

(c) No Power Sales Contract entered into between FMPA and another Project Participant may be amended so as to provide terms and conditions different from those herein contained except upon written notice to and written consent or waiver by each of the other Project Participants, and upon similar amendment being made to the Power Sales Contract of any other Project Participants requesting such amendment after receipt by such Project Participant of notice of such amendment.

**SECTION 22. Notice and Computation of Time.**

Any notice or demand by the Project Participant to FMPA under this Power Sales Contract shall be deemed properly given if sent by overnight mail or courier, or by facsimile or email transmission to the following:

Florida Municipal Power Agency  
Attn: Chief Operating Officer  
8553 Commodity Circle  
Orlando, FL 32819  
Email: ken.rutter@fmpa.com  
Fax: 407-355-5794

With a required copy to:  
FMPA Office of the General Counsel  
2061-2 Delta Way  
P.O. Box 3209 (32315-3209)  
Tallahassee, FL 32303  
Email: jody.lamar.finkea@fmpa.com  
dan.ohagan@fmpa.com  
Fax: 850-297-2014

Any notice or demand by FMPA to the Project Participant under this Power Sales Contract shall be deemed properly given if sent by overnight mail or courier, or by facsimile or email transmission, and addressed to the Project Participant at the address set forth on Schedule 1 hereto.

A notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the business day on which such notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next business day) and a notice of overnight mail or courier shall be deemed to have been received two (2) business days after it was sent or such earlier time as is confirmed by the receiving Party.

The designations of the name and address to which any such notice or demand is directed may be changed at any time and from time to time by either party giving notice as above provided.

**SECTION 23. Applicable Law; Construction.**

This Power Sales Contract is made under and shall be governed by the laws of the State of Florida. Headings herein are for convenience only and shall not influence the construction hereof.

**SECTION 24. Severability.**

If any section, paragraph, clause or provision of this Power Sales Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Power Sales Contract shall remain in full force and effect as though such section, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not been included herein.

**SECTION 25. Solar II Project Responsibility**

This Power Sales Contract is a liability and obligation of the Solar II Project only. No liability or obligation under this Power Sales Contract shall inure to or bind any of the funds, accounts, monies, property, instruments, or rights of FMPA generally, any individual FMPA member other than Project Participant, or any of any other "project" of FMPA as that term is defined in the Interlocal Agreement

**IN WITNESS WHEREOF**, the parties hereto have caused this Power Sales Contract to be executed by their proper officers respectively, being thereunto duly authorized, and their respective seals to be hereto affixed, as of the day and year first above written.

**FLORIDA MUNICIPAL POWER AGENCY**

(SEAL)

By: \_\_\_\_\_  
General Manager & CEO

Attest:

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary or Assistant Secretary

**[Member name]**

(SEAL)

By: \_\_\_\_\_  
[name]  
[Title]

Attest:

Date: \_\_\_\_\_

\_\_\_\_\_  
[name]  
[title]

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
City Attorney

**ATTACHMENT A**  
**POWER PURCHASE AGREEMENTS**

## **ATTACHMENT B**

### **FMPA PROCESS FOR DETERMINING ALLOCABLE A&G COSTS**

FMPA uses a process to determine the Administrative and General costs (A&G) that will be incurred to effectively manage its non-ARP power supply projects. FMPA's Board approves the process and the allocations to power supply project participants when the Board approves each annual power supply project budget. The process is subject to annual review and approval by the Board, and thus, may change from time to time.

The total A&G allocated to the Solar II Project will not exceed 100% of the cost associated with the single highest cost non-executive level FMPA position essential to the effective management of the Projects, and annual increases in total A&G allocated shall be commensurate with annual salary increases of such highest costs non-executive level FMPA position. Any revision to this approach shall require the approval of the Solar II Project Committee. As of the Effective Date of this Agreement, the amount equal to 100% of the cost associated with the single highest cost non-executive level FMPA position essential to the effective management of the Projects is \$232,447.

The following describes the power supply project A&G cost determination process for the FY2018 Budget and provides an example of how A&G costs will be allocated to Solar II Project and ARP Solar Participants, starting with the FY2020 budget:

- 1) Staff determines the FMPA positions that are essential to effective management of the Projects.
- 2) Staff determines the percent time each position spends serving the needs of each the Projects and the ARP.
- 3) The allocable cost of each position to each of the Projects is the percent time this position spends serving the needs of each the Projects determined in 2) multiplied by the current mid-point of the salary range of the position as maintained by FMPA's Human Resources Department and approved by the Board, and multiplied by FMPA's overhead adder percentage.
- 4) The total A&G allocated to each Project is the sum of the allocable costs of each position essential to effective management of the Project.
- 5) Once the annual A&G costs to be allocated to the Solar II Project is determined, the amount is divided by 12 to arrive at the monthly allocable A&G costs.
- 6) For Solar II Project, the monthly allocable A&G costs will be divided by the total amount of the solar energy received by the Solar II Project for the billing month to determine a monthly allocable A&G rate (\$/MWh). Each Solar II Project pays this rate times the amount of solar energy each Participant received during the billing month.
- 7) The table below is an example of the calculation of annual and monthly allocable A&G costs to each power supply project and the Solar II Project for the FY2020 Budget using cost data and the process approved for the FY2020 Budget. This allocation process is subject to Board approval each year.

Example A&G Allocation for FY 2020 Budget								
Position	FY 2019 Mid Point Salary	ARP	STN	Tri-City	STN 2	St Lucie	Solar	Solar 2
General Manager	\$225,000	19.2%	19.2%	19.2%	19.2%	19.2%	2.0%	2.0%
Admin Asst.	\$57,712	19.2%	19.2%	19.2%	19.2%	19.2%	2.0%	2.0%
Director of Engineering	\$196,197	19.2%	19.2%	19.2%	19.2%	19.2%	2.0%	2.0%
Engineer	\$116,129	18.0%	18.0%	18.0%	18.0%	18.0%	5.0%	5.0%
Engineering Assistant	\$57,712	19.2%	19.2%	19.2%	19.2%	19.2%	2.0%	2.0%
Director of Finance	\$185,092	16.0%	16.0%	16.0%	16.0%	16.0%	10.0%	10.0%
Mgr. Contracts Compliance	\$123,097	16.0%	16.0%	16.0%	16.0%	16.0%	10.0%	10.0%
Accountant III	\$116,129	16.0%	16.0%	16.0%	16.0%	16.0%	10.0%	10.0%
Accounting Clerk	\$43,126	16.0%	16.0%	16.0%	16.0%	16.0%	10.0%	10.0%
Payroll Clerk PT	\$45,714	19.2%	19.2%	19.2%	19.2%	19.2%	2.0%	2.0%
Total	\$1,165,908	\$207,503	\$207,503	\$207,503	\$207,503	\$207,503	\$64,198	\$64,198
Overhead Adder	88.83%	88.83%	88.83%	88.83%	88.83%	88.83%	88.83%	88.83%
Annual Allocable A&G	\$2,201,616	\$391,833	\$391,833	\$391,833	\$391,833	\$391,833	\$121,226	\$121,226
Monthly Allocable A&G	\$183,468	\$32,653	\$32,653	\$32,653	\$32,653	\$32,653	\$10,102	\$10,102



**ATTACHMENT C**  
**WORKING CAPITAL ALLOWANCE**

In order to provide for working capital for the Solar II Project, and to provide for the Solar II Project's ability to pay Seller in the event that of non-payment by one or more Project Participants, the Solar II Project shall maintain a working capital fund in the principal amount of \$250,000 as cash on hand, or other financial instrument as determined by the Solar II Project Committee. The working capital fund will be funded at the time solar energy starts to be provided under the Solar PPA and will remain in place for the remaining term of this Power Sales Contract. Working capital expenses, including payment of interest on any amounts drawn on any financial instruments, shall constitute Project Related Costs.

## **ATTACHMENT D**

### **PROJECT DEVELOPMENT FUND COSTS**

As of the Effective Date of this Agreement, FMPA has incurred \$0 in Project Development Fund costs.

The amount of Project Development Fund costs allocable to Project Participants shall be calculated by dividing the total balance of Development Fund Costs incurred for solar development by the total expected energy production allocated to the Solar II Project over the first 20 years of the Solar PPA. The resulting dollar per MWh cost shall be allocated as a Project Related Cost.

<b>Project Development Fund Cost</b>	<b>Units</b>	<b>Value</b>
Total Development Fund Expenditure	\$	
Participant Capacity	MW-AC	
Est. Annual Capacity Factor	%	
Est. Annual Project Energy	MWh	
20 Year Buy down Per Year	\$	
20 Year Buy down Per MWh	\$/MWh	

**SCHEDULE 1**  
**SCHEDULE OF PROJECT PARTICIPANTS**

<u>Name of Project Participant</u>	<u>Solar Entitlement Share (MW)</u>	<u>Solar Entitlement Share (%)</u>
Homestead Public Services	5	xx%
City of Lake Worth Utilities	25	xx%
City of Mount Dora	5	xx%
New Smyrna Beach Utilities Commission	10	xx%
Winter Park Electric Utility	10	xx%
<b>Total</b>	<b>55</b>	<b>100%</b>

Notice Information of Project Participants

<u><b>Homestead Public Services</b></u> George Gretsas, City Manager The City of Homestead 100 Civic Court Homestead, FL 33033	<u><b>City of Lake Worth Utilities</b></u> City of Lake Worth Electric Utilities Director 1900 2 <sup>nd</sup> Avenue North Lake Worth, FL 33461 Tel: (561) 586-1670  With a copy to: City of Lake Worth Attn: City Attorney 7 N. Dixie Highway Lake Worth, FL 33460
<u><b>City of Mount Dora</b></u> City of Mount Dora City Hall 510 Baker Street Mount Dora, FL 32757	<u><b>City of New Smyrna Beach Utilities Commission</b></u> Utilities Commission, City of New Smyrna Beach 200 Canal Street New Smyrna Beach, FL 32168
<u><b>Winter Park Electric Utility</b></u> City of Winter Park Randy Knight, City Manager 401 South Park Avenue Winter Park, FL 32789-4386	



# **SOLAR POWER PURCHASE AGREEMENT**

**between**

**Florida Municipal Power Agency**

**as Buyer**

**and**

**FL Solar [ ], LLC**

**as Seller**

**dated as of**

**December \_\_, 2019**

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**SOLAR POWER PURCHASE AGREEMENT**  
**[(All-Requirements Power Supply Project)][(Solar II Project)]**

This SOLAR POWER PURCHASE AGREEMENT (this “**Agreement**”) is made this [\_\_\_\_] day of December, 2019 (the “**Effective Date**”), by and between **the Florida Municipal Power Agency**, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“**Buyer**”) and FL Solar [\_\_\_\_], LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are each individually referred to herein as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

WHEREAS, Seller intends to develop a photovoltaic solar energy generation facility of approximately [\_\_\_\_] MW aggregate nameplate capacity on a site located in [LOCATION], as further described in Exhibit B (the “**Project**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase and receive, all of the electric Energy and associated Capacity Attributes and Environmental Attributes from Buyer’s Share of the Project, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.**

“**AC**” means alternating current.

“**Abandon**” means after having commenced construction of the Project, Seller stops construction of the Project for more than ninety (90) consecutive days excluding cessation of construction work caused by the occurrence of a Force Majeure Event, Permitting Delay, or Transmission Delay and because of such stoppage Seller cannot reasonably demonstrate to Buyer that it will nonetheless be able to complete the Facility within the timeframe contemplated by this Agreement.

“**Adjustment Period**” has the meaning set forth in Section 5.2.

“**Affiliate**” means, with respect to any Person, any entity controlled, directly or indirectly, by such Person, any entity that controls, directly or indirectly, such Person or any entity directly or indirectly under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession,

directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

**“Agreement”** has the meaning set forth in the first paragraph hereof.

**“Annual Energy Output Guarantee”** has the meaning set forth in Exhibit D.

**“Applicable Law”** means, with respect to any Person or the Project, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, Governmental Approvals, directives and requirements of all regulatory and other Governmental Authorities, in each case applicable to or binding upon such Person or the Project (as the case may be).

**“Applicable REC Program”** means, except as otherwise agreed by the Parties, the Green-e Renewable Energy Standard for the United States published by the Center for Resource Solutions, as may be amended, restated, supplemented, or otherwise modified from time to time, and any successor voluntary renewable energy program established as a replacement for such program.

**“Bankrupt”** means, with respect to a Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) is generally unable to pay its debts as they fall due, (v) been adjudicated bankruptcy or has filed a petition or an answer seeking an arrangement with creditors, (vi) taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (vii) become subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such Party by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive Days, (viii) failed to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) Days of the filing thereof, or (ix) become subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day commences at 8:00 a.m. and ends at 5:00 p.m. local time for the location of the Site.

**“Buyer”** has the meaning set forth in the first paragraph of this Agreement.

**“Buyer Curtailment Cap”** means 33% of the Buyer’s Share of the Annual Energy Output listed in Table A of Exhibit D.

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce Buyer’s Share of generation from the Project by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Period.

**“Buyer Curtailment Period”** means the period of time during which Seller reduces generation from the Project pursuant to a Buyer Curtailment Order. The Buyer Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up.

**“Buyer Excuses”** has the meaning set forth in Section 3.5(b).

**“Buyer’s Share”** means [ ]%.

**“Capacity Attributes”** means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of the Project to produce Energy or ancillary services. Notwithstanding any other provision hereof, Capacity Attributes do not include Environmental Attributes or Tax Attributes.

**“Capacity Shortfall”** means the difference between Buyer’s Share of the Expected Project Capacity and Buyer’s Share of the amount of Project capacity that has achieved Commercial Operation as of the applicable date.

**“Capacity Shortfall Damages”** has the meaning set forth in Section 4.4(b).

**“Change of Law”** means any enactment, adoption, promulgation, modification or repeal of any Applicable Law, or in the administration, interpretation or application thereof by any Governmental Authority occurring on or after the Effective Date.

**“Commercially Reasonable”** or **“Commercially Reasonable Efforts”** means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Prudent Operating Practices, including, without limitation, electric system reliability and stability, state or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. “Commercially Reasonable” or “Commercially Reasonable Efforts” shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

**“Commercial Operation”** means that (a) Seller has delivered to Buyer the Performance Assurance required under Section 9.3; (b) Seller has received all material Governmental

Approvals as may be required prior to commencing commercial operations by Applicable Law for the construction, operation and maintenance of the Project; and (c) the Project or any portion thereof, as applicable, is operating and able to produce and deliver, or make available for delivery, Energy at the Delivery Point.

**“Commercial Operation Date”** means the earlier of (a) the date on which Commercial Operation has occurred with respect to the full Expected Project Capacity and Seller has provided written notice of the Commercial Operation Date to Buyer; (b) 180 days after the Target Commercial Operation Date (as may be extended by Permitted Extensions); and (c) the date the Termination Option is exercised.

**“Compliance Cost Cap”** has the meaning set forth in Section 3.18.

**“Compliance Costs”** means all reasonable out-of-pocket costs and expenses, including registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, incurred by Seller and paid directly to third parties in connection with Seller’s compliance with obligations under any Applicable Law in connection with, as applicable, the qualification of the Project as a renewable energy resource, the certification and transfer of Environmental Attributes, and compliance with the Transmission Owner and Transmission Provider regulations and requirements applicable to the Project due to a Change of Law after the Effective Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under Applicable Law in effect as of the Effective Date.

**“Confidential Information”** has the meaning set forth in Section 13.1.

**“Connecting Utility”** means the Person that owns the portion of the electric transmission system at the Interconnection Point.

**“Continuation Option”** has the meaning set forth in Section 4.4.

**“Contract Price”** has the meaning set forth in Exhibit A.

**“Contract Year”** means, after the Commercial Operation Date, a calendar year commencing HE 0100 on January 1 and ending on HE 2400 on December 31 of the same year; provided that, if this Agreement is terminated prior to its expiration, the Contract Year in which such termination occurs will end at HE 2400 on the termination date and if the Commercial Operation Date occurs a date other than January 1, the first Contract Year shall commence HE 0100 on the Commercial Operation Date, and all related provisions of this Agreement shall be adjusted for such condensed Contract Years on a pro rata basis.

**“Costs”** means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all

reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

***[The following bracketed definition only applies to the ARP PPAs:***

***“Credit Rating”*** means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third-party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by the Rating Agencies.]

***[The following bracketed definition only applies to the Solar II PPAs:***

***“Credit Rating”*** means, (a) with respect to Seller, the rating then assigned to Seller's unsecured, senior long-term debt obligations (not supported by third-party credit enhancements) or if Seller does not have a rating for its senior unsecured long-term debt, then the rating then assigned to Seller as an issues rating by the Rating Agencies; and (b) with respect to Buyer, the rating then assigned to Buyer's long-term bonds secured by revenues of the FMPA Solar II Project or, if Buyer does not have a rating for its long-term bonds or no such bonds are issued and outstanding, then either (i) the rating then assigned to the electric or integrated utility system of each FMPA Solar II Project Participant or (ii) the rating then assigned to the municipality of which the FMPA Solar II Project Participant is a department.]

***“Creditworthy Entity”*** means an entity has a Credit Rating of BBB- from S&P or Baa3 from Moody's with a stable outlook.

***“Curtailed Period”*** means the period of time during which there is any curtailment of delivery of the Product resulting from a reduction (including curtailment to zero output or non-dispatch) of the net electrical output of the Project from levels of net electrical output the Project would otherwise be capable of producing, including during a Transmission Interruption that prevents Buyer from receiving Energy at or Seller from delivering Energy to the Delivery Point, as directed or caused by the Transmission Provider, a Governmental Authority, or Transmission Owner not due to actions or omissions of Seller or an Affiliate of Seller.

***“Daily Delay Damages”*** means an amount equal to (a) \$ [REDACTED] multiplied by the number of MWs of Capacity Shortfall, divided by (b) [REDACTED].

***“Damages Rate”*** has the meaning set forth in Exhibit D.

***“Day” or “day”*** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours local time at the Site location on any calendar day and ending at 24:00 hours local time at the Site location on the same calendar day.

***“Deemed Delivered Energy”*** means the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period,

which amount shall be determined using relevant Project availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period.

***“Default Commercial Operation Date”*** means December 31, 2023 or, if there is an ITC Extension, the deadline for the Project to be placed in service to retain its eligibility for a 30% investment tax credit under such extension.

***“Delivered Energy”*** means Buyer’s Share of all Energy produced from the Project and delivered or made available at the Delivery Point, which shall be net of all Station Service and electrical losses associated with the transmission of the Energy to the Delivery Point, including, if applicable, any transmission or transformation losses between the Metering System and the Delivery Point.

***“Delivery Term”*** means the period of time commencing upon the Initial Energy Delivery Date and terminating at the end of the Term.

***“Delivery Point”*** means the point, more specifically described in Exhibit C, where Seller’s Interconnection Facilities connect to the Transmission Owner’s Interconnection Facilities, which shall be the point of interconnection under the Interconnection Agreement.

***“Disclosing Party”*** has the meaning set forth in Section 13.1.

***“Dispute”*** has the meaning set forth in Section 17.1.

***[The following bracketed definition only applies to the ARP PPAs:***

***“Downgrade Event”*** refers to any point in time when a Party’s or its Guarantor’s Credit Rating falls below BBB- from S&P or Baa3 from Moody’s, if rated by one or more Ratings Agencies.]

***[The following bracketed definition only applies to the Solar II PPAs:***

***“Downgrade Event”*** refers to any point in time (a) with respect to either Party or its Guarantor’s Credit Rating falls below Investment Grade; and (b) with respect to Buyer, (i) any Credit Rating of Buyer’s long-term bonds secured by the revenues of the FMPA Solar II Project falls below Investment Grade; (ii) if Buyer does not have a Credit Rating for its long-term bonds or no such bonds are issued and outstanding, then (A) less than 65% of the FMPA Solar II Project Participant Entitlement Shares are held by FMPA Solar II Project Participants that have a Credit Rating, or (B) the Credit Ratings then assigned to the electric or integrated utility systems of FMPA Solar II Project Participants with Credit Ratings equals at least thirty five percent (35%) of Buyer’s Share of the Expected Project Capacity or Installed Capacity, as applicable, falls below Investment Grade; or (iii) if the FMPA Solar II Project Participant Covenants in any FMPA Solar II Project Power Sales Contract are amended, modified or altered in a manner which materially adversely impacts the ability of the FMPA Solar II Project to perform and pay its obligations under this Agreement and Seller does not consent thereto, such consent not to be unreasonably withheld, conditioned or delayed.]

***“Early Termination Date”*** has the meaning set forth in Section 7.2(a).

***“Effective Date”*** has the meaning set forth in the first paragraph of this Agreement.

***“Energy”*** means electric energy generated by the Project, which shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current and expressed in units of megawatt-hours.

***“Environmental Attribute”*** means any and all presently existing or future benefits, emissions reductions, environmental air quality credits, emissions reduction credits, greenhouse gas emissions, Renewable Energy Credits, offsets and allowances, green tag or other transferable indicia attributable to the Project during the Term, howsoever entitled or named, resulting from the generation of renewable energy or the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of presently existing or future legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency, or any successor state or federal agency given jurisdiction over a program involving transferability of Environmental Attributes, and any renewable energy certificate reporting rights to such Environmental Attributes. Notwithstanding any other provision hereof, Environmental Attributes do not include: (a) any Tax Attributes, (b) state, federal or private grants related to the Project, (c) Energy, or (d) Capacity Attributes.

***“Equitable Defenses”*** means any bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

***“Event of Default”*** has the meaning set forth in Section 7.1.

***“Executives”*** has the meaning set forth in Section 17.2(a).

***“Expected Project Capacity”*** has the meaning set forth in Section 3.4.

***[The following bracketed definitions only apply to the Solar II PPAs:***

***“FMPA Solar II Project”*** means the joint-action solar project created by the FMPA Board of Directors pursuant to FMPA Resolution [#####], dated December [date], 2019.

***“FMPA Solar II Project Participant Covenants”*** means the covenants by each FMPA Solar II Project Participant in the applicable FMPA Solar II Project Power Sales Contract: (a) that the payments which the FMPA Solar II Project Participant is required to make under the applicable FMPA Solar II Project Power Sales Contract constitute an obligation payable as an operating expense of the FMPA Solar II Project Participant's electric utility

system solely from the revenues and other available funds of the electric utility system; (b) that upon the failure of any other FMPA Solar II Project Participant(s) to make payments owed to FMPA under the applicable FMPA Solar II Project Power Sales Contract, to pay to Buyer such non-defaulting FMPA Solar II Project Participant's pro rata share of the amounts owed by the defaulting FMPA Solar II Project Participant(s), and (c) to establish, levy and collect rents, rates and other charges for the products and services provided by its electric utility system, which rents, rates, and other charges shall be at least sufficient to meet the operation and maintenance expenses of such electric utility system, including all sums owed to Buyer pursuant to the FMPA Solar II Project Power Sales Contract.

***"FMPA Solar II Project Participant"*** means a municipality or municipal electric utility that is a member of Buyer and a member of the FMPA Solar II Project, all of which are listed on Exhibit K, as may be updated from time to time in accordance with this Agreement.

***"FMPA Solar II Project Participant Entitlement Share"*** means, as to each FMPA Solar II Project Participant, the participant's individual undivided pro rata entitlement share of the Buyer's Share of the Expected Project Capacity or Installed Capacity, as applicable.

***"FMPA Solar II Project Power Sales Contracts"*** means a Power Sales Contract between a FMPA Solar II Project Participant and Buyer for the sale of FMPA Solar II Project Participant Entitlement Share by Buyer to such FMPA Solar II Project Participant, substantially in the form of Exhibit M.]

***"Forced Outage"*** means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in an amount [REDACTED] of the Installed Capacity in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction, or any other unavailability of the Project for maintenance or repair that is not a Planned Outage, due to a Buyer Curtailment Order or during a Curtailment Period, or the result of a Force Majeure Event.

***"Force Majeure Event"*** means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, other than the obligation to pay amounts due, but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which, by the exercise of due diligence, such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.



- (a) Subject to the foregoing, events that could qualify as a Force Majeure Event include, but are not limited to the following:
- (i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
  - (ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;
  - (iii) except as set forth in subpart (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);
  - (iv) environmental and other contamination at or affecting the Project;
  - (v) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine;
  - (vi) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials;
  - (vii) air crash, shipwreck, train wrecks or other failures or delays of transportation;
  - (viii) vandalism beyond that which could be reasonably prevented by Seller;
  - (ix) the discovery of Native American burial grounds not evidenced in Seller's Phase I environmental assessment of the Site;
  - (x) the discovery of endangered species, as defined by Law; and
  - (xi) breakdown or failure of equipment as a result of a serial manufacturer defect or flaw.
- (b) A Force Majeure Event shall not be based on:
- (i) Buyer's inability economically to use or resell the Product purchased hereunder;
  - (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;
  - (iii) Seller's inability to [REDACTED], except to the extent caused by a Force Majeure Event;
  - (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability

to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event;

- (v) Seller's failure to [REDACTED] pursuant to this Agreement; or
- (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller or Seller's Affiliates.

***“Force Majeure Extension”*** has the meaning set forth in Section 4.2(b)(iii).

***“Gains”*** means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Delivery Term, determined in a commercially reasonable manner. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Environmental Attributes.

***“Governmental Approvals”*** means all authorizations, consents, certifications, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Project.

***“Governmental Authority”*** means any national, state, provincial, local, tribal or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity having jurisdiction over either Party, the Project, the Site, Seller's Interconnection Facilities, the Transmission Owner's Interconnection Facilities, or the Transmission System, including the Transmission Provider and NERC; *provided, however*, that “Governmental Authority” will not in any event include any Party.

***“Governmental Charges”*** has the meaning set forth in Section 12.2.

***“Guarantor”*** means an entity which at the time it is to provide a Guaranty (a) has a Credit Rating of at least BBB from S&P or Baa2 from Moody's if rated by only one Ratings Agency or at least BBB- from S&P and Baa3 from Moody's if rated by both Ratings Agencies, and (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction.

***“Guaranty”*** means a Guaranty substantially in the form of Exhibit E.

***“Initial Energy Delivery Date”*** means the first date that Seller delivers or makes available Energy from the Project to Buyer at the Delivery Point.

***“Initial Negotiation End Date”*** has the meaning set forth in Section 17.2(a).

***“Initial Term”*** has the meaning set forth in Section 2.1.

***“Installed Capacity”*** has the meaning set forth in Section 3.4.

***“Interconnection Agreement”*** means the interconnection service agreement or agreements entered into by and among, as applicable, the Transmission Provider, the Transmission Owner, and the Seller (or Seller’s Affiliate and made available to Seller) pursuant to which the Project will be interconnected with the Transmission System.

***“Interconnection Delay”*** has the meaning set forth in Section 4.2(b)(i).

***“Interest Payment Date”*** means the last Business Day of each calendar month.

***“Interest Rate”*** means the lower of (i) annual rate equal to the Prime Rate then in effect plus ten percent (10%) and (ii) the maximum interest permitted by Applicable Law.

***“Interlocal Agreement”*** means the Interlocal Agreement creating the Florida Municipal Power Agency, as amended and supplemented to date, and as the same may be amended or supplemented in the future.

***“Investment Grade”*** means a Credit Rating of BBB- from S&P or Baa3 from Moody’s with a stable outlook.

***“ITC Extension”*** means an extension of the December 31, 2023 deadline in section 48(a)(7)(B) for the U.S. Tax Code for the Project to be placed in service to qualify for a ■% investment tax credit.

***“Letter(s) of Credit”*** means one or more irrevocable, transferable standby letters of credit, substantially in the form of Exhibit F, 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, with a “stable outlook” by either S&P or Moody’s and having assets of at least \$10 billion, in a form acceptable to the Party in whose favor the letter of credit is issued.

***“Losses”*** means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction for the remaining term of this Agreement, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data

in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Environmental Attributes and, if applicable, the value of any resulting loss or recapture of Tax Attributes.

**“Manager”** has the meaning set forth in Section 17.2(a).

**“Metering System”** means all meters, metering devices and related instruments used to measure and record Energy and to determine the amount of such Energy that is being made available or delivered to Buyer at the Delivery Point for the purpose of this Agreement.

**“Meter Owner”** shall be the Party that owns the Metering System.

**“Moody’s”** means Moody’s Investor Service, Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

**“MW”** means a megawatt (or 1,000 kilowatts) of AC electric generating capacity.

**“MWh”** means a megawatt hour of Energy.

**“NERC”** means the North American Electric Reliability Corporation.

**“Non-Defaulting Party”** has the meaning set forth in Section 7.2.

**“Notice”** has the meaning set forth in Section 18.1.

**“Operating Procedures”** has the meaning set forth in Section 3.11.

**“Option Price”** means the applicable price set forth in the Option Price Table in Exhibit A.

**“PA Beneficiary”** has the meaning set forth in Article 9.

**“PA Provider”** means the Party that has provided or is required to provide the applicable Performance Assurance.

**“Parties”** has the meaning set forth in the first paragraph of this Agreement.

**“Party”** has the meaning set forth in the first paragraph of this Agreement.

**“Performance Assurance”** means collateral provided by a Party to secure such Party’s obligations hereunder. Performance Assurance may be in the form of (i) Letter(s) of Credit, (ii) Cash, (iii) Surety Bond and/or (iv) a Guaranty.

**“Permitted Extensions”** means the extensions to the Target Commercial Operation Date set forth in Section 4.2.

***“Permitting Delay”*** has the meaning set forth in Section 4.2(b)(ii).

***“Person”*** means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, municipality, limited liability company or any other entity of whatever nature.

***“Planned Outage”*** means the removal of the all or a portion of the Project from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during the Project’s operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Installed Capacity. To the extent there are multiple Project Offtakers, any reduction in generation will be allocated to Buyer pro rata based on Buyer’s Share.

***“Prime Rate”*** means the interest per annum equal to the prime rate as published in The Wall Street Journal or comparable successor publication under “Money Rates,” as applied on a daily basis, determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

***“Product”*** has the meaning set forth in Section 3.1.

***“Production Guarantee Damages”*** has the meaning set forth in Exhibit D.

***“Production Shortfall”*** has the meaning set forth in Exhibit D.

***“Project”*** has the meaning set forth in the Recitals to this Agreement.

***“Project Cure Period”*** has the meaning set forth in Section 4.3(a).

***“Project Investor”*** or ***“Project Investors”*** means any and all Persons or successors in interest thereof (a) lending money, extending credit or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; or (b) participating (directly or indirectly) as an equity investor (including a Tax Equity Investor) in the Project; or (c) any lessor under a lease finance arrangement relating to the Project.

***“Project Offtaker”*** means the counterparty to a contract for the purchase of Energy. For the avoidance of doubt, the same entity may be deemed separate Project Offtakers to the extent it is party to multiple contracts for the purchase of Energy.

***“Prudent Operating Practices”*** means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for solar facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition. Prudent Operating Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the industry.

***“Qualified Transferee”*** means any person or entity that (a) has an equal or better credit rating than the Seller and satisfies the collateral requirements of the Seller set forth in the Agreement, (b) provides replacement Performance Assurance from a PA Provider with an Investment Grade Credit Rating [REDACTED], (c) has (or has contracted with for the purpose of this Agreement), or is the subsidiary of an entity that has, a record of owning and/or operating, for a period of at least [REDACTED] years, solar photovoltaic generating facilities with an aggregate nameplate capacity of no less than [REDACTED] MW, and (d) that expressly assumes in writing all obligations of the Seller under this Agreement.

***“Ratings Agency”*** means either of S&P or Moody’s.

***“Receiving Party”*** has the meaning set forth in Section 13.1.

***“Referral Date”*** has the meaning set forth in Section 17.2(a).

***“Renewable Energy Credits”*** or ***“RECs”*** means any credits, certificates, green tags or similar environmental or green energy attributes associated with one MWh of electricity generated by the Project created by the Applicable REC Program.

***“Renewal Term”*** has the meaning set forth in Section 2.1.

***“S&P”*** means Standard & Poor’s Rating Group or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

***“Sales Price”*** means to the extent Seller, acting in a Commercially Reasonable manner, sells any Product that Buyer does not receive, (i) the price Seller actually receives for such Product, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a Commercially Reasonable manner; *less* (ii) any costs reasonably incurred by Seller in reselling such Product; provided, however, in no event shall the Sales Price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability.

***“SEC”*** means the U.S. Securities and Exchange Commission.

**“Seller”** has the meaning set forth in the first paragraph of this Agreement.

**“Seller Excuses”** has the meaning set forth in Section 3.5(a).

**“Seller’s Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission System up to, and on Seller’s side of, the Delivery Point.

**“Seller’s Replacement Costs”** has the meaning set forth in Section 3.5(c).

**“Settlement Amount”** means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other.

**“Site”** has the meaning set forth in the Recitals.

**“Station Service”** means the electric energy from the Transmission System or produced by the Project that is used by the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for testing or operation of the Project.

**“Surety Bond”** means a bond, substantially in the form of Exhibit H, which provides for payment to the other Party upon demand and which is issued by a commercial entity with (i) a Credit Rating from one or both of S&P and Moody’s, which Credit Rating is at least “A-” from S&P (if such entity has a Credit Rating from S&P) and “A3” from Moody’s (if such entity has a Credit Rating from Moody’s), in each case not on negative credit watch, and (ii) having a net worth of at least \$ [REDACTED] at the time of issuance of the bond.

**“System Emergency”** means a condition on the Transmission System, at the Project, or on Seller’s Interconnection Facilities or Transmission Owner’s Interconnection Facilities, which condition is likely to result in imminent significant disruption of service to Transmission System customers or is imminently likely to endanger life or property, and includes any condition during which Seller is directed by Transmission Provider to reduce or cease generation for any period of time on account of an emergency.

**“Target Commercial Operation Date”** means the date that is the latter of (a) 365 days after the Transmission Service Deadline and (b) December 31, 2023.

**“Tax Attributes”** means (a) investment tax credits (including any grants or payments in lieu thereof) and any other tax deductions or benefits under federal, state or other Law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits, payments in lieu thereof and accelerated and/or bonus depreciation); and (b) present or future (whether known or unknown) cash payments, grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money relating in any way to the Project.

***“Tax Equity Investor”*** means an investor that has acquired an equity interest in Seller pursuant to a financing structure that assigns such investor all rights, title and benefits to the Tax Attributes of Seller.

***“Term”*** means the Initial Term plus any Renewal Terms.

***“Terminated Transaction”*** means the termination of this Agreement in accordance with Section 7.2 of this Agreement.

***“Termination Option”*** has the meaning set forth in Section 4.4.

***“Termination Payment”*** has the meaning set forth in Section 7.3.

***“Test Energy”*** means Buyer’s Share of the Energy generated by the Project and delivered to the Delivery Point prior to the Commercial Operation Date.

***“Transfer Taxes”*** has the meaning set forth in Section 3.3(d).

***“Transmission Delay Damages”*** means the liquidated damages Buyer shall owe Seller in the event Buyer is unable to receive any Delivered Energy due to a failure of obtaining transmission service by the Transmission Service Deadline, as calculated pursuant to Section 4.3.

***“Transmission Interruption”*** means a transmission outage or curtailment directed or caused by the Transmission Owner, Transmission Provider or a Governmental Authority in connection with a System Emergency on the Transmission System that prevents or limits Buyer’s ability to receive Energy at the Delivery Point not due to actions or omissions of Buyer or an Affiliate of Buyer.

***“Transmission Owner”*** means the entity that owns the transmission or distribution system to which the Project interconnects.

***“Transmission Owner’s Interconnection Facilities”*** means the interconnection facilities and related assets that are or will be owned by the Transmission Owner that are required to connect the Project with the Transmission System, as further described in the Interconnection Agreement.

***“Transmission Provider”*** means the regional transmission organization with jurisdiction over the location of the Site or, if none, then the applicable balancing authority for the Site. For the avoidance of doubt, the Transmission Provider and the Transmission Owner may be the same entity.

***“Transmission Service Deadline”*** means the date that is one-hundred and twenty (120) days from Buyer’s receipt from Seller of a copy of the final interconnection facilities study report for the interconnection of the Project.



***“Transmission System”*** means the distribution or transmission system to which the Project interconnects.

## **1.2 Interpretation.**

The following rules of construction shall be followed when interpreting this Agreement except to the extent the context otherwise requires:

- (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter;
- (b) words used or defined in the singular include the plural and vice versa;
- (c) references to Articles and Sections refer to Articles and Sections of this Agreement;
- (d) references to Annexes, Exhibits and Schedules refer to the Annexes, Exhibits and Schedules attached to this Agreement, each of which is made a part hereof for all purposes;
- (e) references to Applicable Laws refer to such Applicable Laws as they may be amended from time to time, and references to particular provisions of an Applicable Law include any corresponding provisions of any succeeding Applicable Law and any rules and regulations promulgated thereunder;
- (f) terms defined in this Agreement are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto as so defined;
- (g) references to money refer to legal currency of the United States of America;
- (h) the words “includes” or “including” shall mean “including without limitation;”
- (i) the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Article or Section in which such words appear, unless otherwise specified;
- (j) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
- (k) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (l) the word “or” will have the inclusive meaning represented by the phrase “and/or;”
- (m) the words “shall” and “will” mean “must”, and shall and will have equal force and effect and express an obligation; and

(n) the words “writing,” “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

## **ARTICLE 2 TERM**

### **2.1     *Term.***

The “**Initial Term**” of this Agreement shall commence on the date hereof and continue until the latter of (a) the date the Agreement is terminated in accordance with its terms, or (b) the date that is 20 Contract Years following the Commercial Operation Date. Buyer shall have the option to extend the term of the Agreement twice (each, a “**Renewal Term**”) by providing Seller written notice of extension no less than 365 days prior to the end of the Initial Term or the first Renewal Term, as applicable. Each Renewal Term shall commence at HE 0100 on the date immediately following the last day of the Initial Term or first Renewal Term, as applicable, and extend for a period of 5 years, unless sooner terminated in accordance with the terms hereof.

## **ARTICLE 3 OBLIGATIONS AND DELIVERIES**

### **3.1     *Product.***

The “Product” to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is the Delivered Energy and all associated Environmental Attributes and Capacity Attributes.

### **3.2     *Purchase and Sale.***

Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for the Product in accordance with the terms hereof.

### **3.3     *Contract Price.***

(a) Seller shall provide no less than ten (10) days’ notice prior to the Initial Energy Delivery Date, which shall not occur prior to the Transmission Service Deadline without the prior written consent of Buyer.

(b) Buyer shall pay Seller the Contract Price for all Test Energy.

(c) On and after the Commercial Operation Date, Buyer shall pay Seller for the Product an amount equal to the Contract Price for each MWh of Delivered Energy.

(d) In addition to the amounts otherwise payable by Buyer in accordance with this Section 3.3, Buyer shall pay all applicable sales, use excise, ad valorem, transfer and other similar taxes associated with the sale of Product by Seller to Buyer (“**Transfer Taxes**”), but excluding in all

events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of Product (regardless of whether such Transfer Taxes are imposed on Buyer or Seller), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes.

### **3.4 Project Capacity.**

The “**Expected Project Capacity**” is the expected nameplate capacity of the Project as of the Effective Date, as set forth in Exhibit B. The “**Installed Capacity**” shall be the actual capacity of the Project that is able to generate and deliver Energy to the Delivery Point and has otherwise achieved Commercial Operation as of the Commercial Operation Date. Throughout the Delivery Term, Seller shall sell all Product solely to Buyer, except in the case of an Event of Default of Buyer or other failure of Buyer to receive the , or during a Force Majeure Event where Buyer is prevented from accepting delivery of the Product.

### **3.5 Performance Excuses.**

(a) The obligations of Seller to deliver or make available the Product to Buyer at the Delivery Point shall be excused only (i) during periods of Force Majeure, (ii) by Buyer’s failure to perform its obligation to receive the Product at the Delivery Point or other Buyer Event of Default, (iii) during Curtailment Periods, (iv) during Buyer Curtailment Periods, and (v) during Planned Outages (“**Seller Excuses**”).

(b) The obligations of Buyer to receive and pay for the Product shall be excused only (i) during periods of Force Majeure, (ii) by Seller’s failure to perform its obligations to generate and deliver Product to the Delivery Point or other Seller Event of Default, or (iii) during a Transmission Interruption event (“**Buyer Excuses**”).

(c) If Buyer fails to receive all or part of the Product and such failure is not excused due to Buyer Excuses, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the Month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price (“**Seller’s Replacement Costs**”).

(d) Seller shall include in a monthly invoice delivered to Buyer pursuant to Section 8.1 the amounts owed by Buyer pursuant to Section (a) and a description, in reasonable detail, of the calculation of Seller’s Replacement Costs.

### **3.6 Offsets, Allowances and Environmental Attributes.**

(a) Buyer shall be entitled to all Environmental Attributes resulting from the generation of Energy that is actually purchased by Buyer pursuant to this Agreement. Buyer shall not be entitled to any Environmental Attributes resulting from the generation of Energy that Buyer, for any reason, does not accept and purchase under this Agreement. Upon no less than twenty (20) Business Days’ advance notice, Buyer may request Seller provide Buyer or Buyer’s designee evidence of the transfer of the RECs on a quarterly basis during the Delivery Term in an Environmental Attributes Attestation and Bill of Sale substantially in the form attached as Exhibit

I or, as applicable, an attestation that is the then-currently required attestation of the Applicable REC Program.

(b) Seller shall be entitled to all (i) federal and state production tax credits, investment tax credits and any other tax credits which are or will be generated by the Project, (ii) any cash payments, grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money relating in any way to the Project or Environmental Attributes, and (iii) any Environmental Attributes that the Buyer is not entitled to pursuant to the provisions of Section 3.6(a). Buyer acknowledges that Seller has the right to sell any Environmental Attributes to which it is entitled pursuant to this Section 3.6(b) to any Person other than Buyer at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Buyer hereunder. Buyer shall have no claim, right or interest in such Environmental Attributes or in any amount that Seller realized from the sale of such Environmental Attributes.

(c) Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive any Tax Attributes, or to qualify for accelerated or bonus depreciation for Seller's accounting, reporting or tax purposes, except to the extent Buyer incurs liability under this Agreement in connection with relevant Losses and indemnification obligations. The obligations of the Parties hereunder, including those obligations set forth herein regarding the sale, purchase and price for and Seller's obligation to generate and deliver the Product and Environmental Attributes, shall be effective regardless of whether the generation of Product or sale and delivery of any Delivered Energy from the Project is eligible for, or receives Tax Attributes or to qualify for accelerated or bonus depreciation during the Term.

### **3.7     *Station Service.***

If Buyer or any of its Affiliates provides retail electric service in the service territory in which the Project is located, then if requested by Seller, Buyer or such Affiliate shall provide Station Service to the Project (including Seller's Interconnection Facilities) as requested by Seller during construction and operation of the Project at the rates and on the terms set forth in the applicable tariff(s) on a non-discriminatory basis with other customers in the same rate class as Seller.

### **3.8     *Transmission.***

(a) Seller shall be responsible for obtaining interconnection service for the Project so that Seller can deliver the Product to the Delivery Point in accordance with applicable Transmission Provider interconnection requirements. Seller shall be responsible for all costs to design, equip, construct and maintain the interconnection facilities necessary to deliver Energy from the Project to the Delivery Point. Seller shall be responsible for receiving Network Resource Interconnection Service (or its equivalent) from the Transmission Provider in accordance with the Transmission Provider's Large Generator Interconnection Procedures ("**LGIP**") including funding of any Network Upgrades, as defined in therein. In the event that Seller is not repaid all Seller-funded amounts for such Network Upgrades within five (5) years after the Commercial Operation Date, Seller may, subject to Buyer's consent, such consent not to be unreasonably withheld, assign to Buyer its rights under the LGIP and Interconnection Agreement to repayment of such unpaid amounts. For the avoidance of doubt, Buyer's consent may be withheld if, without otherwise limiting its right to reasonably withhold consent, Buyer is not reasonably satisfied with the terms

and conditions of the Interconnection Agreement or other relevant agreement between Buyer and the Transmission Provider with regard to the Network Upgrade refunding or transmission credit procedures. If Buyer consents to such assignment, then Buyer shall pay to Seller each month an amount equal to the amount Buyer receives from Transmission Provider as a transmission credit or other form of reimbursement for such Network Upgrades during the preceding month until such time as Seller has been fully reimbursed for its Network Upgrade finding. Notwithstanding anything in this Section 3.8(a), Buyer shall not be obligated to pay Seller any amount related to the Network Upgrades for which Buyer has not received a related transmission credit or other form of reimbursement from the Transmission Provider.

(b) Buyer shall be responsible for arranging for all transmission services required to effectuate Buyer's receipt of the Product at and from the Delivery Point, including, without limitation, obtaining firm transmission service, in an amount of capacity equal to the Expected Project Capacity, and shall be responsible for the payment of any charges related to such transmission services hereunder, including, without limitation, charges for transmission or wheeling services, ancillary services, imbalance, control area services, congestion charges, transaction charges and line losses. The Parties acknowledge that the Contract Price does not include charges for such transmission services, all of which shall be paid by Buyer.

(c) In the event that the Transmission Provider or any other properly authorized Person exercising control over the Transmission Owner's Interconnection Facilities or the Transmission System takes any action or orders Seller or Buyer to take any action that affects Buyer's ability to take delivery of Energy hereunder not caused by or resulting from Seller's act or omission, a Curtailment Period, Transmission Interruption, or Force Majeure, Buyer shall use its Commercially Reasonable Efforts to attempt (at its own cost and expense) to mitigate the adverse effects of such action(s) on Buyer's ability to perform its obligations hereunder, including, without limitation, redispatching its other generation resources, if any.

### **3.9     *Scheduling.***

Buyer shall be responsible for the scheduling of all Delivered Energy during the Delivery Term, including, without limitation, arranging any Open Access Same Time Information Systems (OASIS), tagging, transmission scheduling or similar protocols with the Transmission Provider, Transmission Owner, or any other Persons. Buyer shall be responsible for the payment of all charges associated with such scheduling activities, including, without limitation, any imbalance charges.

### **3.10   *Sales for Resale.***

All Delivered Energy delivered to Buyer hereunder shall be sales for resale. Buyer shall provide Seller with any documentation reasonably requested by Seller to evidence that the deliveries of Delivered Energy hereunder are sales for resale.

### **3.11   *Operating Procedures.***

Seller and Buyer will endeavor to develop written operating procedures ("**Operating Procedures**") not less than sixty (60) days before the Initial Energy Delivery Date, which

Operating Procedures shall only be effective if made by mutual written agreement of Seller and Buyer. The Parties agree that the Operating Procedures that they will endeavor to establish will cover the protocol under which the Parties will perform certain obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (1) the method of day-to-day communications; (2) key contacts for Seller and Buyer; and (3) reporting of scheduled maintenance, maintenance outages, Buyer Curtailment Orders, Force Majeure Events, and Forced Outages of the Project.

### **3.12 *Regulatory Approvals.***

(a) Seller and Buyer each agree to use their Commercially Reasonable Efforts to apply for promptly and to pursue diligently any required acceptances or approvals from Governmental Authorities for the consummation of the transactions contemplated by this Agreement or for the giving of effect to the expiration of this Agreement or any termination of this Agreement. This provision is not intended to subject this Agreement to the jurisdiction of any Governmental Authority that does not have such jurisdiction over this Agreement as of the Effective Date.

(b) Buyer shall apply for and shall diligently pursue designation of the Expected Project Capacity as a network resource or otherwise secure a firm delivery path for the Delivered Energy from the Delivery Point to and over the Transmission System. Buyer shall use Commercially Reasonable Efforts to submit an application to obtain a network resource designation or similar firm transmission rights for the Expected Project Capacity not later than thirty (30) Business Days following the Effective Date and to secure such rights no later than the Transmission Service Deadline. Notwithstanding anything to the contrary herein, Seller shall not incur liability for any delays hereunder to the extent such delays are caused by Buyer's failure or inability to secure transmission service in accordance with this Section 3.13(b). Upon Buyer's request, Seller shall use Commercially Reasonable efforts to cooperate with Buyer and provide such information as necessary to assist Buyer in obtaining firm transmission service.

(c) Following the Effective Date of this Agreement, each Party shall promptly seek to obtain all other licenses, permits and approvals necessary to perform its obligations hereunder.

### **3.13 *Standards of Care.***

(a) Seller shall comply with all applicable requirements of Applicable Law, the Transmission Provider and NERC relating to the Project (including those related to construction, ownership, interconnection and operation of the Project).

(b) As applicable, each Party shall perform all generation, scheduling and transmission services in compliance with all applicable operating policies, criteria, rules, guidelines, tariffs and protocols of the Transmission Provider and Prudent Operating Practices.

(c) Seller agrees to abide by all applicable (i) NERC reliability requirements, including all such reliability requirements for generator owners and generator operators, and (ii) all

applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Owner and the Transmission Provider.

### **3.14 *Buyer Curtailment.***

Except to the extent compliance would directly cause loss or recapture of any Tax Attributes, Seller shall reduce Buyer's Share of generation from the Project as required pursuant to a Buyer Curtailment Order, provided that (a) the Buyer Curtailment Period shall not exceed the Buyer Curtailment Cap cumulatively per Contract Year (which may be consecutive or non-consecutive); and (b) Buyer shall pay Seller the Contract Price for Deemed Delivered Energy associated with a Buyer Curtailment Period. If multiple Project Offtakers issue overlapping Buyer Curtailment Orders, then any Deemed Delivered Energy during such period shall be allocated to Buyer on a pro rata basis in accordance with its Buyer's Share.

### **3.15 *Outage Notification.***

(a) Seller shall schedule Planned Outages for the Project in accordance with Prudent Operating Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld, conditioned or delayed. The Parties acknowledge that in all circumstances, Prudent Operating Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld, conditioned or delayed. Buyer shall promptly respond with its approval or with reasonable modifications to the proposed Planned Outage schedule and Seller shall use its best efforts in accordance with Prudent Operating Practices to accommodate Buyer's requested modifications and deliver the final Planned Outage schedule to Buyer. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Operating Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld, conditioned or delayed. Seller shall use its best efforts in accordance with Prudent Operating Practices not to schedule Planned Outages during the period of April 1<sup>st</sup> through October 31<sup>st</sup>. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.

(b) In addition to Planned Outages, Seller shall use Commercially Reasonable Efforts to promptly notify Buyer of any Forced Outage lasting for more than sixty (60) consecutive minutes. Such Notices shall contain information describing the nature of the Forced Outage, the beginning date and time of such Forced Outage, the expected end date and time of such Forced Outage, the amount of Energy that Seller expects will be provided to the Delivery Point during such Forced Outage, and any other information reasonably requested by Buyer. With respect to any such Forced Outage, Seller shall provide Buyer with such Notice by any reasonable means requested by Buyer, including by telephone or electronic mail.

### **3.16 *Operations Logs and Access Rights.***

(a) Seller shall maintain a complete and accurate log of all material operations and

maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, Planned Outages, Forced Outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and, to the extent consistent with Applicable Law, shall provide this information electronically to Buyer within fifteen (15) days of Buyer's reasonable request.

(b) Buyer, its authorized agents, employees or inspectors shall have the right to visit the Site up to five (5) times per calendar year during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement; *provided*, that Buyer shall observe all applicable Project safety rules that Seller has communicated to Buyer; provided further, that Buyer, subject to and without waiving its rights to sovereign immunity under Florida Statutes, shall indemnify Seller for damage to property or injury to persons to the extent caused by the negligent or wrongful act or omission of Buyer, its authorized agents, employees, contractors, inspectors and other representatives while Buyer or such authorized individuals are at the Site or the Project. Buyer may request additional Site visits with Seller's consent, which shall not be unreasonably withheld, conditioned, or delayed.

### **3.17 Forecasting.**

(a) Seller shall provide Buyer with forecasts of the delivery of Energy under this Agreement as described below. Such forecasts shall include the updated status of all Project equipment that may impact availability and production of Product, and other information reasonably requested by Buyer. Seller shall use Commercially Reasonable Efforts to forecast daily by 5:00 a.m. (EDT) the hourly delivery of Energy under this Agreement accurately and to transmit such information in the format agreed to by the Parties as set forth in the Operating Procedures. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to accommodate changes to operating and scheduling procedures of Buyer and will document such updated requirements and procedures in the Operating Procedures.

(b) No later than: (i) forty-five (45) Days prior to the commencement of the first Contract Year; and (ii) September 1 of each calendar year for every subsequent Contract Year, Seller shall provide to Buyer a non-binding forecast of the hourly delivery of Energy under this Agreement for an average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(c) Ten (10) Business Days before the commencement of the first Contract Year, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly energy deliveries under this Agreement for each day of the following month in a form reasonably acceptable to Buyer.

(d) No later than 5:00 a.m. of each day, Seller shall provide Buyer a non-binding forecast of hourly Energy deliveries under this Agreement for the remainder of such day and the following seven (7) days in a form reasonably acceptable to Buyer. Each such Notice shall clearly identify, for each hour, Seller's forecast of all deliveries of Energy pursuant to this Agreement. In the event



that Seller foresees that actual deliveries under this Agreement for any hour will be materially different than a forecast previously provided for such day, Seller shall, as soon as reasonably possible, provide Notice to Buyer of such change and an updated forecast.

### **3.18 *Weather Station.***

(a) No later than sixty (60) Days prior to the Commercial Operation Date, Seller, at its own expense, shall install and maintain at least one stand-alone meteorological station at the Site to monitor, measure, communicate and report the meteorological data required under Section 3.18(b). Seller shall maintain and replace the meteorological station as necessary to provide accurate data with respect to the location of the Project.

(b) Upon the Commercial Operation Date, and continuing through the end of the Delivery Term, Seller shall record and maintain the following data:

(i) real and reactive power production by the Project for each hour;

(ii) changes in operating status, outages and maintenance events;

(iii) any unusual conditions found during inspections;

(iv) any significant events related to the operation of the Project; and

(v) fifteen (15) minute and hourly time-averaged measurements from data samples at sixty (60) seconds or greater frequency for the following parameters at the Project: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, relative humidity, wind direction and speed, back of module surface temperature, and other pertinent meteorological conditions.

(c) Buyer shall have real-time access to the required meteorological data at a frequency not to exceed every fifteen (15) minutes. Seller shall provide Buyer a report within thirty (30) days after the end of each month that provides the foregoing information for such month as well as any other additional information that Buyer reasonably requests regarding conditions at the Site and the operation of the Project that is collected and maintained by Seller in the ordinary course of Project operations.

(d) Seller shall make available to Buyer all data from any weather monitoring portals Seller elects to install at the Site.

(e) Subject to procedures agreed upon in the Operating Procedures, Buyer shall have the right to install equipment and associated communication infrastructure to enable Buyer to monitor, measure and communicate pertinent operation and weather data.

### **3.19 *Compliance Cost Cap.***

Costs applicable to the Compliance Cost Cap are only those costs applicable under the definition of "Compliance Costs" and are new costs associated with a Change of Law occurring after the

Effective Date. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term shall be capped annually at \$ [REDACTED] per MW of Installed Capacity and in the aggregate throughout the Delivery Term at \$ [REDACTED] per MW of Installed Capacity (collectively, the “**Compliance Cost Cap**”). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) Days after the Change of Law that Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such Change of Law. Within thirty (30) Days of the delivery of such Notice with the estimate, Buyer shall provide Seller Notice of (i) Buyer’s request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (ii) Buyer’s initiation of dispute resolution under ARTICLE 17, or (iii) Buyer’s waiver of Seller’s performance of such obligations.

### **3.20    *Production Guarantee.***

Seller shall cause the Project to be operated in accordance with Prudent Operating Practices. Seller guarantees that the Delivered Energy will equal or exceed the Annual Energy Output Guarantee of Energy in at least one of every two rolling Contract Years. If there is a Production Shortfall in any two rolling consecutive Contract Years, then Seller shall owe Buyer liquidated damages in an amount equal to (i) the Production Shortfall that occurred in the later of the two relevant Contract Years, multiplied by (ii) the Damages Rate (the “**Production Guarantee Damages**”).

## **ARTICLE 4 PROJECT DESIGN AND CONSTRUCTION**

### **4.1    *Project Development.***

Seller, at no cost to Buyer shall:

- (a) Design and construct the Project.
- (b) Establish and maintain interconnection rights for the Project that permit the full Expected Project Capacity to interconnect to the Transmission System in compliance with the Transmission Provider’s transmission tariff and the Interconnection Agreement.
- (c) Acquire all material Governmental Approvals for the construction, operation, and maintenance of the Project.
- (d) Complete any environmental impact studies necessary for the construction, operation, and maintenance of the Project.
- (e) At Buyer’s reasonable request, provide to Buyer Seller’s electrical specifications and design drawings pertaining to the Project.
- (f) Within thirty (30) days after each calendar quarter following the Effective Date until the Commercial Operation Date, provide to Buyer a construction progress report substantially in

the form attached in Exhibit L advising Buyer of the current status of the Project, the status of obtaining required Governmental Approvals, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date.

#### **4.2 Commercial Operation.**

(a) Seller shall cause the Project to achieve the Commercial Operation Date by the Target Commercial Operation Date, unless extended in accordance with Section 4.2(b).

(b) Permitted Extensions to the Target Commercial Operation Date are as follows (the "**Permitted Extensions**");

(i) The Target Commercial Operation Date may be extended on a day-for-day basis for a cumulative period equal to no more than [REDACTED] days if Seller has used Commercially Reasonable Efforts to have the Project physically interconnected to the Transmission System and to complete all Transmission Owner's Interconnection Facilities, if any, but such interconnection or Transmission Owner's Interconnection Facilities cannot be completed by the Target Commercial Operation Date for reasons beyond Seller's reasonable control and Seller has worked diligently to resolve the delay ("**Interconnection Delay**");

(ii) The Target Commercial Operation Date may be extended on a day-for-day basis for a cumulative period equal to no more than [REDACTED] days if Seller has used commercially reasonable efforts to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits and Seller has worked diligently to resolve the delay ("**Permitting Delay**");

(iii) The Target Commercial Operation Date may be extended on a day-for-day basis for a cumulative period equal to no more than [REDACTED] days in the event of Force Majeure ("**Force Majeure Extension**"); provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request; and

(iv) The Target Commercial Operation Date may be extended on a day-for-day basis for each day Buyer is liable to Seller for Transmission Delay Damages pursuant to Section 4.3(b).

(c) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 4.2(b)(i)-(iii), such extensions cannot cumulatively exceed [REDACTED] days and all Permitted Extensions taken shall be concurrent, rather than consecutive, during any overlapping days.

(d) If Seller claims a Permitted Extension, Seller shall provide Buyer Notice sixty (60) Days prior to the Target Commercial Operation Date, which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that, in the event sixty (60) Days is impracticable or impossible, Seller shall provide as much advanced Notice as is reasonably

possible.

#### **4.3     *Cure Period and Delay Damages.***

(a) Seller shall cause the Project to achieve the Commercial Operation Date by the Target Commercial Operation Date. If the Commercial Operation Date occurs after the Target Commercial Operation Date after giving effect to Permitted Extensions and for reasons other than Buyer's failure to obtain transmission service by the Transmission Service Deadline in accordance with Section 3.8(b), then Buyer shall be entitled to draw upon the Seller's Performance Assurance for liquidated damages equal to Daily Delay Damages for each day or portion of a day that the Commercial Operation Date occurs after the Target Commercial Operation Date after giving effect to Permitted Extensions until the earlier of (i) the date that is [REDACTED] days after such date, and (ii) the Commercial Operation Date (the "**Project Cure Period**").

(b) Beginning on the Transmission Service Deadline, in the event that Buyer's failure to obtain transmission service in accordance with Section 3.8(b) results in Buyer's inability to receive Delivered Energy, then, subject to Section 4.3(c), Buyer shall owe Seller liquidated damages equal to the Transmission Delay Damages for each day or portion of a day that Buyer fails to receive such Delivered Energy.

(c) Notwithstanding Buyer's failure to obtain transmission service pursuant to Section 3.8(b) and resulting inability to receive all or part of the Delivered Energy, Seller shall use Commercially Reasonable Efforts to commence operations and deliver electricity from the Project, which shall include, if available, selling the Project output to a utility pursuant to the Public Utility Regulatory Policies Act.

(d) Transmission Delay Damages shall be calculated as follows: (i) to the extent Seller sells electricity from the Project to a third party in accordance with Section 4.3(c), Buyer shall pay Seller only the positive difference between the Contract Price and sums received from the utility for any electricity sold pursuant to this Section 4.3; (ii) to the extent Seller is unable to deliver or sell any electricity that the Project is capable of generating despite using Commercially Reasonable Efforts as a result of Buyer's failure to obtain transmission service, Buyer shall pay Seller the full Contract Price for such electricity. In addition, in calculating the Transmission Delay Damages, Buyer shall pay Seller any reasonably incurred and documented costs corresponding to its efforts to sell the Delivered Energy to a third party. For the avoidance of doubt, Buyer shall also be liable to Seller pursuant to Section 11.3 to the extent Buyer's failure to obtain transmission service results in the full or partial loss or recapture of Tax Attributes.

(e) Each Party agrees and acknowledges that (i) the damages that the other Party would incur due to the delays described in this Section 4.3 would be difficult or impossible to predict with certainty and (ii) the Daily Delay Damages and Transmission Delay Damages are an appropriate approximation of such damages.

#### **4.4     *Project Capacity, Default Commercial Operation Date, and Termination Option.***

(a) Seller shall provide Notice to Buyer no later than thirty (30) days prior to the Default Commercial Operation Date if it anticipates a Capacity Shortfall. Seller shall then provide Notice

to Buyer no later than ten (10) Business Days after the Default Commercial Operation Date of the actual Capacity Shortfall, if any. Buyer shall have twenty (20) days after receipt of such notice to either: (i) elect to waive the obligation of Seller to complete the Capacity Shortfall, and neither Party shall have any further obligations with respect to the development, sale, delivery, receipt, or purchase of the Capacity Shortfall (the “**Termination Option**”); or (ii) elect to purchase any amount of Capacity Shortfall that achieves Commercial Operation in accordance with the terms of this Agreement after the Default Commercial Operation Date at the Option Price (the “**Continuation Option**”). For avoidance of doubt, the Agreement shall remain in full force and effect at the Contract Price with respect to any Project capacity that achieved Commercial Operation as of the Default Commercial Operation Date.

(b) If Buyer elects the Continuation Option, then Seller shall continue to pursue Commercial Operation of any Capacity Shortfall. If there remains a Capacity Shortfall as of the Commercial Operation Date, Seller shall then provide Notice to Buyer no later than ten (10) Business Days after the Commercial Operation Date specifying the Installed Capacity. Subject to Seller’s payment of both the Capacity Shortfall Damages as provided below and all applicable Daily Delay Damages pursuant to Section 4.3, the Seller’s Performance Assurance will be reduced to reflect the Installed Capacity and all of Seller’s Performance Assurance posted in excess of such Installed Capacity shall be promptly returned to Seller. Seller shall pay Buyer, as liquidated damages and not as a penalty, an amount (the “**Capacity Shortfall Damages**”) equal to (i) (1) the Capacity Shortfall as of the Commercial Operation Date, in MW, multiplied by (2) \$ [REDACTED] per MW, minus (ii) all Daily Delay Damages previously paid by Seller to Buyer for such amount of Capacity Shortfall.

(c) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to the Capacity Shortfall would be difficult or impossible to predict with certainty, and (ii) the Capacity Shortfall Damages is an appropriate approximation of such damages. In order to satisfy the Capacity Shortfall Damages, Buyer shall have the right to immediately draw upon and apply the Seller’s Performance Assurance to the payment of the Capacity Shortfall Damages. Seller’s payment of the Capacity Shortfall Damages hereunder shall constitute Buyer’s sole remedy for Seller’s failure to achieve Commercial Operation of the Capacity Shortfall.

## **ARTICLE 5**

### **METERING AND MEASUREMENT**

#### **5.1     *Metering System.***

The Parties shall ensure the Metering System is designed, located, constructed, installed, owned, operated and maintained in accordance with the Interconnection Agreement and Prudent Operating Practices in order to measure and record the amount of Energy delivered from the Project to the Delivery Point. The meters shall be of a mutually acceptable accuracy range and type. Seller shall be responsible for the cost of all metering that will be installed, owned, operated and maintained by the Meter Owner for the purpose of determining the amount of Energy delivered to the Delivery Point. Except in the event of a System Emergency or any order of a Governmental Authority, no one other than the Meter Owner shall make adjustments to the Metering System without the written

consent of Meter Owner, which consent shall not be unreasonably withheld, conditioned or delayed. If Buyer is the Meter Owner, then Seller, may, at its own cost, install additional meters or other such facilities, equipment or devices on Seller's side of the Delivery Point as Seller deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Buyer will be entitled to rely upon its own Metering System.

## **5.2     *Inspection and Adjustment.***

(a) The Meter Owner shall inspect and test the Metering System at such times as will conform to Prudent Operating Practices, but not less often than every Contract Year. Upon reasonable written request to the Meter Owner, the other Party may request, at its own expense, inspection or testing of any such meters more frequently than once every Contract Year.

(b) If any seal securing the metering is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made ("**Adjustment Period**"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for deliveries of Energy during the Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for Energy, as the case may be.

(c) The Parties and their representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of the Metering System relating to obligations under this Agreement and the Meter Owner shall use commercially reasonable efforts to provide no less than ten (10) Business Days' prior notice of any such test, inspection or other event.

## **ARTICLE 6 EARLY TERMINATION**

### **6.1     *Early Termination.***

(a) In addition to applicable termination rights otherwise expressly provided in this Agreement, this Agreement may be terminated prior to the expiration of the Term as follows:

(i) By Seller within thirty (30) days after receipt of the final facilities study report from the Transmission Owner, if the estimated cost of Transmission Owner's

Interconnection Facilities (as identified by the Transmission Owner) exceeds [REDACTED] and Buyer has not agreed in writing to reimburse Seller for any overages;

(ii) By Seller if an Interconnection Agreement in form and substance satisfactory to Seller, in its sole commercially reasonable discretion, is not executed on or before [REDACTED] or

(iii) By Seller, in the event that Seller has not obtained the necessary fee, leasehold or other title to or interest in the Site and all Governmental Approvals necessary to construct and operate the Project in the manner contemplated by this Agreement and which are final and no longer subject to appeal or legal challenge, on or before [REDACTED]; *provided* that Seller gives Buyer Notice of such termination within fifteen (15) Days after such date.

(b) Notwithstanding any provision of this Agreement to the contrary, in the event of termination pursuant to this Section 6.1, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination, *provided* that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or otherwise limit the survival provisions set forth in Section 19.1.

## **ARTICLE 7 EVENTS OF DEFAULT**

### **7.1    *Events of Default.***

An “**Event of Default**” shall mean,

(a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) the failure by such Party to satisfy, when due, any Performance Assurance requirements within ten (10) Business Days after receipt of Notice of such failure;

(iii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) Days after Notice thereof;

(iv) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) Days after Notice thereof; *provided*, however, that if such failure is not reasonably capable of being remedied within the thirty (30) Day cure period, such Party shall have such additional time (not exceeding an

additional ninety (90) Days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy;

(v) such Party becomes Bankrupt;

(vi) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.1;

(vii) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party; or

(b) with respect to Buyer as the Defaulting Party, the failure to obtain firm transmission service sufficient to receive the Delivered Energy at the Delivery Point in accordance with Section 3.13(b) by the Transmission Service Deadline, except to the extent Buyer secures interim transmission service sufficient to receive the Delivered Energy from the Transmission Service Deadline at the Delivery Point that becomes firm transmission service no later than the Default Commercial Operation Date; or

(c) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy or Environmental Attributes that was not generated by or associated with the Project; or

(ii) Seller Abandons the Project.

## **7.2 Remedies; Declaration of Early Termination Date.**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the right to one or more of the following:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”);

(b) collect in connection with such Early Termination Date a Termination Payment;

(c) accelerate all amounts owing between the Parties and end the Delivery Term effective as of the Early Termination Date;

(d) withhold any payments due to the Defaulting Party under this Agreement;

(e) suspend performance; and



(f) exercise its rights pursuant to Section 9.3 to draw upon and retain Performance Assurance.

### **7.3     *Termination Payment.***

On or as soon as reasonably practicable following the occurrence of an Early Termination Date, the Non-Defaulting Party will calculate the Termination Payment, which shall equal the Settlement Amount, net of any sums owed by the Non-Defaulting Party to the Defaulting Party. If the Termination Payment calculation yields a positive number, then the Defaulting Party shall owe the Termination Payment to the Non-Defaulting Party. If the Termination Payment calculation results in a negative number, then the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Settlement Amount as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Environmental Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the termination of this Agreement would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with the termination of this Agreement but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect to terminate this Agreement as its remedy for an Event of Default by the Defaulting Party.

### **7.4     *Notice of Payment of Termination Payment.***

As soon as practicable after a designation of the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

### **7.5     *Disputes with Respect to Termination Payment.***

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with ARTICLE 17. The Defaulting Party shall pay all undisputed portions of the Termination Payment and provide Performance Assurance equal to the disputed portion until final resolution of the dispute.

### **7.6 *Rights and Remedies Are Cumulative.***

Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this ARTICLE 7 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

### **7.7 *Mitigation.***

Any Non-Defaulting Party shall be obligated to use Commercially Reasonable efforts to mitigate its Costs and Losses resulting from any Event of Default of the other Party under this Agreement.

## **ARTICLE 8 PAYMENT**

### **8.1 *Billing and Payment.***

On or about the tenth (10<sup>th</sup>) day of each month beginning with the month following the Initial Energy Delivery Date and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer an invoice covering the Product delivered in the preceding month determined in accordance with Article 4 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) Days after date of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by regular mail, facsimile, or e-mail.

### **8.2 *Disputes and Adjustments of Invoices.***

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.2 within twelve (12) months after the

invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

## **ARTICLE 9**

### **INSURANCE, CREDIT AND COLLATERAL REQUIREMENTS**

#### **9.1 Insurance.**

In connection with Seller's performance of its duties and obligations under this Agreement, during the Delivery Term, Seller shall maintain insurance in accordance with Exhibit G.

#### **9.2 Grant of Security Interest.**

To the extent a PA Provider delivers Performance Assurance hereunder, it hereby grants to the other Party (the "**PA Beneficiary**") a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the PA Beneficiary, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the PA Beneficiary's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by the PA Provider or an Early Termination Date as a result thereof, the PA Beneficiary may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Applicable Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of the PA Beneficiary free from any claim or right of any nature whatsoever of PA Provider, including any equity or right of purchase or redemption. PA Beneficiary shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the PA Provider's obligations under the Agreement (the PA Provider remaining liable for any amounts owing to the PA Beneficiary after such application), subject to PA Beneficiary's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

#### **9.3 Performance Assurance.**

(a) Seller's Performance Assurance. Seller agrees to deliver to Buyer and thereafter maintain in full force and effect for the remainder of the Term, Performance Assurance in the amount of [REDACTED] of Buyer's Share of the Expected Project Capacity or Installed Capacity, as applicable, within thirty (30) Days following the Effective Date.

(b) Buyer's Performance Assurance. If Buyer is not a Creditworthy Entity as of the Effective Date or at any time after the Effective Date is subject to a Downgrade Event, then, within

thirty (30) days after the Effective Date or Downgrade Event, as applicable, and for such periods as Buyer is not a Creditworthy Entity, Buyer shall provide Seller with Performance Assurance in the amount of [REDACTED] of Buyer's Share of the Expected Project Capacity or Installed Capacity, as applicable.

(i) If at any time during the Term Buyer becomes a Creditworthy Entity, then Buyer will not be required to provide Buyer's Performance Assurance and Seller shall refund any unused portion of Buyer's Performance Assurance within thirty (30) Days of receipt of Notice and verification of its status as a Creditworthy Entity.

(c) Any sum due under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing may be satisfied by a Party by a draw on Performance Assurance until such Performance Assurance has been exhausted. In addition, upon termination, a Party shall have the right to draw upon Performance Assurance for any undisputed amounts owed under this Agreement if not paid when due pursuant to Section 8.1. Performance Assurance shall not be subject to replenishment.

(d) A PA Beneficiary shall pay interest on cash held as Performance Assurance at the Prime Rate.

(e) If, during the Term, there shall occur a Downgrade Event in respect to a Party's Guarantor, then the applicable PA Provider shall deliver to the PA Beneficiary replacement Performance Assurance within ten (10) Days of such Downgrade Event.

(f) A Party's obligation to maintain Performance Assurance shall terminate upon the occurrence of the following: (i) the Term of the Agreement has ended, or an the Agreement has been terminated pursuant to Section 7.2, as applicable; and (ii) all payment obligations of the PA Provider arising under this Agreement, Termination Payment, indemnification payments or other damages are paid in full. Upon the occurrence of the foregoing, each Party shall promptly return to the other Party the unused portion of the applicable Performance Assurance, including the payment of any interest due thereon.

(g) Any Letter of Credit provided pursuant to this Agreement must provide, among other things, that the PA Beneficiary is entitled to draw the full amount of such Letter of Credit if: (i) the Letter of Credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the Letter of Credit; or (ii) the issuer of the Letter of Credit fails to maintain a credit rating of at least A- from S&P and a rating of at least A3 from Moody's and the Party required to provide the Letter of Credit has failed, within ten (10) Business Days after receipt of Notice thereof by the PA Beneficiary to replace such Letter of Credit with another Letter of Credit, in a form reasonably acceptable to the issuer of the Letter of Credit and PA Beneficiary. Costs of a Letter of Credit shall be borne by the PA Provider.

## **ARTICLE 10**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **10.1 *Representations and Warranties.***

On the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has or will obtain in accordance herewith all Governmental Approvals necessary for it to perform its obligations under this Agreement, other than those Governmental Approvals that are not required to be obtained, and, as to Seller, all Governmental Approvals and all rights, title and interest in and to the Site and as otherwise necessary to construct, operate and maintain the Project and related interconnection facilities, as of the Effective Date;

(c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement; and

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

### **10.2 *General Covenants.***

Each Party covenants that throughout the Term:

(a) it shall continue to be duly organized, validly existing and in good standing under the Applicable Laws of the jurisdiction of its formation;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement; and

(c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any material contracts to which it is a party or any Applicable Law or Governmental Approval.

### **10.3 Seller Covenants.**

Seller covenants as follows:

(a) that, from the Initial Energy Delivery Date through the expiration or termination of this Agreement, the Project shall be operated and maintained in all material respects in accordance with this Agreement, Applicable Laws, Governmental Approvals and Prudent Operating Practices; and

(b) throughout the Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

### **10.4 Buyer's Covenants.**

Buyer covenants as follows:

(a) from the date hereof through the expiration or termination of this Agreement, Buyer shall comply in all material respects with this Agreement and Applicable Laws.

(b) Buyer will, at Seller's expense, reasonably cooperate with Seller in opposing, and will not support any action of any regulatory body having jurisdiction thereover that could result in the modification or vitiation of any of the terms or conditions hereof or have any other material adverse effect on Seller, the Project or this Agreement.

(c) Buyer shall not treat this Agreement for tax purposes as a lease of the Project rather than a service contract; Buyer shall not take an ownership interest in the Project during the first five (5) Contract Years following the Commercial Operation Date (for the avoidance of doubt, nothing in this Agreement permits Buyer to take an ownership interest in the Project); and Buyer shall not take any action or inaction in breach of this Agreement or otherwise fail to obtain transmission service in a manner that would prevent the Project from being placed in service for tax purposes prior to the Default Commercial Operation Date.

(d) Buyer's obligations under this Agreement shall qualify as operating expenses which enjoy first priority payment at all times under any and all bond or other ordinances or indentures to which Buyer is a party and shall be included as part of the rate calculations required by any rate-related debt covenants to which Buyer is bound.

(e) [*For Solar II PPAs Only*: Buyer covenants that Buyer's obligations under this Agreement shall qualify as operating expenses which enjoy first priority payment at all times under any and all bond or other ordinances or indentures to which Buyer is a party relating to electric utility operations and shall be included as part of the rate calculations required by any rate-related debt covenants to which Buyer is bound.

(f) Buyer covenants that from the date hereof through the expiration or termination of this Agreement, Buyer shall (i) establish and maintain FMPA Solar Project Participant payment obligations pursuant to the FMPA Solar Project Power Sales Contracts at amounts sufficient to meet FMPA's costs and liabilities lawfully owed under this Agreement; (ii) deliver written Notice to Seller of (A) any defaults occurring under any FMPA Solar Project Power Sales Contract that are not cured by the applicable cure period and (B) any changes to the list of FMPA Solar Project Participants set forth in Exhibit K; and (iii) not agree to any amendment, modification or alteration of any FMPA Solar Project Power Sales Contract that would materially adversely affect the FMPA Solar Project Participant Covenants without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

(g) Buyer shall enforce the provisions of the FMPA Solar Project Power Sales Contracts and duly perform its covenants and agreements thereunder; provided, however, that notwithstanding any provision of this Agreement to the contrary, in the event of the failure of an FMPA Solar Project Participant to observe the FMPA Solar Project Participant Covenants, such failure shall be considered a Downgrade Event (without limiting Events of Default) and the sole and exclusive remedy of Seller for such failure shall be the delivery by Buyer to Seller of Performance Assurance in the form of a Letter of Credit or cash in an amount equal to the then applicable amount of Buyer's Performance Assurance.

(h) Buyer covenants that from the Effective Date through the expiration or termination of this Agreement, Buyer shall (i) establish and maintain FMPA Solar II Project Participant payment obligations pursuant to the FMPA Solar II Project Power Sales Contracts at amounts sufficient to meet FMPA's costs and liabilities lawfully owed under this Agreement; (ii) deliver written Notice to Seller of (A) any defaults occurring under any FMPA Solar II Project Power Sales Contract that are not cured by the applicable cure period and (B) any changes to the list of FMPA Solar II Project Participants set forth in Exhibit K; and (iii) not agree to any amendment of any FMPA Solar II Project Power Sales Contract that would materially adversely affect the FMPA Solar II Project Participant Covenants without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.]

**[For ARP PPAs Only:** Buyer covenants that Buyer's obligations under this Agreement shall qualify as operating expenses which enjoy first priority payment at all times under any and all bond or other ordinances or indentures to which Buyer is a party relating to electric utility operations and shall be included as part of the rate calculations required by any rate-related debt covenants to which Buyer is bound.

(e) FMPA shall set its rates payable pursuant to the FMPA All-Requirements Power Supply Project Contract ("**ARP Contract**"), as it may be amended by FMPA from time to time, in a manner sufficient to meet its Revenue Requirements, as such term is defined in the ARP Contract. FMPA represents that the term Revenue Requirement, as used in the ARP Contract, includes all of its costs and liabilities lawfully owed under this Agreement.

(f) Buyer shall enforce the provisions of the All-Requirements Power Supply Project Contracts and duly perform its covenants and agreements thereunder.]

## **ARTICLE 11**

### **TITLE, RISK OF LOSS, INDEMNITIES**

#### **11.1   *Title and Risk of Loss.***

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

#### **11.2   *Indemnities by Seller.***

Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("**Claims**") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered under this Agreement up to and at the Delivery Point, (ii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (iii) the failure by Seller or the failure of the Project to comply with Applicable Laws, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

#### **11.3   *Indemnities by Buyer.***

To the fullest extent permitted by Florida law, subject to and without waiving its rights to sovereign immunity under Florida law, Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Delivery Point, (ii) the failure by Buyer to comply with Applicable Laws, (iii) Buyer's breach of this Agreement, or (iv) any Governmental Charges for which Buyer is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.



## ARTICLE 12 GOVERNMENTAL CHARGES

### 12.1 *Cooperation.*

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party incurs any cost, expense, risk, obligation or liability or is otherwise materially adversely affected by such efforts.

### 12.2 *Governmental Charges.*

Seller shall pay or cause to be paid all taxes imposed by any governmental authority (“**Governmental Charges**”) on or with respect to the Product or the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement at and after the Delivery Point. In the event Seller is required by Applicable Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Law.

## ARTICLE 13 CONFIDENTIAL INFORMATION

### 13.1 *Confidential Information.*

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the “Confidential Information”). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the “**Disclosing Party**”) may make such Confidential Information available to the other (each, a “**Receiving Party**”) subject to the provisions of this Section 13.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for

the development, construction, operation or maintenance of the Project and for the purposes of this Agreement who shall be bound by the terms of this Section 13.1;

(iii) Use such Confidential Information solely for the purpose of developing the Project and for purposes of this Agreement; and

(iv) Upon the termination of this Agreement, destroy or return any such Confidential Information in written or other tangible form and any copies thereof; provided, however, that either Party shall be entitled to keep a record copy of such information to the extent required by Florida law.

(c) The restrictions of this Section 13.1 do not apply to:

(i) Release of this Agreement or Confidential Information to any Governmental Authority required for obtaining any approval or making any filing pursuant to Sections 3.12 or 12.2, *provided* that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement and the Confidential Information by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, *provided* that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including, without limitation, any request pursuant to Chapter 119 of the Florida Statutes, or other state or federal public records law, freedom of information act, or other similarly title law); *provided, however*, that the Receiving Party, prior to such disclosure, shall provide reasonable advance Notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain, at its sole expense, a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Project Investors and any other financial institutions expressing an interest in providing equity or debt financing or refinancing and/or credit support to Seller, and the agent or trustee of any of them, any advisors, consultants, insurance providers, brokers of Seller, Project Investors or other financial institutions.

(e) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, *provided* that the Disclosing Party has given Notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 13.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project or as are necessary in order to fulfill such Party's obligations under this Agreement.

(f) The obligations of the Parties under this Section 13.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

## **ARTICLE 14 ASSIGNMENT**

### **14.1 *Successors and Assigns; Assignment.***

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding the foregoing, no consent shall be required for the following:

(i) Any assignment of this Agreement by Seller to any Project Investors as collateral security for obligations under the financing documents entered into with such Project Investors;

(ii) Any assignment by the Project Investors to a third party after the Project Investors have exercised their foreclosure rights with respect to this Agreement or the Project;

(iii) Any assignment or transfer of this Agreement by Seller to an Affiliate of Seller; or

(iv) Any assignment or transfer of this Agreement by Seller to a Person succeeding to all or substantially all of the assets of Seller, provided that such Person is a Qualified Transferee.

(c) An assignee shall be afforded no additional rights, interests or remedies beyond those specifically granted to the assignor in this Agreement. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs and expenses, including attorney's and advisor fees of any such assignment.

(d) Buyer acknowledges that upon an event of default under any financing documents relating to the Project, subject to receipt by Buyer of Notice, any of the Project Investors may (but shall not be obligated to) assume, or cause its designee or a new lessee or buyer of the Project [REDACTED] to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement, provided that Buyer's interests, rights and obligations under this Agreement will remain in full force and effect.

(e) If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to Buyer arising or accruing hereunder from and after the date of such assumption, then Seller shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and Buyer shall continue this Agreement with the assuming party as if such Person had been named as Seller under this Agreement. Notwithstanding any such assumption by any of the Project Investors or a designee thereof, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder prior to such assumption.

(f) The provisions of this ARTICLE 14 are for the benefit of the Project Investors as well as the Parties hereto, and shall be enforceable by the Project Investors as express third-party beneficiaries hereof. Buyer hereby agrees that none of the Project Investors, nor any bondholder or participant for whom they may act or any trustee acting on their behalf, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this ARTICLE 14.

#### **14.2 Collateral Assignment.**

(a) Seller, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this Agreement in favor of a Project Investor for the purposes of financing the development, construction and/or operation of the Project and the Seller's Interconnection Facilities.

(b) Promptly after making such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Project Investor to which Seller's interest under this Agreement has been encumbered. Such Notice shall include the names of the account managers or other representatives of the Project Investors to whom all written and telephonic communications should be addressed.

(c) After giving Buyer such initial Notice, Seller shall promptly give Buyer Notice of any change in the information provided in the initial Notice or any revised Notice.

(d) If Seller encumbers its interest under this Agreement as permitted by this Section 14.2, the following provisions shall apply:

(i) The Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without the prior written consent of the Project Investors;

(ii) The Project Investors or their designees shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller and such act performed by the Project Investors or their designees shall be as effective to prevent or cure an Event of Default as if done by Seller, provided that, if any such Project Investor or its designee elects to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller, Buyer will not be deemed to have waived or relinquished its rights and remedies as provided in this Agreement;

(iii) Buyer shall upon request by Seller execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and, to the knowledge of Buyer, the absence or existence (and the nature thereof) of Events of Default hereunder by Seller and documents of consent to such assignment to the encumbrance and any assignment to such Project Investors; and

(iv) Upon the receipt of a written request from Seller or any Project Investor, Buyer shall use Commercially Reasonable Efforts to execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of the Project or any part thereof and will enter into reasonable agreements with such Project Investor, which agreements will grant certain rights to the Project Investors as more fully developed and described in such documents, including (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of Project Investor, which consent is not to be unreasonably withheld or delayed, (b) Project Investors shall be given notice of, and the opportunity to cure as provided in Section 14.2(d)(ii), any breach or default of this Agreement by Seller, (c) that if the Project Investor forecloses, take a deed in lieu of foreclosure or otherwise exercise its remedies pursuant to any security documents, then (i) Buyer shall, at Project Investor's request, continue to perform all of its obligations hereunder, and Project Investor or its nominee may perform in the place of Seller, and may assign this Agreement to another Person in place of Seller, provided that such other Person is a Qualified Transferee, (ii) Project Investor shall have no liability under this Agreement except during the period of such Project Investor's ownership or operation of the Project and (iii) that Buyer shall accept performance in accordance with this Agreement by Project Investor or its nominee, and (d) that Buyer shall make the same representations and warranties to Project Investor as Buyer made to Seller pursuant to this Agreement. The Parties agree that an agreement substantially in the form of Exhibit J shall be reasonable.

## **ARTICLE 15**

### **FORCE MAJEURE**

#### **15.1 *Force Majeure Events.***

To the extent either Party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure Event to the other Party as detailed below, then, the Party impacted by the Force Majeure Event shall be excused from the performance of its obligations to the extent impacted. As soon as

practicable after commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event (or such longer period as reasonably required given the nature of the Force Majeure Event), the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim and the anticipated impact on the non-performing Party's ability to perform its obligations and the non-performing Party's anticipated plan to resume full performance of the obligations impacted by the Force Majeure Event. Seller shall not substitute Product from any other source for Buyer's Share of the output of the Project during an outage resulting from a Force Majeure Event. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Buyer shall not be required to make any payments for any Product that Seller fails to schedule, deliver or provide as a result of a Force Majeure Event during the term of such Force Majeure Event.

### **15.2 *Extended Force Majeure Events.***

This Agreement may be terminated by either Party with no further obligation to the other Party if a Force Majeure Event prevents the performance of a material portion of the obligations hereunder and such Force Majeure Event is not resolved and full performance is resumed within [REDACTED] months after the commencement of such Force Majeure Event, subject to Seller's right to extend in this Section 15.2. If Seller is the non-performing Party due to damage to the Project caused by a Force Majeure Event, Seller shall have up to [REDACTED] Days following the start of such Force Majeure Event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within [REDACTED] additional months from the date of the report. Seller shall promptly provide Buyer a copy of the engineer's report at no cost to Buyer. If such engineer's report concludes that the Project is capable of being repaired or replaced within such [REDACTED] month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section until the expiration of the period deemed necessary by the engineer's report (not to exceed [REDACTED] months), after which time, either Party may terminate by Notice to the other Party unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement.

## **ARTICLE 16 LIMITATIONS ON LIABILITY**

### **16.1 *Disclaimer of Warranties.***

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

### **16.2 *Limitations on Liability.***

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES

HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF ARTICLE 11, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

### **16.3 Buyer Liability.**

(a) This Agreement is a liability and financial obligation of the *[All-Requirements Power Supply Project / Solar Project II]* only. No liability or obligation under this Agreement shall inure to or bind any of the funds, accounts, monies, property, instruments, or rights of the Florida Municipal Power Agency generally, any individual FMPA member, or any of any other project designated by FMPA in accordance with Article II of the Interlocal Agreement.

(b) *[The following bracketed language applies to ARP PPAs only]* [RESERVED] *[The following bracketed language applies to non-ARP PPAs only]* [Each FMPA Solar II Project Participant has commitments under the FMPA Solar II Project Power Sales Contracts with regard to the payment obligations to the FMPA Solar II Project for all costs related to this Agreement in the event of a default by one or more other FMPA Solar II Project Participants, as more fully described in the Power Sales Contracts.]

## **ARTICLE 17 DISPUTE RESOLUTION**

### **17.1 Intent of the Parties**

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement (a “**Dispute**”) is the dispute resolution

procedure set forth in this Article 12. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the Dispute by means of the dispute resolution procedure set forth in this ARTICLE 17.

### **17.2    *Management Negotiations***

(a) The Parties will attempt in good faith to resolve any Dispute by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "**Manager**"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("**Initial Negotiation End Date**"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("**Executives**"). Within five (5) Business Days of the Initial Negotiation End Date ("**Referral Date**"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) Days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process or judicial proceeding between the Parties. The Parties shall bear their respective costs, expenses and fees relating to the activities under this Section 17.2.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 17.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 17.2(a) above, and subject to Sections 16.2, 19.7 and 19.8 of this Agreement, either Party may pursue all remedies available to it at law or in equity. Venue for any action or proceeding shall be state and federal courts in Leon County, Florida.

### **17.3    *Specific Performance and Injunctive Relief.***

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under Article 13. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including, but not limited to, reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.



## **ARTICLE 18 NOTICES**

### **18.1 Notices.**

Whenever this Agreement requires or permits delivery of a “**Notice**” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified in herein and to the addresses set forth below; provided, however, that Notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement or the Operating Procedures, as applicable. Invoices may be sent by facsimile or e-mail in addition to overnight mail or courier. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or Dispatch Order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

If to Seller: FL SOLAR [REDACTED], LLC

800 Brickell Avenue, Suite 1100  
Miami, FL 33131  
Attn: President

With a copy to:

c/o Origis Energy  
800 Brickell Avenue, Suite 1100  
Miami, FL 33131  
Attention: General Counsel

If to Buyer: Florida Municipal Power Agency

Chief Operating Officer  
8553 Commodity Circle  
Orlando, FL 32819  
Telephone: 407-355-7767  
Email: ken.rutter@fmpa.com

## **ARTICLE 19 MISCELLANEOUS**

### **19.1 Effectiveness of Agreement; Survival.**

This Agreement shall be in full force and effect, enforceable and binding in all respects as of the Effective Date until the conclusion of the Term or earlier termination pursuant to the terms of this Agreement; provided however, that the relevant provisions of this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for the Product delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of Performance Assurance is released and/or returned as applicable (if any is due). Notwithstanding any provisions herein to the contrary, the obligations set forth in Sections 6.1(b) and 13.1 and ARTICLE 16, the indemnity obligations set forth in ARTICLE 11, and the limitations on liabilities set forth herein shall survive (in full force) the expiration or termination of this Agreement.

#### **19.2 Audits.**

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after such twelve (12)-month period.

#### **19.3 Amendments.**

This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

#### **19.4 Waivers.**

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a breach or default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent breach or default or other matter.

#### **19.5 Severability.**

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; *provided* that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the original intent and original economic benefit of the Parties.

#### **19.6 *Standard of Review.***

(a) Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a Person or the FERC acting sua sponte shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).

(b) Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

#### **19.7 *Governing Law.***

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE SOLE AND EXCLUSIVE VENUE FOR ANY DISPUTE, CLAIM OR CONTROVERSY RELATING TO THIS AGREEMENT SHALL BE THE STATE AND FEDERAL COURTS IN LEON COUNTY, FLORIDA.

#### **19.8 *Waiver of Trial by Jury.***

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

#### **19.9 *Attorneys’ Fees.***

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

#### **19.10 *No Third-Party Beneficiaries.***

Except as set forth in Article 14, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

#### **19.11 *No Agency.***

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

#### **19.12 *Cooperation.***

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make Commercially Reasonable Efforts to cooperate and assist each other in making such change, including engaging in good-faith negotiations to revise or supplement this Agreement as appropriate.

#### **19.13 *Further Assurances.***

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section. No Party shall be required to take any action or execute any document under this Section 19.13 that would negatively change that Party's risk or benefit under this Agreement.

#### **19.14 *Captions; Construction.***

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and shall not be construed against one Party or the other as a result of the manner in which this Agreement was prepared, negotiated or executed.

**19.15 *Entire Agreement.***

This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

**19.16 *Forward Contract.***

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

**19.17 *Service Contract.***

Each Party intends this Agreement to be a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code of 1986.

**19.18 *Counterparts.***

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each as of the Effective Date set forth above.

**FL Solar [REDACTED], LLC**

**Florida Municipal Power Agency**

By:\_\_\_\_\_

By:\_\_\_\_\_

Name:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Title:\_\_\_\_\_

**EXHIBIT A**  
**CONTRACT PRICE & OPTION PRICE**

**I. CONTRACT PRICE**

**A. Initial Term**

PERIOD	CONTRACT PRICE (\$/MWh)
From and including the Initial Energy Delivery Date through the remainder of the Initial Term	\$ [REDACTED]

**B. Renewal Terms**

[REDACTED]


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## II. OPTION PRICE TABLE

\_\_\_\_\_

[illegible]



## **EXHIBIT B**

### **DESCRIPTION OF PROJECT**

Seller intends to build, own and operate a single axis tracking photovoltaic solar energy generation facility on a site located in [REDACTED], [REDACTED]. As presently planned, the Expected Project Capacity will be [REDACTED] MW, and will consist of:

#### **Point(s) of Interconnection:**

#### **Real Property Description which shall be subject to adjustment to reflect the final survey and any modifications made in accordance with Prudent Operating Practices:**

Located in the County of [REDACTED], [REDACTED], and more particularly described as follows (as may be updated by Seller in accordance with the Interconnection Agreement):

Nothing in this Agreement or Exhibit B is intended to either (i) limit the right of Seller to make any changes to the Project it determines to undertake, or (ii) grant any rights to Buyer regarding the description, nature or components of the Project.

## **EXHIBIT C**

### **DESCRIPTION OF DELIVERY POINT**

Following is a preliminary description of the Delivery Point. Seller shall update as necessary.

[\_\_\_\_\_]

## EXHIBIT D

### PRODUCTION GUARANTEE

I. **Definitions.** The following defined terms shall apply to this Exhibit D. Capitalized terms used in this Exhibit D and not defined herein will have the meaning assigned in Section 1.1 of the Agreement.

“Actual Energy Output” means, for any Contract Year, the amount of Energy the Seller delivered or made available to Buyer at the Delivery Point during such Contract Year, measured in MWh.

“Annual Energy Output Guarantee” means, for any Contract Year, (i) Buyer’s Share of the amount set forth in the following Table A for such Contract Year, less (ii) any Excused Energy.

Table A	
Contract Year	Annual Energy Output (MWh)
██████████	██████████

“Damages Rate” means an amount equal to ██████ per MWh of Production Shortfall.

“Excused Energy” means (a) any Energy, measured in MWh, that Seller is unable to schedule or deliver to the Delivery Point as a result of Buyer Curtailment Orders, Buyer’s failure to obtain transmission service or Buyer’s failure to perform, including for reasons outside its control, as contemplated in Section 3.8(c) (other than due to a breach by Seller of its obligations under the Agreement); plus (b) Buyer’s Share of any Energy, measured in MWh, that Seller is unable to schedule or deliver to the Delivery Point as a result of a (i) Curtailment Period, (ii) System Emergency (other than a System Emergency caused by Seller’s breach of the Interconnection Agreement), (iii) Force Majeure Event, or (iv) Planned Outages ██████.

“Production Shortfall” means, for any Contract Year, the positive difference (if any) between the Annual Energy Output Guarantee and the Actual Energy Production for that Contract Year.

## II. **Guarantee and Damages.**

a. Production Guarantee Damages. If there is a Production Shortfall in any two rolling consecutive Contract Years, then Seller shall owe Buyer liquidated damages in an amount equal to (i) the Production Shortfall that occurred in the later of the two relevant Contract Years, multiplied by (ii) the Damages Rate (the “**Production Guarantee Damages**”).

b. Annual Report. No later than 45 days after each Contract Year, Seller shall deliver to Buyer: (i) a calculation showing Seller’s computation of the Actual Energy Output for the

previous two Contract Years and the Production Guarantee Damages, if any, owed to Buyer, and (ii) payment in full of any Production Guarantee Damages owed to Buyer. Production Guarantee Damages shall be Buyer's sole remedy for the failure of Seller to satisfy the production guarantee set forth in this Exhibit D.

## **EXHIBIT E** **FORM OF GUARANTY**

THIS SOLAR POWER PURCHASE AGREEMENT GUARANTY, dated as of \_\_\_\_\_ (this “Guarantee”), is issued by [name of guarantor], a \_\_\_\_\_ (“Guarantor”) in favor of [\_\_\_\_\_] (“Guaranteed Party”). [BENEFICIARY], a Delaware limited liability company (“Obligor”) is a wholly owned subsidiary of Guarantor.

### **A. RECITALS**

Obligor and Guaranteed Party have entered into a Solar Power Purchase Agreement, dated as of \_\_\_\_\_ (the “Agreement”).

This Guarantee is delivered to Guaranteed Party by Guarantor pursuant to the Agreement. All terms defined in the Agreement and not otherwise defined in this Guarantee have the meanings given to them in the Agreement.

### **AGREEMENT**

Guarantee.

Guarantee of Obligations Under the Agreement. For value received, Guarantor absolutely, unconditionally and irrevocably, as primary Obligor and not as surety, subject to the express terms hereof, guarantees the payment and performance when due of all obligations, whether now in existence or hereafter arising, by Obligor to Guaranteed Party pursuant to the Agreement (the “Obligations”). This Guarantee is one of payment and not of collection and shall apply regardless of whether recovery of all such Obligations may be or become discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable.

Maximum Guaranteed Amount. Notwithstanding anything to the contrary, Guarantor’s aggregate obligation to Guaranteed Party hereunder is limited to [**insert applicable Required Security Amount**] (the “Maximum Guaranteed Amount”) (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Guaranteed Party, pursuant to a demand made upon Guarantor by Guaranteed Party or otherwise made by Guarantor pursuant to its obligations under this Guarantee, including any indemnification obligations, shall reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis), excluding costs and expenses incurred by Guaranteed Party in enforcing this Guarantee, and shall not either individually or in the aggregate be greater or different in character or extent than the obligations of Obligor to Guaranteed Party under the terms of the Agreement.

Payment; Currency. All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in the currency in which the Obligations were due.

Waiver of Certain Defenses. Guarantor waives: (a) notice of acceptance of this Guarantee and of the Obligations and any action taken with regard thereto; (b) presentment, demand for payment,

protest, notice of dishonor or non-payment, suit, or the taking of any other action by Guaranteed Party against Obligor, Guarantor or others; (c) any right to require Guaranteed Party to proceed against Obligor or any other person, or to require Guaranteed Party first to exhaust any remedies against Obligor or any other person, before proceeding against Guarantor hereunder; and (d) any defense based upon (i) an election of remedies by Guaranteed Party; (ii) a change in the financial condition, corporate existence, structure or ownership of the Guarantor or Obligor; (iii) the institution by or against Obligor or any other person or entity of any bankruptcy, winding-up, liquidation, dissolution, insolvency, reorganization or other similar proceeding affecting Obligor or its assets or any resulting release, stay or discharge of any Obligations; (iv) any lack or limitation of power, incapacity or disability on the part of Obligor or of its directors, partners or agents or any other irregularity, defect or informality on the part of Obligor in the authorization of the Obligations; (v) any lack of validity or enforceability of the Obligations; (vi) any amendment, release, discharge, substitution or waiver of the Agreement or any of the Obligations and (v) any duty of Guaranteed Party to disclose to Guarantor any facts concerning Obligor, the Agreement or the Project, or any other circumstances that might increase the risk to Guarantor under this Guarantee, whether now known or hereafter learned by Guaranteed Party, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances.

Without limitation to the foregoing, Guaranteed Party shall have the right to at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) renew, compromise, extend, accelerate or otherwise change, substitute or supersede the Obligations; (b) take or fail to take any action of any kind in respect of any security for the Obligations, or impair, exhaust, exchange, enforce, waive or release any such security; (c) exercise or refrain from exercising any rights against Obligor or others in respect of the Obligations; or (d) compromise or subordinate the Obligations, including any security therefor, or grant any forbearances or waivers, on one or more occasions, for any length of time, or accept settlements with respect to Obligor's performance of any of the Obligations.

Except as expressly set forth in this paragraph, Guarantor shall be entitled to assert any and all rights, setoffs, counterclaims and other defenses that Obligor may have to payment or performance of any of the Obligations and also shall be entitled to assert any and all rights, setoffs, counterclaims and other defenses that the Guarantor may have against the Guaranteed Party, other than (a) defenses arising from the insolvency, reorganization or bankruptcy of Obligor, (b) defenses expressly waived in this Agreement by Guarantor, (c) defenses arising by reason of (i) Guarantor's direct or indirect ownership interests in Obligor or (ii) legal requirements applicable to Obligor that prevent the payment by Obligor of its payment obligations that constitute Obligations, and (d) defenses previously asserted by Obligor against such claims to the extent such defenses have been resolved in favor of Guaranteed Party by a court of last resort.

Term. This Guarantee shall continue in full force and effect until the earlier to occur of (a) the substitution of an alternative form of Security by Obligor, (b) the satisfaction of all Obligations of Obligor under the Agreement, or (c) the payment by Guarantor, without reservation of rights, of an aggregate amount equal to the Maximum Guaranteed Amount, together with any other amounts required to be paid by Guarantor pursuant to this agreement. Guarantor further agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time payment,

or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise.

Subrogation. Until all Obligations are indefeasibly paid in full, unless otherwise provided herein, Guarantor waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guarantee and any collateral held therefor, and Guarantor subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations. Any amount paid to Guarantor on account of any purported subrogation rights prior to the termination of this Guaranty shall be held in trust for the benefit of Guaranteed Party and shall immediately thereafter be paid to Guaranteed Party.

Expenses. Whether or not legal action is instituted, Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed Party in enforcing its rights under this Guarantee. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment.

Assignment. Guarantor shall not be permitted to assign its rights or delegate its obligations under this Guarantee in whole or part without written consent of Guaranteed Party. Guaranteed Party shall not be permitted to assign its rights hereunder except in connection with a permitted assignment of its rights and obligations under the Agreement.

Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guarantee at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same. All remedies of Guaranteed Party under this Guarantee shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and Guaranteed Party.

Entire Agreement. This Guarantee and the Agreement are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guarantee of the Obligations of Obligor by Guarantor. All prior or contemporaneous agreements or undertakings made, which are not set forth in this Guarantee, are superseded.

Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and shall be deemed received (a) if given personally, when received; (b) if mailed by certified mail (postage prepaid and return receipt requested), five (5) days after deposit in the U.S. mails; (c) if given by facsimile, when transmitted with confirmed transmission; or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party shall specify in a notice delivered to the other in accordance with this Section):

If to Guarantor:

Attn: \_\_\_\_\_

If to Guaranteed Party:

Attn: \_\_\_\_\_

Counterparts. This Guarantee may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

Governing Law; Jurisdiction. This Guarantee shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to principles of conflicts of law. Guarantor and Guaranteed Party submit to the jurisdiction and venue of the Superior Court of the District of Columbia or of any federal district court located in the District of Columbia over any disputes relating to this Guarantee.

Further Assurances. Guarantor shall cause to be promptly and duly taken, executed, acknowledged and delivered such further documents and instruments as Guaranteed Party may from time to time reasonably request in order to carry out the intent and purposes of this Guarantee.

Limitation on Liability. Except as specifically provided in this Guarantee, Guaranteed Party shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the Agreement.

Effectiveness. This Guarantee shall be effective as of the date set forth in the first paragraph hereof upon its execution by both Guarantor and Guaranteed Party.



IN WITNESS WHEREOF, Guarantor and Guaranteed Party have executed and delivered this Guarantee.

**[Guarantor]**

By: \_\_\_\_\_

—  
Name:

Title:

Acknowledged and agreed

**[Guaranteed Party]**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT F**  
**FORM OF IRREVOCABLE LETTER OF CREDIT**

Irrevocable Standby Letter of Credit No.

Date of Issuance:

Beneficiary:

[Buyer Name]

Applicant/Account Party:

Amount: USD Amount ([Amount] and 00/100)

Initial expiration date at our counter (unless evergreen):

Final expiration date at our counter:

Ladies and Gentlemen:

We, [Bank Name]

("Issuer"), do hereby issue this Irrevocable Transferable Standby Letter of Credit No. {\_\_\_\_\_} by order of, for the account of, and on behalf of [\_\_\_\_\_] ("Account Party") and in favor of [Buyer Name]. The term "Beneficiary" includes any successor by operation of law of the named beneficiary including without limitation any liquidator, receiver or conservator.

This Letter of Credit is issued, presentable and payable at the office of the Issuing Bank and we guarantee to YOU that drafts and documents drawn under and in compliance with the terms of this Letter of Credit will be honored on presentation pursuant to the terms of this Letter of Credit.

This Letter of Credit is available in one or more drafts drawn on [Bank Name] and may be drawn hereunder for the account of up to an aggregate amount not exceeding [\$Amount]. This Letter of Credit is drawn against by presentation to us at our office located at [Bank Address] of a drawing certificate (i) signed by an officer of the Beneficiary; (ii) dated the date of presentation; and (iii) the following statement:

"The undersigned hereby certifies to [Bank Name] ("Issuer"), with reference to its Irrevocable Transferable Standby Letter of Credit No.[\_\_\_\_], dated \_\_\_\_\_, issued on behalf of [\_\_\_\_\_] ("Account Party") and in favor of the [Buyer Name], ("Beneficiary") that:

[said Account Party has failed to perform in accordance with the terms and provisions of the Solar Power Purchase Agreement dated [ ] to which Account Party and Beneficiary are parties, as such agreement may be amended and supplemented from time to time, and any replacements or substitutions thereof, (collectively, the "Agreement").]

☐ --or--

[(i) Beneficiary has received notice from the Issuing Bank pursuant to the terms of the Letter of Credit that Issuing Bank elects not to extend the Letter of Credit for an additional one-year period, and (ii) the Letter of Credit will expire in fewer than thirty (30) days from the date hereof. As such, as of the date hereof Beneficiary is entitled to draw under the Letter of Credit.]

The Beneficiary hereby draws upon the Letter of Credit in an amount equal to \$[insert amount in figures] (United States Dollars [insert amount in words] ).”

If presentation of any drawing certificate is made on a Business Day and such presentation is made on or before 10:00 a.m. Eastern Time, Issuer shall satisfy such drawing request on the second Business Day. If the drawing certificate is received after 10:00 a.m. Eastern Time, Issuer will satisfy such drawing request on the third Business Day.

It is a condition of the letter of credit that it will be automatically extended without amendment for additional one-year periods until [ ] (the “Final Expiration Date”), unless at least one hundred twenty (120) days prior to any expiration date we send you written notice at the above address by registered mail or overnight courier service that we elect not to consider this Letter of Credit extended for any such period.

This Letter of Credit may be transferred in its entirety (but not in part) by Issuing Bank only upon presentation to us of a Request for Transfer signed by the Beneficiary in the form of Exhibit A accompanied by this Original Letter of Credit and any amendment(s), in which the Beneficiary irrevocably transfers to such transferee all of its rights hereunder, whereupon we agree to either issue a Transferred letter of credit to such transferee or endorse such transfer on the reverse of this Letter of Credit. Any transfer fees assessed by the issuer will be payable solely by the applicant.

Payments under the Letter of Credit shall be in accordance with the following terms and conditions:

All commissions and charges will be borne by the Account Party.

This Letter of Credit shall be governed by the International Standby Practices Publication No. 590 of the International Chamber of Commerce, (the “ISP”), except to the extent that terms hereof are inconsistent with the provisions of the ISP, in which case the terms of the Letter of Credit shall govern. This Letter of Credit shall be governed by the internal laws of the State of Florida to the extent that the terms of the ISP are not applicable; provided that, in the event of any conflict between the ISP and such Florida laws, the ISP shall control.

This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary and the Issuer.

The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless the Beneficiary shall have signed a written waiver.

No such waiver, unless expressly so stated therein, shall be effective as to any transaction that occurs subsequent to the date of the waiver, nor as to any continuance of a breach after the waiver.

Partial drawings and multiple drawings are permitted.

A failure to make any drawing at any time shall not impair or reduce the availability of this Letter of Credit in any subsequent period or our obligation to honor your subsequent demands for payment made in accordance with the terms of this Letter of Credit.

Original Letter of Credit and all amendments need to be presented for a drawing. If it's a partial drawing, we will endorse the drawing amount on the back of the Original Letter of Credit and return the same to beneficiary.

EXHIBIT A UNDER STANDBY LETTER OF CREDIT NO.  
REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

Date: \_\_\_\_\_

[Bank Name and Address]

Re: Standby Letter of Credit No.

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE \_\_\_\_\_

ADDRESS OF TRANSFEREE \_\_\_\_\_

CITY, STATE/COUNTRY ZIP \_\_\_\_\_

(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such letter of credit and all amendment(s), if any, are returned herewith, and we ask you to issue a Transferred Letter of Credit or endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to           % of the amount transferred, minimum of \$          

The applicant has wired funds to you through \_\_\_\_\_ bank and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

Very truly yours, [BENEFICIARY NAME]

\_\_\_\_\_  
Authorized Signature

The signature(s) of \_\_\_\_\_ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program.

\_\_\_\_\_

\_\_\_\_\_  
(Signature of Authenticating Bank)

\_\_\_\_\_  
(Name of Bank)

\_\_\_\_\_

\_\_\_\_\_  
(Printed Name/Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_

\_\_\_\_\_

(1) FOR BANK USE ONLY	
Confirmation of Authenticating Bank's signature performed by:	
Date: _____	Time: _____ a.m./p.m.
Addl Info.: _____	

## **EXHIBIT G**

### **INSURANCE REQUIREMENTS**

**General Liability Insurance.** Seller must obtain the following insurance coverage, which can be exceeded by Seller and may be met through any combination of primary insurance and following form excess or umbrella insurance so long as the combined limits meet requirements of this Agreement:

Commercial general liability insurance in an “occurrence” form with bodily injury and property damage combined liability limits of not less than [REDACTED] per occurrence; provided, however: (i) Seller may use any combination of primary or excess policies to satisfy the overall limit requirements; and (ii) if Seller uses a “claims-made” policy, it must maintain continuous coverage in effect for at least two (2) years beyond termination of this Agreement, through continuous renewal of the original policy or by purchasing extended discovery period or retroactive insurance dated back to the Effective Date of this Agreement.

Specific coverage for broad form contractual liability and a separation of insured provision.

**Additional Insurance.** In addition to the requirements above, Seller must acquire and maintain throughout the Term, the following additional types of insurance:

**Workers’ Compensation.** Workers’ compensation insurance in accordance with statutory requirements including employer’s liability insurance with limits not less than [REDACTED] and endorsement providing insurance for obligations under the U.S. Longshoremen’s and Harbor Worker’s Compensation Act and the Jones Act, where applicable.

**Auto Liability.** Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage limits of at least [REDACTED].

**All Risk Property.** All Risk Property insurance covering the Facility against physical loss or damage, with a minimum limit sufficient to cover replacement of the Facility, except physical loss or damage caused by flood, wind, or earthquake, which shall be insured up to \$10 million, to be procured at commercially reasonable terms and limits available in the marketplace. A deductible may be carried, which will be the absolute responsibility of Seller.

**EXHIBIT H**  
**FORM OF SURETY BOND**

**BOND NUMBER** \_\_\_\_\_

**POWER PURCHASE AGREEMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS**, That we \_\_\_\_\_  
(hereinafter called "Principal"), and [\_\_\_\_\_] authorized to do business in the State of \_\_\_\_\_  
(hereinafter called "Surety") are held and firmly bound unto \_\_\_\_\_  
(hereinafter called "Obligee") as Obligee, for such monetary amount as incurred by the Obligee, not to exceed the penal sum of \_\_\_\_\_  
(\$\_\_\_\_\_) DOLLARS, good and lawful money of the United States of America, the payment of which, well and truly to be made, we do bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS** the above bounded Principal has entered into a certain written agreement with the above named Obligee, effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the

\_\_\_\_\_  
(hereinafter called "Agreement") which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copies at length were attached herein.

The obligation of this Bond shall be null and void unless: (1) the above Agreement is in writing, and has been fully executed by both the Principal and the Obligee; (2) the Principal is actually in Default under the above Agreement (hereinafter called "Default"), and is declared by the Obligee thereafter to be in Default; and (3) the Obligee has provided written notice of the Default to the Surety as promptly as possible, and in any event, within fifteen (15) days after such Default.

The Surety, at the sole election and discretion of the Surety, may take any of the following actions:

1. Determine the amount for which the Surety may be liable to the Obligee, and as soon as practicable thereafter, tender payment thereof to the Obligee; or
2. Pay the full amount of the above penal sum in complete discharge and exoneration of this Bond, and of all liabilities of the Surety relating hereto.

**PROVIDED HOWEVER**, that this Bond is executed by the Surety and accepted by the Obligee subject to the following expressed conditions:

1. This bond may be cancelled by providing sixty days (60) written notice of cancellation given by certified mail to the Obligee and to the Principal at the addresses stated below. Such cancellation shall in no way limit the liability of the Surety for subsequent defaults of the Principal's obligation incurred prior to such termination. In the event of cancellation, the Principal is responsible for providing alternate security to the Obligee thirty (30) days prior to the termination date, otherwise to be considered in Default under the Agreement and the Obligee shall be entitled to submit a Demand and receive payment under this Bond.
2. A reorganization under Chapter 11 of the US Bankruptcy Code by the Principal shall not constitute an event of Default recoverable under this Bond if they continue to perform their obligations under the Agreement.
3. In the event the Principal fails to make any payments due to the Obligee which would constitute the basis of a Default, within Ten (10) business days of Surety's receipt of a Demand for payment under this Bond (hereinafter called "Demand"), Surety shall pay to the Obligee the amount of such Demand. The Surety shall cause to be paid all payments then past due, and in so doing cure any Default under the Agreement. The Obligee may present one or more Demands at any time in its sole discretion, provided however, Surety shall not be obligated to pay an aggregate amount in excess of the penal sum of the Bond less any amounts previously paid by the surety.



4. Surety's liability under this Bond issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.
5. No claim, action, suit or proceeding, except as herein set forth, shall be had or maintained against the Surety on this Bond unless same be brought or instituted and process served upon the Surety within six (6) months following the effective cancellation date of this Bond.
6. Any notice given or required under this Agreement will be made to the following representatives of the Parties:
  - a. To: {Principal}
  - b. To: {Obligee}
  - c. To: {Surety}

In the event of conflict or inconsistency between the provisions of this Bond and the provisions of the above Agreement, the provisions of this Bond shall control. The Obligee's acceptance of this Bond and reliance upon it as security constitutes its acknowledgement and agreement as to the explicit terms stated herein under which it is offered and issued by the Surety.

Sealed with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**WITNESS:**

**PRINCIPAL:**

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Signature) (SEAL)

\_\_\_\_\_  
(Name & Title)

**WITNESS:**

**SURETY:**

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Signature) (SEAL)

\_\_\_\_\_  
(Name, as Attorney-in-Fact)

## EXHIBIT I

### ENVIRONMENTAL ATTRIBUTES ATTESTATION AND BILL OF SALE

#### I. Seller Information

Name of Seller: \_\_\_\_\_

Address of Seller: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

#### II. Declaration

I, [NAME AND TITLE] , declare that the Environmental Attributes listed below were sold in accordance with that [AGREEMENT] dated as of [DATE] ("Agreement") exclusively from: \_\_\_\_\_ ("Seller") to [\_\_\_\_\_] ("Buyer").

# MWhs Environmental Attributes Transferred	Period of Generation (mm/yy)

I further declare that:

- 1) all the Environmental Attributes were generated by Seller;
- 2) to the best of my knowledge, the Environmental Attributes were not sold, marketed or otherwise claimed by a third party;
- 3) Seller transferred the Environmental Attributes only once, to Buyer;
- 4) the Environmental Attributes were not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by Seller, nor, to the best of my knowledge, by any other entity;
- 5) all of the Environmental Attributes transferred to Buyer (as listed above) were generated at the [\_\_\_\_\_] facility, a [\_\_\_\_\_] -powered generation facility located in [County, State]; and
- 6) Environmental Attributes transferred to Buyer include RECs which shall be registered and eligible under the Applicable REC Program specified in the Agreement.

As an authorized agent of Seller, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

## **EXHIBIT J**

### **FORM OF LENDER CONSENT**

In the event Seller collaterally assigns its rights hereunder to the Lender as security, any related Lender Consent will contain provisions substantially as follows:

Buyer will not terminate the Agreement other than as provided therein, without the prior written consent of the Lender.

In connection with the exercise of its rights under the Financing Documents, the Lender shall have the right, but not the obligation, to do any act required to be performed by Seller under the Agreement, and Buyer shall accept any such performance by the Lender any such performance by the Lender to the same extent as if such performance was rendered by Seller itself.

Lender shall not assume, sell or otherwise dispose of the Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Lender or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Agreement (a) executes and delivers to Buyer a written assumption of all of Seller's rights and obligations under the Agreement in form and substance reasonably satisfactory to Buyer, which include the obligation to cure any and all defaults of Seller under the Agreement which are capable of being cured and which are not personal to Seller; (b) satisfies and complies with all requirements of the Agreement; (c) if applicable, delivers to Buyer a replacement for any Credit Support that is required to be delivered and maintained by Seller under the Agreement; and (d) is a Permitted Transferee (as defined below). Lender further acknowledges that the assignment of the Agreement to Lender is for security purposes only and that Lender has no rights under the Agreement to enforce the provisions of the Agreement unless and until an event of default has occurred and is continuing under the Financing Documents (a "Financing Default") or under this Agreement, in which case Lender shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Agreement to the same extent and in the same manner as if Lender were an original party to the Agreement.

"Permitted Transferee" means any person or entity who (i) meets the Required Credit Rating set forth in the Agreement, (ii) has, or is the subsidiary of an entity that has, a record of owning and/or operating, for a period of at least three (3) years, solar photovoltaic generating facilities with an aggregate nameplate capacity of no less than 200 MW, and (iii) is not a Prohibited Person or Entity. Lender may from time to time, following the occurrence of a Financing Default, notify Buyer in writing of the identity of a proposed transferee of the Agreement, which proposed transferee may include Lender, in connection with the enforcement of Lender's rights, which notice shall include evidence reasonably acceptable to Buyer that the proposed transferee satisfies the criteria set forth above. Upon receipt of such notice, Buyer shall, within thirty (30) Days of its receipt of such written notice, confirm to Lender whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if Buyer fails to so respond within such thirty (30) Day period such proposed transferee shall be deemed to be a "Permitted Transferee".

If Buyer becomes entitled to terminate the Agreement due to an uncured Event of Default by Seller, Buyer shall not terminate the Agreement unless it has first given notice of such uncured Event of Default to the Lender and has given the Lender an Additional Cure Period to cure such Event of Default. For the purposes of this Agreement, "Additional Cure Period" means (i) with respect to a monetary default, ten (10) Business Days in addition to the cure period (if any) provided to Seller in the Agreement, and (ii) with respect to a non-monetary default, thirty (30) Days in addition to the cure period (if any) provided to Seller in the Agreement. However, if the Lender requires possession of the Project in order to cure the Event of Default and commences foreclosure proceedings against Seller within thirty (30) Days of receiving notice of an Event of Default from Buyer or Seller, whichever is received first, Lender shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) Days; provided, however, that Lender shall provide a written notice to Buyer that it intends to commence foreclosure proceedings with respect to Seller within ten (10) Business Days of receiving a notice of such Event of Default from Buyer or Seller, whichever is received first.

Neither the Lender nor any other participant in the Project Debt shall be obligated to perform or be liable for any obligation of Seller under the Agreement until and unless any of them assumes the Agreement.

Any party taking possession of the Project through the exercise of the Lender's rights and remedies shall remain subject to the terms of the Agreement and shall assume all of Seller's obligations under the Agreement, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Lender or its successor assumes the Agreement in accordance with this paragraph, Buyer shall continue the Agreement with the Lender or its successor, as the case may be, substituted wholly in the place of Seller.

Within sixty (60) Days of any termination of the Agreement in connection with any bankruptcy or insolvency Event of Default of Seller, upon the request of Lender, the Lender (or its successor) and Buyer shall enter into a new power purchase agreement on the same terms and conditions as the Agreement and for the period that would have been remaining under the Agreement but for such termination.

Buyer agrees to execute an estoppel certificate substantially in the form of Attachment A.

**[ATTACHMENT A TO EXHIBIT J]**

**[Buyer shall have the right to qualify and/or revise any representation, warranty and other statement that such representation, warranty or other statement is a true statement as of the date of this certificate.]**

**[Date]**

Reference is made to that certain Power Purchase Agreement dated as of [\_\_\_\_] (the “PPA”), by and between [\_\_\_\_], a [\_\_\_\_] organized and existing under the laws of [\_\_\_\_] (“Buyer”); and [\_\_\_\_], LLC, a [\_\_\_\_] (“Seller”). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. Buyer is a [\_\_\_\_] duly organized, validly existing and in good standing (if applicable) under the laws of the State of [\_\_\_\_]. The execution and delivery by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any further internal approval or consent of Buyer and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.

The copy of the PPA, as amended, attached as Exhibit [\_\_\_\_], constitutes a true and complete copy of the PPA.

To Buyer’s knowledge, as of the date hereof, the PPA is in full force and effect and the PPA has not been assigned or amended by Buyer. All representations and warranties of Buyer under the PPA were true and correct (as may be qualified by the terms of the Agreement) when made, and, to Buyer’s knowledge, remain true and correct in all material respects as of the date hereof, except for those that, by their nature or terms, apply only as of the date originally made[, except: \_\_\_\_\_].

As of the date hereof, (A) no default or event of default with respect to Buyer nor, to the Buyer’s knowledge, Seller, has occurred under the PPA, and (B) to Buyer’s knowledge, there are no material defaults (including breach(es) of the PPA existing as of the date hereof that are not yet defaults under the PPA because applicable cure periods have not yet expired) or circumstances which with the passage of time and/or giving of notice would constitute a default.

To Buyer’s knowledge, there is no event, act, circumstance or condition constituting an event of force majeure under the PPA.

To Buyer’s knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the PPA. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA. As of the date hereof, there is no pending or, to Buyer’s knowledge, threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which purports to materially affect the legality, validity or enforceability of the PPA. There exist no pending or to the Buyer’s

knowledge, threatened disputes or legal proceedings under the PPA or otherwise between Buyer and Seller.

All payments due, if any, under the PPA by Buyer have been paid in full through the period ending on the date hereof.

*[Signature page follows]*

IN WITNESS WHEREOF, Buyer has caused this Certificate to be duly executed by its officer thereunto duly authorized as of the date first set forth above.

---

By:

Title:

Name:

## EXHIBIT K

### PARTICIPANT LIST

[FMPA All Requires Power Supply Project Participants and their respective shares:]

<b>Member</b>	<b>Share</b>	<b>Rice Creek</b>	<b>Whistling Duck</b>
Beaches	15	8.2%	11.8%
Clewiston	1	0.5%	0.8%
FPUA	15	8.2%	11.8%
Havana	0.25	0.1%	0.2%
KEYS	25	13.7%	19.7%
KUA	20	11.0%	15.7%
Newberry	1	0.5%	0.8%
Ocala	20	11.0%	15.7%
<b>ARP Totals:</b>	<b>97.25</b>	<b>53%</b>	<b>77%</b>

[FMPA Solar II Project Participants and their respective shares:]

<b>Member</b>	<b>Share</b>	<b>Rice Creek</b>	<b>Whistling Duck</b>
Homestead	5	4.4%	2.2%
LWU	30	17.8%	8.9%
Mount Dora	5	4.4%	2.2%
New Smyrna	10	8.9%	4.5%
Winter Park	15	11.2%	5.6%
<b>Solar II Totals:</b>	<b>81</b>	<b>47%</b>	<b>23%</b>



## EXHIBIT L

### **FORM OF PROGRESS REPORT**



**Project:**

**Recipient:**

### **PROJECT PROGRESS REPORT**

Pursuant to Section 4.1(f) of the Agreement, after the Effective Date and before the Commercial Operation Date, Seller will provide Buyer with quarterly progress reports advising Buyer of the current status of the Project, the status of obtaining required Governmental Approvals, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date.

#### **I. Overview**

<b>Milestone</b>	<b>Expected Completion</b>	<b>Status</b>	<b>Notes</b>
Interconnect Screening Study		Pending	
Start of Permitting		Pending	
Completion of Site Studies		Pending	
Interconnection Application		Pending	
System Impact Study		Pending	
Local Permitting Complete		Pending	
Facilities Study		Pending	
Interconnection Agreement		Pending	
Construction NTP		Pending	
Start of Major Equipment Delivery to Site		Pending	
85% Capacity Available		Pending	
Back Feed Available		Pending	
COD		Pending	



## **II. Status Updates**

- **Interconnection Agreement**
  - **Status update**
    - March 2020:
  - **Discussion of any foreseeable disruptions or delays**
    - March 2020:
- **Permits, Licenses, Easements and Approvals to Construct**
  - **Status update**
    - March 2020:
  - **Discussion of any foreseeable disruptions or delays**
    - March 2020:
- **Construction Notice To Proceed**
  - **Status update**
    - March 2020:
  - **Discussion of any foreseeable disruptions or delays**
    - March 2020:
- **Major Equipment Delivered to Site**
  - **Status update**
    - March 2020:
  - **Discussion of any foreseeable disruptions or delays**
    - March 2020:
- **Commercial Operation Date**
  - **Status update**
    - March 2020:
  - **Discussion of any foreseeable disruptions or delays**
    - March 2020:

*Report Completed: [Date, Sender Initials]*

**EXHIBIT M**

**FORM OF SOLAR II PROJECT POWER SALES CONTRACT**

**[*FMPA to provide final version*]**

**AGENDA ITEM 8 – ACTION ITEMS**

**d. Approval of the St. Lucie Audit Report**

**Board of Directors Meeting  
December 12, 2019**



# **8d – 2017-2018 St. Lucie Audit Report**

Board of Directors

December 12, 2019

# Scope and Objectives

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- Scope - Billings under the St. Lucie Unit 2 Participation (“Participation Agreement”) and the Nuclear Reliability Exchange (“NREA”) Agreements for the two-year period from January 2017 through December 2018.
- Objective – To verify that the billings’ calculations, allocations, and classifications were reasonable and proper.

# Audit Finding Summary

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- Inventory use charge overbilled
- General plant use charge overbilled
- Nuclear fuel amortization billing errors
- NREA negative energy overbilled
- A&G rent-related maintenance overbilled

# Total Refund due to Participants

<u>Recommendations</u>	<sup>a</sup> <u>Participation</u> <u>Agreement</u>	<sup>a</sup> <u>NRE</u> <u>Agreement</u>	<sup>a</sup> <u>Total</u>
1 Inventory Use Charge Overbill	(114,524)	-	(114,524) <sup>b, c</sup>
2 General Plant Use Charge Overbill	(239,602)	-	(239,602) <sup>b, c</sup>
3 NREA Fuel Invoices Overbill	-	(757,777)	(757,777) <sup>b, c</sup>
4 NREA Negative Energy Overbill		(72,547)	(72,547) <sup>b, c</sup>
5 A&G Rent and Rent-related maintenance	(21,081)		(21,081) <sup>c</sup>
Total Net Refund Due Participants Before Interest	(375,207)	(830,324)	(1,205,531)
Interest on Qualifying Audit Findings Through September 30, 2019	(25,991)	(74,115)	(100,106)
Total Net Refund Due (Participants) / FPL	(401,198)	(904,439)	(1,305,637)
3 NREA Fuel Invoices Overbilled (January 2019 - June 2019)		(233,446)	(233,446) <sup>d</sup>
Net Impact of Audit Findings	(401,198)	(1,137,885)	(1,539,084)



# Total Refund due to Participants (Cont'd)

---

**TM**

- a** Bracketed “( )” amounts represent refunds due to Participants; the non-bracketed amounts represent charges to Participants.
- b** FPL agrees with the recommendation.
- c** Adjustment qualifies for interest in accordance with the Participation and NRE Agreements. Interest is not included in the amount reported here. See General Comment A in Audit Report.
- d** Correction of current period invoices for audit findings for January - June 2019. Additional refunds may be due July 2019 to date corrections are implemented.



## Discussion

# Recommended Motion

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- Motion to approve St. Lucie Audit Report



# **St. Lucie Unit No.2 Audit Report**

## **Billings to Participants under the Participation and Nuclear Reliability Exchange Agreement**

### **Audit Performed By:**

Louis DeSimone  
Steve Ruppel, CPA  
Ellen Leatherman, MBA  
Kurian Varghese, CPA, MSA  
Liyuan Woerner, CPA, MBA

September 30, 2019

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## Executive Summary

Florida Municipal Power Agency (“FMPA”) and Orlando Utilities Commission (“OUC”) are co-owners of Florida Power and Light’s (“FPL”) St. Lucie Unit No. 2 and have entered into individual St. Lucie Unit 2 Participation and St. Lucie Nuclear Reliability Exchange Agreements with FPL.

FMPA has audited the actual costs billed under the St. Lucie Unit 2 Participation and Nuclear Reliability Exchange Agreements for the two-year period from January 2017 through December 2018. Audit findings and recommended adjustments for the audit period equal a net over billing to the Participants of \$1,539,084 of which FMPA's share is \$903,139 and OUC's share is \$635,764. In addition, as of September 30, 2019, the interest on qualifying audit adjustments under the Agreements total \$100,106 (\$52,517 for FMPA and \$47,589 for OUC). Additional interest will accrue through the date of refund on the qualifying audit adjustments.

The distribution of the refund between the St. Lucie Unit 2 Participation and Nuclear Reliability Exchange Agreements are as follows:

	<u>FMPA</u>	<u>OUC</u>	<u>TOTAL</u>
St. Lucie Unit 2 Participation Agreement	\$ (219,160)	\$ (156,047)	\$ (375,207)
Nuclear Reliability Exchange Agreement	\$ (631,642)	\$ (432,128)	\$ (1,063,771)
Subtotal:	\$ (850,802)	\$ (588,176)	\$ (1,438,978)
Interest on Qualifying Audit Findings			
Through September 30, 2019	\$ (52,517)	\$ (47,589)	\$ (100,106)
<b>Total Due FPL / (Participants)</b>	<b>\$ (903,319)</b>	<b>\$ (635,764)</b>	<b>\$ (1,539,084)</b>

FPL will make the appropriate adjustments on subsequent invoices during the billing period. Refer to General Comment A for more details on interest on qualifying audit findings.

### Summary of Audit Findings

<u>Recommendations</u>	<sup>a</sup> <u>Participation</u> <u>Agreement</u>	<sup>a</sup> <u>NRE</u> <u>Agreement</u>	<sup>a</sup> <u>Total</u>
1 Inventory Use Charge Overbill	(114,524)	-	(114,524) <b>b, c</b>
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Total Net Refund Due Participants Before Interest	(375,207)	(830,324)	(1,205,531)
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Total Net Refund Due (Participants) / FPL	(401,198)	(904,439)	(1,305,637)
3 NREA Fuel Invoices Overbilled (January 2019 - June 2019)		(233,446)	(233,446) <b>d</b>
Net Impact of Audit Findings	(401,198)	(1,137,885)	(1,539,084)

**TM**

- a** Bracketed “( )” amounts represent refunds due to Participants; the non-bracketed amounts represent charges to Participants.
- b** FPL agrees with the recommendation.
- c** Adjustment qualifies for interest in accordance with the Participation and NRE Agreements. Interest is not included in the amount reported here. See General Comment A in Audit Report.
- d** Correction of current period invoices for audit findings for January - June 2019. Additional refunds may be due for due for July 2019 to date when corrections are implemented.

## Scope and Objectives

The scope of this audit was to review the billings under the St. Lucie Unit 2 Participation (“Participation Agreement”) and the Nuclear Reliability Exchange (“NREA”) Agreements for the two-year period from January 2017 through December 2018.

The objectives of this audit were to determine whether:

- a) Costs billed were supported by adequate documentation.
- b) Costs billed were in compliance with the terms of the Participation and NRE Agreements.
- c) Allocations, which are necessary for billing certain costs, were reasonable and in compliance with the terms of the Participation and NRE Agreements.
- d) Costs billed to Participants were calculated based on the proper ownership shares.
- e) Classification of costs between St. Lucie Site, St. Lucie Common, St. Lucie Unit No. 2 (“SL2”), and St. Lucie Unit No. 1 (“SL1”) were proper and/or equitable.
- f) Changes in billing procedures as a result of previous audits were incorporated into the billing system and were working as intended.



## Background Information

There are two nuclear units located on the St. Lucie Site. Both units are operated by FPL. SL1 is wholly owned by FPL, while SL2 is jointly owned by FPL, OUC, and FMPA. SL1 began commercial operation in December 1976 and SL2 began commercial operation in August 1983. The original operating licenses for both units were for a 20-year period. Subsequently, FPL filed for a 20-year license renewal in September 2003. The Nuclear Regulatory Commission approved the license renewal applications of SL1 and SL2 for an additional 20-year terms. This approval extends SL1's license expiration date to March 1, 2036 and SL2's license expiration date to April 6, 2043.

Under the Participation Agreements, OUC and FMPA purchased ownership interests in SL2 of 6.08951% and 8.806%, respectively; and are entitled to their proportionate share of Net Energy of SL2. Participants pay their proportionate share of SL2's operations and maintenance ("O&M"), administrative and general ("A&G"), and capital expenditures. OUC and FMPA have separate Participation Agreements with FPL.

Under the NRE Agreements, the Participants exchange one-half of their total energy entitlements from SL2 for an equal amount from SL1. OUC and FMPA have separate NRE Agreements with FPL. These agreements have some differences in the calculation of O&M and fuel costs.

Under the OUC NRE Agreement, all of the SL1 and SL2 production O&M costs are included in the O&M calculation; whereas, under the FMPA agreement, only one-third of the production O&M costs are included for each unit.

Additionally, OUC's fuel costs under their NRE Agreement are calculated on a month-by-month basis; whereas, under FMPA's NRE Agreement, fuel costs for both units are calculated on a 12-operating-month rolling average.

This is the sixteenth audit of billings under the Participation and NRE Agreements. The total billings to FMPA and OUC during the audit period were approximately \$38 million and \$26 million, respectively, under the Participation Agreement and approximately (\$468,440) and (\$933,124), respectively, to FMPA and OUC, under the Nuclear Reliability Exchange Agreement for O&M and fuel expenses.

SL1 and SL2 both completed one refueling outage during this audit period. The current audit included a review of the costs related to SL2 Refueling Outage Cycles 21-24.

## **Audit Findings**

### **1. Inventory Use Charge – Over Billed**

Audit review of the Inventory Use Charge identified errors due to use of the incorrect Monthly Capital Charge rate for FY2018. Correction of the rate used for the Inventory Use Charge resulted in an over billing of \$65,048.04 and \$49,475.92 to FMIPA and OUC respectively during the 2018 calendar year.

#### **Audit Request**

The St. Lucie Participants were over-billed in the amounts of \$65,048.04 and \$49,475.92 to FMIPA and OUC, respectively for the net amount of \$114,523.95.

This audit adjustment qualifies for interest pursuant to General Comment A.

#### **FPL Response**

FPL agrees with these finding and will correct the over-billings in the future invoices.

### **2. General Plant Use Charge – Over Billed**

Audit review of the General Plant Use Charge identified errors due to incorrect Monthly Taxes Other than Income balance used for FY2018. Correction of the monthly balances for the General Plant Use Charge resulted in an over billing of \$141,648.88 and \$97,952.79 to FMIPA and OUC respectively during the 2018 calendar year.

#### **Audit Request**

The St. Lucie Participants were over-billed in the amounts of \$141,648.88 and \$97,952.79 to FMIPA and OUC, respectively for the net amount of \$239,601.67.

This audit adjustment qualifies for interest pursuant to General Comment A.

#### **FPL Response**

FPL agrees with these finding and will correct the under-billings in the future invoices.

### **3. Nuclear Fuel Amortizations**

Pursuant to the Nuclear Reliability Exchange Agreements (NREA), the costs (O&M & Fuel) related to the exchange of energy between the St. Lucie Units would be billed monthly. During the audit period, several monthly amortizations related to the Participants \$/MWh for St. Lucie Unit 2 Nuclear Fuel were not included in the calculation of the Participants St. Lucie Unit 2 costs for the NREA Fuel Invoice.

The errors or omissions included several items:

St. Lucie Billing Participation and NRE Agreements Audit  
September 30, 2019

- The audit adjustment agreed to in the 2013 – 2014 was supposed to be included in Refuel 21, Cycle 3. While, FPL included the values due the Participants (\$470,238 for FMMA and \$372,143 for OUC) in the Nuclear Fuel Amortization schedules, they failed to amortize it monthly to the Participants \$/MWh cost of nuclear fuel for St. Lucie No. 2. This charge should have been amortized during the period of March 2017- August 18 (Refuel 21, Cycle 3).
- The final adjustments resulting from the Nuclear Refueling cost true-ups were not included for Cycle 22 through 24. The final adjustments are normally several months after the Refuel Cycle occurs and preliminary calculations are provided for the Nuclear Fuel in Reactor amortization schedules. Past audits had found that these true-up adjustments were frequently missed. However, the impact in past audits were immaterial and did not impact the Participants' \$/MWh for St. Lucie Unit 2 for the NREA Fuel invoices. The final Nuclear Refuel cost true-up adjustments have been properly included in the current audit for Cycle 22 - 24.
- The Participants cost of money during the construction of the Nuclear Fuel for Refuel Cycles 22 through 24 were not included in the respective Participant's St. Lucie Unit 2 Nuclear Fuel Amortization schedules. This resulted in the Participants \$/MWh for their fuel costs of St. Lucie Unit 2 being understated for the NREA Fuel invoices. The cost of money is the difference between FPL's carrying costs on actual nuclear refueling related payments and the carrying costs for the Participants' advance payments during the same period.
- FMMA's Carrying Charge is calculated on the Unamortized Balance of Nuclear Fuel in Reactor and included in their \$/MWh for St. Lucie Unit 2 in the NREA Fuel Invoice. However, the unamortized balances did not reflect the above corrections. The calculation of the Carrying Charges to be included in the cost of FMMA's \$/MWh for St. Lucie Unit 2 fuel was understated and resulted in overbillings to FMMA. FPL's calculations also went to \$0.00 beginning in October 2018. Reconstruction of the Nuclear Fuel amortization schedules between the audit team and FPL's Nuclear Fuel Accounting Department for the preceding errors and omissions resulted in the correct unamortized Nuclear Fuel in Reactor balances for the proper calculation of the monthly costs to be amortized to FMMA's \$/MWh for St. Lucie Unit 2 for inclusion in the NREA Fuel invoice.

As a result, the Participants were overbilled in the NREA Fuel invoices for exclusion of these costs from their nuclear fuel \$/MWh for St. Lucie Unit 2. Overall, FMMA was overbilled \$419,153 and OUC was overbilled \$338,623 for NREA Fuel invoices during the audit period of 2017 – 2018 calendar years. The issues also carried forward into the current Nuclear Fuel invoice billings for 2019. Corrections of invoices from January through June 2019 resulted in and additional refunds of \$188,891 due to FMMA and \$44,555 due to OUC (additional 2019 refunds may be due through date of correction). In total, the audit adjustments prior to interest, due to the Participants are \$608,044 due to FMMA and \$383,178 due to OUC.

St. Lucie Billing Participation and NRE Agreements Audit  
September 30, 2019

### **Audit Request**

The St. Lucie Participants request that FPL correct the Participant Nuclear Fuel in Reactor amortization schedules and refund to the Participant's for the impact on the monthly St. Lucie Unit 2 \$/MWh included in the NREA Fuel invoices during the periods January 2017 through June 2019. Total refunds due Participants for the audit period and through June 2019 are \$608,044 and \$383,178 to FMMA and OUC, respectively for the months indicated. This audit adjustment also qualifies for interest (calculated through anticipated refund date of September 15, 2019) and an additional \$35,385 and \$32,629 is due FMMA and OUC, respectively.

### **FPL Response**

FPL agrees with these finding and will correct the over-billings in the future invoices.

## **4. NREA Negative Energy – Over Billed**

Audit review of the NREA Negative Energy expense identified errors due to an incorrect conversion from \$/MWh to \$/KWh for the months of March and April 2018. Total refunds due to Participants are \$23,598 and \$48,950 to FMMA and OUC, respectively.

### **Audit Request**

The St. Lucie Participants were over-billed in the amounts of \$23,598 and \$48,950 to FMMA and OUC, respectively, for the net amount of \$72,547.

This audit adjustment qualifies for interest pursuant to General Comment A.

### **FPL Response**

FPL agrees with these findings and will correct the over-billings going forward.

## **5. A&G Rent and Rent-Related Maintenance – Over Billed**

Audit review of A&G expenses identified rent and rent-related maintenance charges related to non-nuclear locations which are non-billable to participants. Total refunds due to Participants are \$12,463 and \$8,618 to FMMA and OUC, respectively.

### **Audit Request**

The St. Lucie Participants were over-billed in the amounts of \$12,463 and \$8,618 to FMMA and OUC, respectively, for the net amount of \$21,081.

This audit adjustment qualifies for interest pursuant to General Comment A.

**FPL Response**

FPL disagrees with these findings. FMPA audit department is considering a contract amendment proposal and will report to the Finance Committee for further guidance.

**General Comments****A) Interest on Qualifying Audit Findings**

Pursuant to Section 10.3, Amendment No. 3 of the St. Lucie Unit 2 Participation Agreement, and billing adjustment of \$250,000 or greater before application of the respective Participant ownership percentages will be refunded with interest calculated in accordance with the agreement. As such, the following audit issues qualify for interest:

- (1) 2018 Inventory Use Charge - Over Billings
- (2) 2018 General Plant User Charge – Over Billings
- (3) 2017-2019 Nuclear & NRE Fuel – Over Billings
- (4) 2018 NREA Negative Energy – Over Billings
- (5) 2017-2018 A&G Rent and Rent-related Maintenance – Over Billings

Interest on these items through September 30, 2019 totals \$100,106. FPL will refund FMPA and OUC \$52,517 and \$47,589, respectively.

**AGENDA ITEM 8 – ACTION ITEMS**

**e. Approval of Selection of Bond  
Counsel**

**Board of Directors Meeting  
December 12, 2019**



# **BOD 8e – EC 8e – Approval of Selection of Bond Counsel**

**Board of Directors and  
Executive Committee**

December 12, 2019

# Requests for Proposals (RFPs)

## *Proposals Received from 7 Firms*

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- BMO (Bryant Miller & Olive)
- D. Seaton and Associates
- Greenberg Traurig
- Holland & Knight
- Nabors Giblin & Nickerson
- Nixon Peabody
- Orrick



# Bond Counsel RFP Summary

## *Details*

---

FMPA received 7 proposals-several categories

Bond Counsel only

Bond and Disclosure Counsel

Bond, Disclosure, and/or Special Counsel

FMPA ranked the proposals based on criteria listed

Qualifications of individuals assigned

Qualifications/reputation/experience of the firm

Responsiveness to proposals

Fees (ranged from \$300-\$1,095)

- Orrick, Holland & Knight, Seaton – highest
- Nabors, BMO - lowest

Evaluation Team

Jody Finklea

Linda Howard

Rich Popp

Ed Nunez

Craig Dunlap, Dunlap & Associates

Nat Singer, Swap Financial

# Recommendation

## *Bond Counsel*

---

Nixon

- Institutional knowledge
- Highly respected tax expertise
- Great track record
- Lowered fees from current contract (now from \$400 - \$595)

# Recommendation

## *Disclosure Counsel*

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**BMO**

- State and local presence
- Good track record with several FMPA members
- Proven ability in the disclosure space
- Lower fees for similar service (\$415-\$450)

# Recommendation

*Special Counsel*

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**Nixon or  
BMO**

- Considered a 3<sup>rd</sup> firm, but not enough known work
- Either of the selected firms can do the special projects as they arise
- FMPA and/or its members have good history on special projects

# Recommended Motion

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- Motion: Move approval of the Finance Committee's recommendation that the Board and Executive Committee select Nixon Peabody as Bond Counsel, BMO as Disclosure Counsel and Nixon Peabody and BMO as Special Counsel as determined by FMPPA based on the nature of the project

**AGENDA ITEM 9 – INFORMATION  
ITEMS**

- a. Guidelines for a Significant  
Amount of Staff Time for an  
Individual Member Project**

**Board of Directors Meeting  
December 12, 2019**



# **BOD 9a – Guidelines for a Significant Amount of Staff Time for an Individual Member Project**

FMIPA Board of Directors  
December 12, 2019

# Presentation Overview

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- FMPA is expanding services to members
- Many service requests are related to FMPA's strategic priorities, but the requests could be viewed as member-specific projects
- Consider adopting a policy when to bill for significant staff time on individual member projects
- Recommended guidelines were approved by FMPA's Member Services Advisory Committee (MSAC) in October and are being submitted to FMPA's Board of Directors for consideration



# Why Propose These Guidelines?

## *To Be Proactive and Have a Policy in Place*

---

- As FMMPA expands services to members, there could come a time when someone asks if we have a policy when to bill for big projects
- This has not been an issue to date
- The intent is to be proactive and have policy in place to define a significant member project and how to handle it
- The recommended guidelines are intended to apply to a limited number of time-consuming requests; not intended to impact the type of services FMMPA has provided to date

# FMPA's Strategic Priorities, as Ranked by Members

## *5 of 7 Involve Projects at Member Systems [Votes out of 25]*

---

- 1. Assist Cities in evaluating retail cost of service, retail rate structures and solar subscription programs to price our service correctly [22]**
- 2. Continue to drive down controllable wholesale power costs for all of FMPA's power supply projects [21]**
- 3. Assist members with best practices and strategic guidance in operational areas to enhance reliability [18]**
- 4. Expand engineering services (e.g., fuse coordination, phase balancing, EVs) [17]**
- 5. Expand services in NERC regulatory compliance, cyber security and information technology [16]**
- 6. Assist members with AMI implementation and/or provide data management services for AMI [16]**
- 7. Investigate alternatives to mitigate increasing transmission rates of IOUs or connect with new power supply resources [16]**

# Project Oversight Assistance a Management Goal

*FMPA Provided Assistance with 27 Projects in Fiscal 2019*

---

- **Bartow:** Power quality investigation, scoping fuse coordination
- **Bushnell:** System expansion (engineering, operations, rates, communications)
- **Clewiston:** Substation upgrade, breaker replacement, SCADA/HMI
- **Fort Meade, Havana Moore Haven:** System maps
- **Jacksonville Beach, Kissimmee:** Transmission operations planning studies
- **Kissimmee:** Distributed generation interconnection study, solar subscriptions
- **Lake Worth Beach:** AMI/Power quality
- **New Smyrna Beach:** Grid modernization plan, storm playbook, reliability analysis
- **Newberry:** AMI project
- **Starke:** Substation, vault re-design, feeder relocations, back-up generator
- **Winter Park:** Rate assistance

# Consider Adopting a Policy to Address Big Projects

## *Policy Guidelines When to Bill for Individual Member Projects*

---

- Amend FMPA's existing Member Services Guidelines
- Not include Member Services staff (Mike, Cairo, Sharon, Mark)
- Significant projects defined as more than 120 staff hours, includes self-performed and project management projects
- First 120 hours provided at no cost as a member benefit
- Estimated hours in excess of 120 charged at rate of average salary plus benefits for FMPA's subject-matter-expert pay grades
- If project requires travel, bill for travel expenses

# Billable Time, Expenses Intended to Mitigate Costs

## *But Intent Is Not to Discourage Member Requests*

---

- Billable guidelines intended to apply to distinct projects that require significant FMPA staff time within a particular project period that, as a result, diverts FMPA's human resources from their primary function
- Not apply to combination of smaller efforts less than 120 hours/year
- FMPA will not charge more than original good-faith estimate, unless project scope changes and the increase is approved by the member
- If a project takes less time, reduce the charge accordingly
- Existing projects with members not affected
- MSAC requested periodic updates on policy implementation

# Recommended Action

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- Presented for Board information in December
- Presented for Board action in January

Florida Municipal Power Agency  
Guidelines for Development of Member Services  
May 2003  
DRAFT Revised October 2019

1. Purpose

At the FMPA Strategic Planning Session in 2002, "Member Services" was identified as a Priority Strategic Issue. One of FMPA's action items, as directed by board members and participants at the Strategic Planning Session, is to review FMPA's existing member services policies and to determine what services members would like to see provided through the agency.

A major step toward addressing this action item was to establish a Member Services Advisory Committee (MSAC), consisting of FMPA Board Members. The objective of this committee is to provide assessment and direction for new and existing member services offered by FMPA.

The purpose of this document is to provide FMPA members, as well as agency staff, with objective procedures for existing and new member services. The use of these procedures will ensure that FMPA is providing its members with quality services that are relevant to member issues and adequately address members' needs.

2. Proposal Phase

The suggestion for a new member service may originate with any FMPA member or FMPA staff. The person or group who proposes a new member service will complete a FMPA Member Services Proposal Form and submit it to the MSAC for review. (A copy of the Proposal Form is included as Attachment 1-.) The Member Services Proposal Form should be completed in as much detail as possible, in order to facilitate review by the MSAC.

The FMPA Member Services Proposal Form consists of the following sections to be completed by the originator:

a. Contact Information (Section I):

The originator of the Proposal Form will provide the MSAC with the originator's name, member's name, or FMPA Department, and relevant information for contacting the originator.

b. Proposed New Service (Section II):

The originator of the Proposal Form provides a working name or title of the proposed service; a description of the proposed service; and a list of other

Florida Municipal Power Agency  
Guidelines for Development of Member Services  
May 2003

DRAFT Revised October 2019

members who have an interest in the proposed service (if known at time of proposal).

c. Funding for Proposed Service (Section III):

The funding of FMPA Member Services is set forth in section 5 of this document "Guidelines for Funding of Services." This method of funding has been approved by the FMPA Executive Committee. If any additional or more relevant types of funding exist for the proposed service, the originator should provide a description of that funding. Section III of the Proposal Form should be completed ONLY if the funding for the proposed new service is an EXCEPTION to Section 5.

d. Resources (Section IV):

If the originator is aware of any potential resources that may be utilized in the successful development and implementation of the proposed service, the information may be included in this section of the Proposal Form. This may include any vendors, professional organizations, agencies, utilities, or other resources that may be used for development and implementation of the proposed service.

e. Additional Comments and Suggestions (Section V):

The originator should provide any additional information that may be helpful in the development and implementation of the proposed service.

3. Review Phase

The completed form shall be submitted to a member of the MSAC. The MSAC will review and evaluate the proposal in a timely manner and provide a response to the originator.

The MSAC will take one of two actions at this point: 1) Recommend that the ~~Executive Committee~~ Board of Directors approve development and implementation of the proposed service; 2) Deny development and implementation of the proposed service. In the event the MSAC denies the proposed service, the originator may submit the proposed service to the FMPA ~~Executive Committee~~ Board of Directors for consideration.

The MSAC will approve or deny the proposed new service, based upon the information provided, certain assumptions, special provisions, ~~–~~funding, and staffing requirements.



Florida Municipal Power Agency  
Guidelines for Development of Member Services  
May 2003

DRAFT Revised October 2019

4. Development Phase

Following approval of a proposed new service, the MSAC will provide direction to FMPA staff for the development and implementation of the service. Staff will maintain contact with the originator of the new service for communication and guidance during development.

Service development will typically have five stages:

a. Kickoff Meeting (Stage 1)

All members are invited to an initial “kickoff” meeting. At this meeting, FMPA staff, members, and other interested individuals will discuss the development of the new service.

b. Commitment by Interested Members (Stage 2)

Following the kickoff meeting, members will be contacted to determine if they are interested in participating in the new service. This contact is intended to identify members who are truly interested in participating in the development and implementation of the new service.

The funding of FMPA Member Services is discussed in detail in Section 5 of this document, “Guidelines for Funding of Services”. If there are any expenses required for the service that go beyond traditional funding for Standard Member Services, interested members will be required to sign a commitment form. (A copy of the Commitment Form is included as Attachment 2). Examples of non-traditional funding expenses will include charges for outside services or equipment, substantial staff time devoted directly to a member, or specific training and workshops. Each member who signs a commitment form will be expected to pay for the service. The member may be released from the commitment at any time and, thereafter, will no longer be considered a participant in the service.

c. Member Service Development Meetings (Stage 3)

Once members have committed to participating and funding the development of the service, member service development meetings will take place. These meetings are intended to provide the members an opportunity to discuss the service in detail and to make technical decisions regarding the specific nature of the service.

d. Implementation of Service (Stage 4)

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Depending upon the complexity of the service, the actual implementation stage may be simple or may require several evolutions. It is recommended that all participating members continue to provide expertise and input during this stage.

e. Evaluation / Review of Service (Stage 5)

The MSAC, with the advice and counsel of FMPA staff, will periodically review FMPA services to ensure that the services are up-to-date, relevant, desirable, and valuable to members.

5. Guidelines for Funding of Services

The MSAC has established the following guidelines regarding for the funding of existing and new member services:

***Standard Member Services*** are those services, which are provided to FMPA members as a general benefit of membership in FMPA. The costs of these services are covered by FMPA general agency funds, since the services are providing a benefit to FMPA members.

***Exceptions to Standard Member Services*** shall be those occasions when one or more members may require services that deviate from the Standard Member Services as described above. The MSAC has provided the following guidelines for addressing funding for Exceptions to Standard Member Services. The ~~Executive Committee~~Board of Directors has the authority to deviate from these guidelines, and the MSAC reserves the right to amend these guidelines, with the approval of the ~~Executive Committee~~Board of Directors.

A. Extraordinary outside services, material or equipment. This includes consultants or contractors who are specifically hired to participate in the development or implementation of the service. It may also include specific services, materials, equipment or software required to meet the needs of the participating member(s). These expenses may be charged among the service participants.

B. Member Services. Member Services expenses may be charged equally among all service participants. The nature of some services, however, may require a weighted charge to participants, and the expense structure of those services will be determined by the MSAC.

C. ~~Excessive~~Significant amounts of ~~“in-office”~~ staff time for an individual member project. If an FMPA staff member other than a staff member in the Member Services Department is ~~dedicating~~asked to dedicate a

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significant amount time to the resolution of a specific member issue, the time will be charged to the agency-specific member based on the following guidelines.

- i. Significant is defined as any project the FMPA staff estimates will take more than 120 staff hours, such as:
  1. Self Perform: FMPA staff self-performs the assignment with a clearly defined scope, deliverables and schedule.
  2. Project Management: FMPA staff participates in a project management or support role alongside the member on a project that leverages FMPA's consulting services agreements.
- ii. These billable guidelines are intended to apply to distinct projects that require significant FMPA staff time within a particular project period that, as a result, divert FMPA human resources from their primary function for the Agency.
- iii. These guidelines are not intended to apply to a combination of smaller efforts for a member or a member request that results in a small, intermittent time commitment that is within or slightly exceeds 120 hours in a 12-month period. Those time commitments will be monitored by FMPA staff.
- iv. Prior to the onset of any project, FMPA's member should provide specific expectations of the level of work or support required from FMPA staff.
- v. If FMPA determines that the level of effort will be less than 120 hours, such a project will be provided to the member at no cost as a member benefit. If during a project it becomes clear that actual time is going to exceed 120 hours, staff will provide an estimate to complete the project and, if approved by the member, anything over 120 hours will become billable time.
- ~~i-vi.~~ If FMPA determines the level of effort will exceed 120 hours, the hours in excess of 120 will be charged at a rate calculated as the average salary rate plus benefits for FMPA's subject-matter-expert pay grades.
- vii. If a billable project requires travel to the member city or another location away from the FMPA office, the travel expenses will be

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charged to the member. This includes mileage, meals, hotels, airfare, etc. in accordance with FMPA's travel procedures.

viii. The billable time and expense requirements are intended to help mitigate costs spent on significant services for an individual member, but the intent is not to discourage FMPA members from requesting services. In that spirit, it is agreed that FMPA will not charge more than the original good-faith estimate, unless the scope of the project changes and the increase is approved by the member.

ix. If the project takes less time than estimated, the charge to the member will be reduced accordingly.

~~C. "Out-of-office" staff time. If an FMPA member requests assistance, for a specific issue related to the member, from staff that requires staff to visit the city or another location away from the FMPA main office, the direct cost and travel expense of the staff time will be charged directly to the member. This includes time to travel, as well as the time dedicated to the service provided.~~

~~D. Travel expenses. If an FMPA member requests assistance, for a specific issue related to the member, from staff that requires travel to the member city or another location away from the FMPA office, the travel expenses will be charged directly to the member. This includes mileage, air-fare, meals, hotels, etc.~~

E.D. Training and Workshops. If FMPA provides training and workshops as a member service, the direct costs of the function will be charged to the member(s) who participate.

F.E. Other Funding. If a service is conducive to funding other than what is described in these guidelines (grants, special projects, partnerships, etc), the members are encouraged to include this information in Section III of the Member Services Proposal Form.

**AGENDA ITEM 9 – INFORMATION  
ITEMS**

**b. FY 2019 Preliminary Financial  
Results**

**Board of Directors Meeting  
December 12, 2019**



# **FYE 2019 Preliminary Financial Results**

Board of Directors - 9b  
Executive Committee – 9e  
December 12, 2019

# Financial Statement Highlights

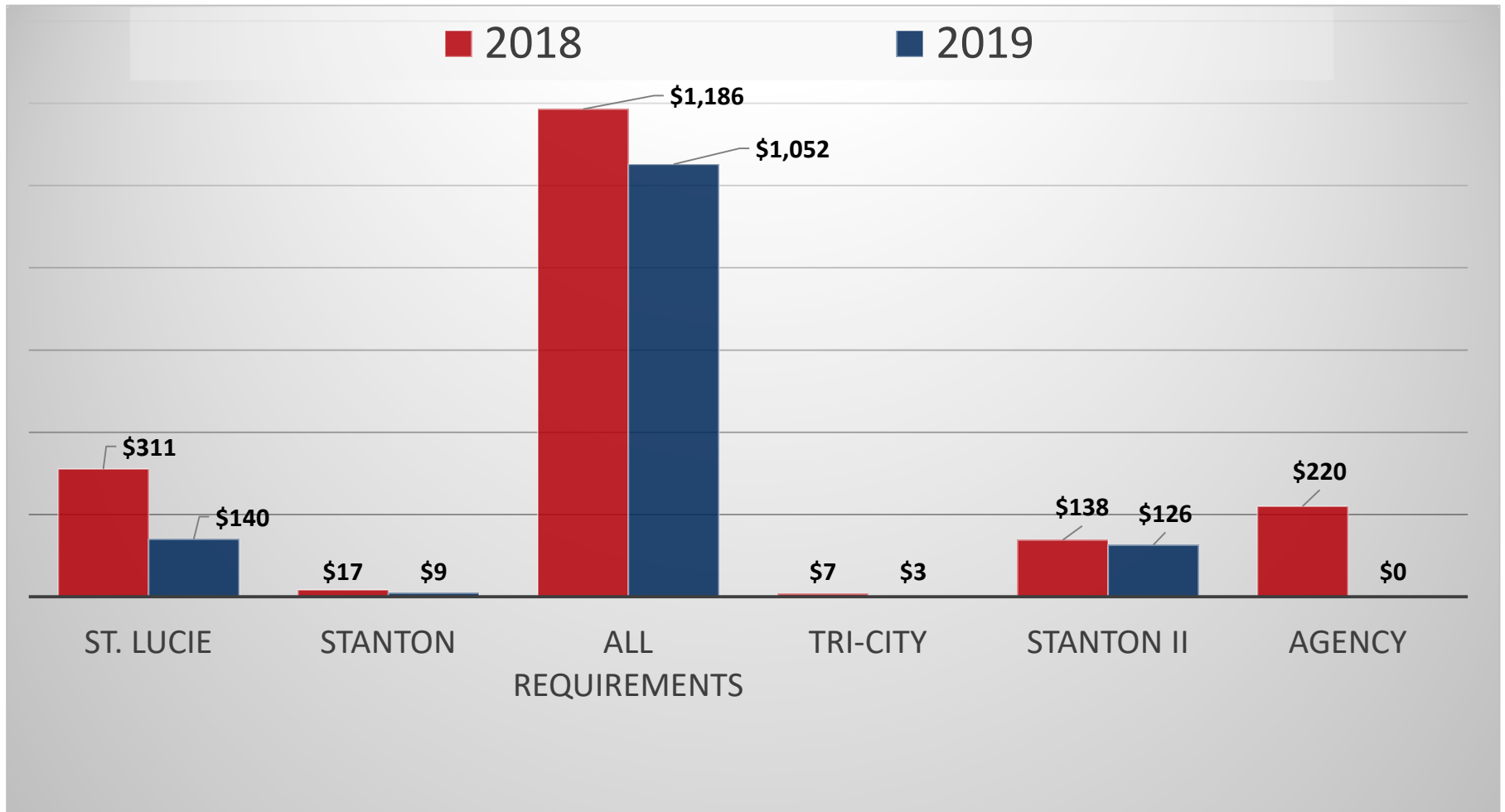
## *FYE 2019*

---

- **Long Term Debt:** Reduced by \$329M  
Notably:
  - St. Lucie – Dec 2018 Paid Off 2000 & 2002 Bonds
  - All Requirements –Paid Off 2008B & 2008C Bonds Early  
Redemption of \$69M; Swap Terminations of \$5.9M  
Mar 2019
- **Expenses:** Expenses are Below Budget for All Projects
- **Due to Participants:** Total Net to Due \$7.789M;  
FYE 2018 Net Due from Participants \$7.688M
- **Vero Beach:** Proceeds of Sale are Being Utilized to Reduce  
Monthly ARP Billings to Participants

# Long Term Debt by Project

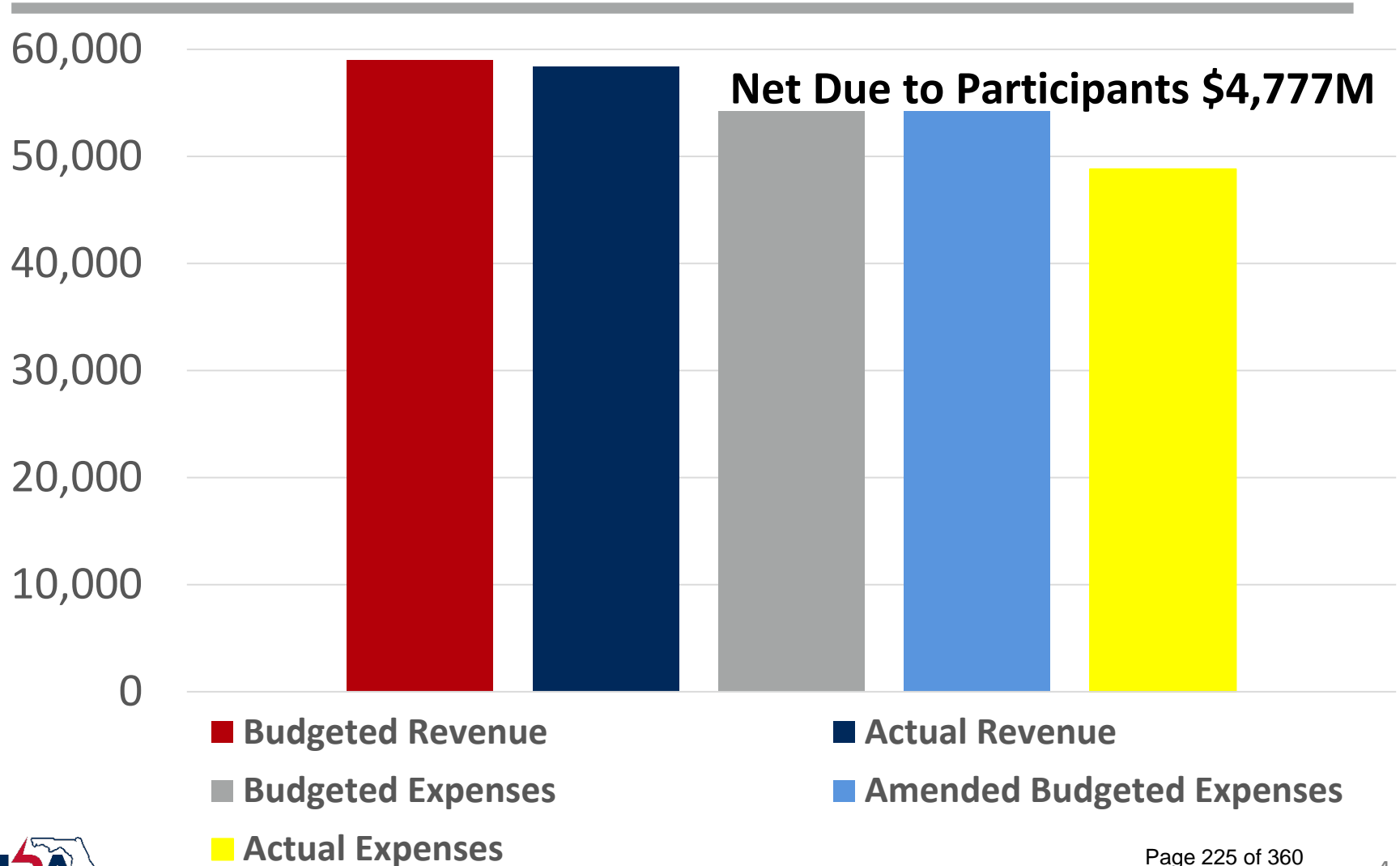
## Overall Reduction of \$329M





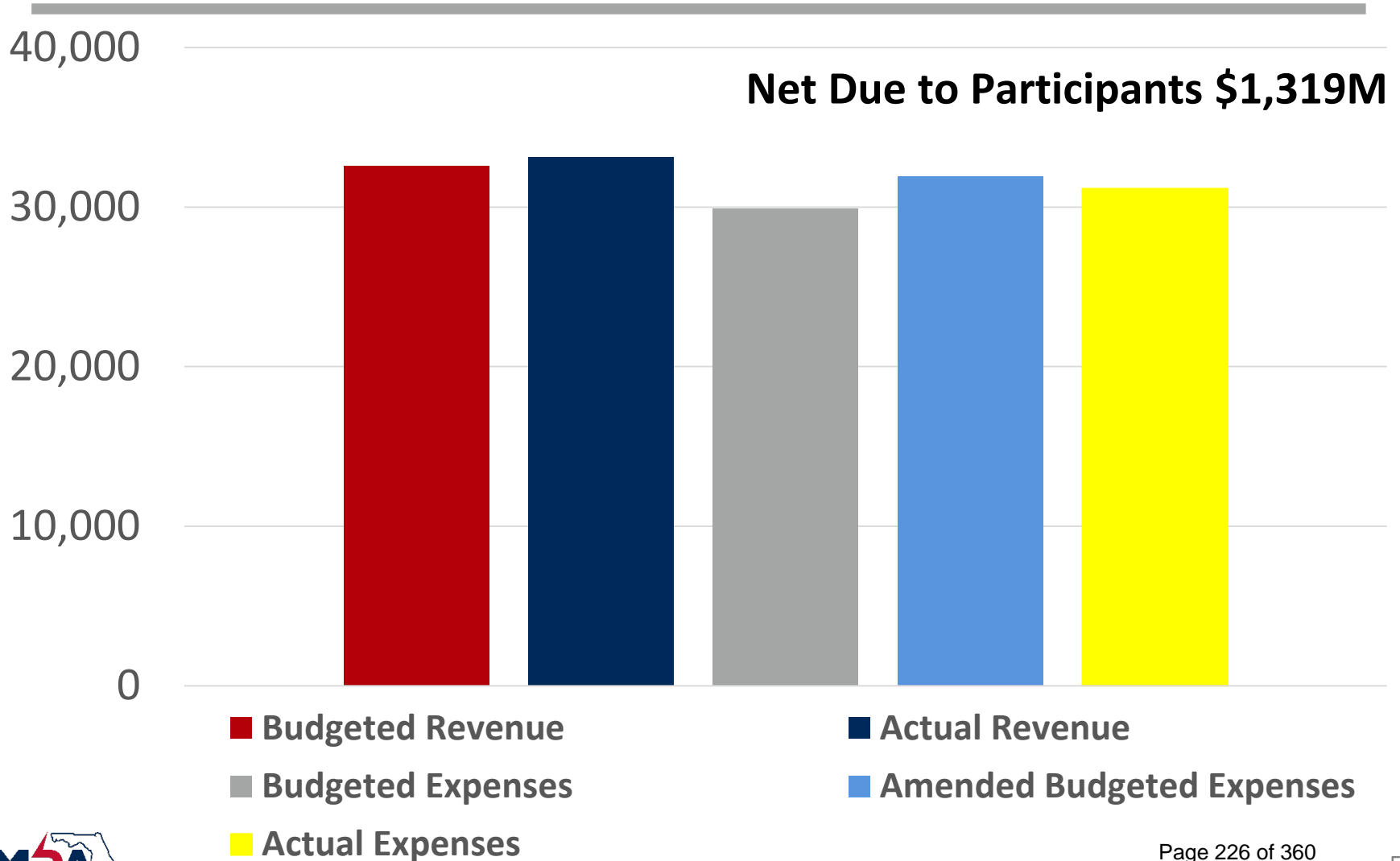
# Budget to Actual Comparison (\$000s)

## *St. Lucie*



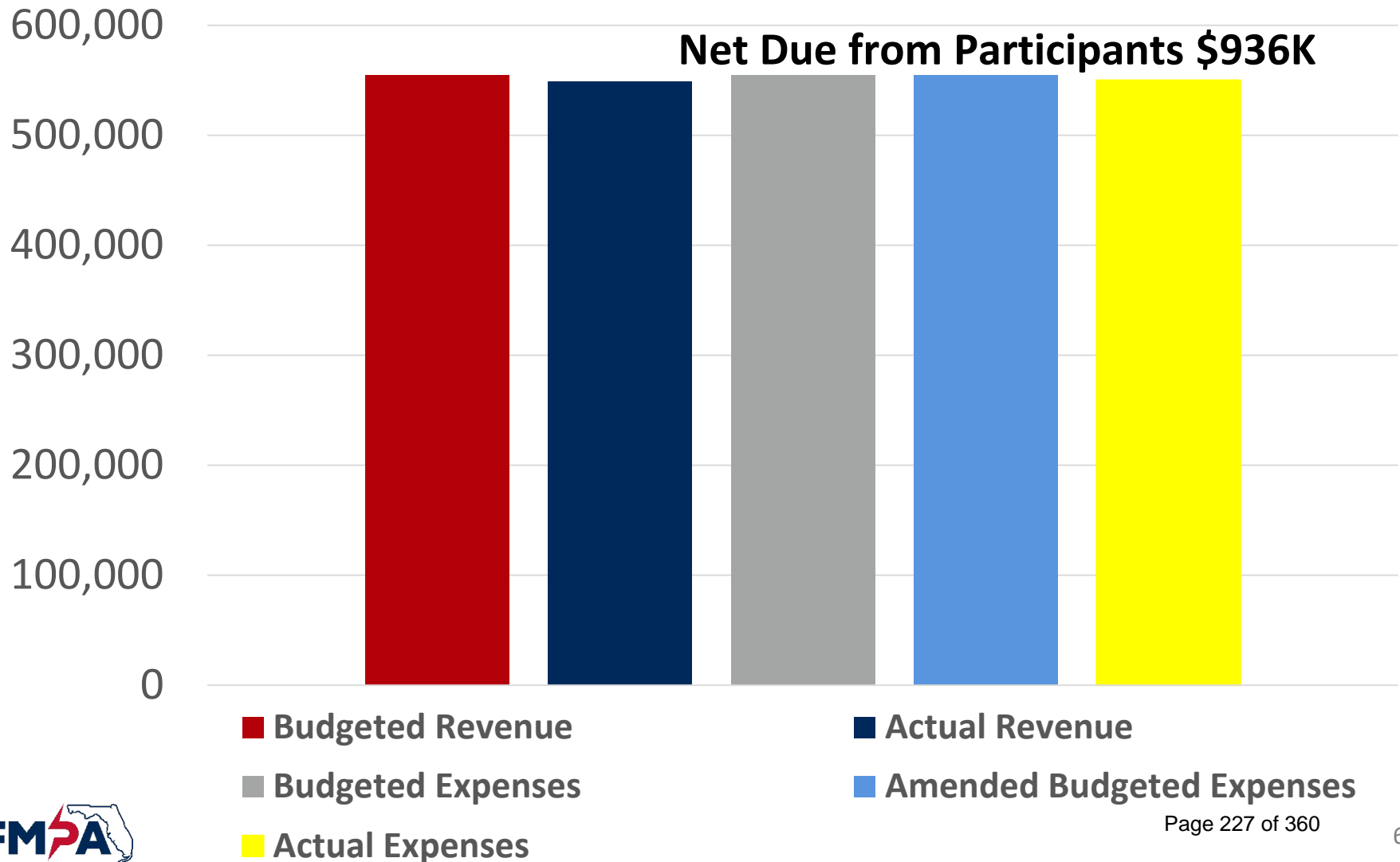
# Budget to Actual Comparison (\$000s)

## *Stanton*



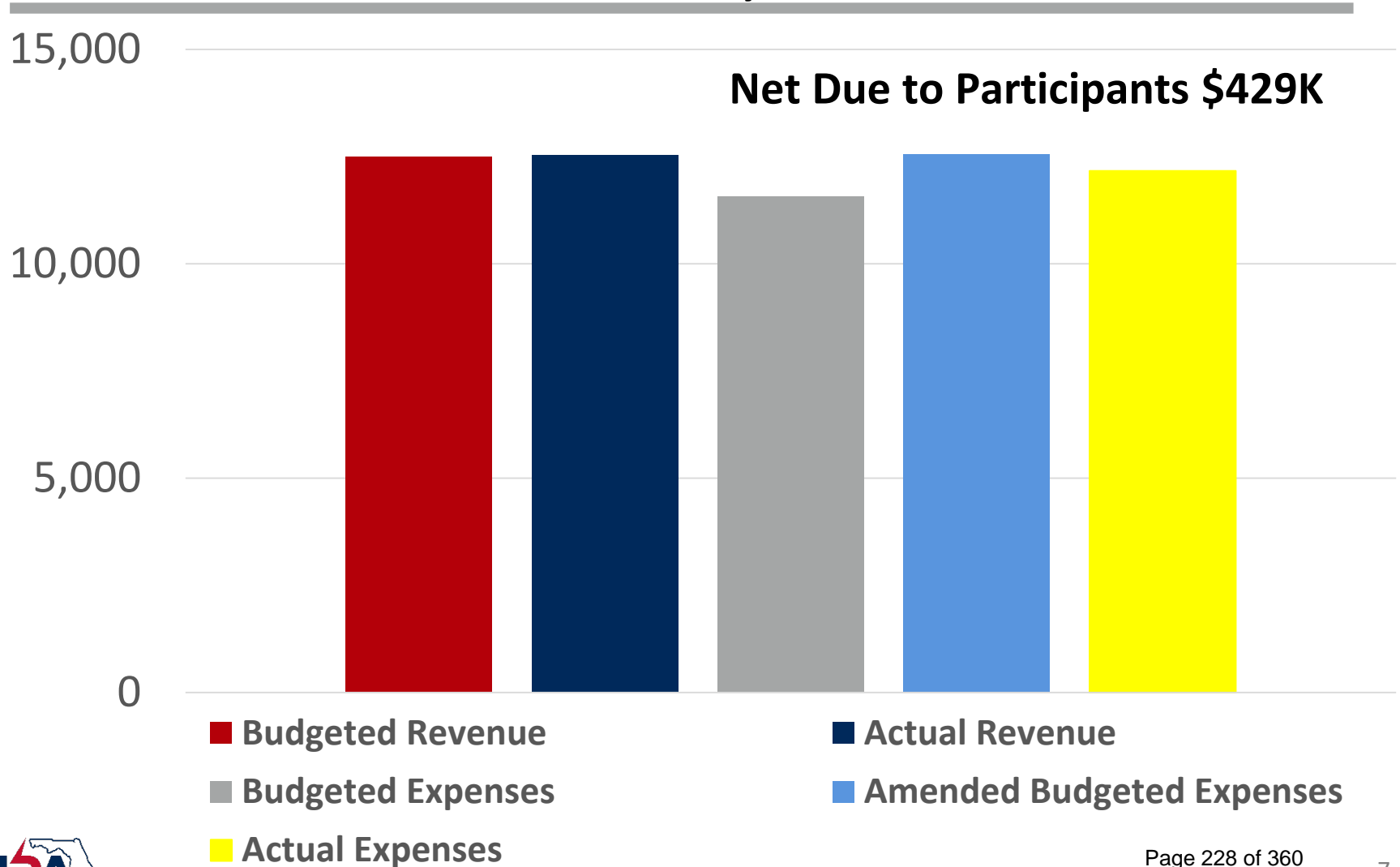
# Budget to Actual Comparison (\$000s)

## *All Requirements*



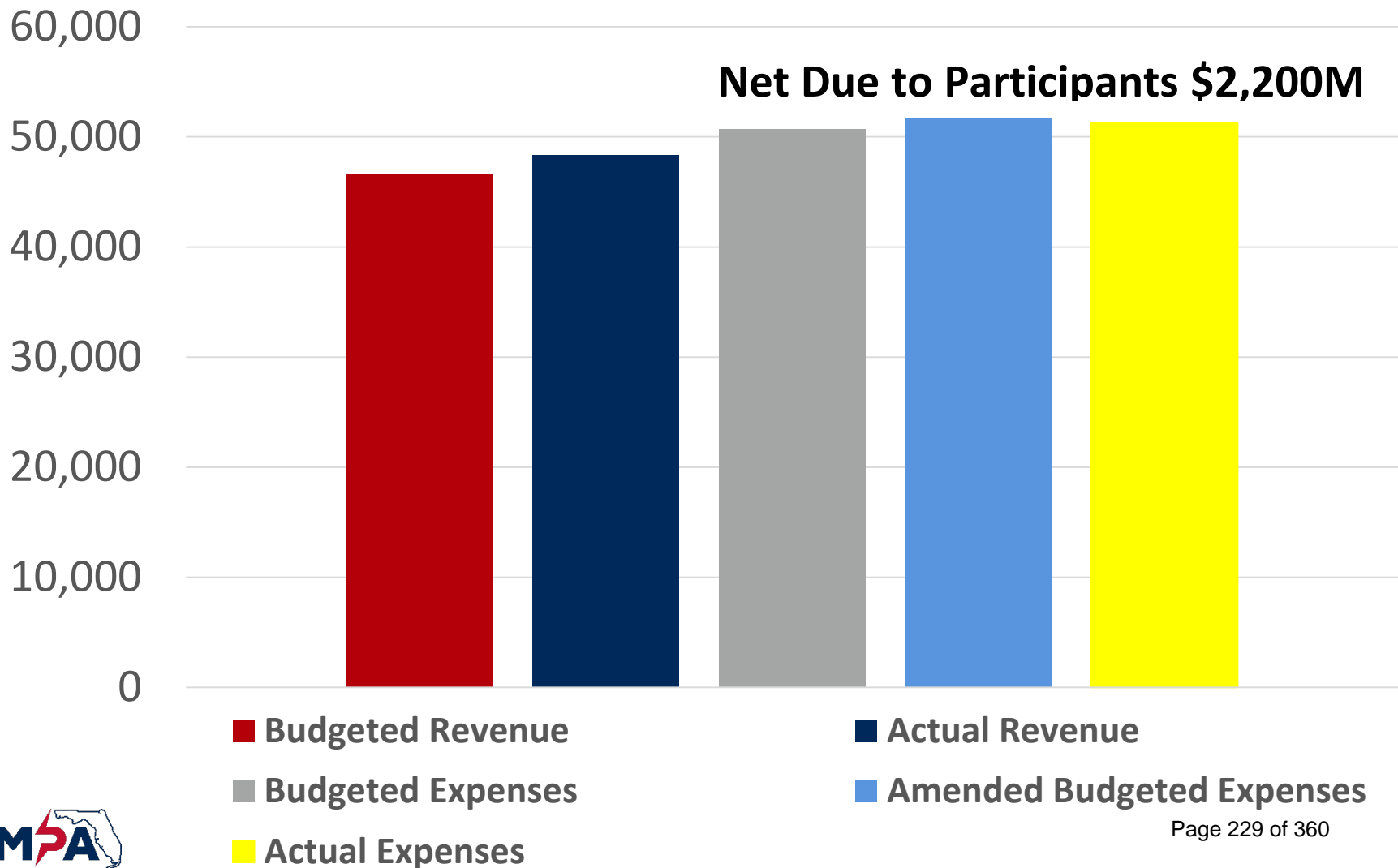
# Budget to Actual Comparison (\$000s)

## *Tri-City*



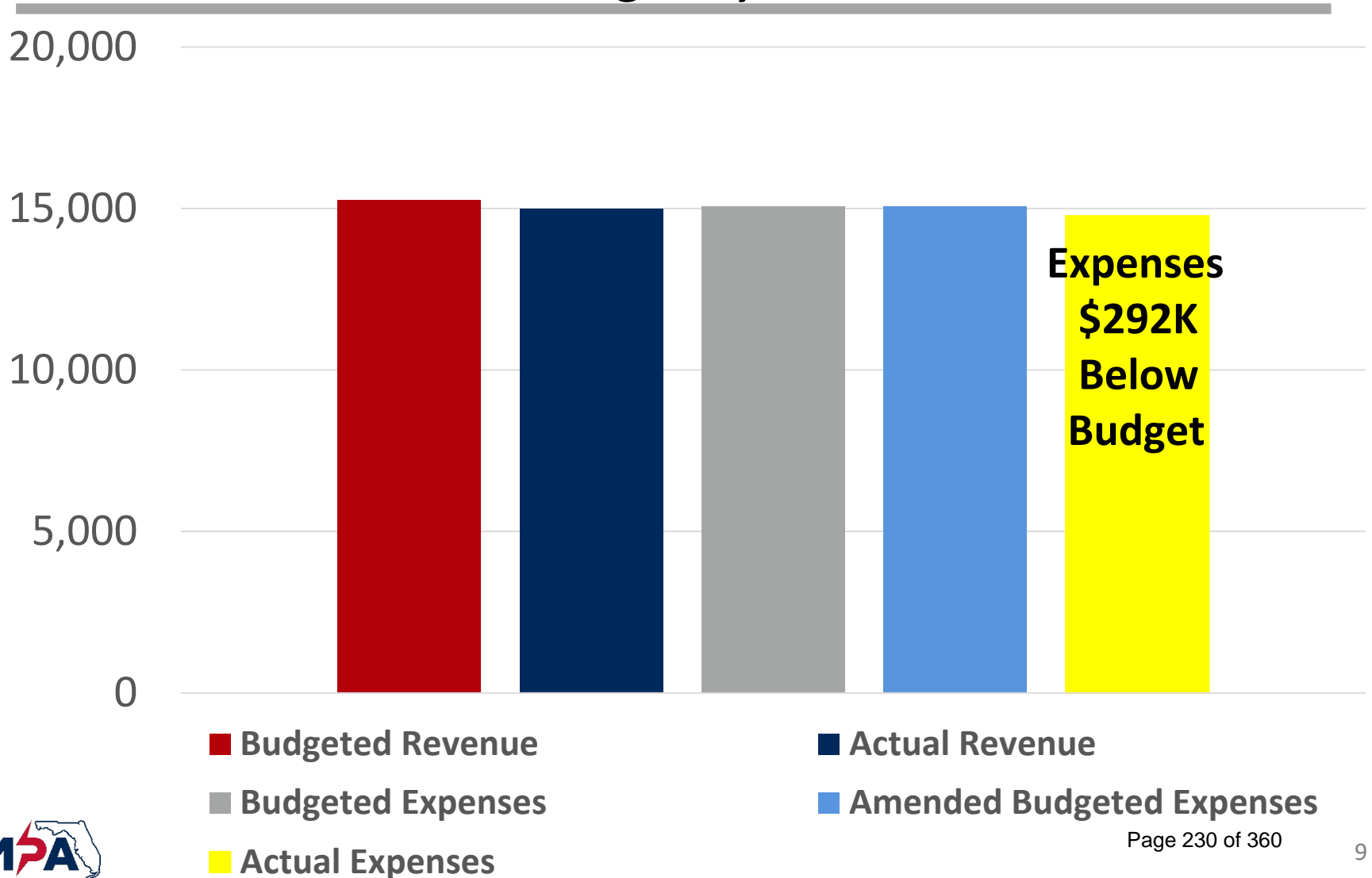
# Budget to Actual Comparison (\$000s)

## *Stanton II*



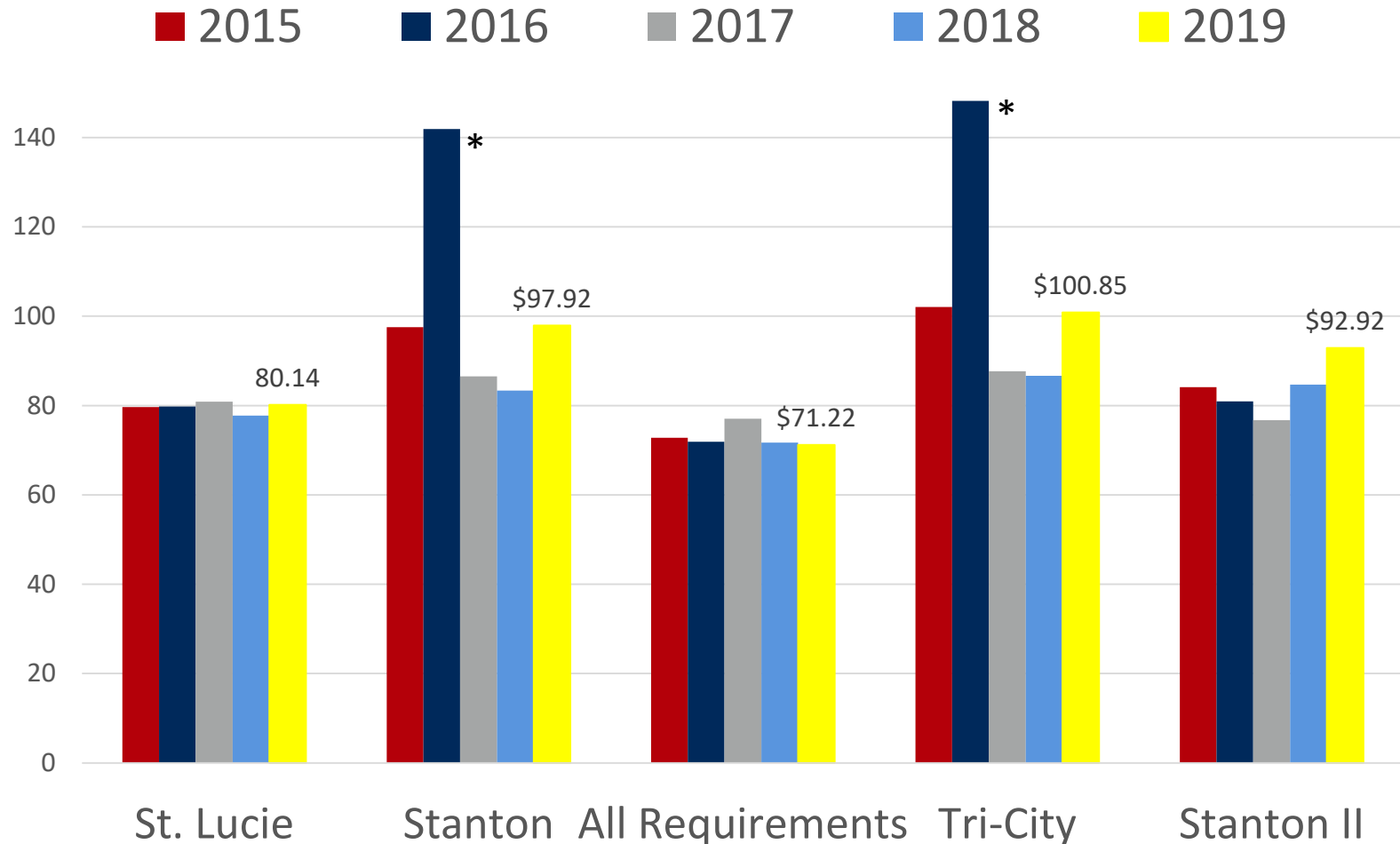
# Budget to Actual Comparison (\$000s)

## Agency



# Average \$/MWh Billed

*By Project Years 2015 - 2019*



\* Due to Extended Outage at Stanton

# **Next Steps to Finalize *FYE 2019***

---

- **Final Leadership Review of Financial Statements**
- **Final Review by Auditors Purvis Gray & Company**
- **Auditors to Provide Auditor Report & Opinion Letter**
- **January 2020 –Provide Financial Statements & Audit Report to Board of Directors & Executive Committee for Approval**



**AGENDA ITEM 9 – INFORMATION  
ITEMS**

**c. Summary of Finance Committee  
Items**

**Board of Directors Meeting  
December 12, 2019**



# **BOD 9c – EC 9f – Summary of Finance Committee Items**

Board of Directors and  
Executive Committee

December 12, 2019

# Finance Committee Items

## *Possible Action Items Next Month*

---

- Acceptance of Year end audited financial statements
- Acceptance of External Auditor year end audit report
- Internal Audit items/Review and approval of the
  - Operational audit reports
  - Risk Management policies/proposed changes

# Recommended Action

---

- Information only. No action required

**AGENDA ITEM 9 – INFORMATION  
ITEMS**

**d. Solar Phase I Poinsett PPA  
Revisions**

**Board of Directors Meeting  
December 12, 2019**



## BOD 9d / EC 9g Solar Phase I Poinsett PPA Revisions

FMIPA Board of Directors and Executive Committee  
December 2019



# Revised PPA the Solution to Poinsett Solar Delay

*Poinsett Site is fully permitted; waiting for Duke Interconnection study*

---

- FMPA Solar Committees met several times to discuss options.
- Proposed solution to change sites considered in August was rejected.
- Staff continued discussions with Florida Renewable Partners (FRP).
- In October, FRP presented options for PPA revisions that allow additional time in exchange for reduced pricing, while staying at the original facility site.
  - FRP avoids financial damages unless new timeframe is not met.

# Revised PPA the Solution to Poinsett Solar Delay

## *Lowest Contract Price offered without Renewal Terms*

---

- At their October 23 joint meeting, the Solar Project Committee and ARP Solar Participants Advisory Committee voted to move forward with revisions to their Poinsett PPAs.
  - Maintain original site, delivery point, and production profile.
  - Milestone dates pushed out approximately 3 years.
  - Accept lowest price adjustment offer, which results in net present value savings of approximately \$12 million\* over 20 years.
  - Drop the two 5-year renewal term options.



## Information Only

### *Subcommittee Approval of PPA Revisions Still Needed*

---

- A markup of the Amended and Restated Agreement (using the ARP PPA as a template) is attached.
- The same changes will be made for the Amended and Restated Solar Project PPA.
- Another joint meeting of the FMPA Solar Committees will be scheduled prior to January BOD/EC meetings.
  - 100% approval required.

**AMENDED AND RESTATED RENEWABLE ENERGY  
POWER PURCHASE AGREEMENT**

**between**

**FLORIDA MUNICIPAL POWER AGENCY**

**as Buyer**

**and**

**POINSETT SOLAR, LLC**

**as Seller**

**dated as of**

**May 16, 2018 \_\_\_\_\_, 2019**

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Exhibit L	Certificate – Commercial Operations
Exhibit M	REC Bill of Sale
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Exhibit N-2	Estoppel Certificate
Exhibit O	Other Buyers; Other Solar Project Buyers

## **AMENDED AND RESTATED RENEWABLE ENERGY POWER PURCHASE AGREEMENT**

This AMENDED AND RESTATED RENEWABLE ENERGY POWER PURCHASE AGREEMENT (this “Agreement”) is made this 16<sup>th</sup> day of May, 2018, 2019 (the “Effective Date”), by and between **FLORIDA MUNICIPAL POWER AGENCY**, a governmental joint action agency organized and existing under Florida law (“**Buyer**”) and **POINSETT SOLAR, LLC**, a Delaware limited liability company (“**Seller**”). Buyer and Seller are each individually referred to herein as a “Party” and collectively as the “Parties”.

### **WITNESSETH:**

WHEREAS, Seller intends to develop a photovoltaic solar energy generation facility of approximately 74.5 MW alternating current (“AC”) aggregate nameplate capacity on a site located in Osceola County, Florida (“**Site**”);

WHEREAS, Seller, or an Affiliate of Seller, also intends to develop two additional photovoltaic solar energy generation facilities, each of approximately 74.5 MWAC aggregate nameplate capacity, one on a site located in Orange County, Florida, and another on a site located in Osceola County, Florida (such projects, together with the Project, the “**Solar Project Portfolio**”); and

WHEREAS, Seller desires to sell and deliver to Buyer and Buyer desires to purchase and receive all of Buyer’s Share (as defined hereinafter) of the nameplate capacity, electric energy and environmental credits from the Project (as defined hereinafter), on the terms and conditions set forth herein; and

WHEREAS, Buyer and Seller entered into that certain Renewable Energy Power Purchase Agreement, as of May 16, 2018 (as to such date, the “Original Effective Date”, and as to such agreement, the “Original Agreement”); and

WHEREAS, Buyer and Seller have each determined that the Original Agreement ought to be amended and restated as set forth in this Agreement.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agreement and restate the Original Agreement to read in its entirety as follows:

### **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions.**

The capitalized terms listed in this ARTICLE 1 shall have the meanings set forth herein. Other terms used in this Agreement but not listed in this Article shall have the meanings as commonly used in the English language and, where applicable, in Prudent Operating Practice.

**"Abandon"** means after having commenced construction of the Project, Seller stops construction of the Project for more than ninety (90) consecutive days excluding cessation of construction work caused by the occurrence of a Force Majeure Event, Permitting Delay, or Transmission Delay.

**"AC"** has the meaning set forth in the Recitals.

**"Adjustment Period"** has the meaning set forth in Section 5.2(b).

**"Affiliate"** means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the power, directly or indirectly, to direct or cause the direction of the management, policies or operations of such Person, whether through the ownership of voting securities or by contract or otherwise.

**"After-Tax Basis"** means, with respect to Sections 12.2 and 12.3, any payment received or deemed to have been received by any Person, the amount of such payment (the "Base Payment") supplemented by a further payment (the "Additional Payment") to such Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in the State of Florida and shall take into account the deductibility (for federal income tax purposes) of any state and local income taxes.

**"Agreement"** has the meaning set forth in the first paragraph hereof.

**"Applicable Law"** means, with respect to any Person, the Site, or the Project, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, Governmental Approvals, directives and requirements of all regulatory and other Governmental Authorities, in each case applicable to or binding upon such Person, the Site or the Project (as the case may be).

**"ARP Contract"** is defined in Section 11.4(d).

**"Bankrupt"** means, with respect to a Party, such Party (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes

bankrupt or insolvent (however evidenced), (d) is generally unable to pay its debts as they fall due, (e) has been adjudicated bankrupt or has filed a petition or an answer seeking an arrangement with creditors, (f) has taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceedings, (g) becomes subject to an order, judgment or decree for relief, entered in an involuntary case, by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive Days, (h) fails to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) Days of the filing thereof, or (i) becomes subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and closes at 5:00 p.m. Eastern Prevailing Time.

**“Buyer”** has the meaning set forth in the first paragraph of this Agreement.

**“Buyer Excuses”** has the meaning set forth in Section 3.5(b).

**“Buyer Purchase Damages”** means:

(a) the discounted value (discounted at the Interest Rate) of the positive difference, if any, of: (i) all Dollar amounts that Buyer would, in the manner set forth below, be expected to pay at then prevailing market conditions to buy from a third party a product comparable to the Buyer’s Product being purchased under this Agreement through the remaining Delivery Term; *plus* (ii) all incremental costs over and above those that Buyer would otherwise incur; *provided*, that such costs are quantifiable and directly related to the termination of this Agreement, and *provided further* that the incremental costs explicitly excludes costs related to any retail electric customer program; *less* (iii) all Dollar amounts Buyer would have been expected to pay to Seller for Buyer’s Product under this Agreement through the remainder of the Term.

(b) Buyer shall calculate the Buyer Purchase Damages in a Commercially Reasonable manner by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants, if available. The average of the quotes that were obtained shall be deemed to be the market price. The quotes obtained shall be: (i) for a like amount, (ii) of products comparable to Buyer’s Product, (iii) at the same or reasonably similar Delivery Point, (iv) for the remaining Term, and (v) determined in any other Commercially Reasonable manner. In no event shall Buyer Purchase Damages include any penalties or ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall not be required to actually have purchased any replacement of Buyer’s Product to calculate Buyer Purchase Damages as set forth herein. If Buyer Purchase Damages are owed as a result of an Event



of Default and the Buyer Purchase Damages are a negative number then the Buyer Purchase Damages shall be deemed to equal Zero Dollars (\$0.00).

**“Buyer’s Delivered Energy”** means Buyer’s Share of the Delivered Energy.

**“Buyer’s Facility Attributes”** means Buyer’s Share of the Facility Attributes.

**“Buyer’s Performance Assurance”** means the Performance Assurance provided by Buyer in the event of a Buyer Downgrade Event, in the amount of Buyer’s Share of [REDACTED] as security for Buyer’s obligation to pay for Buyer’s Product pursuant to this Agreement.

**“Buyer’s Product”** means Buyer’s Share of the Product.

**“Buyer’s Renewable Attributes”** means Buyer’s Share of the Renewable Attributes.

**“Buyer’s Share”** means, with respect to the Product (including the Energy, Renewable Attributes and Facility Attributes) and certain other rights and obligations set forth in this Agreement, Buyer’s undivided pro rata entitlement share, expressed as the percentage set forth in Part I of Exhibit O, as such Exhibit may be amended pursuant to Section 3.1(b). For the avoidance of doubt, the sum of Buyer’s Share and each Other Buyer’s Share(s) (if any) shall equal one hundred percent (100%) of the Product.

**“Change of Law”** means any change in or addition to any Applicable Law on or after the Original Effective Date.

**“Claims”** has the meaning set forth in Section 12.2.

**“Collateral Agent”** has the meaning set forth in Exhibit N-1.

**“Commercially Reasonable”** or **“Commercially Reasonable Efforts”** means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake consistent with its required performance under this Agreement while protecting its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Prudent Operating Practices, including electric system reliability and stability, state or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. “Commercially Reasonable” or “Commercially Reasonable Efforts” shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, decision or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

**“Commercial Operation”** means the Project is fully operable and capable of continuous operation at the Project Capacity and able to produce and deliver the Product to Buyer in accordance with the terms of this Agreement.

**“Commercial Operation Date”** means the date following the Initial Energy Delivery Date, on which (a) Commercial Operation has occurred with respect to the full Project Capacity; (b) Seller has delivered to Buyer the Seller’s Delivery Term Security required under Section 10.4(a)(ii); (c) Seller has delivered to Buyer a report with the results of start-up and operational and performance testing conducted by Seller to demonstrate the attainment of Commercial Operation of the Project; (d) Seller has received all local, state and federal Governmental Approvals and other approvals, consents and authorizations as may be required by Applicable Law for the construction, operation and maintenance of the Project and generation, delivery and sale of Product hereunder, and (e) Seller has executed and delivered to Buyer a certificate certifying to Buyer the fulfillment of all conditions precedent to Commercial Operation of the Project substantially in the form of Exhibit L.

**“Confidential Information”** has the meaning set forth in Section 14.1.

**“Contract Price”** means (i) from and including the Initial Energy Delivery Date until the Commercial Operation Date, seventy-five percent (75%) of the Dollar-per-MWh Rate, and (ii) from the Commercial Operation Date through the remainder of the Term the Dollar-per-MWh Rate.

**“Contract Quantity”** has the meaning set forth in Section 3.19(a).

**“Contract Year”** means each one year period during the Term, with the first Contract Year commencing on the Commercial Operation Date and ending on the day before the anniversary of the Commercial Operation Date, and subsequent Contract Years commencing on the anniversary of the Commercial Operation Date.

**“Credit Rating”** means, (a) with respect to Seller or any other Person, the rating then assigned to Seller’s or such Person’s unsecured, senior long-term debt obligations (not supported by third-party credit enhancements); and (b) with respect to Buyer, the rating then assigned to Buyer’s long-term bonds secured by revenues of the ARP Project.

**“Cure Payment Period”** has the meaning set forth in Section 3.19(c).

**“Curtailed Period”** means the period of time during which any of the following occur: (a) Transmission Provider orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for the following reasons: (i) any System Emergency; (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes Transmission Provider’s electric system integrity; (b) a curtailment ordered by the Transmission Provider for reasons including, (i) any situation that affects normal function of the electric system, including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that

jeopardize the Transmission Provider's Transmission System integrity or the integrity of other systems to which the Transmission Provider is connected; (c) scheduled or unscheduled maintenance on the Transmission Provider's Transmission System that prevents (i) Buyer from receiving Energy at or (ii) Seller from delivering Energy to the Delivery Point; or (d) a curtailment in accordance with Seller's obligations under the Large Generator Interconnection Agreement.

**"Daily Delay Damages"** means Buyer's Share of [REDACTED] per day.

**"Daily Delay Damages Cap"** has the meaning set forth in Section 4.4(a).

**"Day" or "day"** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Eastern Prevailing Time on any calendar day and ending at 24:00 hours Eastern Prevailing Time on the same calendar day.

**"Defaulting Party"** has the meaning set forth in Section 7.1.

**"Delivered Energy"** means the Energy delivered to the Delivery Point net of all electrical losses associated with the transmission or transformation (from direct current to AC) of the Energy to the Delivery Point, including, if applicable, any losses between the Metering System and the Delivery Point.

**"Delivery Point"** means the point, more specifically described as the ring bus in Exhibit C, where Seller's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

**"Delivery Term"** means the period of time commencing upon the Initial Energy Delivery Date and terminating at the end of the Term.

**"Disclosing Party"** has the meaning set forth in Section 14.1.

**"Dispute"** has the meaning set forth in Section 18.1.

**"Dollar" or "\$"** means dollars of the United States of America.

**"Dollar-per-MWh Rate"** means [REDACTED] per MWh of Delivered Energy.

**"Downgrade Event"** means any point in time during the Term when: (a) with respect to Seller, two of three of Seller's Guarantor's Credit Ratings fall below Investment Grade; and (b) with respect to Buyer, any Credit Rating of Buyer's long-term bonds secured by the revenues of the ARP Project falls below Investment Grade.

**"Early Termination Date"** has the meaning set forth in Section 7.2(a).

**"Effective Date"** has the meaning set forth in the Preamble to the Agreement.

***“Electric Interconnection Upgrade”*** means to complete or to cause to be completed all work, services, installations, equipment and facilities, and to obtain or to cause to be obtained all required Governmental Approvals necessary to interconnect the Project with the Transmission Provider’s Transmission System.

***“Energy”*** means net electric energy generated by the Project and available for delivery to the Delivery Point, which shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current (AC).

***“Energy Not Received”*** means, in any hour where Energy is not delivered to the Delivery Point, (a) the positive difference between (i) the most recently available forecast of Energy deliveries as defined in Section 3.16, and (ii) the actual amount of Delivered Energy delivered during such hour, if any; or, if such forecast is unavailable, (b) the positive difference between (i) the estimate of Energy production for such hour derived from a P50 (probability of exceedance is fifty percent (50%)) simulation using actual meteorological data for such hour and PVSyst solar forecasting tool, or its successor, or other peer industry standard solar energy forecasting tool, reflective of the same degradation rate as was assumed in the preparation of Exhibit D per year relative to the Project Capacity (prorated over a partial year as applicable) and (ii) the actual amount of Delivered Energy during such hour, if any.

***“Equitable Defenses”*** means any bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to grant same.

***“Event of Default”*** has the meaning set forth in Section 7.1.

***“Excess Energy Credit”*** has the meaning set forth in Section 3.19(d).

***“Excess Energy Delivery”*** has the meaning set forth in Section 3.19(d).

***“Excess Energy Rate”*** means [REDACTED] of the Dollar-per-MWh Rate.

***“Executives”*** has the meaning set forth in Section 18.2(a).

***“Facility Attributes”*** means all ancillary products, services, capabilities or attributes which are or can be produced by or associated with the Project at any time during the Term.

***“Fair Market Value”*** means the price that, as of the applicable Notice Date, would be paid in an arm’s length, free market transaction, in cash, between an informed, willing seller and informed willing buyer neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology and the commercial benefits that Seller may be able to derive from the Project, *provided* that installed equipment will be valued on an installed basis and costs of removal from current location will not be a deduction from the value.

**“Fitch”** means Fitch Ratings Ltd. or any successor thereto, or if there is no such successor, a nationally recognized credit rating agency.

**“FMPA All-Requirements Power Supply Project”** means the joint-action power supply project created by the FMPA Board of Directors pursuant to FMPA Resolution 1985-B2, dated March 22, 1985.

**“FMPA All-Requirements Power Supply Project Contracts”** means the Power Supply Project Contracts between Buyer and each member of the FMPA All-Requirements Power Supply Project for the sale of the electric capacity and energy and dispatching and transmission services by FMPA to such member.

**“FMPA Solar Project”** means the joint-action solar project created by the FMPA Board of Directors pursuant to FMPA Resolution 2018-B5, dated March 21, 2018.

**“Forced Outage”** means a reduction or suspension of Energy from the Project or an unavailability of the Project, in each case, in an amount greater than five percent (5%) of the Project Capacity and in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip or unavailability that is not a Planned Outage or Maintenance Outage, due to a Curtailment Period, or the result of a Force Majeure Event.

**“Force Majeure Event”** means any event or circumstance after the [Original](#) Effective Date that wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, other than the obligation to pay amounts due, but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event and thereafter to mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement, (3) such Party could not reasonably have been expected to prevent or avoid such event and could not overcome such event by the exercise of due diligence, and (4) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

- (a) Subject to the foregoing, events that could qualify as a Force Majeure Event include the following:
  - (i) acts of God, flooding, landslide, earthquake, fire, explosion, epidemic, quarantine, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
  - (ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation which directly impact operations;

- (iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);
  - (iv) environmental and other contamination at or affecting the Project prior to the Original Effective Date which was not reasonably discoverable during Site due diligence using Prudent Operating Practices;
  - (v) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine, air crash, shipwreck, train wrecks or other failures or delays of transportation;
  - (vi) vandalism beyond that which could not be reasonably prevented by Seller using Prudent Operating Practices;
  - (vii) the discovery of Native American burial grounds not evidenced in Seller's Phase I environmental assessment of the Site and not reasonably discoverable during Site due diligence using Prudent Operating Practices;
  - (viii) the discovery of endangered species at the Site, as defined by Applicable Law, not reasonably discoverable during Site due diligence using Prudent Operating Practices;
  - (ix) damage to or destruction of the Project generator step-up transformer that requires installation of a replacement unit; and
  - (x) damage to or destruction of the Transmission Provider's Transmission System which prevents Buyer from accepting delivery of Energy to the Delivery Point.
- (b) A Force Majeure Event shall not be based on:
- (i) Buyer's inability to economically use or resell Buyer's Product purchased hereunder;
  - (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;
  - (iii) Seller's inability to obtain Governmental Approvals or other consents, approvals or authorizations of any type for the ownership, construction, operation, or maintenance of the Project or the production, transmission, delivery and sale of Product;
  - (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to install, equip, build, operate, maintain or repair the Project, except to the extent Seller's inability to obtain sufficient labor, equipment,

materials, or other resources is caused by a Force Majeure Event of the specific type described in any of subsections (a)(i) through (a)(vi) above;

- (v) Seller's failure to obtain Performance Assurance, financing or other funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement; or
- (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller or Seller's Affiliates.

***"Force Majeure Extension"*** has the meaning set forth in Section 4.3(c)(iii).

***"GEP Damages"*** has the meaning set forth in Section 3.19(c).

***"GEP Failure"*** has the meaning set forth in Section 3.19(c).

***"Governmental Approvals"*** means all authorizations, consents, approvals, waivers, exceptions, variances, filings, notices, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority and shall include those siting, construction and operating permits and licenses, and any of the foregoing under any Applicable Law that are required to construct, interconnect, operate, maintain and repair the Project and deliver Delivered Energy to the Delivery Point.

***"Governmental Authority"*** means any federal, state, local or municipal government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; any court or governmental tribunal; or any independent operator, regional transmission organization or other regulatory body; in each case having jurisdiction over either Party, the Project, the Site, the generation, delivery and sale of Product, Seller's Interconnection Facilities, the Transmission Provider's Interconnection Facilities, or the Transmission Provider's Transmission System.

***"Governmental Charges"*** has the meaning set forth in Section 13.2.

***"Guaranteed Commercial Operation Date"*** means June 30, ~~2020~~2023, as such date may be extended in accordance with Section 4.3(c).

***"Guaranteed Energy Production"*** or ***"GEP"*** has the meaning set forth in Section 3.19(b).

***"Guarantor"*** means an entity providing payment security on behalf of a Party. The Guarantor must be incorporated or organized in a jurisdiction of the United States and be in good standing in such jurisdiction.

***"Guaranty"*** means a guaranty substantially in the form of Exhibit F issued by a Guarantor with an Investment Grade Credit Rating.

***“Initial Energy Delivery Date”*** means the first date that Seller delivers Buyer’s Delivered Energy to Buyer at the Delivery Point and that Buyer is able to receive and transmit such Buyer’s Delivered Energy from the Delivery Point.

***“Initial Negotiation End Date”*** has the meaning set forth in Section 18.2(a).

~~***“Initial Term”***~~ has the meaning set forth in Section 2.1.

***“Interest Payment Date”*** means the last Business Day of each calendar month.

***“Interest Rate”*** means the lower of (a) annual rate equal to the U.S. 10-year Treasury Note then in effect plus four percent (4%) and (b) the maximum interest permitted by Applicable Law.

***“Interim Milestones”*** has the meaning set forth in Section 4.1(i).

***“Interlocal Agreement”*** means the Interlocal Agreement creating the Florida Municipal Power Agency, as amended and supplemented to date, and as the same may be amended or supplemented in the future.

***“Investment Grade”*** means a Credit Rating of at least: (a) BBB- when the Credit Rating is issued by S&P, (b) Baa3 when the Credit Rating is issued by Moody’s, or (c) BBB- when the Credit Rating is issued by Fitch; *provided*, that if the applicable Person is rated by each of Moody’s, S&P and Fitch, the two (2) highest ratings will be the applicable standard in determining such Person’s Credit Rating.

***“Large Generator Interconnection Agreement”*** means the mutually agreed interconnection agreement between the Transmission Provider and Seller pursuant to which Seller’s Interconnection Facilities and the Transmission Provider’s Interconnection Facilities will be constructed and operated and maintained, in accordance with the Transmission Provider’s Open Access Transmission Tariff.

***“Letter(s) of Credit”*** means one or more irrevocable, transferable standby letters of credit, substantially in the form of Exhibit G, 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, without a “negative credit watch”, “negative outlook” or other rating decline alert by either S&P or Moody’s and having net tangible assets of at least \$10 Billion, in a form acceptable to the Party in whose favor the letter of credit is issued.

***“Lien”*** means any lien, charge, claim, mortgage, security agreement or other encumbrance.

***“Maintenance Outage”*** means removal of a portion of the Project from service availability, excluding Planned Outages and Forced Outages.

***“Manager”*** has the meaning set forth in Section 18.2(a).



***“Measurement Period Performance Percentage”*** has the meaning set forth in Section 3.19(a).

***“Metering System”*** means all meters, metering devices and related instruments used to measure and record Energy and to determine the amount of Delivered Energy.

***“Milestone Daily Delay Damages”*** means Buyer’s Share of [REDACTED] for each day of delay in achieving the milestones set out in the first two rows of Exhibit K.

***“Milestone Daily Delay Damages Cap”*** has the meaning set forth in Section 4.1(j).

***“Moody’s”*** means Moody’s Investor Service, Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

***“MW”*** means a megawatt (or 1,000 kilowatts) of AC electric generating capacity.

***“MWh”*** means a megawatt hour.

***“NERC”*** means the North American Electric Reliability Corporation.

***“Network Upgrades”*** means additions, modifications and upgrades to the Transmission Provider’s Transmission System, or any other electric delivery system beyond the Delivery Point to which Transmission Provider’s Transmission System is directly or indirectly interconnected or which is affected, to accommodate the interconnection of the Project to the Transmission Provider’s Transmission System.

***“Network Upgrade Cost”*** means the costs to make any Network Upgrades required by the Transmission Provider for the Project.

***“Newly Available Product”*** means any Product available to Seller following a default or termination by (a) any Other Buyer under a power purchase agreement with Seller relating to the Project, or (b) any Other Solar Project Buyer under a power purchase agreement with Seller relating to a project in the Solar Project Portfolio other than the Project.

***“Non-Defaulting Party”*** has the meaning set forth in Section 7.2.

***“Notice”*** has the meaning set forth in Section 19.1.

***“Notice Date”*** has the meaning set forth in Section 9.1.

***“Operating Procedures”*** has the meaning set forth in Section 3.11.

***“Option Price”*** has the meaning set forth in Section 9.1.

*“Original Agreement”* has the meaning set forth in the Preamble to the Agreement.

*“Original Effective Date”* has the meaning set forth in the Preamble to the Agreement.

***“Other Buyer”*** means each Person (if any) other than Buyer identified in Part I of Exhibit O that will purchase Product from the Project.

***“Other Buyer's Share”*** means, with respect to the Product (including the Energy, Renewable Attributes and Facility Attributes) and certain other rights and obligations set forth in this Agreement, an Other Buyer's undivided pro rata entitlement share, expressed as the percentage set forth in Part I of Exhibit O, as such Exhibit may be amended pursuant to Section 3.1(b). For the avoidance of doubt, the sum of Buyer's Share and all Other Buyer's Shares) shall equal one hundred percent (100%).

***“Other Solar Project Buyers”*** means each of the “Other Solar Project Buyers” identified in Part I of Exhibit O with respect to the Taylor Creek project and the Holopaw project.

***“OUC”*** means the Orlando Utilities Commission.

***“Parties”*** has the meaning set forth in the first paragraph of this Agreement.

***“Party”*** has the meaning set forth in the first paragraph of this Agreement.

***“Performance Assurance”*** means security in the form of cash, Letters of Credit, or Guaranty (unless specified otherwise in this Agreement) in the form and substance set out in this Agreement provided by a Party to the other Party to secure a Party's obligations hereunder.

***“Performance Measurement Period”*** has the meaning set forth in Section 3.19(a).

***“Permitted Extensions”*** means extensions to the Guaranteed Commercial Operation Date due to Transmission Delay, Permitting Delay, or Force Majeure Extension.

***“Permitting Delay”*** has the meaning set forth in Section 4.3(c)(ii).

***“Person”*** means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, governmental entity, limited liability company or any other entity of whatever nature.

***“Plan”*** means a plan delivered by one Party to the other Party or by Collateral Agent or Tax Equity Investor(s) to Buyer, as applicable, in connection with an outage or an Event of Default (as applicable) pursuant to Section 7.1(a)(iii) (Events of Default), Section 16.1 (Force Majeure), section 3(c) of a consent to assignment delivered pursuant to Section 15.2(d), or section 6(c) of an estoppel certificate delivered pursuant to Section 15.2(d), as such plan may be updated by written Notice (including by e-mail) from the Person delivering such plan to the applicable Party.

***“Planned Outage”*** means the scheduled removal of all or a portion of the Project from service availability. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage period, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project consistent with recommendations of equipment manufacturers and Prudent Operating Practice, (b) cannot be reasonably conducted during the Project’s operations, and (c) is reasonably expected to cause the amount of Energy delivered to the Delivery Point to be reduced by at least five percent (5%) of the Project Capacity.

***“Point of Interconnection”*** has the meaning set forth in Exhibit C.

***“Product”*** means the Energy, Renewable Attributes and Facility Attributes generated by the Project, net of Station Service.

***“Project”*** means Seller’s electrical plant and equipment used to generate electricity utilizing photovoltaic solar energy generator equipment and facilities located at the Site, Seller’s Interconnection Facilities and any and all additions, replacements or modifications. The Project is more particularly described in Exhibit B.

***“Project Capacity”*** has the meaning set forth in Section 3.4.

***“Project Cure Period”*** has the meaning set forth in Section 4.4(a).

***“Project Development Security”*** has the meaning set forth in Section 10.4(a)(i).

***“Project Investor”*** or ***“Project Investors”*** means any and all Persons or successors in interest thereof (a) lending money, extending credit or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; or (b) participating (directly or indirectly) as an equity investor (including a Tax Equity Investor) in the Project; or (c) any lessor under a lease finance arrangement relating to the Project.

***“Project Quantity”*** means the total estimated Energy production of the Project for a Contract Year as set forth in Exhibit D, as such Exhibit may be amended in accordance with Section 3.19(g).

***“Prudent Operating Practices”*** means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for solar facilities of similar size, type, and design as the Project, that, in the exercise of reasonable judgment, in light of the facts known at the time,

would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition. Prudent Operating Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practice, methods, or acts generally accepted in the industry.

***“Purchase Option”*** has the meaning set forth in Section 9.1.

***“Qualified Institution”*** means a U.S. commercial bank or a licensed U.S. branch of a foreign bank, or other Person having an unsecured bond rating equivalent to A- or better (by S&P and/or Fitch) or A3 or better (by Moody’s) as determined by at least two (2) Ratings Agencies, one of which must be either Standard & Poor’s or Moody’s, and net tangible assets of at least Thirty Billion Dollars (\$30,000,000,000).

***“Ratings Agency”*** means either of Fitch, S&P or Moody’s.

***“Receiving Party”*** has the meaning set forth in Section 14.1.

***“Referral Date”*** has the meaning set forth in Section 18.2(a).

***“Renewable Attributes”*** means any and all existing and future renewable resource attributes, emissions credits and other environmentally related attributes that arise from, result from, are created by or are attributable to the generation, production, purchase or sale of Energy from the Project. Renewable Attributes do not include (a) any Energy, capacity, reliability or other power attributes from the Project, (b) Tax Attributes or (c) emission reduction credits encumbered or used by the Project for compliance with local, state or federal operating and/or air quality permits.

~~***“Renewal Term”***~~ has the meaning set forth in Section 2.1.

***“S&P”*** means Standard & Poor’s or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

***“Scheduling Coordinator”*** means the Persons designated by Buyer and Other Buyers by Notice to Seller as the Persons who are authorized and responsible for (a) scheduling the amount of Energy expected to be delivered to the Delivery Point by the Project, consistent with the Operating Procedures, during any hour during the Delivery Term and (b) acting as the designated account manager for the Green-E Tracking System, or other body for the registration, certification, or transfer of Renewable Attributes, for the purposes of allocating and distributing Renewable Attributes among the Buyer and the Other Buyers (if any), based on Buyer’s Share and each Other Buyer’s Share, as applicable.

***“SEC”*** means the U.S. Securities and Exchange Commission.

***“Seller”*** has the meaning set forth in the first paragraph of this Agreement.

**“Seller Excuses”** has the meaning set forth in Section 3.5(a).

**“Seller Excuse Hours”** means the hours Seller is unable to generate or deliver Energy due to Seller Excuses.

**“Seller Sales Damages”** means:

(a) the discounted value (discounted at the Interest Rate) of the positive difference, if any, of: (i) all Dollar amounts that Seller would, in the manner set forth below, be expected to receive from the sale of the Buyer’s Product under this Agreement through the remainder of the Term; *plus* (ii) all incremental costs over and above those that Seller would otherwise incur when delivering the Buyer’s Product to the Delivery Point; *less* (iii) all Dollar amounts Seller reasonably would, in the manner set forth below, be expected to receive at then-prevailing market conditions from the sale to a third party of the Buyer’s Product that it would have provided to Buyer through the remainder of the Term.

(b) Seller shall calculate the Seller Sales Damages in a Commercially Reasonable manner by using the average of market bids or quotations provided by three (3) or more bona fide unaffiliated market participants, if available. The average of the bids/quotes that were obtained shall be deemed to be the market price. The quotes obtained shall be: (i) for a like amount, (ii) of Product from the Project equivalent to Buyer’s Product, (iii) at the same or reasonably similar Delivery Point, (iv) for the remainder of the Term, and (v) determined in any other Commercially Reasonable manner. In no event shall Seller Sales Damages include any penalties, or ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Buyer’s liability. For the purposes of this definition, Seller shall not be required to actually resell the Buyer’s Product to calculate the Seller Sales Damages as set forth herein. If Seller Sales Damages are owed as a result of an Event of Default and the Seller Sales Damages, as calculated pursuant to this definition, are a negative number then the Seller Sales Damages shall be deemed to equal Zero Dollars (\$0.00).

**“Seller’s Delivery Term Security”** has the meaning set forth in Section 10.4(a)(ii).

**“Seller’s Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering and supervisory control and data acquisition (SCADA) facilities required to connect the Project with the Transmission Provider’s Transmission System up to, and on Seller’s side of, the Delivery Point.

**“Seller’s Ultimate Parent Company”** means the ultimate parent of Seller, which as of the Original Effective Date is NextEra Energy, Inc.

**“Settlement Amount”** means (a) with respect to a Termination Payment owed to Buyer, the Buyer Purchase Damages; or (b) with respect to a Termination Payment owed to Seller, the Seller Sales Damages, as applicable.

“**Site**” has the meaning set forth in the Recitals as further described in Exhibit I.

“**Solar Project Portfolio**” has the meaning set forth in the Recitals.

“**Station Service**” means the electric energy required by the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project.

“**System Emergency**” means a condition on the Transmission Provider’s Transmission System, at the Project, or on transmission facilities used to deliver Energy from the Project to the Delivery Point which condition is likely to result in imminent significant disruption of service to the Transmission Provider’s Transmission System customers or is imminently likely to endanger life or property.

“**Tax Attributes**” means (a) investment tax credits (including any grants or payments in lieu thereof) and any other tax deductions or tax benefits under federal, state or other Applicable Law available as a result of the ownership and operation of the Project or the output generated by the Project (including tax credits, payments in lieu thereof and accelerated and/or bonus depreciation); and (b) present or future (whether known or unknown) cash payments, grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money relating in any way to the Project.

“**Tax Equity Investor**” means one or more Project Investor(s) seeking a return that is enhanced by tax credits and/or tax depreciation and generally (a) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (b) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).

“**Term**” has the meaning set forth in Section 2.1.

“**Termination Payment**” has the meaning set forth in Section 7.3(a).

“**Transmission Delay**” has the meaning set forth in Section 4.3(c)(i).

“**Transmission Provider**” means Duke Energy Florida or any successor to the Transmission Provider’s Transmission System.

“**Transmission Provider’s Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Transmission Provider’s Transmission System with the Project up to, and on the Transmission Provider’s side of, the Delivery Point.

***“Transmission Provider’s Transmission System”*** means the facilities for the transmission of Buyer’s Delivered Energy from the Delivery Point to Buyer’s electric delivery system.

## **1.2 Interpretation.**

The following rules of construction shall be followed when interpreting this Agreement:

- (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter;
- (b) words used or defined in the singular include the plural and vice versa;
- (c) references to Articles and Sections refer to Articles and Sections of this Agreement;
- (d) references to Annexes, Exhibits and Schedules refer to the Annexes, Exhibits and Schedules attached to this Agreement, each of which is made a part hereof for all purposes;
- (e) references to Applicable Laws refer to such Applicable Laws as they may be amended from time to time, and references to particular provisions of an Applicable Law include any corresponding provisions of any succeeding Applicable Law and any rules and regulations promulgated thereunder;
- (f) terms defined in this Agreement are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto as so defined;
- (g) references to money refer to legal currency of the United States of America;
- (h) the words “includes” or “including” shall mean “including without limitation;”
- (i) the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Article or Section in which such words appear, unless otherwise specified;
- (j) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
- (k) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (l) the word “or” will have the inclusive meaning represented by the phrase “and/or;”
- (m) the words “shall” and “will” mean “must”, and shall and will have equal force and effect and express an obligation; and

(n) the words “writing,” “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

## ARTICLE 2 TERM

### 2.1 *Term.*

This Agreement shall commence on the Original Effective Date and, unless sooner terminated in accordance with the terms hereof, continue until the date that is twenty (20) years following the Commercial Operation Date (the “~~Initial Term~~”). ~~The Initial Term may be extended at the option of Buyer for two (2) extension terms of five (5) years each or by one ten (10) year extension term (the “Renewal Term(s)”), with no change to the Contract Price, by Notice from Buyer to Seller at least one hundred twenty (120) days prior to the expiration of the Initial Term or the initial Renewal Term, as applicable. The Initial Term and any Renewal Term(s) are collectively (the “Term”).~~ Term”).

## ARTICLE 3 OBLIGATIONS AND DELIVERIES

### 3.1 *Product.*

(a) Seller shall produce, deliver and sell to Buyer Buyer’s Product which is or can be produced by or associated with the Project now and in the future (whether known or unknown) in accordance with the terms hereof. Seller and Buyer acknowledge that except in the case in which Buyer’s Share is or becomes equal to one hundred percent (100%), the Buyer’s Product under this Agreement is not intended to be the entire Product produced by or relating to the Project and that Seller has or will contract to sell the remaining shares of the Product to Other Buyers. Seller acknowledges that Buyer does not and shall not incur obligations to the Other Buyers through this Agreement and the rights and obligations of this Agreement shall be separate and independent of any agreements entered into by Seller with Other Buyers and Other Solar Project Buyers, including with regard to Seller’s ability or inability so resell Newly Available Product to third parties, except as expressly, specifically set forth herein.

(b) In the event of availability of Newly Available Product in connection with the Project, Seller shall proceed to dispose of such Other Buyer’s Share of the Product as follows:

(i) Seller shall first offer to transfer to Buyer and to each non-defaulting Other Buyer(s) a pro rata portion of the Newly Available Product, in accordance with each such Person’s share of the Project as set forth in Part I of Exhibit O. Any part of such Newly Available Product that is declined by Buyer or any Other Buyer(s), shall be reoffered pro rata to Buyer and/or such Other Buyer(s) which have accepted in full the first such offer; such reoffering shall be repeated until such Newly Available Product has been reallocated in full or until Buyer and/or all such



Other Buyers have declined to take any portion or additional portion of such Newly Available Product.

(ii) If less than all of the Newly Available Product shall be accepted by Buyer and/or such Other Buyers, Seller shall offer the remaining Newly Available Product to Other Solar Project Buyers on a pro rata basis in accordance with such Other Solar Project Buyers' share of the Solar Project Portfolio as set forth in Part II of Exhibit O.

(c) If less than all of the Newly Available Product shall be accepted by Buyer and/or such Other Buyers and/or such Other Solar Project Buyers pursuant to Section 3.1(b), Seller may sell to a third party the remaining portion of Newly Available Product for the remainder of the Term. Upon the conclusion of such reoffering, Seller shall provide Buyer with an amended Exhibit O reflecting the revised percentages constituting Buyer's Share and each Other Buyer's Share, as well as the share of each such Person in the Solar Project Portfolio. Such amended Exhibit O will be deemed to replace the exhibit attached to this Agreement as Exhibit O prior to such amendment.

### **3.2 *Purchase and Sale.***

(a) Unless specifically excused by the terms of this Agreement, during the Delivery Term Seller shall produce at the Project, sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, Buyer's Product, and Buyer shall pay Seller for Buyer's Product in accordance with the terms hereof.

(b) For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Buyer's Product on the terms and conditions set forth herein, Seller will transfer to Buyer, and Buyer will receive from Seller, all right, title, and interest in and to all Buyer's Renewable Attributes and Buyer's Facility Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Term, for all Buyer's Delivered Energy. Seller agrees to transfer and make such Buyer's Renewable Attributes and Buyer's Facility Attributes available to Buyer immediately to the fullest extent allowed by Applicable Law upon Seller's production or acquisition of the Buyer's Renewable Attributes and Buyer's Facility Attributes. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Buyer's Renewable Attributes and Buyer's Facility Attributes to any Person other than Buyer.

### **3.3 *Contract Price.***

Buyer shall pay Seller the Contract Price for each MWh of Buyer's Delivered Energy. Buyer and Seller acknowledge and agree that the consideration for the transfer of Buyer's Renewable Attributes and Buyer's Facility Attributes is contained within Contract Price paid for the Buyer's Product. In the event that during any Contract Year Seller produces and makes an Excess Energy Delivery to the Delivery Point, within thirty (30) days after the end of such Contract Year, Seller shall credit Buyer by an amount such that in respect of all such Excess Energy Delivery, Buyer

effectively paid the Excess Energy Rate for such Excess Energy Delivery pursuant to the settlement process described in Section 3.19.

### **3.4 Project Capacity.**

The “**Project Capacity**” is the full generation capacity of the Project net of all Station Service and net of losses, including transformation or transmission losses, to the Delivery Point, which shall be 74.5 MW AC as of the Commercial Operation Date. Throughout the Delivery Term, Seller shall sell and deliver Buyer’s Share of the Project Capacity solely to Buyer, except as may be permitted under this Agreement in the case of an Event of Default of Buyer or during a Curtailment Period, Planned Outage or Maintenance Outage, Forced Outage or Force Majeure Event where Buyer is prevented from accepting delivery of Buyer’s Share of the Energy.

### **3.5 Performance Excuses.**

(a) The obligation of Seller to deliver Buyer’s Delivered Energy to the Delivery Point shall be excused only (i) during periods of a Force Majeure Event, (ii) by Buyer’s unexcused failure to perform its obligation to receive Buyer’s Delivered Energy at the Delivery Point, (iii) during Curtailment Periods and (iv) during Planned Outages and Maintenance Outages (“**Seller Excuses**”).

(b) The obligation of Buyer to receive and pay for Buyer’s Share of the Energy shall be excused only (i) during periods of a Force Majeure Event, (ii) by Seller’s failure to perform its obligations to generate and deliver Energy to the Delivery Point, or (iii) during Curtailment Periods (“**Buyer Excuses**”).

(c) Except for a failure resulting from a Force Majeure Event or during a Curtailment Period, the failure of electric transmission service shall not excuse performance with respect to either Party.

### **3.6 Buyer’s Right to Curtail.**

(a) The Scheduling Coordinator may curtail, or require Seller to curtail, all or part of the Energy from the Project at any time for any reason, including Buyer Excuses. In the event that the curtailment does not arise out of Buyer Excuses, for any such period and to the full extent the Project is otherwise available (taking into account any partial or full outage), Buyer shall be responsible for and shall pay Seller for Buyer’s Share of the Energy Not Received at the Delivery Point as a result of the curtailment directed by Scheduling Coordinator at the Contract Price for the amount of Buyer’s Share of Energy Not Received as determined and calculated by Seller and agreed to by Buyer in a Commercially Reasonable manner. In the event that Buyer requests Seller to curtail all or part of the Energy the Project is capable of generating, Seller shall curtail the generation of such Energy as soon as reasonably possible after receiving, and otherwise in accordance with, Notice from Buyer.

(b) Seller shall include in a monthly invoice delivered to Buyer pursuant to Section 8.1 the amounts, if any, owed by Buyer pursuant to Section 3.6(a) and a description, in reasonable detail, of the calculation of Buyer’s Share of Energy Not Received.

### 3.7 *Replacement Energy.*

(a) Subject to clauses (b) and (c) of this Section 3.7, in the event of a Planned Outage, Maintenance Outage, Forced Outage, or an outage in connection with a Force Majeure Event or any other Seller Excuse, during the period of such outage, Buyer (i) has the right to purchase replacement energy as necessary and (ii) shall be relieved from the obligation to receive and purchase, or cause to be received and purchased, Buyer's Share of the Energy at the Delivery Point; *provided*, that Seller shall have no obligation to reimburse Buyer for any such replacement energy.

(b) In connection with any outage for which Seller delivers written Notice (including by e-mail) to Buyer stating that Seller anticipates such outage will continue for forty-eight (48) hours or more, and Seller has delivered a Plan to Buyer:

(i) Buyer may, upon written Notice to Seller, Collateral Agent or Tax Equity Investor(s) (as applicable), purchase replacement energy for a period of time equal to the lesser of (A) the remaining period of time outlined in such Plan, or (B) seven (7) days; *provided*, for the avoidance of doubt, that if the Plan provides a timeline greater than seven (7) days to resume the delivery of Energy to the Delivery Point, Buyer may continue to purchase replacement energy upon written Notice to Seller, Collateral Agent or Tax Equity Investor (as applicable) on a rolling basis until the date on which delivery of Energy to the Delivery Point is anticipated to resume, as specified in the Plan;

(ii) Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

(iii) Seller, Collateral Agent or Tax Equity Investor(s) (as applicable) shall provide regular Plan updates to Buyer.

(c) In connection with any outage that is not a Planned Outage or a Maintenance Outage and for which Seller fails to deliver written Notice (including by e-mail) to Buyer within twenty-four (24) hours after the occurrence of such outage.

(i) Buyer may, upon written Notice to Seller, Collateral Agent or Tax Equity Investor(s) (as applicable), purchase replacement energy for a period of time equal to seven (7) days, and Buyer may continue to purchase replacement energy upon written Notice to Seller or Collateral Agent (as applicable) on a rolling basis until the date on which delivery of Energy to the Delivery Point is anticipated to resume, as specified in a Plan;

(ii) Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

(iii) Seller, Collateral Agent or Tax Equity Investor(s) (as applicable) shall provide regular Plan updates to Buyer.

### **3.8 *Offsets, Allowances and Renewable Attributes.***

(a) Buyer shall be entitled to Buyer's Renewable Attributes and Buyer's Facility Attributes. Buyer shall not be entitled to any Renewable Attributes or Facility Attributes resulting from Delivered Energy which Buyer does not purchase under this Agreement.

(b) Seller shall transfer and assign to Buyer all Buyer's Renewable Attributes. On or before the tenth (10th) day following the end of each Month, Seller shall complete and provide to Buyer the bill of sale for Buyer's Renewable Attributes in the form attached hereto as Exhibit M, together with Seller's monthly invoice to Buyer for Buyer's Product issued in accordance with Section 8.1.

(c) Seller shall be entitled to all (i) Tax Attributes, and (ii) any Renewable Attributes that the Buyer is not entitled to pursuant to the provisions of Section 3.8(a). Buyer acknowledges that Seller has the right to sell any Renewable Attributes to which Seller is entitled pursuant to this Section 3.8(c) to any Person other than Buyer at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Buyer hereunder. Buyer shall have no claim, right or interest in such Renewable Attributes that Seller has the right to sell under this Section 3.8(c) or in any amount that Seller realized from the sale of such Renewable Attributes.

(d) Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive any Tax Attributes, or to qualify for accelerated or bonus depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the sale, purchase and price for and Seller's obligation to generate and deliver Buyer's Delivered Energy, Buyer's Renewable Attributes, and Buyer's Facility Attributes, shall be effective regardless of whether the generation of Product or sale and delivery of any Delivered Energy from the Project is eligible for, or receives Tax Attributes or to qualify for accelerated or bonus depreciation during the Term.

### **3.9 *Transmission.***

(a) Seller shall be responsible for presenting to and receiving Transmission Provider approval of the Project interconnection requirements and transmission facilities so that Seller can perform its Product deliveries hereunder in accordance with applicable Transmission Provider requirements. Seller shall be responsible for all costs to design, equip, construct and maintain the interconnection facilities necessary to deliver Energy from the Project to the Point of Interconnection. Seller shall be responsible for receiving Network Resource Interconnection Service from the Transmission Provider in accordance with the Transmission Provider's Large Generator Interconnection Procedures. Subject to Section 4.2, Buyer shall be responsible for arranging for all transmission services required to effectuate Buyer's purchase of Buyer's Product, including obtaining firm transmission service or delivery to the wholesale and retail power customers of Buyer, in an amount of capacity equal to the Buyer's Share of the Project Capacity, and shall be responsible for the payment of any charges related to such transmission services hereunder, including charges for transmission or wheeling services, ancillary services,

control area services, congestion charges, transaction charges and line losses. The Parties acknowledge that the Contract Price does not include charges for such transmission services, all of which shall be paid by Buyer.

(b) In the event that the Transmission Provider or any other properly authorized Person exercising control over the Transmission Provider's Interconnection Facilities or the Transmission Provider's Transmission System takes any action or orders Seller or Buyer to take any action that affects Buyer's ability to take delivery of Energy hereunder not caused by or resulting from Seller's act or omission, a Curtailment Period or a Force Majeure Event, Buyer shall use its Commercially Reasonable Efforts to attempt to mitigate the adverse effects of such action(s) on Buyer's ability to take delivery of Energy hereunder; including redispatching its generation resources other than the Project.

### **3.10 Scheduling.**

Scheduling Coordinator shall be responsible for the scheduling of all Delivered Energy during the Delivery Term, including arranging any Open Access Same Time Information Systems (OASIS), tagging, transmission scheduling or similar protocols with the Transmission Provider or any other Persons.

### **3.11 Operating Procedures.**

Seller and Buyer will endeavor to develop written operating procedures ("**Operating Procedures**") not less than sixty (60) days before the scheduled Initial Energy Delivery Date, which Operating Procedures shall only be effective if made by mutual written agreement of Seller and Buyer. The Parties agree that the Operating Procedures they will endeavor to establish will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include procedures concerning the following: (1) the method of day-to-day communications; (2) key personnel lists for Seller and Buyer; and (3) reporting of scheduled maintenance, Maintenance Outages, Planned Outages and Forced Outages of the Project.

### **3.12 Regulatory Approvals.**

(a) Buyer shall apply for and shall diligently pursue a reservation of network transmission service that secures a firm delivery path for the Buyer's Delivered Energy from the Delivery Point to and over the Transmission Provider's Transmission System, in an amount of capacity equal to Buyer's Share of the Project Capacity, with such application being submitted not later than ten (10) Business Days following the [Original Effective Date](#).

(b) Following execution of this Agreement by both Parties, each Party shall promptly seek to obtain all Governmental Approvals and other licenses, permits and approvals necessary to perform its obligations hereunder.

### **3.13 Standards of Care.**

(a) Seller shall comply with all requirements of Applicable Law, Governmental Approvals and NERC relating to the Project (including those related to construction,

ownership, interconnection and/or operation of the Project and production and delivery of Buyer's Product).

(b) As applicable, each Party shall perform all generation, scheduling and transmission services in compliance with all applicable operating policies, criteria, rules, guidelines, tariffs and protocols of Prudent Operating Practices.

(c) Seller agrees to comply with all (i) NERC reliability requirements, including all such reliability requirements for generator owners and generator operators, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

### **3.14 *Outage Notification.***

(a) Seller shall schedule Planned Outages for the Project in accordance with Prudent Operating Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld, conditioned or delayed. The Parties acknowledge that in all circumstances, Prudent Operating Practices shall dictate when Planned Outages should occur. Seller shall Notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than August 1<sup>st</sup> of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld, conditioned or delayed. Buyer shall promptly respond within five (5) Business Days with its approval or with reasonable modifications to the proposed Planned Outage schedule and Seller shall use its best efforts in accordance with Prudent Operating Practices to accommodate Buyer's requested modifications and deliver the final schedule to Buyer. Seller shall contact and confirm by Notice to Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Operating Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld, conditioned or delayed. Seller shall use its best efforts in accordance with Prudent Operating Practices not to schedule Planned Outages during the period of April 1<sup>st</sup> through October 31<sup>st</sup> of the Delivery Term. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage or at any other time.

(b) In addition to Planned Outages, Seller shall promptly inform Buyer of any Forced Outage lasting for more than sixty (60) consecutive minutes. Such information shall be communicated by electronic mail to Buyer's designated personnel and describe the nature of the Forced Outage, the beginning date and time of such Forced Outage, the expected end date and time of such Forced Outage, the amount of Energy that Seller expects will be delivered at the Delivery Point during such Forced Outage, and any other information reasonably requested by Buyer. With respect to any such Forced Outage, Seller shall communicate and inform Buyer and thereafter provide Buyer with such Notice by any reasonable means requested by Buyer, including by telephone or electronic mail.

(c) If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall Notify Buyer of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent), in order to optimize the Delivered Energy from the Project. Upon such Notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that Seller shall take all reasonable measures consistent with Prudent Operating Practices to not schedule any Maintenance Outage during the weekday day light hours during the period of April 1<sup>st</sup> through October 31<sup>st</sup> of the Delivery Term. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Project that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer Notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such Notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage, *provided* that such change has no substantial impact on Seller. Seller shall Notify Buyer of any subsequent changes in generation capacity available to Buyer as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in Notices. Seller shall take all reasonable measures consistent with Prudent Operating Practices to minimize the frequency and duration of Maintenance Outages. Seller may schedule a Maintenance Outage at any time and without the requirement to Notify Buyer in advance during conditions of low solar insolation, but Seller shall Notify Buyer of the commencement of the Maintenance Outage if such Maintenance Outage is expected to exist for more than four (4) hours.

(d) The Parties acknowledge and agree that the estimated Project Quantities set forth on Exhibit D (as such Exhibit may be amended in accordance with Section 3.19(g)) does not take into account Planned Outages, Maintenance Outages, and Forced Outages.

### **3.15 Operations Logs and Access Rights.**

(a) Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include information on power production, solar insolation, efficiency, availability, maintenance performed, Maintenance Outages, Planned Outages, Forced Outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically in an agreed format to Buyer within five (5) days of Buyer's request.

(b) Buyer, its authorized agents, and employees shall have the right of ingress to and egress from the Site and Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement; *provided*, that Buyer shall observe all applicable Project safety rules that Seller has communicated to Buyer; and *provided further* that Buyer, subject to and without waiving

its rights to sovereign immunity under Florida Statutes, indemnify Seller for damage to property or injury to persons to the extent caused by the negligent or wrongful act or omission of Buyer's authorized agents or employees while such authorized individuals are at the Site or the Project.

**3.16 *Availability; Energy Production Forecasting.***

(a) Seller shall provide Buyer with forecasts of the delivery of Energy under this Agreement as described below. Such forecasts shall include the updated status of all Project equipment that may impact availability and production of Product, and other information reasonably requested by Buyer. Seller shall use Commercially Reasonable Efforts to forecast daily by 5:00 a.m. the hourly delivery of Energy under this Agreement accurately and to transmit such information in the format agreed by the Parties consistent with the Operating Procedures. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to accommodate changes to operating and scheduling procedures of Buyer.

(b) No later than: (i) the earlier of January 15<sup>th</sup> preceding the first Contract Year or forty-five (45) Days prior to the commencement of the first Contract Year; and (ii) January 15<sup>th</sup> of each calendar year for every subsequent Contract Year, Seller shall provide to Buyer a non-binding forecast of the hourly delivery of Energy at the Delivery Point under this Agreement for an average day in each month of the following calendar year in a form agreed by the Parties.

(c) Ten (10) Business Days before the commencement of the first Contract Year, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly energy deliveries of Energy to the Delivery Point under this Agreement for each day of the following month in a form agreed by the Parties.

(d) No later than 5:00 a.m. of each day of each Contract Year, Seller shall provide Buyer a non-binding forecast of hourly Energy deliveries at the Delivery Point under this Agreement for the remainder of such day and the following seven (7) days in a form reasonably acceptable to Buyer. Each such Notice shall clearly identify, for each hour, Seller's forecast of all deliveries of Energy pursuant to this Agreement. In the event that Seller foresees that actual deliveries of Energy under this Agreement for any hour will be materially different than a forecast previously provided for such day, Seller shall, as soon as reasonably possible, provide Notice to Buyer of such change and an updated forecast.

**3.17 *Weather Station.***

(a) No later than sixty (60) Days prior to the Commercial Operation Date, Seller, at its own expense, shall install and maintain at least one stand-alone meteorological station at the Site to monitor, measure, communicate and report the meteorological data required under Section 3.17(b). Seller shall maintain and replace the meteorological station as necessary to provide accurate data with respect to the location of the Project.

(b) Upon Commercial Operation, and continuing through the end of the Delivery



Term, Seller shall record and maintain the following data:

- (i) real and reactive power production by the Project for each hour;
- (ii) changes in operating status, outages and maintenance events;
- (iii) any unusual conditions found during inspections;
- (iv) any significant events related to the operation of the Project; and
- (v) one (1) minute and hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Project: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, relative humidity, wind direction and speed, precipitation, barometric pressure, back of module surface temperature, and other pertinent meteorological conditions.

(c) Buyer shall have real-time access to the required meteorological data at a frequency not to exceed every five (5) minutes. Seller shall provide Buyer a report within thirty (30) days after the end of each month that provides the foregoing information for such month as well as any other additional information that Buyer reasonably requests regarding conditions at the Site and the operation of the Project that is collected and maintained by Seller in the ordinary course of Project operations.

(d) Seller shall make available to Buyer all data from any weather monitoring portals Seller elects to install at the Site.

(e) Subject to procedures agreed upon in the Operating Procedures, Buyer shall have the right to install equipment and associated communication infrastructure to enable Buyer to monitor, measure and communicate pertinent operation and weather data.

### **3.18 *Change of Law.***

Buyer shall be responsible for Changes of Law which impact Buyer, and Seller shall be responsible for Changes of Law which impact Seller.

### **3.19 *Contract Quantity, Guaranteed Energy Production and Excess Energy.***

(a) The quantity of Buyer's Delivered Energy that Seller expects to be able to deliver to Buyer during any Contract Year (without consideration for Planned Outages, Maintenance Outages, Curtailment Periods or other Seller Excuses) is the Contract Quantity, where "**Contract Quantity**" means Buyer's Share of the Project Quantity in Exhibit D, as such Exhibit may be amended in accordance with this Section 3.19(g). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than Guaranteed Energy Production (as defined below) in the two (2) prior consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**") in accordance with the following formula, expressed as a percentage:

**Measurement Period Performance Percentage** = (Buyer's Delivered Energy during Performance Measurement Period / (Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period,

A sample calculation of Measurement Period Performance Percentage is set forth in Exhibit A.

(b) **Guaranteed Energy Production (“GEP”)** means a Measurement Period Performance Percentage of [REDACTED]

(c) If Seller has a Measurement Period Performance Percentage below [REDACTED] (“**GEP Failure**”), then within forty-five (45) days after the last day of the Performance Measurement Period, Seller shall Notify Buyer of such failure. If the Measurement Period Performance Percentage is equal to or greater than [REDACTED], Seller may cure the GEP Failure by paying Buyer within ten (10) Business Days after such Notice (the “**Cure Payment Period**”) GEP Damages as described by the following formula:

**GEP Damages** = Dollar-per-MWh Rate x [REDACTED] x (Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period)) – Buyer's Delivered Energy during Performance Measurement Period.

A sample calculation of the GEP Damages is set forth in Exhibit A.

(d) If Seller has a Measurement Period Performance Percentage greater than [REDACTED] (“**Excess Energy Delivery**”), then within forty-five (45) days after the last day of the Performance Measurement Period, Seller shall Notify Buyer of such Excess Energy Delivery. The Seller shall credit the Buyer within ten (10) Business Days after such Notice an Excess Energy Credit as described by the following formula:

**Excess Energy Credit** = [REDACTED] x Dollar-per-MWh Rate x Buyer's Delivered Energy during Performance Measurement Period – ([REDACTED] x Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period)) / Hours in Performance Measurement Period

A sample calculation of the Excess Energy Credit is set forth in Exhibit A.

(e) The Parties agree that the damages sustained by Buyer associated with Seller's failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably

time consuming or expensive and the GEP Damages are a reasonable approximation of damages sustained by Buyer and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(f) If Seller has a Measurement Period Performance Percentage below [REDACTED] or does meet such threshold but does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default within ninety (90) days following the Cure Payment Period.

(g) Within thirty (30) days after the Commercial Operation Date, Seller shall provide Buyer with an amended Exhibit D reflecting the revised Product Quantities reflecting the as-built Site layout. Such revised Product Quantities shall not exceed +/- 5% of the Product Quantities set forth in Exhibit D as of the Effective Date of this Agreement unless by mutual agreement of the Parties. Such amended Exhibit D will be deemed to replace the exhibit attached to this Agreement as Exhibit D prior to such amendment. If the Parties are unable to agree on the revised Exhibit D, then either Party may submit the disagreement for dispute resolution as provided in this Agreement.

### **3.20 Signage.**

Seller shall install, at its own expense but subject to Buyer's approval, signage at the Site that informs the public of Buyer's involvement with the Project as a purchaser of Product. The Parties shall work in good faith to determine the appropriate location and specifications of such signage, but in no event shall such signage be less visible or informative than that which Seller provides for itself at the Site. The Parties shall also work in good faith to jointly plan and execute all public communications and events related to the Project including any press release, groundbreaking or other ceremony, and ongoing media or other public announcements during the Term. All Persons attending events at the Site shall sign Seller's waiver of liability or shall not be allowed access to the Site and the Project. Buyer may provide or install, at its own expense and in a manner that does not interfere with the normal operation of the Project, displays or other materials that support public education regarding the Project. Seller shall use Commercially Reasonable Efforts to cooperate with Buyer to ensure the timely installation and display and maintenance of such materials.

## **ARTICLE 4 PROJECT DESIGN AND CONSTRUCTION**

### **4.1 Project Development.**

Seller, at no cost to Buyer, shall:

(a) Design and construct, permit, finance, commission, start-up and test the Project, including directly assigned interconnection facility cost but excluding Network Upgrades except as provided in Section 4.2.

(b) Acquire all rights, title, entitlements and/or interests in the Site sufficient for

Seller to be able to construct, operate and maintain the Project on the Site.

(c) Perform or cause to be performed all due diligence inspection, evaluation, testing and investigation activities relating to the viability of the Project.

(d) Perform or cause to be performed all studies and pay all fees, obtain all necessary approvals and execute all necessary agreements with the Transmission Provider.

(e) Acquire all Governmental Approvals and other approvals, consents and authorizations necessary for the construction, operation, and maintenance of the Project and production, delivery and sale of Buyer's Product.

(f) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project and production, delivery and sale of Buyer's Product.

(g) At Buyer's request, provide to Buyer Seller's electrical specifications and design and construction drawings pertaining to the Project.

(h) Within fifteen (15) days after the last day of each month until the Commercial Operation Date, provide to Buyer a monthly progress report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's development and construction progress. Seller shall provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.

(i) Seller will make all Commercially Reasonable Efforts to achieve timely the interim milestones for Project construction as set forth in Exhibit J ("**Interim Milestones**"). The Interim Milestones are Seller's best estimate of the schedule for construction and installation of the Project and, except as expressly set forth herein, the failure of Seller to meet any such Interim Milestone will not itself be a breach of this Agreement. Seller shall provide monthly status reports on development activity relative to the Interim Milestones, including any actual or anticipated delays and efforts to mitigate any such delay.

(j) In addition to the Daily Delay Damages referred to in Sections 4.4 and 6.1, Seller shall: (i) pay to Buyer the Milestone Daily Delay Damages for each day or portion of a day that Seller does not achieve a milestone set forth in the first two (2) rows of Exhibit K by the date corresponding to such milestone in Exhibit K; *provided*, that Seller's liability to Buyer in connection with delays in achieving each such milestone shall in no event exceed Buyer's Share of [REDACTED] ("**Milestone Daily Delay Damages Cap**"), and (ii) develop a remedial plan to complete development and construction of the Project by the Guaranteed Commercial Operation Date.

(k) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving a milestone set forth in the first two (2) rows of

Exhibit K would be difficult or impossible to predict with certainty and (ii) the Milestone Daily Delay Damages are an appropriate approximation of such damages for the Project.

#### **4.2 *Network Upgrades.***

(a) Seller shall be responsible for submitting the necessary generator interconnection requests and causing the necessary transmission studies to be performed to determine whether Network Upgrades are required to interconnect the Project with the Transmission Provider's Transmission System in accordance with the Large Generator Interconnection Agreement and Transmission Provider's Large Generator Interconnection Procedures. To the extent Network Upgrades are necessary, Seller shall coordinate with Transmission Provider to cause the Network Upgrades to be constructed. Buyer may incur or reimburse Seller for costs incurred by Seller for the Network Upgrade Costs pursuant to Section 4.2(b), and if Buyer elects to reimburse Seller, Seller shall invoice Buyer for Buyer's Share of all incurred Network Upgrade Costs. If Buyer elects to incur directly the Network Upgrade Costs or to cause a third party to incur such Network Upgrade Costs, then Seller shall assign and transfer to Buyer any rights or interests of Seller in and to a refund of such Network Upgrade Costs which Seller may have under the Large Generator Interconnection Agreement, and Buyer may thereafter reassign such rights and interests in and to a refund to any person, in Buyer's sole discretion.

(b) After Seller receives the facilities studies and estimate of Network Upgrade Costs from the Transmission Provider and from owners of any affected systems, and prior to initiating Network Upgrade construction, Seller shall provide to Buyer the studies, the estimated Network Upgrades Costs, and a copy of the Large Generator Interconnection Agreement, including any description of the reimbursement or crediting process for Network Upgrade Costs to review and approve prior to Buyer incurring the Network Upgrade Costs or reimbursing Seller for Seller's funding of the Network Upgrade Costs. If the Network Upgrade Costs exceed Ten Million Dollars (\$10,000,000) or Buyer is not satisfied with the reimbursement or crediting process for the Network Upgrade Costs and Buyer decides not to pay the Network Upgrades Costs, then Buyer shall Notify Seller within three (3) Business Days of its decision and Seller shall have the right exercisable by Notice to Buyer sent within five (5) Business Days after receipt of Buyer's Notice to assume responsibility to pay the Network Upgrade Costs for the Project and obtain the credit from the Transmission Provider. In such event, Buyer shall not be required to incur or reimburse Seller for any costs of the Network Upgrades. If Seller does not give Notice to Buyer of Seller's intention to assume responsibility to pay the Network Upgrade Costs, either Party may terminate this Agreement by Notice to the other Party without further liability. If Buyer incurs or pays for all or part of the Network Upgrade Costs for the Project and Seller terminates this Agreement, then Seller shall reimburse Buyer for such Network Upgrades Costs incurred by Buyer, as described in Section 6.1(c).

#### **4.3 *Guaranteed Commercial Operation.***

(a) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, as such date may be extended in accordance

with Section 4.3(c).

(b) If Seller believes that the requirements for Commercial Operation have been satisfied and fulfilled, Seller shall present to Buyer, an independent engineer's report, the form of which is attached as Exhibit L, verifying that each of the conditions set forth therein has been satisfied or waived in writing by both Parties. The date identified in such report as the day Commercial Operation was achieved shall be the Commercial Operation Date in the absence of manifest error.

(c) Permitted Extensions to the Guaranteed Commercial Operation Date are as follows, *provided* that the Permitted Extensions shall not exceed one hundred eighty (180) days:

(i) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred eighty (180) days if from the Effective Date Seller has used Commercially Reasonable Efforts to have the Project physically interconnected to the Transmission Provider's Transmission System and to complete all Electric Interconnection Upgrades, if any, but such Electric Interconnection Upgrades cannot be completed thirty (30) days prior to the Guaranteed Commercial Operation Date. Seller shall provide Buyer Notice of such occurrence promptly upon the determination that such physical interconnection or upgrades cannot be completed timely in accordance with the Interim Milestones schedule set forth in Exhibit J, and Seller shall work diligently to resolve the delay ("**Transmission Delay**");

(ii) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred eighty (180) days if from the Effective Date Seller has used Commercially Reasonable Efforts to obtain the Governmental Approvals necessary for the construction and operation of the Project, but is unable to obtain such Governmental Approvals by the deadline date therefor in the Interim Milestones schedule set forth in Exhibit J, and Seller has worked diligently to resolve the delay ("**Permitting Delay**"); and

(iii) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred eighty (180) days for Force Majeure Events ("**Force Majeure Extension**"); *provided*, that Seller works diligently to resolve the effect of the Force Majeure Event and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

(d) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 4.3(c), such extensions cannot cumulatively exceed one hundred eighty (180) days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(e) If Seller claims a Permitted Extension, Seller shall provide prompt Notice to Buyer of the occurrence of the event causing delay and the anticipated delay impact, which Notice must clearly identify the Permitted Extension being claimed and include

information necessary for Buyer to verify the length and qualification of the extension.

#### 4.4 *Project Cure Period and Delay Damages.*

(a) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date. If the Commercial Operation Date has not been achieved prior to the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions (up to one hundred eighty (180) days), then if Seller does not pay Buyer the Daily Delay Damages within thirty (30) days after receipt of Buyer's invoice therefor, Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date (after giving effect to Permitted Extensions) for up to an additional two hundred forty (240) days ("**Project Cure Period**"). The Daily Delay Damages payable to Buyer for the Project shall not exceed Buyer's Share of [REDACTED] ("**Daily Delay Damages Cap**"). For the avoidance of doubt the Permitted Extensions and the Project Cure Period are sequential.

(b) Each Party agrees and acknowledges that (A) the damages that Buyer would incur due to Seller's delay in achieving the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty and (B) the Daily Delay Damages are an appropriate approximation of such damages.

(c) If the Project has not achieved Commercial Operation by the date upon which Seller has paid to Buyer the Delay Damages Cap, such failure shall be a Seller Event of Default and Buyer shall have the right to terminate this Agreement within sixty (60) days of such date upon ten (10) days' prior Notice to Seller.

## ARTICLE 5 METERING AND MEASUREMENT

### 5.1 *Metering System.*

Seller shall ensure the Metering System is designed, located, constructed, installed, owned, operated, tested, calibrated and maintained in accordance with the Large Generator Interconnection Agreement and Prudent Operating Practices in order to measure and record the amount of Delivered Energy. The meters shall be revenue meters of a mutually acceptable accuracy range and type and measure Delivered Energy in kilowatt hours. Seller shall be responsible for the cost of all metering that will be installed, owned, operated and maintained by Seller for the purpose of determining the amount of Delivered Energy. None of Buyer, Buyer's Affiliates or the employees, subcontractors or contractors of any of them shall make adjustments to the Metering System without the written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer, may, at its own cost, install additional meters or other such facilities, equipment or devices on Buyer's side of the Delivery Point as Buyer deems necessary or appropriate to monitor the measurements of the Metering System; *provided, however*, that in all cases Seller will be entitled to base its invoiced amounts for Buyer's Product solely by reference to the Metering System.

## 5.2 *Inspection and Adjustment.*

(a) Seller shall inspect and test all meters at such times as will conform to Prudent Operating Practices, but not less often than every two (2) Contract Years. Seller shall be responsible for all costs and expenses incurred by Seller for such inspection and testing. Upon reasonable written request to Seller, Buyer may request, at its own expense, inspection or testing of any such meters more frequently than once every two (2) Contract Years.

(b) If any seal securing the meters is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of Delivered Energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the last three (3) months of the second half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made (“**Adjustment Period**”). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for Buyer’s Delivered Energy during the Adjustment Period or Buyer shall be entitled to a credit against any subsequent payments for Buyer’s Delivered Energy, as the case may be.

(c) Buyer and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of the Metering System relating to obligations under this Agreement.

## ARTICLE 6 EARLY TERMINATION

### 6.1 *Early Termination.*

(a) In addition to applicable termination rights under Sections 7.2 and 16.1, this Agreement may be terminated prior to the expiration of the Term as follows:

(i) By Seller if a Large Generator Interconnection Agreement in form and substance satisfactory to Seller, in its sole discretion, is not executed on or before January 2, ~~2020~~2023, *provided* that in each case Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(ii) By Seller if Buyer has not, on or before May 1, ~~2020~~2023, and at its sole cost and expense, secured adequate transmission access and firm transmission service in accordance with the requirements of this Agreement and as required for



Buyer to accept all Buyer's Delivered Energy in accordance with this Agreement on terms and conditions satisfactory to Buyer in its sole discretion, *provided* that in each case Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(iii) By Seller in the event that Seller has not obtained the necessary fee, leasehold or other title to or interest in the Site on or before November 20, ~~2018~~2020, *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(iv) By Seller in the event that Seller has not obtained all Governmental Approvals necessary to construct and operate the Project in the manner contemplated by this Agreement, on or before October 20, ~~2019~~2020, *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(v) By Seller if all approvals of its management and board of directors (or equivalent governing body) required for the execution, delivery and performance of this Agreement have not been granted by May 30, ~~2018~~2021; *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(vi) By Buyer, if after giving effect to Permitted Extensions and the payment of Daily Delay Damages payments up to the Daily Delay Damages Cap, the Guaranteed Commercial Operation Date has not been obtained on or before August ~~24th, 2021~~23rd, 2024; *provided* that Buyer shall give Seller Notice of such termination within fifteen (15) Days after such date;

(b) Notwithstanding any provision of this Agreement to the contrary, in the event of termination pursuant to this Section 6.1, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination, *provided, however*, that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or any indemnity obligations under ARTICLE 12 or the provisions of ARTICLE 14, which provisions shall survive any termination of this Agreement.

(c) In the event that Buyer has incurred, or caused a third party to incur, unreimbursed Network Upgrade Costs, upon any Seller's termination of this Agreement or termination by Buyer, Seller shall reimburse Buyer for such Network Upgrades Costs incurred by Buyer, or a third party on behalf of Buyer, within thirty (30) days of receipt of Buyer's invoice therefor, with interest accrued at the Interest Rate.

## ARTICLE 7 EVENTS OF DEFAULT

### 7.1 *Events of Default.*

An "Event of Default" shall mean,

(a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; *provided, however*, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party shall have such additional time (not exceeding an additional ninety (90) days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy and provides a Plan to the other Party which outlines the actions that will be taken to cure the default and the proposed cure timeline.

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights or obligations hereunder other than in compliance with Section 15.1;

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume in writing acceptable to Buyer all the obligations of such Party under this Agreement (including posting applicable Performance Assurances) to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or

(b) with respect to Seller as the Party causing an Event of Default (the “**Defaulting Party**”), the occurrence of any of the following:

(i) Seller fails to satisfy the Performance Assurance requirements set forth in Section 10.4, as applicable, in each case within five (5) Business Days after receipt of Notice of such failure;

(ii) if at any time, Seller delivers or attempts to deliver to Buyer hereunder any energy, renewable attributes, or facility attributes that were not generated by or are not associated with the Project;

(iii) the failure by Seller to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, after giving effect to Permitted

Extensions, if any, and payment of Daily Delay Damages up to the Daily Delay Damages Cap.

(iv) Seller Abandons the Project.

(v) Buyer is unable to acquire the Project and occupy, possess and use the Site and the Project free and clear of all Liens through exercise of Buyer's Purchase Option.

(vi) the failure by Seller to pay GEP Damages due to Buyer pursuant to Section 3.19 within the Cure Payment Period set forth in Section 3.19(f), if GEP Damages are applicable.

(vii) the failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.19(f), in any Contract Year.

(viii) if Seller sells or delivers or attempts to sell or deliver Buyer's Delivered Energy and/or Buyer's Renewable Attributes and Buyer's Facility Attributes to any Person other than Buyer except as expressly, specifically permitted under this Agreement.

## **7.2 Remedies; Declaration of Early Termination Date.**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall, as its sole and exclusive remedy, have the right to one or more of the following:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") on which the following shall apply:

(i) if Seller is the Non-Defaulting Party, (A) collect damages if any Event of Default arose at any time prior to the commencement of the Delivery Term, or (B) collect the Termination Payment if any Event of Default arose during the Delivery Term; and

(ii) if Buyer is the Non-Defaulting Party, (A) exercise its right pursuant to Section 10.4 to draw upon and retain Performance Assurance and any Milestone Daily Delay Damages, if applicable, prior to commencement of the Delivery Term, or (B) collect GEP Damages and the Termination Payment if any Event of Default arose during the Delivery Term.

(b) As to either Party as the Non-Defaulting Party:

(i) accelerate all amounts owing between the Parties and end the Delivery Term effective as of the Early Termination Date;

(ii) withhold any payments due to the Defaulting Party under this Agreement;

(iii) suspend performance; and

(iv) without duplication of Section 7.2(a)(ii)(A), exercise its rights pursuant to Section 10.4 to draw upon and retain Performance Assurance (if any) that is in place at that time.

### 7.3 ***Termination Payment.***

(a) The “**Termination Payment**” shall be the Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party as of the Early Termination Date netted into a single amount. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages (excluding replacement costs); *provided, however*, that any lost Renewable Attributes, Buyer’s Facility Attributes or Buyer’s Renewable Attributes (as applicable) shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with the termination of this Agreement would be difficult or impossible to predict with certainty, (ii) Termination Payment described in this Section 7.3 is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment is the exclusive remedy of the Non-Defaulting Party in connection with a termination of this Agreement occurring during the Delivery Term but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies in respect of obligations and liabilities that are incurred prior to the Early Termination Date and such obligations and liabilities are not included in the calculation of the Termination Payment.

(b) With respect to the calculation of the Buyer Purchase Damages for purposes of determining the Termination Payment owed to Buyer:

(i) Buyer shall provide Seller Notice containing the Buyer Purchase Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Buyer Purchase Damages, to the degree Buyer deems pertinent within sixty (60) days after the Early Termination Date.

(ii) Upon receipt of Buyer’s calculation of the Buyer Purchase Damages, if Seller disputes such calculation, in whole or in part, Seller shall, within fifteen (15) Business Days following its receipt of such Notice, provide to Buyer a detailed written explanation of the basis for such dispute; *provided, however*, Seller can only dispute the calculation based on a failure as to the material assumptions used in preparation of the Buyer Purchase Damages. Buyer shall nevertheless be entitled during the pendency of any dispute to draw the entire amount due from the Seller’s Performance Assurance.

(iii) Any dispute with regard to Buyer Purchase Damage calculation shall be pursued through the dispute resolution process of ARTICLE 18. Upon resolution of the dispute (A) any amount owed by Seller to Buyer in addition to the amount drawn on Seller's Performance Security shall be paid by Seller to Buyer within thirty (30) Business Days following such resolution with interest accrued at the Interest Rate, or (B) any amount required to be returned to Seller by Buyer shall be paid within thirty (30) Business Days following such resolution along with interest accrued at the Interest Rate.

(c) With respect to the calculation of the Seller Sales Damages for purposes of determining the Termination Payment owed to Seller:

(i) Seller shall provide Buyer Notice containing the Seller Sales Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Seller Sales Damages to the degree Seller deems pertinent within sixty (60) days after the Early Termination Date.

(ii) Upon receipt of Seller's calculation of the Seller Sales Damages, if Buyer disputes such calculation, in whole or in part, Buyer shall, within fifteen (15) Business Days following its receipt of such Notice, provide to Seller a detailed written explanation of the basis for such dispute; *provided, however*, Buyer can only dispute the calculation based on a failure as to the material assumptions and the sufficiency of the data used in preparation of the Seller Sales Damages.

(iii) Any dispute with regard to the Seller Sales Damages calculation shall be pursued through the dispute resolution process set forth in ARTICLE 18. Upon resolution of the dispute, any payment required from one Party to the other shall be made by the owing Party within thirty (30) Business Days following such resolution.

#### **7.4 Notice of Payment of Termination Payment.**

Subject to Sections 7.3(b) and 7.3(c), as soon as practicable after a designation of the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

#### **7.5 Disputes with Respect to Termination Payment.**

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with ARTICLE 18.

## **7.6 *Rights and Remedies Are Cumulative.***

Except where liquidated damages are provided as the exclusive remedy for a specific failure, breach or default, the rights and remedies of a Party pursuant to this ARTICLE 7 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

## **7.7 *Mitigation.***

Any Non-Defaulting Party shall be obligated to mitigate its damages resulting from any Event of Default of the other Party under this Agreement.

# **ARTICLE 8 PAYMENT**

## **8.1 *Billing and Payment.***

(a) On or about the tenth (10<sup>th</sup>) day of each month beginning with the month following the Initial Energy Delivery Date and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer an invoice covering the Buyer's Product provided in the preceding month determined in accordance with ARTICLE 5 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after date of the invoice to the account designated by Seller. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by electronic mail.

(b) On or before the tenth (10th) day following the end of each month during the Delivery Term, Seller will document the production of Buyer's Renewable Attributes by delivering with each invoice to Buyer a bill of sale and attestation for Buyer's Renewable Attributes produced by the Project. The form of bill of sale and attestation is set forth as Exhibit M.

## **8.2 *Disputes and Adjustments of Invoices.***

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months after the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the

dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not Notified in accordance with this Section 8.2 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party which is not an Affiliate of any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

## ARTICLE 9 PURCHASE OPTION

### 9.1 *Buyer Purchase Option.*

So long as an Event of Default by Buyer has not occurred and is continuing at the end of the ~~Initial Term or the first Renewal~~ Term, Seller grants to Buyer an option to purchase the Project in accordance with this Section 9.1 (the “**Purchase Option**,” subject to the last paragraph of this Section 9.1) for a purchase price equal to the greater of (a) the Fair Market Value of the Project or (b) the applicable “Minimum Purchase Price” set forth in Exhibit E (such greater amount, the “**Option Price**”), as follows:

(a) To exercise the Purchase Option, Buyer shall, not less than one hundred eighty (180) days prior to the end of the ~~then-current~~ Term of the Agreement, provide written Notice to Seller of Buyer’s intent to exercise the Purchase Option (the date on which Seller receives such Notice, the “**Notice Date**”).

(b) Within thirty (30) days after the Notice Date, Seller shall specify the Option Price by written Notice to Buyer, and Buyer shall then have a period of thirty (30) days after receipt of such Notice either (i) to confirm or retract its decision to exercise the Purchase Option, or (ii) if the Option Price specified by Seller is equal to the Fair Market Value of the Project, to disagree with Seller’s determination of such Fair Market Value, in each case, by written Notice to Seller.

(c) If Buyer disagrees with Seller’s determination of such Fair Market Value (to the extent in excess of the applicable “Minimum Purchase Price” set forth in Exhibit E), it shall so Notify Seller in writing, and the Parties shall determine the Fair Market Value of the Project in accordance with Section 9.2.

(d) Upon final determination of the Option Price (including any determination of the Fair Market Value pursuant to Section 9.2), and before the applicable “Purchase Date” set forth in Exhibit E (or such other date as the Parties may mutually agree in writing):  
(i) the Parties shall promptly execute all definitive agreements necessary to cause title to

the Project to pass to Buyer, free and clear of any Liens, subject only to the Liens of Project Investors which Buyer elects to assume; and (ii) Buyer shall pay the Option Price to Seller in immediately available funds and in accordance with any previous written instructions delivered to Buyer by Seller or any Project Investors, as applicable, for payments under this Agreement. Buyer shall also execute such documents reasonably necessary for Buyer to accept, assume and perform all then-existing agreements relating to the Project.

(e) Each Party shall bear its respective fees, costs and expenses incurred in connection with such Purchase Option transaction. In the event that the Purchase Option transaction closes prior to the applicable "Purchase Date" set forth in Exhibit E, this Agreement shall terminate automatically. In the event Buyer retracts its intent to exercise the Purchase Option, or does not timely confirm the Purchase Option in accordance with this ARTICLE 9, in each case, prior to the end of the Term, the provisions of the Agreement shall continue in full force and effect as if Buyer had not Notified Seller of its intent to exercise the Purchase Option.

Irrespective of Buyer's Share, Buyer's Purchase Option is limited to an option to purchase 100% of the Project, which option may be exercised solely by Buyer or in conjunction with Other Buyers or any other Person(s).

## **9.2 Determination of Fair Market Value.**

If the Option Price indicated by Seller in accordance with Section 9.1 is equal to the Fair Market Value of the Project and Buyer disagrees with such stated Fair Market Value in accordance with Section 9.1, then the Parties shall mutually select an independent appraiser with relevant experience and expertise; *provided*, that if the Parties cannot agree on the selection of such independent appraiser within thirty (30) days of Seller's receipt of Buyer's written Notice that Buyer disagrees with Seller's determination of the Fair Market Value, then each Party shall select an appraiser, and the two (2) appraisers so selected shall appoint a third appraiser, which appraiser shall perform the appraisal described in this Section 9.2. The Parties shall cooperate to cause the appraiser to act reasonably and in good faith to determine the Fair Market Value and to support such determination in a written opinion delivered to the Parties within thirty (30) days of the initial request for appraisal. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. Upon Buyer's receipt of such written opinion, Buyer shall then have a period of thirty (30) days to confirm or retract its decision to exercise the Purchase Option. The costs of the appraisal shall be borne equally by the Parties.



## ARTICLE 10 INSURANCE, CREDIT AND COLLATERAL REQUIREMENTS

### 10.1 *Insurance.*

In connection with Seller's performance of its duties and obligations under this Agreement, during the Delivery Term, Seller shall maintain insurance in accordance with Exhibit H.

### 10.2 *Grant of Security Interest.*

To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, such Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, in addition to its other rights and remedies hereunder, Buyer may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (b) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller or other Person, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full, if applicable.

### 10.3 *Seller Financial Statements.*

If requested by Buyer the Seller shall deliver within one hundred twenty (120) days following the end of each fiscal year of Seller's Ultimate Parent Company: (i) a copy of Seller's Ultimate Parent Company's annual report or 10K report, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's Ultimate Parent Company's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, in each case unless otherwise publicly available. If any such statements shall not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Seller diligently pursues the preparation, certification and delivery of the statements.

#### 10.4 *Seller's Performance Assurance.*

(a) Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Performance Assurance in the amount of Buyer's Share of [REDACTED] ("Project Development Security") without replenishment within five (5) Business Days following the Original Effective Date of this Agreement until Seller posts Seller's Delivery Term Security; *provided, however*, that (A) Seller's maximum aggregate obligation to Buyer with respect to the Project Development Security under this Agreement shall in no event exceed Buyer's Share of [REDACTED], and (B) Seller's maximum aggregate obligation to Buyer with respect to the Project Development Security under this Agreement and to the Other Buyer(s) with respect to the "Project Development Security" under and as defined in the applicable power purchase agreements between Seller and the Other Buyers in connection with this Project shall in no event exceed [REDACTED];

(ii) Performance Assurance in the amount of Buyer's Share of [REDACTED] ("Seller's Delivery Term Security") from the Commercial Operation Date until the end of the Term; *provided*, that Seller may elect to apply the Project Development Security toward Seller's Delivery Term Security. Seller's Delivery Term Security shall be subject to replenishment; *provided, however*, that (A) Seller's maximum aggregate obligation to Buyer under this Agreement with respect to the Performance Assurance shall in no event exceed Buyer's Share of [REDACTED], and (B) Seller's maximum aggregate obligation to Buyer with respect to the Performance Assurance under this Agreement and to the Other Buyer(s) with respect to the "the Performance Assurance" under and as defined in the applicable power purchase agreements between Seller and the Other Buyers in connection with this Project shall in no event exceed [REDACTED].

(b) If, after the Commercial Operation Date, no amounts are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn from a cash deposit or Letter of Credit, if applicable, in accordance with Section 10.4(c). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days after Seller's provision of Seller's Delivery Term Security unless, with respect to cash held as Project Development Security, Seller elects by Notice to Buyer to apply the Project Development Security toward Seller's Delivery Term Security.

(c) Any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing

may be satisfied by Buyer on a draw on Seller's Performance Assurance. In addition, upon termination, Buyer shall have the right to draw upon Seller's Performance Assurance for any undisputed amounts owed to Buyer under this Agreement if not paid when due pursuant to Section 8.1. Subject to the maximum aggregate obligation set forth in Section 10.4(a)(ii), Seller's Delivery Term Security shall be subject to replenishment within five (5) days after any draw thereon by Buyer.

(d) Buyer shall deposit Seller's Performance Assurance in a Qualified Institution; *provided* that, interest on cash held as Project Development Security shall be retained by Buyer until Seller posts Seller's Delivery Term Security. Upon Seller's posting of Seller's Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified by Seller. After Seller posts Seller's Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the amount of interest due to Seller for Seller's Delivery Term Security. Buyer does not guaranty any particular rate of interest.

(e) If, during the Term, there shall occur a Downgrade Event in respect of Seller's Guarantor, then Seller shall deliver to Buyer replacement Performance Assurance in the form of a Letter of Credit, cash or a replacement Guaranty from a different Guarantor (meeting the requirements set forth in the definition thereof and acceptable to Buyer, such acceptance not to be unreasonably withheld) in lieu thereof in an amount equal to the then applicable amount of Performance Assurance; *provided, however*, that Seller shall only be required to maintain such replacement Performance Assurance for so long as (1) the Credit Rating of Seller's original Guarantor remains below Investment Grade, or (2) no Ratings Agency rates Seller's original Guarantor.

(f) Seller's obligation to maintain the applicable Performance Assurance shall terminate upon the occurrence of the following: (i) the Term of the Agreement has ended, or the Agreement has been terminated pursuant to Section 7.2, as applicable; and (ii) all payment obligations of each Party arising under this Agreement, the Termination Payment, indemnification payments or other damages are paid in full. Upon the occurrence of the foregoing, Buyer shall promptly return to Seller the unused portion of the applicable Performance Assurance, if any, including the payment of any interest due thereon.

(g) Any Letter of Credit provided by Seller pursuant to this Agreement must provide, among other things, that the Buyer is entitled to draw the full amount of such Letter of Credit if: (i) the Letter of Credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the Letter of Credit; or (ii) the issuer of the Letter of Credit fails to maintain a credit rating of at least A- from S&P or a credit rating of at least A3 from Moody's and the Party required to provide the Letter of Credit and Seller has failed, within ten (10) Business Days after receipt of Notice thereof by Buyer to replace such Letter of Credit with another Letter of Credit, in a form reasonably acceptable to the issuer of the Letter of Credit and Buyer. Costs of a Letter of Credit provided by Seller shall be borne by Seller.

### 10.5 *Buyer's Performance Assurance*

Buyer agrees to deliver to Seller collateral to secure its obligations under this Agreement under the following circumstances:

(a) If, during the Term, there shall occur a Buyer Downgrade Event in respect of Buyer, then Buyer shall deliver to Seller Performance Assurance in the form of a Letter of Credit or cash in an amount equal to the then applicable amount of Buyer's Performance Assurance; *provided, however*, that Buyer shall only be required to maintain its Performance Assurance in the form of a Letter of Credit or cash for so long as Buyer's Credit Ratings remain below the lower of (i) Investment Grade, or (ii) that of the Seller or, if applicable the Seller's Guarantor. Buyer's Performance Assurance shall be subject to replenishment within five (5) days after any draw thereon by Seller after the failure of Buyer to pay the undisputed amount of any amount invoiced by Seller to Buyer.

(b) Buyer's obligation to maintain the applicable Performance Assurance shall terminate upon the occurrence of the following: (i) the Term of the Agreement has ended, or the Agreement has been terminated pursuant to Section 7.2, as applicable; (ii) Buyer has achieved the requisite Credit Rating, and (iii) all payment obligations of each Party arising under this Agreement, Termination Payment, indemnification payments or other damages are paid in full. Upon the occurrence of the foregoing, Seller shall promptly return to Buyer the unused portion of the applicable Performance Assurance, including the payment of any interest due thereon.

(c) Any Letter of Credit provided by Buyer pursuant to this Agreement must provide, among other things, that the Seller is entitled to draw the full amount of such Letter of Credit if: (i) the Letter of Credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the Letter of Credit; or (ii) the issuer of the Letter of Credit fails or ceases to maintain a credit rating of at least A- from S&P or a credit rating of at least A3 from Moody's and Buyer has failed, within ten (10) Business Days after receipt of Notice thereof by Seller to replace such Letter of Credit with another Letter of Credit, in a form reasonably acceptable to the issuer of the Letter of Credit and Seller. Costs of a Letter of Credit provided by Buyer as Buyer's Performance Assurance shall be borne by Buyer.

## ARTICLE 11 REPRESENTATIONS, WARRANTIES AND COVENANTS

### 11.1 *Representations and Warranties.*

(a) On the Original Effective Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has or will obtain in accordance herewith (i) all Governmental Approvals necessary for it to perform its obligations under this Agreement, and (ii)

all Governmental Approvals and rights, title and interest in and to the Site and as otherwise necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;

(iii) the execution, delivery and performance of and consummation of the transactions contemplated by this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any Governmental Approvals, any contracts to which it is a party or any Applicable Law;

(iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could reasonably be expected to materially adversely affect its ability to perform its obligations under and consummation of the transactions contemplated by this Agreement;

(vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under and the transactions contemplated by this Agreement;

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(ix) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or deliver or take delivery of the Buyer's Product as provided in this Agreement.

(b) On the [Original](#) Effective Date, Seller represents and warrants that it is an Affiliate of NextEra Florida Renewables, LLC.

## **11.2 General Covenants.**

Each Party covenants that throughout the Term:

(a) it shall continue to be duly organized, validly existing and in good standing under the Applicable Laws of the jurisdiction of its formation;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law or Governmental Approval; and

(d) it shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

### **11.3 Seller Covenants.**

(a) Seller covenants as follows:

(i) from the date hereof through the expiration or termination of this Agreement, Seller shall comply with this Agreement and Applicable Laws;

(ii) from the Initial Energy Delivery Date through the expiration or termination of this Agreement, the Project shall be operated and maintained in accordance with this Agreement, Applicable Laws, and Prudent Operating Practices;

(iii) throughout the Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project; and

(iv) except as expressly provided for in this Agreement, Seller will not grant, create, confer, assign, transfer or convey any right, title or interest in or to the Project in favor of any third party which is not terminable without cost or expense to Buyer upon exercise by Buyer of the Buyer's Purchase Option.

(b) Seller represents and covenants that it has not sold and will not in the future sell or attempt to sell, convey, transfer or encumber any of Buyer's Renewable Attributes or Buyer's Facility Attributes or any right, title or interest in or to Buyer's Renewable Attributes or Buyer's Facility Attributes to any Person other than Buyer. Seller shall not report to any Person that any of Buyer's Renewable Attributes or Buyer's Facility Attributes are owned by or belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that Buyer's Renewable Attributes and Buyer's Facility Attributes are owned by and belong to it. At Buyer's request, the Parties shall execute and deliver such documents and instruments as may be reasonably required to effect recognition and transfer of Buyer's Renewable Attributes and Buyer's Facility Attributes to Buyer. Except with regard to the execution and delivery of bills of sales and attestations similar to Exhibit M, Buyer shall bear the costs, fees and expenses associated with preparing and executing any such documents and instruments. Seller shall reasonably

cooperate in any registration by Buyer of the Project (at Buyer's cost) in the renewable portfolio standard or equivalent program in any state and program in which Buyer may wish to register or maintained registered the Project by providing copies of all such information as Buyer reasonably requires for such registration

(c) Seller represents that, as of the Commercial Operation Date and continuing through [the end of](#) the Term of this Agreement, the Project shall satisfy the criteria for qualifying small power production facilities under the Public Utility Regulatory Policies Act of 1978 and 18 C.F.R. § 292.204.

#### 11.4 *Buyer's Covenants.*

Buyer covenants or affirms as follows:

(a) Buyer covenants that from the date hereof through the expiration or termination of this Agreement, Buyer shall comply with this Agreement and Applicable Laws.

(b) Buyer covenants that Buyer's obligations under this Agreement shall qualify as operating expenses which enjoy first priority payment at all times under any and all bond or other ordinances or indentures to which Buyer is a party relating to electric utility operations and shall be included as part of the rate calculations required by any rate-related debt covenants to which Buyer is bound.

(c) Buyer affirms that it elected to commence negotiations with Seller for the generation, sale and delivery of solar energy, renewable attributes and facility attributes from the Project pursuant to a competitive solicitation after determining that Seller's proposal was the most favorable alternative meeting Buyer's procurement criteria and requirements for solar energy and capacity.

(d) FMPA shall set its rates payable pursuant to the FMPA All-Requirements Power Supply Project Contract ("**ARP Contract**"), as it may be amended by FMPA from time to time, in a manner sufficient to meet it Revenue Requirements, as such term is defined in the ARP Contract. FMPA represents that the term Revenue Requirement, as used in the ARP Contract, includes all of its costs and liabilities lawfully owed under this Agreement.

## ARTICLE 12 TITLE, RISK OF LOSS, INDEMNITIES

### 12.1 *Title and Risk of Loss.*

Title to and risk of loss related to Buyer's Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer Buyer's Product free and clear of all Liens therein or thereto by any Person arising prior to or at the Delivery Point.

## **12.2 Indemnities by Seller.**

Seller shall release, indemnify, defend, and hold harmless, on an After-Tax Basis, Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("**Claims**") resulting from, or arising out of or in any way connected with (a) any event, circumstance, act, or incident relating to the Buyer's Product delivered under this Agreement up to and at the Delivery Point, (b) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (c) the failure by Seller or the failure of the Project to comply with Applicable Laws, (d) any Governmental Charges for which Seller is responsible hereunder, or (e) any Liens against the Buyer's Product delivered hereunder made by, under, or through Seller, in all cases including any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or third parties, caused by the negligence of Seller excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

## **12.3 Indemnities by Buyer.**

To the fullest extent permitted under Florida law, subject to and without waiving its rights to sovereign immunity under Florida Statutes, Buyer shall release, indemnify and hold harmless, on an After-Tax Basis, Seller and its directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (a) any event, circumstance, act, or incident relating to the Buyer's Product received by Buyer under this Agreement after the Delivery Point, (b) the failure by Buyer to comply with Applicable Laws, or (c) any Governmental Charges for which Buyer is responsible hereunder, in all cases including any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller or third parties caused by the negligence of Buyer, excepting only such Claims to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

# **ARTICLE 13 GOVERNMENTAL CHARGES**

## **13.1 Cooperation.**

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party incurs any cost, expense, risk, obligation or liability or is otherwise materially adversely affected by such efforts.

## **13.2 Governmental Charges.**

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("**Governmental Charges**") on or with respect to the Buyer's Product or the transaction under



this Agreement arising prior to the Delivery Point, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Buyer's Product or the transaction under this Agreement at and after the Delivery Point. If Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under law.

## ARTICLE 14 CONFIDENTIAL INFORMATION

### 14.1 *Confidential Information.*

(a) The Parties acknowledge that Seller asserts that this Agreement contains trade secret information. The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the "**Confidential Information**"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "**Disclosing Party**") may make such Confidential Information available to the other (each, a "**Receiving Party**") subject to the provisions of this Section 14.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Project and for the purposes of this Agreement who shall be bound by the terms of this Section 14.1;

(iii) Use such Confidential Information solely for the purpose of developing the Project and for purposes of implementing, performing, administering and enforcing this Agreement; and

(iv) Upon the termination of this Agreement, destroy or return any such Confidential Information in written or other tangible form and any copies thereof;

*provided, however*, the Buyer shall be entitled to keep on record copy of such information as required by Florida law.

(c) The restrictions of this Section 14.1 do not apply to:

(i) Release of this Agreement to any Governmental Authority required for obtaining any approval or making any filing pursuant to Sections 3.12 or 4.2, *provided* that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by redacting and/or requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, *provided* that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including any Florida Public Records Law (Chapter 119, Florida Statutes) request); *provided, however*, that the Receiving Party, prior to such disclosure, shall provide reasonable advance Notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Project Investors and any other financial institutions expressing an interest in providing equity or debt financing or refinancing and/or credit support to Seller, and the agent or trustee of any of them, *provided* that they agree to comply with the requirements and limitations on disclosure and use of Confidential Information.

(e) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, *provided* that the Disclosing Party has given Notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 14.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from

releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project or as are necessary in order to fulfill such Party's obligations under this Agreement.

(f) The obligations of the Parties under this Section 14.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

## ARTICLE 15 ASSIGNMENT

### 15.1 *Successors and Assigns; Assignment.*

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns. This Agreement and a Party's rights, obligations and interests shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding the foregoing, no consent shall be required for the following assignment if the assignee has demonstrated experience and ability and a level of creditworthiness to perform and assume obligations under other agreements similar to this Agreement with the other Persons:

(i) Any collateral assignment of this Agreement by Seller to any senior lien Project Investors as collateral security for Seller's obligations under the financing documents entered into with such Project Investors;

(ii) Any assignment by the Project Investors to a third party in connection with a foreclosure of the Project Investor's mortgage and lien on the Project;

(iii) Any assignment or transfer of this Agreement by Seller to an Affiliate of Seller and the Guarantor;

(iv) Any assignment or transfer of this Agreement by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that such Person's creditworthiness and the creditworthiness of any provider of Performance Assurance is equal to or better than that of Seller, there is an assignment and assumption agreement among all Parties and the assignee and the Performance Assurance in place at such time is replaced by equal or better security by assignee; and

(v) Any assignment or transfer of this Agreement by Buyer to any Other Buyer or to any Other Solar Project Buyer.

(c) An assignee shall be afforded no additional rights, interests or remedies beyond those specifically granted to the assignor in this Agreement. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs and expenses, including attorney's and advisor fees of any such assignment.

(d) Buyer acknowledges that upon an event of default under any financing documents relating to the Project, subject to receipt by Buyer of Notice, and further subject to rights of Other Buyers, any of the Project Investors may (but shall not be obligated to) assume, or cause its designee or a new lessee or buyer of the Project with demonstrated experience and ability and a level of creditworthiness to perform and assume obligations under other renewable energy power purchase agreements similar to this Agreement, to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement; *provided*, that, regardless of whether any such Project Investor or its designee assumes all of the interests, rights and obligations of Seller thereafter arising under this Agreement, the Performance Assurance and security required to be posted by Seller is replaced by the assignee and Buyer's interests, rights, remedies, benefits, privileges, and obligations under this Agreement will remain in full force and effect, including the right to terminate this Agreement.

(e) If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to Buyer arising or accruing hereunder from and after the date of such assumption, then Seller shall be released and discharged from the terms and conditions hereof except with respect to obligations arising prior to the assignment, and each such obligation hereunder from and after such date except with respect to obligations and covenants which survive expiration or early termination, but not any obligation or liability owned, accrued, incurred, or relating to the period prior to the date of such assumption, and Buyer shall continue this Agreement with the assuming party as if such Person had been named as Seller under this Agreement; *provided, however*, that if any such Person assumes this Agreement as provided herein, Buyer acknowledges and agrees that such Persons shall not be personally liable for the performance of such obligations hereunder except to the extent of the required Performance Assurance and the total interest of the Project Investors in the Project. Notwithstanding any such assumption by any of the Project Investors or a designee thereof, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder prior to such assumption.

## **15.2 Collateral Assignment.**

(a) Seller, without approval of Buyer, may, by security, charge or otherwise encumber its entire interest under this Agreement in favor of a Project Investor for the purposes of financing the development, construction and/or operation of the Project and the Seller's Interconnection Facilities.

(b) Promptly after making such encumbrance, Seller shall deliver Notice to Buyer in writing of the name, address, and telephone and facsimile numbers of each Project Investor to which Seller's interest under this Agreement has been encumbered. Such Notice shall also include the name of the single representative of (i) the Tax Equity Investors (if any) and/or (ii) the other Project Investors, if any, which may be the Collateral Agent or another representative or both, to whom all written and telephonic communications may be addressed by Buyer.

(c) After giving Buyer such initial Notice, Seller shall promptly give Buyer Notice of any change in the information provided in the initial Notice or any revised Notice.

(d) If Seller intends to encumber its interest under this Agreement as permitted by this Section 15.2, the Parties shall use Commercially Reasonable Efforts to enter into a mutually acceptable consent agreement substantially in the form of Exhibit N-1. Buyer shall, upon a commercially reasonable request by Seller or a Project Investor and at Seller's sole expense, cooperate reasonably to execute, or arrange for the delivery of, those normal, reasonable and customary certificates, opinions and other documents (including estoppel certificates related to a tax equity financing substantially in the form of Exhibit N-2) and to provide such other normal and customary representations and warranties, as may be necessary in connection with a financing of the Project that Buyer reasonably determines do not affect any of Buyer's rights, benefits, risks, burdens, liabilities or obligations under this Agreement.

## ARTICLE 16 FORCE MAJEURE

### 16.1 *Force Majeure Events.*

To the extent either Party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure Event to the other Party as detailed below, then, the Party impacted by the Force Majeure Event shall be excused from the performance of its obligations for the period during which its performance is impacted. As soon as practicable after commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim and the anticipated impact on the non-performing Party's ability to perform its obligations and the non-performing Party's Plan to resume full performance of the obligations impacted by the Force Majeure Event. Seller shall not without the prior written consent of Buyer substitute Buyer's Product from any other source for the output of the Project during an outage resulting from a Force Majeure Event. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Buyer shall not be required to make any payments for any Buyer's Product that Seller fails to schedule, deliver or provide as a result of a Force Majeure Event during the term of such Force Majeure Event. This Agreement may be terminated by either Party with no further obligation to the other Party if such Force Majeure Event prevents the performance of a material portion of the obligations hereunder and such Force Majeure Event is not resolved and full performance resumed within one hundred eighty (180) days after the commencement of such Force Majeure Event; *provided, however*, if the Force Majeure Event occurs after the Commercial Operation Date and Seller is the non-performing Party, Seller shall have up to ninety (90) days following such Force Majeure Event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within fifteen (15) additional months or less from the date of the report and provide Buyer a copy of the engineer's report, at no cost to Buyer. If such engineer's report concludes that the Project is capable of being repaired or replaced within such fifteen (15) month

period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 16.1 until the expiration of the period deemed necessary by the engineer's report (not to exceed fifteen (15) months), after which time, Buyer may terminate this Agreement by Notice to Seller unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement.

## **ARTICLE 17**

### **LIMITATIONS ON LIABILITY**

#### **17.1    *Disclaimer of Warranties.***

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

#### **17.2    *Limitations on Liability.***

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED, SUCH EXPRESS REMEDY SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. A PARTY'S REMEDY OR MEASURE OF DAMAGES WILL BE ACTUAL DAMAGES. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## **ARTICLE 18**

### **DISPUTE RESOLUTION**

#### **18.1    *Intent of the Parties***

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement (a “**Dispute**”) is the dispute resolution procedure set forth in this ARTICLE 18. Either Party may seek a preliminary injunction or other provisional judicial remedy at any time if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the Dispute by means of the dispute resolution procedure set forth in this ARTICLE 18.

## **18.2 Management Negotiations**

(a) The Parties will attempt in good faith to resolve any Dispute by prompt negotiations between each Party’s authorized representative designated in writing as a representative of the Party (each a “**Manager**”). Either Manager may, by Notice to the other Party, request a meeting to initiate settlement negotiations to be held within ten (10) Business Days of the other Party’s receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting (“**Initial Negotiation End Date**”), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the Dispute (“**Executives**”). Within five (5) Business Days of the Initial Negotiation End Date (“**Referral Date**”), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.

(c) All communication and writing exchanged between the Parties in connection with these settlement negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties. The Parties shall bear their respective costs, expenses and fees relating to the activities under this Section 18.2.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 18.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 18.2(a) above, and subject to Sections 17.2, 20.7 and 20.8 of this Agreement, either Party may pursue all remedies available to it at law or in equity. Venue for any action or proceeding shall be state and federal courts in Orange County, Florida.

## **18.3 Specific Performance and Injunctive Relief.**

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any non-monetary material obligation of the other Party under this Agreement, including with respect to disclosure or misuse of Confidential Information, audit

rights, access to facilities, access to information, data and documents, emergencies, imminent harm to persons or property of impermissible transactions; *provided*, that, the right to specific performance explicitly excludes Seller's obligation to construct the Project. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

## ARTICLE 19 NOTICES

### 19.1 *Notices.*

Whenever this Agreement requires or permits delivery of a “**Notice**” (or requires a Party to “**Notify**”), the Party with such right or obligation shall provide a written communication in the manner specified in herein and to the addresses set forth below; *provided, however*, that Notices of outages or other scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement or procedure developed by the Parties. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of Buyer’s Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice. The Parties acknowledge and agree that in the event that Buyer receives conflicting Notices from the Collateral Agent and the Tax Equity Investor(s)’s representative named under Section 15.2 (if and as applicable), the Notice from the Collateral Agent shall supersede that from the Tax Equity Investor(s)’ representative.



If to Seller: **POINSETT SOLAR, LLC**  
c/o NextEra Florida Renewables, LLC  
700 Universe Boulevard  
Juno Beach, FL 33408  
Attn: Director, Business Management (South Region)  
Telephone: 561-304-5912  
Email: Charles.Lande@nee.com

With a copy to: NextEra Florida Renewables, LLC  
700 Universe Boulevard  
Juno Beach, FL 33408  
Attn: Mitchell Ross, Vice President & General Counsel  
Telephone: 561-691-7126  
Email: Mitch.ross@nee.com

If to Buyer: Florida Municipal Power Agency  
Chief Operating Officer  
8553 Commodity Circle  
Orlando, FL 32819  
Telephone: 407-355-7767  
Email: [frank.gaffneyken.rutter@fmpa.com](mailto:frank.gaffneyken.rutter@fmpa.com)

With a copy to: Florida Municipal Power Agency  
Office of General Counsel  
P.O. Box 3209,  
Tallahassee, FL 32315-3209  
2061 Delta Way, Ste 2,  
Tallahassee, Florida 32303-4240  
Telephone: 850-297-2011  
Facsimile: 850-297-2014  
Email: jody.finklea@fmpa.com  
Dan.ohagan@fmpa.com

## **ARTICLE 20 MISCELLANEOUS**

### **20.1 *Effectiveness of Agreement; Survival.***

This Agreement shall be in full force and effect, enforceable and binding in all respects as of the [Original](#) Effective Date until the conclusion of the Term or earlier termination pursuant to the terms of this Agreement; *provided, however*, that this Agreement shall remain in effect until (a) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for the Buyer's Product delivered or not delivered prior to the end of the Term, the Termination Payment, indemnification payments or other damages (whether directly or indirectly

such as through set-off or netting) and (b) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation. Notwithstanding any provisions herein to the contrary, the obligations set forth in the following articles and sections shall survive (in full force) the expiration of termination of this Agreement: Sections 12.2 and 12.3 until the applicable statute of limitation lapses, 14.1 regarding confidentiality, for a period of two (2) years, 20.2 (*Audits*), 20.7 (*Governing Law*), 20.8 (*Waiver of Trial by Jury*), 20.9 (*Attorney's Fees*) and 20.11 (*Project Members*); ARTICLE 1 (*Definitions and Interpretation*), and ARTICLE 17 (*Limitations on Liability*).

## **20.2 Audits.**

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after such twelve (12)-month period.

## **20.3 Amendments.**

Except as provided in Sections 3.1(b) and 3.19(g), this Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

## **20.4 Waivers.**

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a breach or default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent breach or default or other matter.

## **20.5 Severability.**

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; *provided* that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the intent of the Parties.

## **20.6 *Standard of Review.***

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a Person or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).

## **20.7 *Governing Law.***

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE SOLE AND EXCLUSIVE VENUE FOR ANY DISPUTE, CLAIM OR CONTROVERSY RELATING TO THIS AGREEMENT SHALL BE THE STATE AND FEDERAL COURTS IN ORANGE COUNTY, FLORIDA.

## **20.8 *Waiver of Trial by Jury.***

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

## **20.9 *Attorneys’ Fees.***

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs of the proceeding recoverable in said action.

## **20.10 *No Third-Party Beneficiaries.***

Except indemnitees, a Project Investor party to a consent to assignment among the Parties, and Other Buyers and Other Solar Project Buyers with respect to their priority right to purchase Newly Available Product, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

**20.11 *Project Members.***

This Agreement is an obligation of Buyer only, and all costs and liabilities of Buyer hereunder are payable solely from the revenues and funds of the FMPA All-Requirements Power Supply Project. No liability or obligation under this Agreement shall inure to or bind any of the funds, accounts, monies, property, instruments, or rights of Buyer generally, of any individual member of Buyer, or of any other “project” of Buyer as contemplated in the Interlocal Agreement. Buyer shall enforce the provisions of the All-Requirements Power Supply Project Contracts and duly perform its covenants and agreements thereunder.

**20.12 *No Agency.***

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

**20.13 *Cooperation.***

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make Commercially Reasonable Efforts to cooperate and assist each other in making such change on terms and conditions mutually agreed by the Parties.

**20.14 *Further Assurances.***

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 20.14. No Party shall be required to take any action or execute any document under this Section 20.14 that would negatively change that Party's risk or benefit under this Agreement.

**20.15 *Captions; Construction.***

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

**20.16 *Entire Agreement.***

This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

**20.17 *Forward Contract.***

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

**20.18 *Counterparts.***

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

**POINSETT SOLAR, LLC**

**FLORIDA MUNICIPAL POWER AGENCY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### SAMPLE CALCULATIONS

#### I. Summary of Terms and Sample Values:

(Note: The results of the formulas contained in this Exhibit A are derived from precise values without regard to rounding which is used to show interim results for ease of presentation.)

**Project Quantity ( $E_{1y}$ )** means the total estimated Energy production of the Project for a Contract Year.

*For this example  $E_{1y}$  is [REDACTED] MWh for each Contract Year*

**Delivered Energy (DE)** means the Energy delivered to the Delivery Point net of all electrical losses associated with the transmission or transformation (from direct current to AC) of the Energy to the Delivery Point, including, if applicable, any losses between the Metering System and the Delivery Point.

*For this example DE is [REDACTED] MWh for each Contract Year in a shortfall scenario*

*For this example DE is [REDACTED] MWh for each Contract Year in an excess energy scenario*

**Buyer's Share;** *for this example [REDACTED] %*

**Contract Quantity ( $CE_{b,1y}$ )** means Buyer's Share of the Project Quantity.

*For this example  $E_{b,1y}$  is [REDACTED] % x [REDACTED] = [REDACTED] MWh in each Contract Year*

**Buyer's Delivered Energy ( $DE_b$ )** means Buyer's Share of the Delivered Energy.

*For this example  $DE_b$  is [REDACTED] % x [REDACTED] = [REDACTED] MWh in each Contract Year in a shortfall scenario*

*For this example  $DE_b$  is [REDACTED] % x [REDACTED] = [REDACTED] MWh in each Contract Year in an excess energy scenario*

**Performance Measurement Period (2y)** means the two prior consecutive Contract Years during the Delivery Term.

**Contract Quantity during Performance Measurement Period ( $CE_{b,2y}$ )**

*For this example  $CE_{b,2y}$  is 2 x [REDACTED] MWh = [REDACTED] MWh*

**Buyer's Delivered Energy during Performance Measurement Period ( $DE_{b,2y}$ )**

*For this example  $DE_{b,2y}$  is 2 x [REDACTED] MWh = [REDACTED] MWh in a shortfall scenario*

For this example  $DE_{b,2y}$  is  $2 \times \text{[REDACTED]} MWh = \text{[REDACTED]} MWh$  in an excess energy scenario

**Dollar-per-MWh Rate (R)** means  $\text{[REDACTED]}$  per MWh of Delivered Energy.

**Hours in Performance Measurement Period (h)**

For this example  $h$  is  $2 \times 8,760 = 17,520$

**Seller Excuse Hours in Performance Measurement Period ( $h_e$ )** means the hours Seller is unable to generate or deliver Energy due to Seller Excuses.

For this example  $h_e$  is  $\text{[REDACTED]}$

## II. Sample Calculation of Measurement Period Performance Percentage:

**Measurement Period Performance Percentage** = Buyer's Delivered Energy during Performance Measurement Period / (Contract Quantity during Performance Measurement Period  $\times$  (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period), expressed as a percentage.

$$\frac{DE_{b,2y}}{CE_{b,2y} \times \frac{(h - h_e)}{h}}$$

$$\frac{\text{[REDACTED]} MWh}{\text{[REDACTED]} MWh \times \frac{\text{[REDACTED]} - \text{[REDACTED]}}{\text{[REDACTED]}}}$$

$$\frac{\text{[REDACTED]} MWh}{\text{[REDACTED]} MWh \times \text{[REDACTED]}}$$

$$\frac{\text{[REDACTED]} MWh}{\text{[REDACTED]} MWh}$$

$$\text{[REDACTED]}$$



Expressed as a percentage

██████████

### III. Sample Calculation of GEP Damages:

**GEP Damages** = Dollar-per-MWh Rate x (0.8 x (Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period) – Buyer’s Delivered Energy during Performance Measurement Period)

$$R \times \text{██████████} \times CE_{b,2y} \times \frac{(h - h_e)}{h} - DE_{b,2y}$$

$$\text{██████████} / MWh \times \left( \text{██████████} \times \text{██████████} MWh \times \frac{(\text{██████████})}{\text{██████████}} - \text{██████████} MWh \right)$$

$$\text{██████████} / MWh \times (\text{██████████} \times \text{██████████} MWh \times \text{██████████} - \text{██████████} MWh)$$

$$\text{██████████} / MWh \times (\text{██████████} MWh - \text{██████████} MWh)$$

$$\text{██████████} / MWh \times (\text{██████████} MWh)$$

████████████████████

### IV. Sample Calculation of Excess Energy Credit:

**Excess Energy Credit** = ██████████ x Dollar-per-MWh Rate x (Buyer’s Delivered Energy during Performance Measurement Period – ██████████ x Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period)

$$\blacksquare \times R \times \left( DE_{b,2y} - \blacksquare \times CE_{b,2y} \times \frac{(h - h_e)}{h} \right)$$

$$\begin{aligned} & \blacksquare \times \blacksquare / MWh \\ & \times \left( \blacksquare MWh - \blacksquare \times \blacksquare \times \frac{(\blacksquare)}{\blacksquare} \right) \end{aligned}$$

$$\blacksquare / MWh \times (\blacksquare MWh - \blacksquare \times \blacksquare \times \blacksquare)$$

$$\blacksquare / MWh \times (\blacksquare MWh - \blacksquare \times \blacksquare \times \blacksquare)$$

$$\blacksquare / MWh \times (\blacksquare MWh - \blacksquare MWh)$$

$$\blacksquare / MWh \times \blacksquare MWh$$

$$\blacksquare$$

## EXHIBIT B

### DESCRIPTION OF PROJECT

Seller intends to build, own and operate Project with a nameplate capacity rating of the Project Capacity. The Project will be located in Osceola County. The Project will generate electrical power that will be sold wholesale.

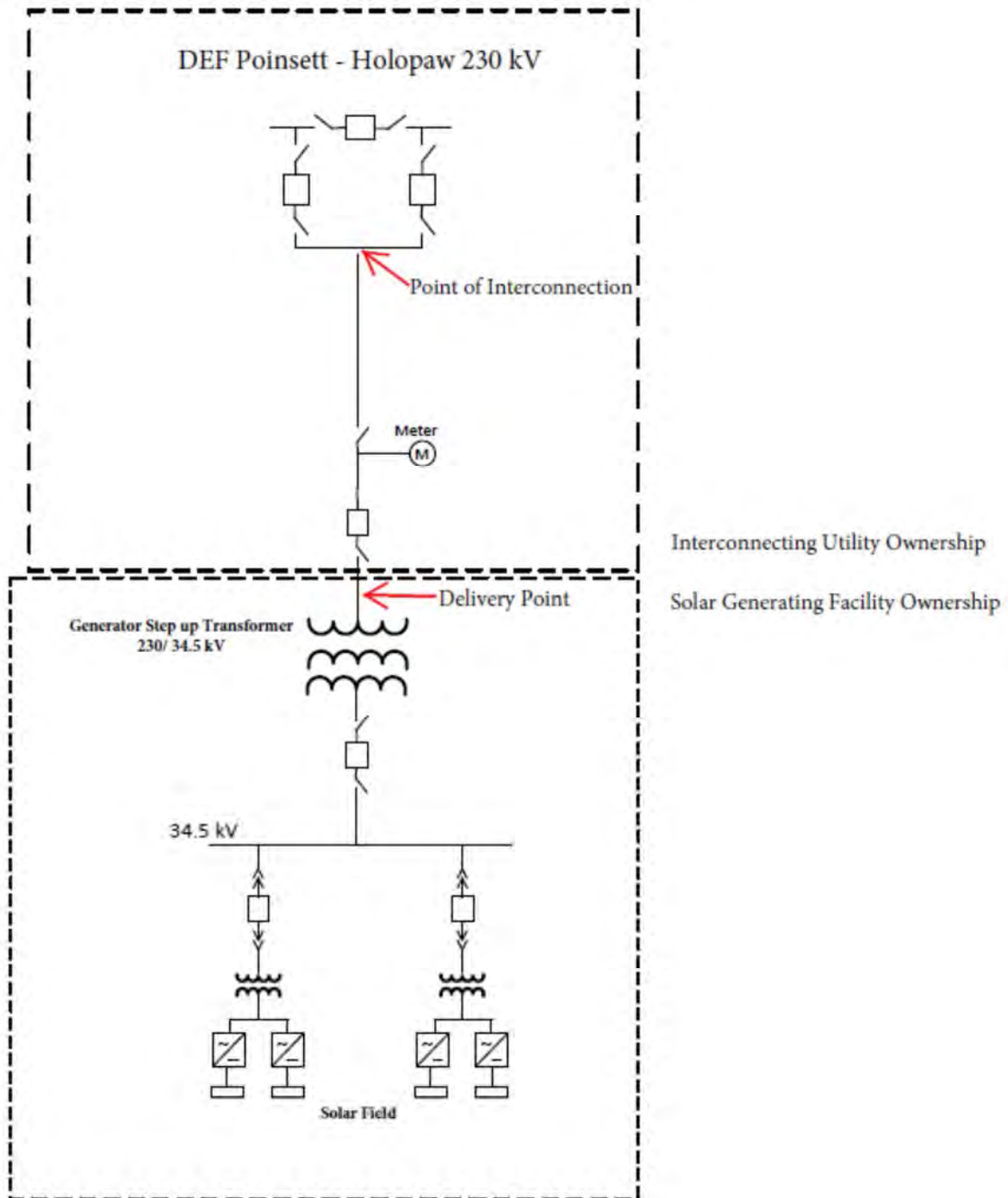
As presently planned, the Project will consist of:

- Photovoltaic solar modules and power inverters
- Electrical transformation equipment located at the Project
- An underground and/or aboveground electric cable collection system to carry electricity to the substation
- An underground and/or aboveground fiber-optic data collection system
- Permanent meteorological (“MET”) tower(s)
- A temporary construction lay down area
- Maintenance/field office(s)

Nothing in this Agreement or Exhibit B is intended to either (i) limit the right of Seller to make any changes to the Project consistent with the terms and conditions of this Agreement it determines to undertake consistent with Applicable Law, Governmental Approvals and Prudent Operating Practices, or (ii) grant any rights to Buyer regarding the description, nature or components of the Project.

## EXHIBIT C

### DESCRIPTION OF DELIVERY POINT AND ONE-LINE DIAGRAM



# EXHIBIT D

## PROJECT QUANTITY

Period	Project Quantity (MWh)
Jul-Dec <a href="#">2020</a> <a href="#">2023</a>	
<a href="#">2021</a> <a href="#">2024</a>	
<a href="#">2025</a> <a href="#">2022</a>	
<a href="#">2026</a> <a href="#">2023</a>	
<a href="#">2027</a> <a href="#">2024</a>	
<a href="#">2028</a> <a href="#">2025</a>	
<a href="#">2029</a> <a href="#">2026</a>	
<a href="#">2030</a> <a href="#">2027</a>	
<a href="#">2031</a> <a href="#">2028</a>	
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<a href="#">2048</a>	
<a href="#">2049</a>	
Jan-Jun <a href="#">2050</a> <a href="#">2043</a>	

**EXHIBIT E**

**PURCHASE OPTION**

Purchase Date	Minimum Purchase Price
Last day of the <del>Initial</del> Term	
<del>Last day of first Renewal Term</del>	

## EXHIBIT F FORM OF GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of \_\_\_\_\_, \_\_\_\_\_ (the “**Effective Date**”), is made by [NEXTERA ENERGY CAPITAL HOLDINGS, INC.] (“**Guarantor**”), in favor of [\_\_\_\_\_] (“**Counterparty**”).

### RECITALS:

- A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary [INSERT NEXTERA ENERGY PROJECT COMPANY] (“**Obligor**”), have entered into, or concurrently herewith are entering into, that certain Renewable Energy Power Purchase Agreement dated as of \_\_\_\_\_, 2018 (together, the “**Agreement**”); and
- B. WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed [spell out the dollar amount] U.S. Dollars (U.S. \$ \_\_\_\_\_) (the “**Maximum Recovery Amount**”).
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above).

2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”).

- (b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES.** Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty; *provided, however*, that an amendment to this Guaranty increasing the Maximum



Recovery Amount and/or extending the termination date of this Guaranty may be executed solely by Guarantor.

**6. WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Obligor may have under the Agreement.
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

**7. REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

**8. TERMINATION.** This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement and (ii) [need fixed termination date – term of Agreement plus six months]; *provided, however*, that no such termination shall affect Guarantor's liability with respect to any Obligations arising under any Transactions entered into prior to the time the termination is effective, which Obligations shall remain subject to this Guaranty.

**9. NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

TO GUARANTOR: *	TO COUNTERPARTY:
NextEra Energy Capital Holdings, Inc. 700 Universe Blvd. Juno Beach, Florida 33408 Attn: Treasurer	_____ _____ _____ Attn: _____
[Tel: (561) 694-6204 -- for use in connection with courier deliveries]	[Tel: (____) ____ - ____ -- for use in connection with courier deliveries]

\* *(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. (561) 625-7504 and ATTN: Credit Department, Fax No. (561) 625-7642. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

#### 10. **MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Florida, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns and shall be binding regardless of whether Counterparty and Obligor enter into amendments to the Agreement. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Middle District of Florida, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Circuit Court in and for Orange County, Florida (without prejudice to the right of any party to remove to the United States District Court for the Middle District of Florida) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_, 20\_\_\_\_, but it is effective as of the Effective Date

NEXTERA ENERGY CAPITAL HOLDINGS,  
INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT G  
FORM OF LETTER OF CREDIT**

**[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT**

**DATE OF ISSUANCE:**  
**[Date of issuance]**

**[BENEFICIARY] (“Beneficiary”)**

**[Address]**

**Attention:** **[Contact Person]**

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Messrs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “**you**”) this Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) for the account of [Entity] [--- Address ---] and [Entity] [--- Address ---] (“**Account Parties**”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [*describe the underlying agreement which requires this LC*].

**1.     Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be [*written dollar amount*] United States Dollars (US\$[*dollar amount*]) (such maximum amount referred to as the “**Stated Amount**”).

**2.     Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [*bank address*] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “**Draw Certificate**”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: \_\_\_\_\_ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

**3.     Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [\_\_\_\_\_] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [\_\_\_\_\_] time on any Business Day, payment will be made on the fourth succeeding Business Day.

In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on *[one year from the issuance date]* (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered paragraph 9) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF FLORIDA WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

\* \* \*

*SINCERELY,*  
[ISSUING BANK]

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

## **EXHIBIT H**

### **SELLER INSURANCE REQUIREMENTS**

Before the Commercial Operation Date, Seller shall procure and maintain the following minimum insurance, with insurers rated “A-” VII or higher by A.M. Best’s Key Rating Guide, that are licensed to do business in Florida:

(a) Workers’ Compensation Insurance for statutory obligations imposed by applicable laws, including, where applicable, the Alternate Employer Endorsement, the United States Longshoremen’s and Harbor Workers’ Act, the Maritime Coverage and the Jones Act;

(b) Employers’ Liability Insurance, including Occupational Disease, shall be provided with a limit of (i) One Million Dollars (\$1,000,000) for bodily injury per accident, (ii) One Million Dollars (\$1,000,000) for bodily injury by disease per policy, and (iii) One Million Dollars (\$1,000,000) for bodily injury by disease per employee;

(c) Business Automobile Liability Insurance which shall apply to all owned, non-owned, leased, and hired automobiles with a limit of One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage;

(d) Commercial General Liability Insurance which shall apply to liability arising out of premises, operations, bodily injury, property damage, products and completed operations and liability insured under and insured contract (contractual liability), with a limit of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate. The products and completed operations coverage insurance shall be provided for the duration of any applicable warranty period;

(e) Excess Liability Insurance which shall apply to Employers Liability, Commercial General Liability and Business Automobile Liability Insurance, required in (b), (c), and (d) above, with a limit of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate;

(f) Upon commencement of construction of the Project, Builder's Risk Insurance with limits of insurance written on a probable maximum loss basis, including sublimits for wind, earthquakes and flood exposure;

(g) Following the Commercial Operation Date, All-Risk Property Insurance with limits of insurance written on a probable maximum loss basis, including sublimits for wind, earthquake, and flood exposures.

Except for Workers’ Compensation Insurance, Buyer shall be endorsed as an additional insured on Seller’s insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Buyer. All policies of insurance required to be maintained by Seller hereunder shall provide for a severability of interests clause and include a provision that Sellers’s insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Buyer.

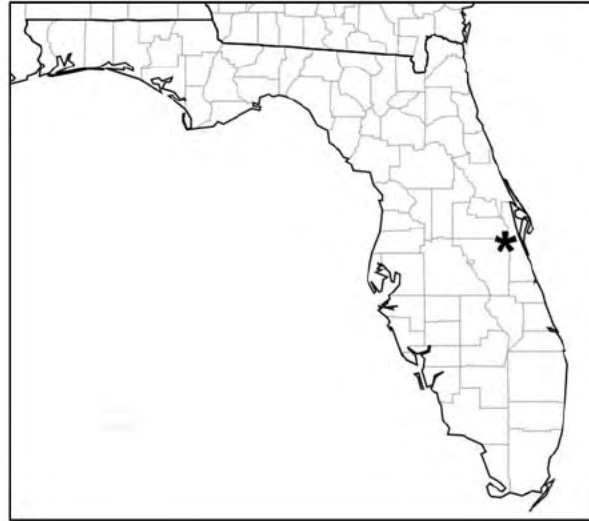
In the event that any policy furnished by Seller provides for coverage on a “claims made” basis, the retroactive date of the policy shall be the same as the effective date of the Agreement, or such other date, as to protect the interest of Buyer. Furthermore, for all policies furnished on a “claims made” basis, Seller’s providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. If coverage is on “occurrence” basis, Seller shall maintain such insurance during the entire term of the Agreement.

Following execution of this Agreement and annually thereafter, Seller shall promptly provide evidence of the minimum insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance. If any of the required insurance is cancelled or non-renewed, Seller shall within thirty (30) days provide written notice to Buyer and file a new certificate of insurance with Buyer, demonstrating that the required insurance coverage to be maintained hereunder has been extended or replaced. Neither Seller’s failure to provide evidence of minimum coverage of insurance following Buyer’s request, nor Buyer’s decision to not make such request, shall release Seller from its obligation to maintain the minimum coverage provided for in this Schedule 11.

Seller shall be responsible for covering all deductibles associated with the foregoing insurance coverage.



**EXHIBIT I**  
**SITE DESCRIPTION; MAP**



# **EXHIBIT J** **INTERIM MILESTONE SCHEDULE**

Anticipated Date (as of the Effective Date and subject to extensions as permitted in the Agreement)	Milestone	Section
May 30, <del>2018</del> <u>2021</u>	Seller Management Approval	6.1(a)(v)
November 20, <del>2018</del> <u>2020</u>	Site Control	6.1(a)(iii)
October 20, <del>2019</del> <u>2020</u>	Receipt of all Governmental Approvals	6.1(a)(iv)
January 2, <del>2020</del> <u>2023</u>	Large Generator Interconnection Agreement execution	6.1(a)(i)
February 15, <del>2020</del> <u>2023</u>	Initial Energy Delivery Date	3.3
May 30, <del>2020</del> <u>2023</u> (but in any event not later than thirty (30) days prior to the Guaranteed Commercial Operation Date)	Electric Interconnection Upgrades Complete	4.3(c)(i)
June 30, <del>2020</del> , <u>2023</u>	Guaranteed Commercial Operation Date	4.3, 6.1(a)(vi)
December 27, <del>2020</del> <u>2023</u>	Guaranteed Commercial Operation Date with 180 days Permitted Extensions	4.3, 4.4, 6.1(a)(vi)
August <del>24, 2021</del> <u>23</u> , <u>2024</u>	Outside guaranteed commercial operation date (which accounts for 180 days Permitted Extensions, <i>plus</i> the 240-day Project Cure Period	4.3, 4.4, 6.1(a)(vi)

**EXHIBIT K**  
**MILESTONES WITH DELAY DAMAGES**

<b>Date</b>	<b>Milestone</b>	<b>Section</b>
May 30, <del>2019</del> <u>2022</u>	Florida Department of Environmental Protection - Environmental Resource Permit Received	4.1(j)
January 1, <del>2020</del> <u>2023</u>	Start of Construction	4.1(j)
June 30, <del>2020</del> <u>2023</u> , as such date may be extended in accordance with <u>Section 4.3(c)</u> .	Guaranteed Commercial Operation Date	4.3, 4.4, 6.1(a)(vi)

# **EXHIBIT L** **CERTIFICATE – COMMERCIAL OPERATIONS**

This certification ("Certification") is delivered by \_\_\_\_\_ ("Seller") to \_\_\_\_\_ ("Buyer") in accordance with the terms of that certain Amended and Restated Renewable Energy Power Purchase Agreement dated \_\_\_\_\_ ("Agreement"), as amended from time to time, by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

- a) The Project and all equipment and systems comprising the Project have been fully commissioned.
- b) The Plant has demonstrated that it can safely and continuously produce and deliver the "**Project Capacity**" of 74.5MW<sub>ac</sub> to the Delivery Point. [Refer to **Attachment A**]
- c) Seller has delivered to Buyer the Delivery Term Security required under Section 10.4(a)(ii). [Refer to **Attachment B**]
- d) Seller has installed all equipment needed to enable telemetering of the Energy from the Project to the Delivery Point, as may be necessary pursuant to the Large Generator Interconnection Agreement, and such equipment, if needed, is fully operational.
- e) Seller has delivered to Buyer a report with the results of start-up and performance testing conducted by Seller to demonstrate the attainment of commercial operation status of the Project. [Refer to **Attachment A**]
- f) Seller has received all local, state and federal Governmental Approvals and other approvals, consents and authorizations as may be required by Applicable Law for the construction, interconnection, operation and maintenance of the Project and generation, delivery and sale of Buyer's Product hereunder. [Refer to **Attachment C**]
- g) Seller has obtained and submitted to Buyer Certificates of insurance evidencing the coverage required by **Exhibit H**. [Refer to **Attachment D**]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the \_\_\_\_ day of \_\_\_\_\_, 2012\_\_.

\_\_\_\_\_  
PROJECT, LLC

\_\_\_\_\_  
, Vice President

# **EXHIBIT M** **REC BILL OF SALE**

## **BUYER'S RENEWABLE ATTRIBUTES ATTESTATION AND BILL OF SALE**

In accordance with the terms and conditions of that certain [Amended and Restated Renewable Energy Power Purchase Agreement](#) (the "Agreement") made the \_\_\_\_\_ day of \_\_\_\_\_, [2018,20](#), by and between FLORIDA MUNICIPAL POWER AGENCY, a governmental joint action agency organized and existing under Florida law ("Buyer") and POINSETT SOLAR, LLC, a Delaware limited liability company ("Seller"), Seller hereby sells, transfers and delivers to Buyer all Buyer's Renewable Attributes produced by or associated with the Buyer's Delivered Energy, including but not limited to all renewable energy credits, green tags, environmental attributes and reporting rights, in the amount of one \_\_\_\_\_ for each megawatt hour of Buyer's Delivered Energy during the Operation Period set forth below. Capitalized terms used in this Buyer's Renewable Attributes Attestation and Bill of Sale and not otherwise defined shall have the meaning set forth in the Agreement.

Project name and location: \_\_\_\_\_

Fuel Type: Photovoltaic - Solar

Capacity (MW<sub>AC</sub>): \_\_\_\_\_

Operational Date: \_\_\_\_\_

Energy Admin. ID no.: \_\_\_\_\_

Operation Period:

Dates: From \_\_\_ to \_\_\_\_\_

MWh: \_\_\_\_\_

Buyer's Share of Project Quantity (%): \_\_\_\_\_

Renewable Attributes Sold to Buyer: \_\_\_\_\_

Seller further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) the sale, transfer and delivery by Seller to Buyer of Buyer's Renewable Attributes which are the subject hereof is the one and only sale, transfer and delivery of Buyer's Renewable Attributes referenced herein;
- iii) the Buyer's Delivered Energy during the period indicated above was in the amount indicated above;
- iv) Seller has at all times complied with the requirements of Applicable Law with respect to the operation of the Project and the generation of Buyer's Renewable Attributes; and

- v) to the best of Seller's knowledge, the Buyer's Renewable Attributes have been generated by the Project and sold by Seller.

IN WITNESS WHEREOF this Buyer's Renewable Attributes Attestation and Bill of Sale confirms, in accordance with the Agreement, the transfer from Seller to Buyer of Buyer's Renewable Attributes as set forth above, and has been executed on the date set forth below.

Seller's Contact Person: [\_\_\_\_\_]

SELLER

By \_\_\_\_\_

Name \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT N-1 CONSENT TO ASSIGNMENT

### FORM OF CONSENT AND AGREEMENT ([NAME OF CONTRACTING PARTY]) ([NAME OF ASSIGNED AGREEMENT])

This CONSENT AND AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, 20[ ], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [ ] (the “Contracting Party”), [ ], a [ ] (the “Project Owner”), and [ ], as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”). Capitalized terms used in this Consent and not otherwise defined shall have the meaning set forth in the Assigned Agreement.

A. The Project Owner owns, operates and maintains [ ] (the “Project”).

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Assigned Agreement”).

C. [ ] (the “Borrower”), the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [ ], as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [ ] (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned as collateral all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [ ] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”, and, together with the Credit Agreement and any other financing documents relating to the issuance of promissory notes under the Credit Agreement (the “Notes”), the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and collateral assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows as of the date of this Consent:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has received no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and collateral assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event; No Disputes. After giving effect to the pledge and collateral assignment referred to in Section 1, and after giving effect to the consent to such pledge and collateral assignment by the Contracting Party herein, there exists no event or condition (a “**Termination Event**”) that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an “event of default” or “default” (or any other similar event however defined) by the Project Owner under the Assigned Agreement, in the manner and within the times prescribed therein, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section \_\_\_ of the Assigned Agreement)]<sup>2</sup> or (ii) suspend the performance of any of its obligations under the Assigned Agreement which can be performed notwithstanding the event of default or default without copying the Collateral Agent on any notice to the Project Owner required under the Assigned Agreement for Contracting Party to terminate the Assigned Agreement or suspend performance thereunder [(other than a termination pursuant

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<sup>2</sup> Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.



to Section \_\_ of the Assigned Agreement)]<sup>3</sup> and providing the Collateral Agent the opportunity to cure as provided below. The Contracting Party further agrees that it will not assign the Assigned Agreement without copying the Collateral Agent as set forth in in Section [ ] of the Assigned Agreement.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section \_\_ of the Assigned Agreement)]<sup>4</sup>, and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall (i) give written notice to the Contracting Party that Collateral Agent intends to cure the Termination Event and (ii) have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a “Non-monetary Event”) the Collateral Agent shall have one hundred twenty (120) days to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event and Collateral Agent has provided a Plan to the Contracting Party which outlines the actions that will be taken to cure the Non-monetary Event and includes the proposed timeline to cure the Non-monetary Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition. The Contracting Party shall be entitled to rely, and shall be fully protected in relying, upon any notice by Collateral Agent of its intent to cure a Termination Event in good faith believed by Contracting Party to be genuine and correct and to have been signed.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement or a relinquishment by Contract Party of any right or remedy in respect of the Assigned Agreement.

(e) In connection with any outage for which (i) the Collateral Agent delivers written Notice (which such Notice may consist of an e-mail) to Buyer stating that the Collateral Agent anticipates such outage will continue for forty-eight (48) hours or more, and (ii) the Collateral Agent has delivered a Plan to Buyer:

(i) Buyer may, upon written Notice to Collateral Agent, purchase replacement energy for a period of time equal to the lesser of (A) the remaining period of time outlined

<sup>3</sup> Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

<sup>4</sup> Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

in such Plan, or (B) seven (7) days; *provided*, for the avoidance of doubt, that if the Plan provides a timeline greater than seven (7) days to resume the delivery of Energy to the Delivery Point, Buyer may continue to purchase replacement energy upon written Notice to Collateral Agent on a rolling basis until the date on which delivery of Energy to the Delivery Point will resume, as specified in the Plan;

(ii) Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

(iii) the Collateral Agent shall provide regular Plan updates to Buyer.

(f) In connection with any outage that is not a Planned Outage or a Maintenance Outage and for which Seller fails to deliver written Notice (including by e-mail) to Buyer within twenty-four (24) hours after the occurrence of such outage

(i) Buyer may, upon written Notice to Seller or Collateral Agent (as applicable), purchase replacement energy for a period of time equal to seven (7) days, and Buyer may continue to purchase replacement energy upon written Notice to Seller or Collateral Agent (as applicable) on a rolling basis until the date on which delivery of Energy to the Delivery Point is anticipated to resume, as specified in a Plan;

(ii) Buyer shall not be obligated to purchase or receive Energy during such period; and

(iii) Seller or Collateral Agent (as applicable) shall provide regular Plan updates to Buyer.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent's request, the Contracting Party will, within sixty (60) days after presentation by Collateral Agent of the proposed designee and agreement, enter into a new agreement with the Collateral Agent or the Collateral Agent's qualified designee for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same Project Owner Performance Assurance, covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement.

5. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of remedies following a default under the Financing Documents, the Collateral Agent may (but shall not be obligated to) assume, or cause any qualified purchaser at any foreclosure sale or any qualified assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights, duties and obligations of the Project Owner thereafter arising under the Assigned Agreement. If the interest of the Project Owner in the Assigned Agreement shall be assumed, sold or transferred as provided above, the assuming party shall agree in writing with Contracting Party and Collateral Agent to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption, shall provide Performance Assurance consistent with the terms of the Assigned Agreement, and the Contracting Party shall continue to perform its obligations under the Assigned Agreement in favor of the

assuming party as if such party had thereafter been named as the “Seller” under the Assigned Agreement; provided that if the Collateral Agent or its designee (or any entity acting on behalf of the Collateral Agent, the Collateral Agent’s designee or any of the other Secured Parties) assumes the Assigned Agreement as provided above, it shall not be personally liable for the performance of the obligations thereunder except to the extent of all of its right, title and interest in and to the Project and the amount of Performance Assurance. For purposes of this ARTICLE 5, a “qualified” purchaser or assignee or transferee shall be one which Contracting Party and Collateral Agent agree has the technical skill and financial wherewithal to operate and maintain the Project in the same manner as the Project Owner.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on Schedule II hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party’s corresponding payment obligation under the Assigned Agreement.

7. No Amendments. The Contracting Party acknowledges that the Project Owner and Collateral Agent have informed Contracting Party that the Financing Documents restrict the right of the Project Owner to amend or modify the Assigned Agreement, or to waive or provide consents with respect to certain provisions of the Assigned Agreement, unless certain conditions specified in the Financing Documents are met. The Contracting Party shall not without the prior written consent of the Collateral Agent, materially amend or modify the Assigned Agreement, or accept any waiver or consent with respect to certain provisions of the Assigned Agreement, unless the Contracting Party has received from the Project Owner a copy of a certificate delivered by the Project Owner to the Collateral Agent to the effect that such amendment, modification, waiver or consent has been made in accordance with the terms and conditions of the Financing Documents, which may in certain circumstances require the prior written consent of the Collateral Agent thereto.

8. Additional Provisions. [To be specified if necessary to clarify the Assigned Agreement.]

9. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [ \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 Attn: [ \_\_\_\_\_ ]  
 Telephone No.: [ \_\_\_\_\_ ]  
 Facsimile No.: [ \_\_\_\_\_ ]

The Project Owner:

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The Contracting Party:

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10. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns. No assignment of this Consent by a party hereto shall be effective without the prior consent of the other parties hereto, which consent shall not be unreasonably withheld.

11. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

12. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of Florida, without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By:

Name:

Title:

[\_\_\_\_\_]

as Collateral Agent

By:

Name:

Title:

Acknowledged and Agreed:

[NAME OF PROJECT OWNER]

By:

Name:

Title:

Schedule I

Assigned Agreement

Schedule II

Payment Instructions  
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement  
(Section 2(c))]



**EXHIBIT N-2  
ESTOPPEL CERTIFICATE**

**FLORIDA MUNICIPAL POWER AGENCY**  
**(Effective Date: \_\_\_\_\_ [20\_\_])**

POINSETT SOLAR, LLC, a Delaware limited liability company (“Seller”), and FLORIDA MUNICIPAL POWER AGENCY, a governmental joint action agency organized and existing under Florida law (“Buyer”), are parties to that certain Amended and Restated Renewable Energy Power Purchase Agreement, dated as of \_\_\_\_\_ as it may have been amended and modified (the “Agreement”). Capitalized terms used but not otherwise defined herein have the same meaning given such terms in the Agreement. Buyer acknowledges that [name of tax equity Investor(s)] (the “Investor(s)”) has requested an estoppel certificate in connection with the close of the purchase by the Investor(s) of [one hundred] percent ([100]%) of the non-managing Class B equity interest in the Seller effective the date hereof.

The undersigned, a duly authorized representative of Buyer, does hereby certify and with respect to Section 5 hereof, covenant to Investor(s) as of the date of this Estoppel Certificate set forth above the following with respect to the Agreement:

1. No Event of Default with respect to Buyer, nor, to the knowledge of Buyer, Seller has occurred and is continuing under the Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Seller or, to the knowledge of Buyer, Buyer to terminate the Agreement.
2. There exists no event or condition that would, either immediately or with the passage of time and/or giving of notice, allow the Seller or, to the knowledge of Buyer, Buyer to suspend the performance of its obligations under the Agreement.
3. Each representation or warranty made or given by Buyer in Section 11.1 of the Agreement is complete, true and correct.
4. As of the date hereof, (i) with respect to Buyer, the Agreement is in full force and effect and has not been assigned, amended, supplemented or modified by Buyer, (ii) with respect to Seller, to the knowledge of Buyer, the Agreement is in full force and effect and has not been assigned, amended, supplemented or modified by Seller, (iii) there are no pending or to the knowledge of Buyer, threatened disputes or legal proceedings between Buyer and the Seller, (iv) there is no pending or, to the knowledge of Buyer, threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator the adverse outcome of which would materially affect the legality, validity or enforceability of the Agreement, (v) Buyer does not have knowledge of any event, act, circumstance or condition constituting a

Force Majeure Event under the Agreement that would relieve Buyer from the performance of its obligations under the Agreement, and (vi) all undisputed amounts due from Seller under the Agreement as of the date hereof have been paid in full and to the knowledge of Buyer the Seller owes no indemnity payments or other amounts to Buyer under the Agreement.

5. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.

(a) Buyer agrees to send copies of all Notices of all Events of Default of Seller sent to Seller (and copies of any notices sent by Buyer to Seller related to Buyer's exercise of its termination rights) to the Investor designated by the Investors to receive notice at the address set forth on Exhibit A hereto by overnight carrier, mail, fax or email.

(b) Buyer agrees that it will not terminate the Agreement without first sending the Investor notice and opportunity to cure as provided in this Section 5.

(c) If an Investor elects to exercise its right to cure an Event of Default by Seller under the Agreement as provided in this Section 5, it shall (i) give written notice to the Buyer and Other Buyers that Investor intends to cure the Event of Default and (ii) have a period beginning on the date the cure period for such Event of Default for the Seller expires and ending on the later of (A) thirty (30) days if such Event of Default consists of a payment default or (B) if such Event of Default is an event other than a failure to pay amounts due and owing by the Seller (a "Non-monetary Event"), one hundred twenty (120) days so long as the Investor has commenced and is diligently pursuing appropriate action to cure such Event of Default and Investor has provided a Plan to the Buyer which outlines the actions that will be taken to cure the Non-monetary Event and includes the proposed timeline to cure the Non-monetary Event; provided, however, that (x) if possession of the Project is necessary to cure such Non-monetary Event and the Investor has commenced foreclosure proceedings, the Investor will be allowed a reasonable time to complete such proceedings, and (y) if the Investor is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Seller, then the time periods specified herein for curing an Event of Default shall be extended for the period of such prohibition. The Buyer shall be entitled to rely, and shall be fully protected in relying, upon any notice by Investor,

including with respect to its intent to cure an Event of Default in good faith believed by Buyer to be genuine and correct.

(d) In connection with any outage of the Project for which (i) the Investor(s) delivers written Notice (which such Notice may consist of an e-mail provided that it is confirmed by overnight delivery of a copy of such Notice to Buyer) to Buyer stating that the Investor(s) anticipates such outage will continue for forty-eight (48) hours or more, and (ii) the Investor(s) has delivered a Plan to Buyer:

A. Buyer may, upon written Notice to Investor(s), purchase replacement energy for a period of time equal to the lesser of (A) the remaining period of time outlined in such Plan, or (B) seven (7) days; provided, for the avoidance of doubt, that if the Plan provides a timeline greater than seven (7) days to resume the delivery of Energy to the Delivery Point, Buyer may continue to purchase replacement energy upon written Notice to Investor(s) on a rolling basis until the date on which delivery of Energy to the Delivery Point will resume, as specified in the Plan.

B. Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

C. the Investor(s) shall provide regular Plan updates to Buyer.

(e) In connection with any outage that is not a Planned Outage or a Maintenance Outage and for which Seller or Investor fails to deliver written Notice to Buyer within twenty-four (24) hours after the occurrence of such outage:

(iv) Buyer may, upon written Notice to Seller or Investor (as applicable), purchase replacement energy for a period of time equal to seven (7) days, and Buyer may continue to purchase replacement energy upon written Notice to Seller or Investor (as applicable) on a rolling basis until the date on which delivery of Energy to the Delivery Point is anticipated to resume, as specified in a Plan;

(v) Buyer shall not be obligated to purchase or receive Delivered Energy during such period; and

(vi) Investor shall provide regular Plan updates to Buyer.

(f) Any curing of or attempt to cure any Event of Default shall not be construed as an assumption by any Investor of any covenants, agreements or obligations of the Seller under or in respect of the Agreement.

6. Buyer confirms that the Commercial Operation Date has occurred.

7. Buyer acknowledges that as of the date hereof, Buyer has not provided a Notice

to Seller of Buyer's intent to exercise the Purchase Option to Seller that is pending.

8. As of the date hereof, the Performance Assurance provided by Seller has not been drawn upon by Buyer.
9. Buyer acknowledges and agrees that solely on the basis of the truth, accuracy and completeness of written certification provided by Seller and delivered to Buyer, each of the Investor(s) (i) is a "Project Investor" as defined in the Agreement, (ii) has all rights of a "Project Investor" as defined in the Agreement and (iii) Buyer's consent is not required for a direct or indirect transfer of the non-managing Class B equity interest in the Seller to the Investor(s).

*[Signature page follows]*

**IN WITNESS WHEREOF**, Buyer has caused this Estoppel Certificate to be executed by its undersigned authorized officer as of the date first set forth above.

**FLORIDA MUNICIPAL POWER AGENCY**

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit A**

**INVESTOR ADDRESS FOR NOTICES**

Buyer shall send notices under this Estoppel Certificate to the address of the single Investor identified below.

[Investor Name]  
[Address]  
[Attention: \_\_\_\_\_, Position]  
[Email Address]

With a copy to the other Investor identified below:

[Investor Name]  
[Address]  
[Attention: \_\_\_\_\_, Position]  
[Email Address]

**EXHIBIT O**  
**OTHER BUYERS; OTHER SOLAR PROJECT BUYERS**

**Part I. Buyer's Share; Other Buyers; Other Buyer's Share**

<b>Buyer and Other Buyers (as applicable)</b>	<b>Buyer's Share and Other Buyer's Share (as applicable)</b>
FMPA All-Requirements Power Supply Project	23.49 %
FMPA Solar Project	76.51 %

**Part II. Other Solar Project Buyers; Each Other Solar Project Buyer's Share**

<b>Project</b>	<b>Buyer or Other Solar Project Buyer (as applicable)</b>	<b>Buyer or Other Solar Project Buyer (as applicable) Share of Project</b>	<b>Buyer or Other Solar Project Buyer (as applicable) Share of the Solar Project Portfolio</b>
"Poinsett" Project in Osceola County	FMPA Solar Project	76.51%	25.51%
	FMPA All-Requirements Power Supply Project	23.49%	7.83%
"Holopaw Project" in Osceola County	OUC	45.64%	15.21%
	FMPA All-Requirements Power Supply Project	54.36%	18.12%
"Taylor Creek" Project in Orange County	OUC	100.00%	33.33%

**AGENDA ITEM 9 – INFORMATION  
ITEMS**

- e. Parliamentary Procedure to Suspend  
the Rules for Reading Resolution  
Titles**

**Board of Directors Meeting  
December 12, 2019**





# **Parliamentary Procedure to Suspend the Rules for Reading Resolution Titles**

FMIPA Board of Directors – 9e  
FMIPA Executive Committee – 9h

December 12, 2019

# Reading Resolution Titles: Why?

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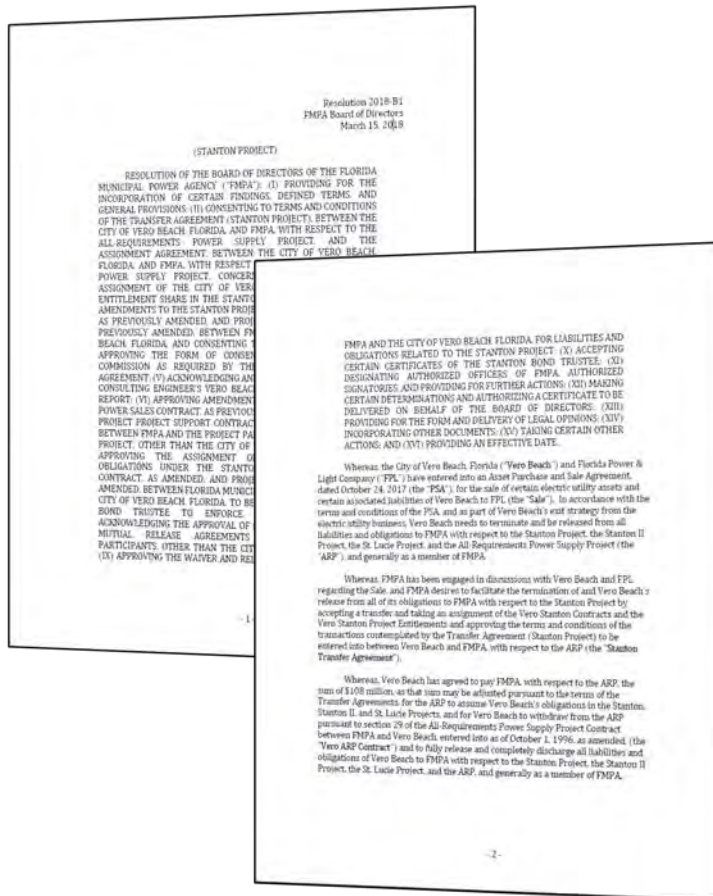
- Resolutions are the most formal manner of taking action – usually reserved for important business issues and matters the governing body wants to memorialize. Examples:
  - Issuance of debt (bonds)
  - Setting budgets
  - Recognition
- Traditional parliamentary procedure would have the entire resolution read so the voting body approves it in every detail.

# Reading Resolution Titles: Why?

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- Robert's Rules of Order Newly Revised (RONR)—adopted by the Board and Executive Committee as the official rules of procedure—allow formal action on resolutions to be taken by reading the title only.
  - This requires the title to be sufficiently detailed to summarize the main points of the resolution.
  - A level of formality is preserved.
  - Provides a record that the governing body was aware, in summary form, of all of the substantive provisions of the resolution.

# Reading Resolution Titles: What happens?



# RONR to the Rescue!

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- § 25 Motion to Suspend the Rules
  - **Description:** Suspend a rule of order. CANNOT suspend requirements in the by-laws, governing documents, or state, federal or local law.
  - **When can be made?** Any time.
  - **Must be Seconded?** Yes.
  - **Debatable?** No.
  - **Amendable?** No.
  - **Vote:** Two-thirds.
  - **Reconsiderable?** No.

# RONR to the Rescue!

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- Form of the Motion:

*I move that the rules be suspended as to the reading of Resolution 2019-B6 by title, and that the title of Resolution 2019-B6 be inserted in the minutes of the meeting as though read aloud here.*

- Including the title in the minutes preserves the formality and record of the governing body's decision.

**AGENDA ITEM 10 – MEMBER  
COMMENTS**

**Board of Directors Meeting  
December 12, 2019**

**AGENDA ITEM 11 – ADJOURNMENT**

**Board of Directors Meeting  
December 12, 2019**