



ARP EXECUTIVE COMMITTEE AGENDA PACKAGE

December 12, 2019

**9:15 a.m. [NOTE TIME] (or immediately
following the Board of Directors Meeting)**

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

Meeting Number 730 030 316#

Meeting Password: 8553

Committee Members

Howard McKinnon, Havana - Chairman

Lynne Tejeda, Key West – Vice Chairwoman

Jody Young, Bushnell

Lynne Mila, Clewiston

Fred Hilliard, Fort Meade

Paul Jakubczak, Fort Pierce

Robert Page, Green Cove Springs

Allen Putnam, Jacksonville Beach

Larry Mattern, Kissimmee

Brad Chase, Leesburg

Bill Conrad, Newberry

Mike Poucher, Ocala

Robert Milner, Starke

Meeting Location

Florida Municipal Power Agency

8553 Commodity Circle

Orlando, FL 32819

(407) 355-7767

MEMORANDUM

TO: FMPA Executive Committee
FROM: Jacob A. Williams, General Manager and CEO
DATE: December 3, 2019
RE: FMPA Executive Committee Meeting
Thursday, December 12, 2019 at 9:15 a.m. [NOTE TIME]
(or immediately following the Board of Directors meeting)
PLACE: Florida Municipal Power Agency
8553 Commodity Circle, Orlando, FL 32819
Fredrick M. Bryant Board Room

DIAL-IN: (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)

Chairman Howard McKinnon, Presiding

AGENDA

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***Item also on the Board of Directors Agenda.**

**** Item(s) Subject to Super Majority Vote**

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

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

**Executive Committee
December 12, 2019**

AGENDA ITEM 2 – SET AGENDA (By Vote)

**Executive Committee
December 12, 2019**

**AGENDA ITEM 3 – RECOGNITION OF
GUESTS**

**Executive Committee
December 12, 2019**

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

**Executive Committee
December 12, 2019**

VERBAL REPORT

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

**Executive Committee
December 12, 2019**

VERBAL REPORT

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

**Executive Committee
December 12, 2019**

AGENDA ITEM 7 – CONSENT AGENDA

- a) Approval of Meeting Minutes – Meeting Held October 17, 2019 and ARP Telephonic Rate Workshops Held October 9, 2019 and November 12, 2019**

**Executive Committee
December 12, 2019**

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

**MINUTES
EXECUTIVE COMMITTEE
THURSDAY, OCTOBER 17, 2019
FLORIDA MUNICIPAL POWER AGENCY
8553 COMMODITY CIRCLE
ORLANDO, FL 32819**

PARTICIPANTS Lynne Mila, Clewiston (via telephone)
PRESENT: Fred Hilliard, Fort Meade
Paul Jakubczak, Fort Pierce
Bob Page, Green Cove Springs
Howard McKinnon, Havana
Allen Putnam, Jacksonville Beach
Larry Mattern, Kissimmee
Bill Conrad, Newberry
Mike Poucher, Ocala
Bob Milner, Starke * (via telephone)

*arrived after roll call

OTHERS John Tompeck, Fort Pierce
PRESENT Barbara Quiñones, Homestead
Karen Nelson, Jacksonville Beach
Jim Williams, Leesburg
Joe Bunch, New Smyrna Beach
Craig Dunlap, Dunlap & Associates, Inc.
Jonathan Nunez, nFront Consulting

STAFF Jacob Williams, General Manager and CEO
PRESENT Jody Finklea, Deputy General Counsel
Ken Rutter, Chief Operating Officer
Linda Howard, Chief Financial Officer
Carol Chinn, Chief Information and Compliance Officer
Cairo Vanegas, Manager of Member Services Development
Chris Gowder, Business Development and System Operations
Director
Dan O'Hagan, Assistant General Counsel
Mark McCain, Assistant General Manager, Member Services
and Public Relations
Sharon Adams, Human Resources Director
Sue Utley, Executive Asst. /Asst. Secy. to the Board
Susan Schumann, Manager of External Affairs and Solar Projects
Mike McCleary, Manager of Member Services Development
Michelle Johnson, Manager of Regulatory Compliance

Ed Nunes, Assistant Treasurer/Debt
David Schumann, Power Generation Fleet Director
Luis Cruz, IT Manager
Isabel Montoya, IT Specialist
Jesse Rivera, IT Support Specialist
Richard Montgomery, Business Development Administrator

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

Chairman Howard McKinnon, Havana, called the FMPA Executive Committee Meeting to order at 11:06 a.m. on Thursday October 17, 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 9 members present out of a possible 13. Bob Milner, Starke, joined via telephone after roll call bringing the total members present to 10 out of a possible 13.

ITEM 2 – SET AGENDA (BY VOTE)

MOTION: Mike Poucher, Ocala, moved approval of the agenda as presented. Paul Jakubczak, Fort Pierce, seconded the motion. Motion carried 10 – 0.

ITEM 3 – RECOGNITION OF GUESTS

Chairman McKinnon welcomed Michelle Johnson, FMPA's new Regulatory Compliance Manager.

ITEM 4 – PUBLIC COMMENTS

None

ITEM 5 – COMMENTS FROM THE CHAIRMAN

Chairman McKinnon thanked the FMPA members and staff for their concerns and expressions of well wishes during his recovery from foot surgery. He said he will be retiring as Town Manager at the end of the year and may continue as the Board of Directors and Executive Committee representative from the Town of Havana.

ITEM 6 – REPORT FROM GENERAL MANAGER

None

ITEM 7 –CONSENT AGENDA

Item 7a – Approval of Meeting Minutes – Held September 19, 2019; Joint Telephonic Executive Committee and Finance Committee Minutes Held September 10, 2019

Item 7b – Approval of Treasury Reports – As of August 31, 2019

Item 7c – Approval of the Agency and All-Requirements Project Financials as of August 31, 2019

MOTION: Allen Putnam, Jacksonville Beach, moved approval of the Consent Agenda as presented. Mike Poucher, Ocala, seconded the motion. Motion carried 10 – 0.

ITEM 8 – ACTION ITEMS

a. Approval of Resolution 2019-EC6 – Approval of Series 2019A Bonds and Related Documents

MOTION: Larry Mattern, Kissimmee, moved approval of Resolution 2019-EC6. Allen Putnam, Jacksonville Beach, seconded the motion.

Resolution 2019-EC6 was read by title:

A RESOLUTION OF THE EXECUTIVE COMMITTEE OF FLORIDA MUNICIPAL POWER AGENCY (I) RECITING STATEMENT OF AUTHORITY; (II) APPROVING AND ADOPTING THE SERIES 2019A SUPPLEMENTAL ALL-REQUIREMENTS POWER SUPPLY PROJECT REVENUE BOND RESOLUTION (FIXED RATE BONDS) WHICH AUTHORIZES THE ISSUANCE OF FLORIDA MUNICIPAL POWER AGENCY ALL-REQUIREMENTS POWER SUPPLY PROJECT REFUNDING REVENUE BONDS, SERIES 2019A TO BE SOLD ON OR BEFORE MAY 31, 2020 IN A PRINCIPAL AMOUNT SUFFICIENT TO PRODUCE NOT TO EXCEED NINETY MILLION DOLLARS (\$90,000,000) IN NET PROCEEDS FOR THE PURPOSE OF REFUNDING ALL OR A PORTION OF FMPA'S ALL-REQUIREMENTS POWER SUPPLY PROJECT VARIABLE RATE DEMAND REFUNDING REVENUE BONDS, SERIES 2008C (THE "REFUNDED BONDS") AND TO PAY ANY COSTS OF ISSUANCE RELATING TO THE SERIES 2019A BONDS (INCLUDING ANY SWAP TERMINATION FEES PAYABLE IN CONNECTION WITH THE TERMINATION OF ANY QUALIFIED SWAPS RELATED TO THE REFUNDED BONDS) AND DELEGATES TO AUTHORIZED SIGNATORIES AND AUTHORIZED OFFICERS CERTAIN MATTERS RELATING TO THE ISSUANCE OF SUCH SERIES 2019A BONDS INCLUDING (1) WHETHER AND WHEN TO ISSUE SUCH SERIES 2019A BONDS, (2) DETERMINATION OF THE PRINCIPAL AMOUNTS, MATURITIES, INTEREST RATES, SINKING FUND INSTALLMENTS AND OTHER REDEMPTION PROVISIONS OF THE SERIES

2019A BONDS, (3) APPROVAL OF THE SALE AND PURCHASE PRICE FOR THE SERIES 2019A BONDS, (4) DETERMINATION OF THE SWAP TERMINATION FEES FOR TERMINATION OF ALL OR ANY PORTION OF THE QUALIFIED SWAPS RELATING TO THE REFUNDED BONDS; (5) DETERMINATION OF WHETHER AND WHEN TO TERMINATE ALL OR ANY PORTION OF THE QUALIFIED SWAPS RELATING TO THE REFUNDED BONDS AND TO EFFECT THE TERMINATION OF ALL OR ANY PORTION OF THE QUALIFIED SWAPS AND TO EXECUTE ANY DOCUMENTATION IN CONNECTION THEREWITH, INCLUDING, BUT NOT LIMITED TO, THE CONFIRMATIONS OF THE TERMINATIONS IN WHOLE OR IN PART OF ANY QUALIFIED SWAPS, (6) DETERMINATION OF AMOUNT, IF ANY, OF THE DEBT SERVICE RESERVE REQUIREMENT FOR THE SERIES 2019A BONDS, (7) DETERMINATION OF THE SWAP REINSTATEMENT FEES OR INCREASE IN FIXED RATES ON QUALIFIED SWAPS FOR REINSTATEMENT OF ALL OR ANY PORTION OF THE QUALIFIED SWAPS RELATING TO THE REFUNDED BONDS AND THE PAYMENT OF SUCH FEES, (8) DETERMINATION OF WHETHER AND WHEN TO REINSTATE ALL OR ANY PORTION OF THE QUALIFIED SWAPS RELATING TO THE REFUNDED BONDS AND TO EFFECT THE REINSTATEMENT OF ALL OR ANY PORTION OF THE QUALIFIED SWAPS AND TO EXECUTE ANY DOCUMENTATION IN CONNECTION THEREWITH, INCLUDING, BUT NOT LIMITED TO, THE CONFIRMATIONS OF THE REINSTATEMENT IN WHOLE OR IN PART OF ANY QUALIFIED SWAPS, (9) DETERMINATION OF THE AGGREGATE PRINCIPAL AMOUNT OF SERIES 2019A BONDS TO BE ISSUED, (10) DETERMINATION OF PRESENT VALUE SAVINGS FROM ISSUING THE SERIES 2019A BONDS AND FROM ISSUING FMPSA'S ALL-REQUIREMENTS POWER SUPPLY PROJECT REFUNDING REVENUE BONDS, SERIES 2019B; AND (11) DETERMINATION OF THE ADVISABILITY OF SECURING BOND INSURANCE FOR SUCH SERIES 2019A BONDS; (III) MAKING CERTAIN FINDINGS AS TO THE REASONS REQUIRING THE NEGOTIATED SALE OF THE SERIES 2019A BONDS; (IV) ACKNOWLEDGING REQUIREMENT TO OBTAIN DISCLOSURE STATEMENT FROM THE UNDERWRITERS AND APPROVING THE FORM DISCLOSURE STATEMENT; (V) AUTHORIZING AND APPROVING THE AWARD OF SALE OF THE SERIES 2019A BONDS TO ONE OR MORE UNDERWRITERS OF BONDS OF FMPSA AND THE EXECUTION OF A BOND PURCHASE CONTRACT; (VI) APPROVING THE PREPARATION, EXECUTION, DELIVERY AND USE OF A PRELIMINARY AND A FINAL OFFICIAL STATEMENT, THE DEEMING "FINAL" OF THE PRELIMINARY OFFICIAL STATEMENT AND THE EXECUTION, DELIVERY AND PERFORMANCE OF A CONTINUING DISCLOSURE AGREEMENT AND, IF NECESSARY, AN ESCROW DEPOSIT AGREEMENT; (VII) DESIGNATING AUTHORIZED OFFICERS AND APPROVING AND RATIFYING PREVIOUS ACTIONS; (VIII) PROVIDING FOR THE TAKING OF CERTAIN OTHER ACTIONS; (IX) PROVIDING FOR SEVERABILITY; AND (X) PROVIDING FOR AN EFFECTIVE DATE.

Motion carried 10 – 0.

b. Approval of Resolution 2019-EC7 – Approval of Series 2019B Bonds and Related Documents

MOTION: Larry Mattern, Kissimmee, moved approval of Resolution 2019-EC7. Allen Putnam, Jacksonville Beach, seconded the motion.

Resolution 2019-EC7 was read by title:

A RESOLUTION OF THE EXECUTIVE COMMITTEE OF FLORIDA MUNICIPAL POWER AGENCY (I) RECITING STATEMENT OF AUTHORITY; (II) APPROVING AND ADOPTING THE SERIES 2019B SUPPLEMENTAL ALL-REQUIREMENTS POWER SUPPLY PROJECT REVENUE BOND RESOLUTION (FIXED RATE BONDS) WHICH AUTHORIZES THE ISSUANCE OF FLORIDA MUNICIPAL POWER AGENCY ALL-REQUIREMENTS POWER SUPPLY PROJECT REFUNDING REVENUE BONDS, SERIES 2019B (FEDERALLY TAXABLE) TO BE SOLD ON OR BEFORE MAY 31, 2020 IN A PRINCIPAL AMOUNT SUFFICIENT TO PRODUCE NOT TO EXCEED EIGHT MILLION DOLLARS (\$8,000,000) IN NET PROCEEDS FOR THE PURPOSE OF REFUNDING ALL OR A PORTION OF FMPA'S ALL-REQUIREMENTS POWER SUPPLY PROJECT REVENUE BONDS, SERIES 2013A AND TO PAY ANY COSTS OF ISSUANCE RELATED TO THE SERIES 2019B BONDS AND DELEGATES TO AUTHORIZED SIGNATORIES AND AUTHORIZED OFFICERS CERTAIN MATTERS RELATING TO THE ISSUANCE OF SUCH SERIES 2019B BONDS INCLUDING (1) WHETHER AND WHEN TO ISSUE SUCH SERIES 2019B BONDS, (2) DETERMINATION OF THE PRINCIPAL AMOUNTS, MATURITIES, INTEREST RATES, SINKING FUND INSTALLMENTS AND OTHER REDEMPTION PROVISIONS OF THE SERIES 2019B BONDS, (3) APPROVAL OF THE SALE AND PURCHASE PRICE FOR THE SERIES 2019B BONDS, (4) DETERMINATION OF AMOUNT, IF ANY, OF THE DEBT SERVICE RESERVE REQUIREMENT FOR THE SERIES 2019B BONDS, (5) DETERMINATION OF THE AGGREGATE PRINCIPAL AMOUNT OF SERIES 2019B BONDS TO BE ISSUED, (6) DETERMINATION OF PRESENT VALUE SAVINGS FROM ISSUING THE SERIES 2019B BONDS AND FROM ISSUING FMPA'S ALL-REQUIREMENTS POWER SUPPLY PROJECT REFUNDING REVENUE BONDS, SERIES 2019A AND (7) DETERMINATION OF THE ADVISABILITY OF SECURING BOND INSURANCE FOR SUCH SERIES 2019B BONDS; (III) MAKING CERTAIN FINDINGS AS TO THE REASONS REQUIRING THE NEGOTIATED SALE OF THE SERIES 2019B BONDS; (IV) ACKNOWLEDGING REQUIREMENT TO OBTAIN DISCLOSURE STATEMENT FROM THE UNDERWRITERS AND APPROVING THE FORM DISCLOSURE STATEMENT; (V) AUTHORIZING AND APPROVING THE AWARD AND SALE OF THE SERIES 2019B BONDS TO ONE OR MORE UNDERWRITERS OF BONDS OF FMPA AND THE EXECUTION OF A BOND PURCHASE CONTRACT; (VI) APPROVING THE PREPARATION, EXECUTION, DELIVERY AND USE OF A PRELIMINARY AND A FINAL OFFICIAL STATEMENT, THE DEEMING "FINAL" OF THE PRELIMINARY OFFICIAL STATEMENT AND THE EXECUTION, DELIVERY AND

PERFORMANCE OF A CONTINUING DISCLOSURE AGREEMENT AND, IF NECESSARY, AN ESCROW DEPOSIT AGREEMENT; (VII) DESIGNATING AUTHORIZED OFFICERS AND APPROVING AND RATIFYING PREVIOUS ACTIONS; (VIII) PROVIDING FOR THE TAKING OF CERTAIN OTHER ACTIONS; (IX) PROVIDING FOR SEVERABILITY; AND (X) PROVIDING FOR AN EFFECTIVE DATE.

Motion carried 10 – 0.

c. Approval of Starke FGT Firm Gas Transportation Contract Assignment to FMPA

Richard Montgomery presented the Starke FGT Firm Gas Transportation Contract Assignment to FMPA.

MOTION: Paul Jakubczak, Fort Pierce, moved approval for accepting the assignment of the Starke gas transportation capacity and authorize the General Manager and CEO to execute the FGT Gas Transportation Contract No. 124146. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 10 – 0.

d. Approval of Municipal Finance Disclosure Procedures Changes

Linda S. Howard presented the item on the Municipal Finance Disclosure Procedures Changes.

MOTION: Allen Putnam, Jacksonville Beach, moved approval of adopting the new reporting events into the Municipal Finance Disclosure Procedures. Mike Poucher, Ocala, seconded the motion. Motion carried 10 – 0.

e. Approval of Rate Schedule B-1 for FY 2020

Jason Wolfe presented Rate Schedule B-1 for FY 2020.

MOTION: Paul Jakubczak, Fort Pierce, moved approval of Rate Schedule B-1, effective October 1, 2019. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 10 – 0.

ITEM 9 – INFORMATION ITEMS:

Item 9a – Solar Phase II Project Recommendation

Susan Schumann presented the information on the Solar Project Phase II at the Board of Directors meeting. There was no further discussion.

Item 9b – Update on Bond Counsel RFP

Linda S. Howard presented the information on the Bond Counsel RFP to the Board of Directors. There was no further discussion.

Item 9c – Historical Gas Purchase Patterns

Ken Rutter presented information on FMPA's historical gas purchase patterns as requested by a Member.

Item 9d – Contract Rate of Delivery (CROD) Amount for Green Cove Springs

Jason Wolfe presented information for Green Cove Springs' Contract Rate of Delivery effective January 1, 2020.

Item 9e – Regulatory Compliance Update

Michelle Johnson presented the quarterly regulatory compliance update to the Board of Directors. There was no further discussion.

ITEM 10 – MEMBER COMMENTS

Bob Page, Green Cove Springs, said the FMPA staff has done a great job of managing costs and said it was a job well done.

Jody Finklea informed the Executive Committee about a workshop he gave at the Kissimmee Utility Authority Board meeting on Roberts Rules of Order and discovered the reading of a Resolution by title could be suspended by a motion to suspend.

ITEM 11 – Adjournment

There being no further business, the meeting was adjourned at 12:08 p.m.

Howard McKinnon
Chairperson, Executive Committee

Sue Utley
Assistant Secretary

Approved: _____

Seal

PUBLIC NOTICE SENT TO CLERKSNOVEMBER 5 & 7, 2019
AGENDA PACKAGES SENT TO MEMBERS NOVEMBER 11, 2019

**MINUTES
EXECUTIVE COMMITTEE
ALL-REQUIREMENTS POWER SUPPLY PROJECT
TELEPHONIC RATE WORKSHOP
WEDNESDAY, OCTOBER 9, 2019
FLORIDA MUNICIPAL POWER AGENCY
8553 COMMODITY CIRCLE
ORLANDO, FLORIDA 32819**

COMMITTEE MEMBERS PRESENT VIA TELEPHONE

Christina Simmons for Jody Young, Bushnell
Lynne Mila, Clewiston
Paul Jakubczak, Fort Pierce
Allen Putnam, Jacksonville Beach
Larry Mattern, Kissimmee
Brad Chase, Leesburg
Bill Conrad*, Newberry
Mike Poucher, Ocala
Bob Milner, Starke

*arrived after roll call.

COMMITTEE MEMBERS ABSENT

Fred Hilliard, Fort Meade
Bob Page, Green Cove Springs
Howard McKinnon, Havana
Lynne Tejeda, Key West

OTHERS PRESENT

Kevin Crawford, Kissimmee

STAFF PRESENT

Jacob Williams, General Manager and CEO
Sue Utley, Executive Assistant to General Manager and CEO / Asst.
Secy. to the Board
Jason Wolfe, Financial Planning, Rates and Budget Director

Item 1 – Call to Order

FMPA Secretary Allen Putnam called the Executive Committee All-Requirements Telephonic Rate Workshop to order at 2:02 p.m. on Tuesday, November 12, 2019, via telephone. A speaker telephone for public attendance and participation was located in the Executive Conference Room at Florida Municipal Power Agency, 8553 Commodity Circle, Orlando, Florida.

Item 2 – Information Items

Jason Wolfe gave a verbal update on the natural gas markets; provided an overview of the October loads and reviewed the October ARP rate calculation.

Item 3 – Discussion of Cancelling Monthly Telephonic ARP Rate Workshops

Jason Wolfe presented information for consideration by the Executive Committee to cancel the monthly ARP Rate Workshop Telephonic meetings. The majority of Members on the call said they get value from the monthly ARP Rate Workshop teleconferences and wanted to continue to have them.

Item 4 – Member Comments

None

There being no further business, the meeting was adjourned at 2:21 p.m.

Approved

AP/su

AGENDA ITEM 7 – CONSENT AGENDA

**b) Approval of Treasury Reports as of
October 31, 2019**

**Executive Committee
December 12, 2019**

AGENDA PACKAGE MEMORANDUM

TO: FMPA Executive Committee
FROM: Gloria Reyes
DATE: December 3, 2019
ITEM: EC 7(b) – Approval of the All-Requirements Project Treasury Reports as of October 31, 2019

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

Debt Discussion

The All-Requirements Project has fixed, variable, and synthetically fixed rate debt. The variable rate bonds and lines of credit portion is 1.46%. The fixed and synthetic fixed rate percentages of total debt are 88.57% and 9.96%, respectively. The estimated debt interest funding for fiscal year 2020 as of October 31, 2019 is \$38,747,561.28. The total amount of debt outstanding is \$793,968,000.¹

Hedging Discussion

The Project has 4 interest rate swap contracts. As of October 31, 2019, the cumulative market value of the interest rate swaps in the All-Requirements Project was (\$15,481,563).

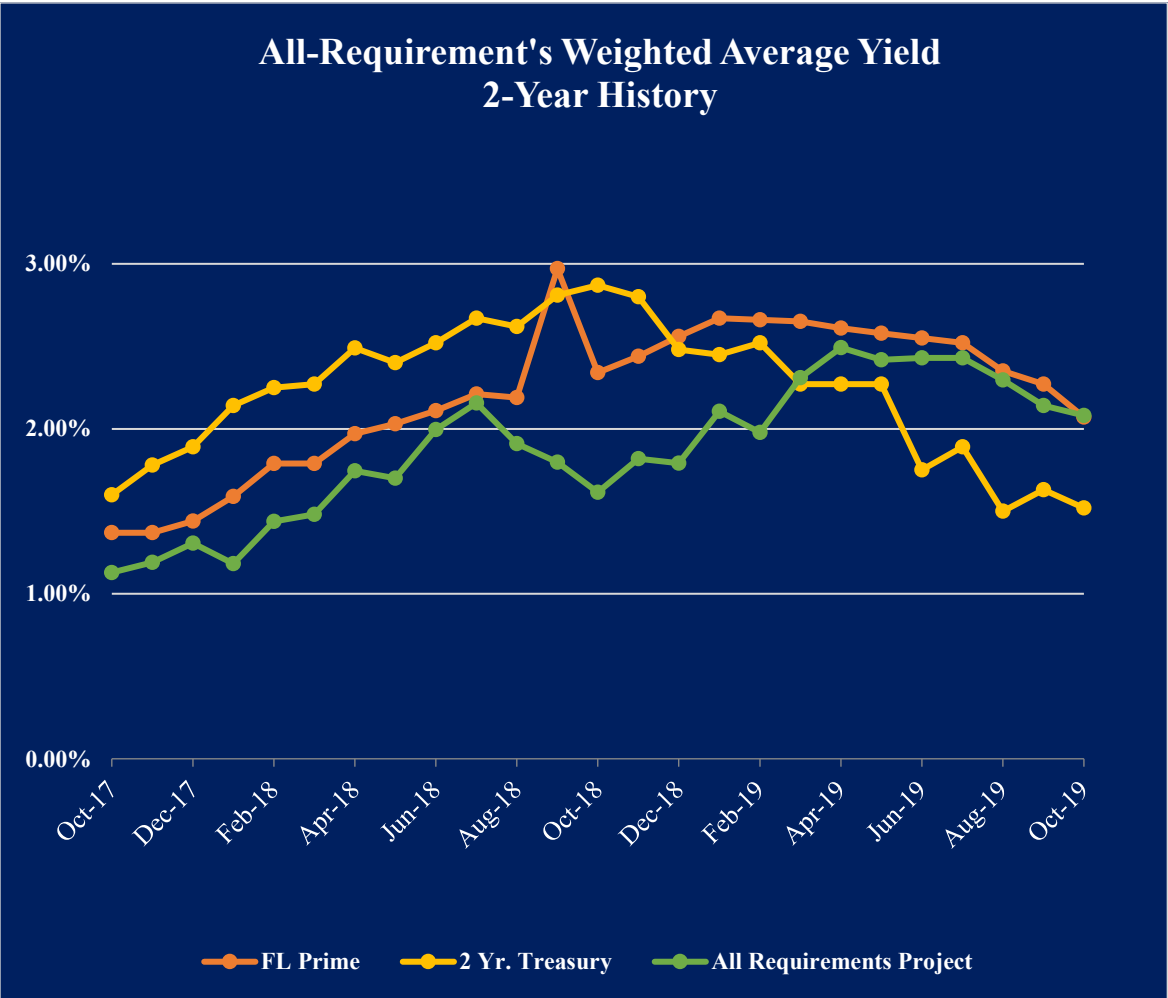
The Swap Valuation Report for October is posted in the "Member Portal" section of FMPA's website.

Investment Discussion

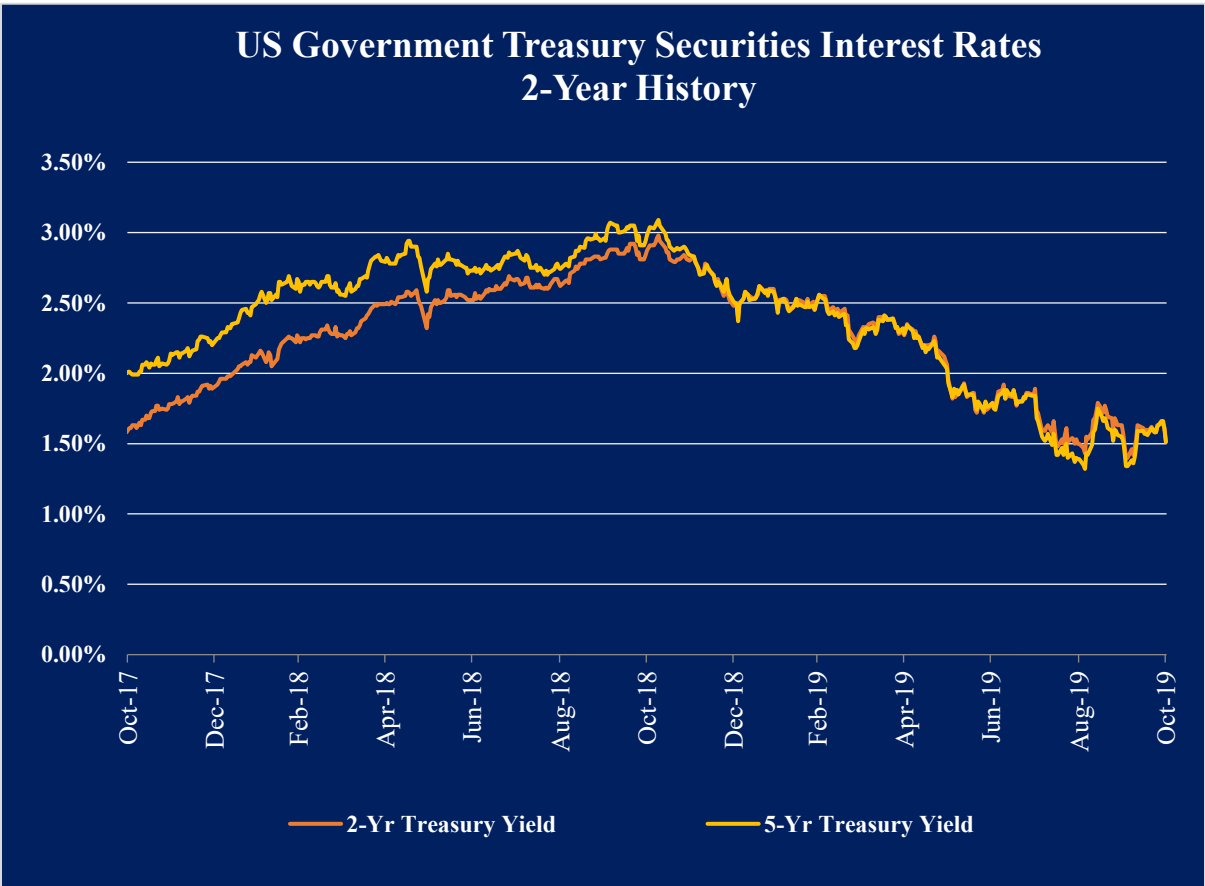
The investments in the Project are comprised of debt from the government-sponsored enterprises such as the Federal Farm Credit Bank, Federal Home Loan Bank, Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal National Mortgage Association (Fannie Mae), as well as investments in U.S. Treasuries,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

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

As of October 31, 2019, the All-Requirements Project investment portfolio earned a weighted average yield of 2.05%, reflecting the All-Requirements Project need for liquidity given its 60-day cash position. The benchmarks (SBA’s Florida Prime Fund and the 2-year US Treasury Note) and the Project’s yields are graphed below:



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 Investment Report for October is posted in the “Member Portal” section of FMPPA’s website.

Recommended
Motion

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

AGENDA PACKAGE MEMORANDUM

TO: FMPA Executive Committee
FROM: Gloria Reyes
DATE: December 3, 2019
ITEM: EC 7(b) – Approval of the All-Requirements Project Treasury Reports as of September 30, 2019

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

Debt Discussion

The All-Requirements Project has fixed, variable, and synthetically fixed rate debt. The variable rate bonds and lines of credit portion is 1.53%. The fixed and synthetic fixed rate percentages of total debt are 89.28% and 9.19%, respectively. The estimated debt interest funding for fiscal year 2019 as of September 30, 2019 is \$40,723,005. The total amount of debt outstanding is \$860,323,000.¹

Hedging Discussion

The Project has 4 interest rate swap contracts. As of September 30, 2019, the cumulative market value of the interest rate swaps in the All-Requirements Project was (\$15,970,872).

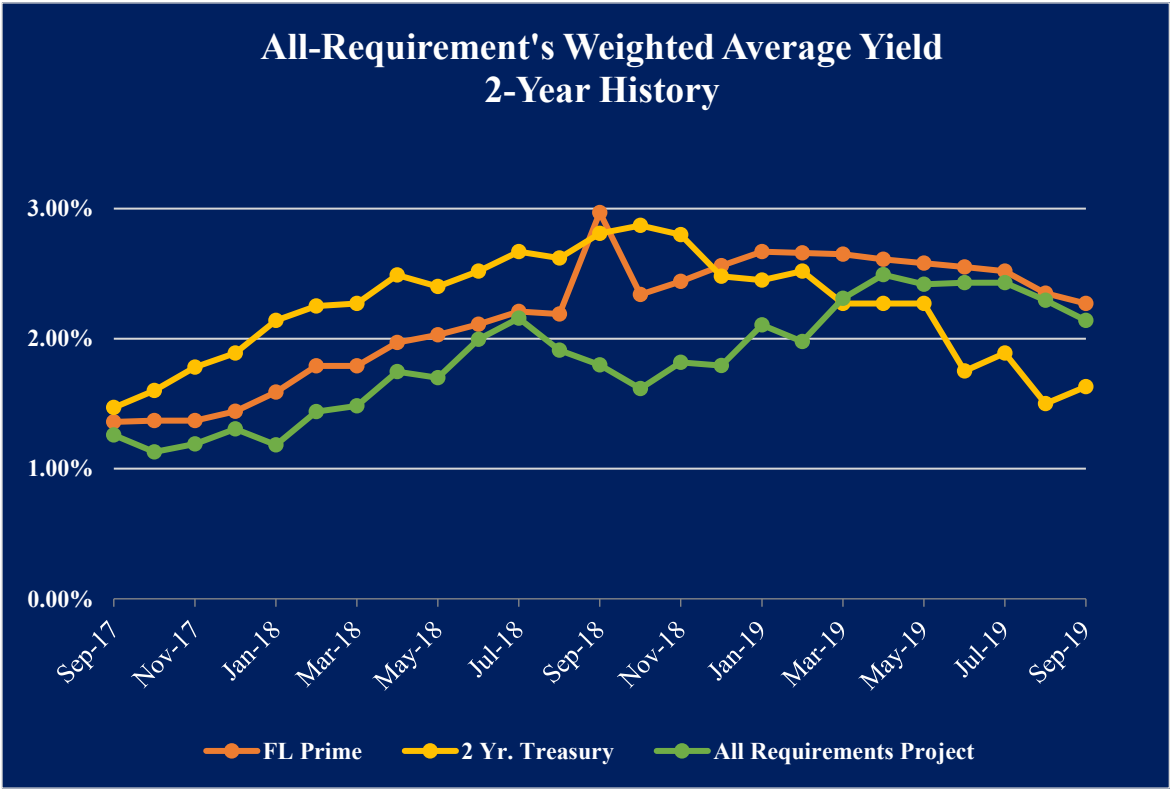
The Swap Valuation Report for September is posted in the "Member Portal" section of FMPA's website.

Investment Discussion

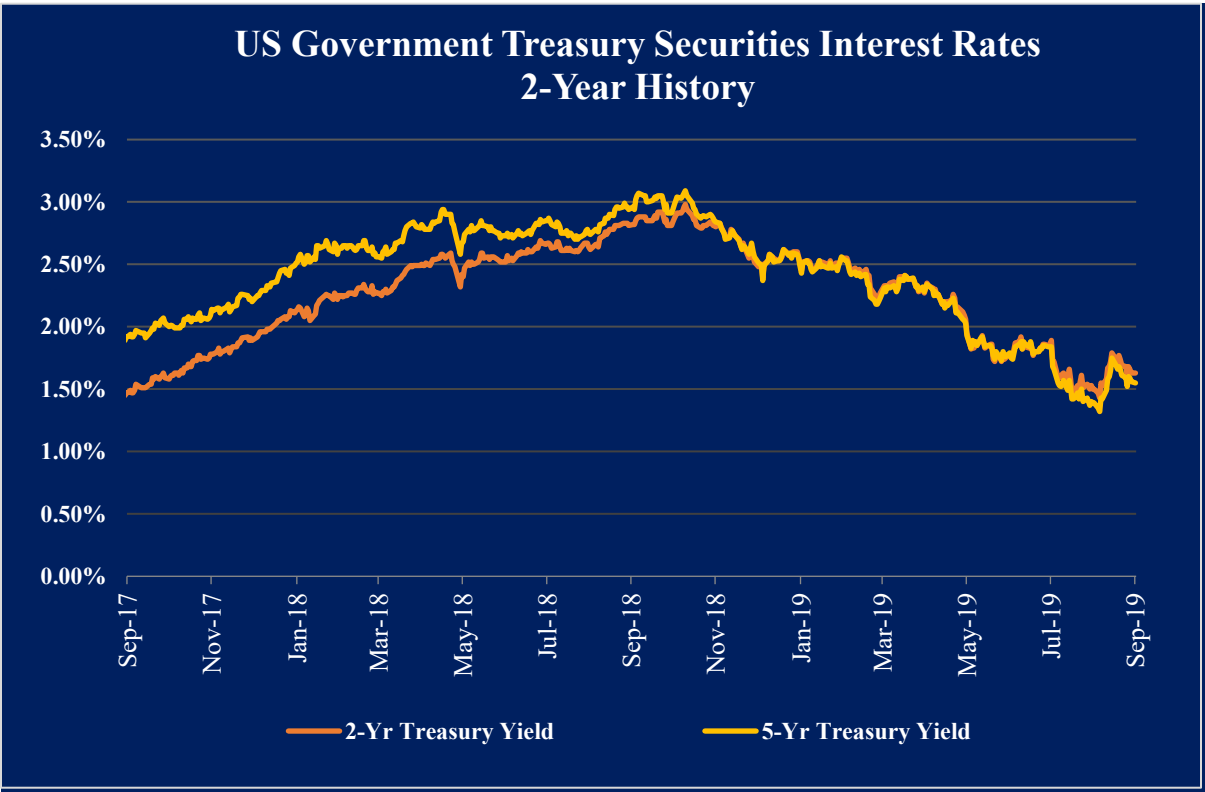
The investments in the Project are comprised of debt from the government-sponsored enterprises such as the Federal Farm Credit Bank, Federal Home Loan Bank, Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal National Mortgage Association (Fannie Mae), as well as investments in U.S. Treasuries,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

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

As of September 30, 2019, the All-Requirements Project investment portfolio earned a weighted average yield of 2.14%, reflecting the All-Requirements Project need for liquidity given its 60-day cash position. The benchmarks (SBA’s Florida Prime Fund and the 2-year US Treasury Note) and the Project’s yields are graphed below:



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

Recommended
Motion

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

AGENDA ITEM 7 – CONSENT AGENDA

- c) Approval of the Agency and All-Requirements Project Financials as of October 31, 2019**

**Executive Committee
December 12, 2019**



Linda S. Howard, CPA, CTP
Chief Financial Officer

MEMORANDUM

TO: FMPA Executive Committee
FROM: Linda Howard
DATE: December 3, 2019
SUBJECT: EC 7c – Approval of the Agency and All-Requirements Project Financials for the period ended October 31, 2019

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

Recommended Motion: Move approval of the Agency and All-Requirements Project Financial reports for the month of October 31, 2019.

LH/GF

AGENDA ITEM 8 – ACTION ITEMS

a) Approval of FY 2020 Management Goals

**Executive Committee
December 12, 2019**

AGENDA PACKAGE MEMORANDUM

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

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** FMPA – 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 FMPA – 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 Executive Committee Meeting
Schedule for Calendar Year 2020**

**Executive Committee
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 (2nd 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 (2nd Thursday due to Holidays)

Location	<hr/> The meetings will be held in the Frederick M. Bryant Board Room, 8553 Commodity Circle, Orlando, Florida with the exceptions noted above. <hr/>
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Recommended Motion	<hr/> Move approval of the Calendar Year 2020 Board of Directors and Executive Committee meeting dates as presented. <hr/>
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JAW/su

AGENDA ITEM 8 – ACTION ITEMS

c) Approval of ARP Solar II Participation

**Executive Committee
December 12, 2019**



BOD 8c – EC 8c

Solar Phase II Project Recommendation

December 12, 2019

Project Approval Information

FMSP Phase II Details

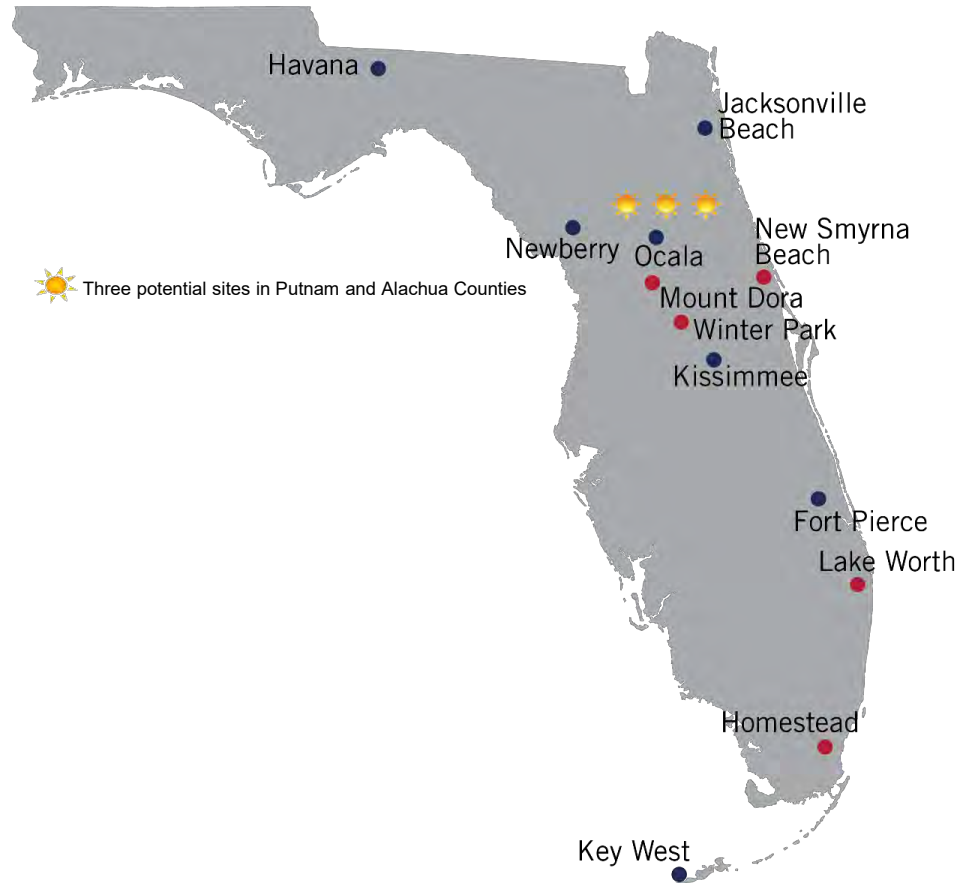
- FMSP Phase II Participants and Project Structure
- Approvals Required
 - Members
 - FMPA Board and EC
- FMPA Solar II Project – Board Approvals
- ARP Solar II Participants – EC Approvals
- Recommended Motions



FMSP Phase II Participants and Project Structure

Final Participation from 12 Member Cities

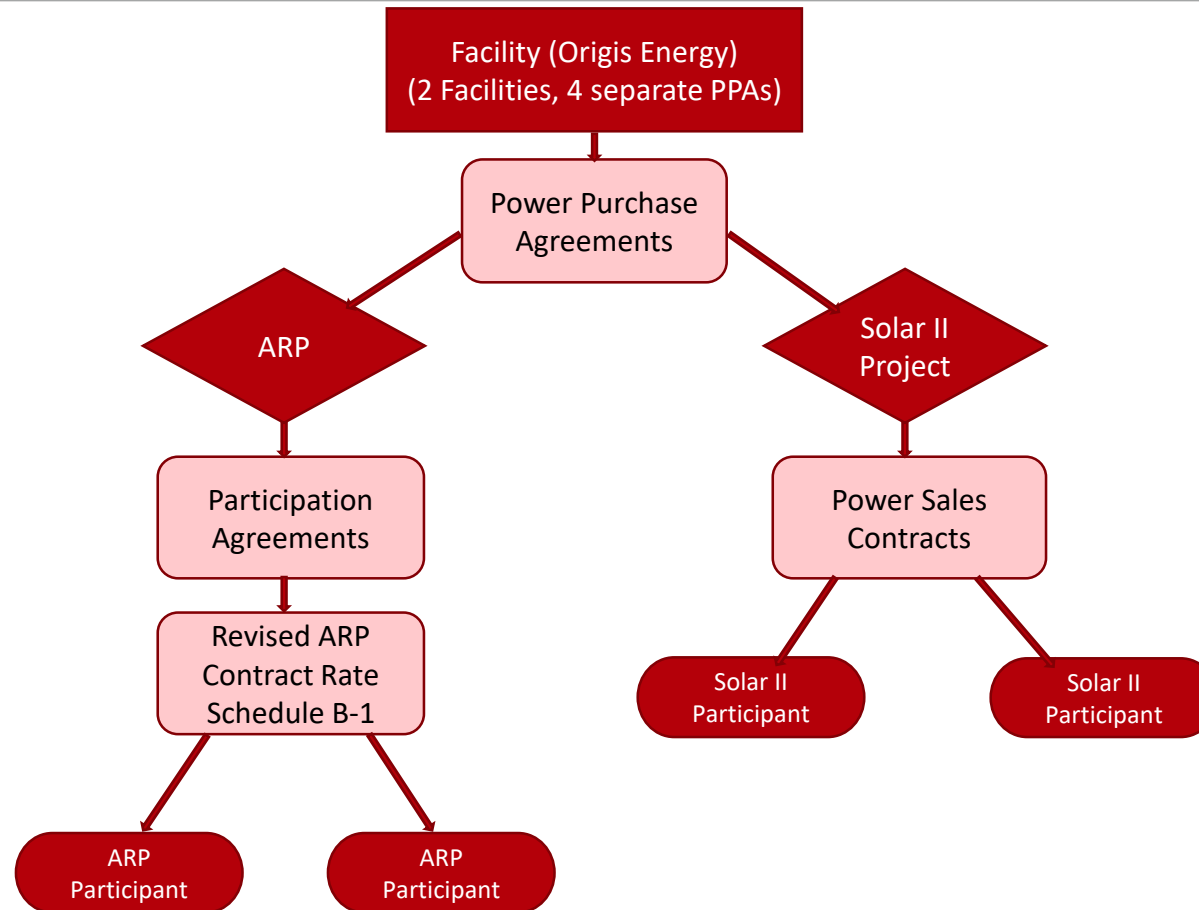
148.25 MW Total – Two 74.9 MW Facilities



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
Total	148.25 MW
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

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, FMPA 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

- 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

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.

DRAFT

All-Requirements Project Solar Energy Participation Agreement

This All-Requirements Project Solar Energy Participation Agreement is entered into as of this ____ day of ____, 2019, (the “Effective Date”) by and between [Member Name] (“ARP Solar Participant”), and Florida Municipal Power Agency All-Requirements Power Supply Project (“FMPPA”) (FMPPA and ARP Solar Participant are hereinafter referred to individually as a “Party” or collectively as the “Parties”).

WHEREAS, ARP Solar Participant is a member of the Florida Municipal Power Agency (“FMPPA”) All-Requirements Power Supply Project (“ARP Project”); and

WHEREAS, as an ARP Participant, ARP Solar Participant receives all of its power supply needs from the ARP Project; and

WHEREAS, ARP Solar Participant desires that FMPPA, as its wholesale power supply provider, include within its energy resource portfolio renewable energy resources; and

WHEREAS, FMPPA has entered into Power Purchase Agreements between FMPPA and Origen Energy (the “Seller”), (the “Solar PPA”) for approximately xx MWs of the output from two photovoltaic electric generating facilities having nameplate capacities of 74.9 MW alternating current (“ac”) each, which will be designed, financed, constructed and operated by Seller in Alachua and Putnam Counties, Florida (“Solar Facility”);

WHEREAS, FMPPA has revised Rate Schedule B-1 of the All-Requirement Power Supply Contract to permit ARP Participants to voluntarily commit to financial responsibility for a percentage share of the costs incurred by FMPPA pursuant to the Solar PPA (the “Solar Rate Commitment”); and

WHEREAS, ARP Solar Participant hereby determines that it is in the best interests of the health, safety, and welfare of the citizens and residents of ARP Solar Participant to commit financially, subject to the conditions set forth in this Agreement, to the Solar Rate Commitment set forth in the revised Rate Schedule B-1.

NOW THEREFORE, for and in consideration of the mutual covenants by them to be kept and performed, all as hereinafter set forth, the Parties hereby mutually agree as follows:

SECTION 1. Term & Termination

(a) Term. This Agreement shall commence on the Effective Date, and shall thereafter continue in effect until terminated in accordance with the terms of this Agreement (the “Term”).

(b) Termination. Unless terminated in accordance with SECTION 1(c) or SECTION 1(d) of this Agreement, this Agreement shall automatically terminate upon the expiration or early termination of the Solar PPA, except that any accrued liabilities or obligations incurred by FMPPA under the Solar PPA shall survive termination of this Agreement and shall be billable to ARP Solar Participants.

(c) Early Termination; Step-Up. ARP Solar Participant may only terminate its Solar Rate Commitment if one of the following four conditions are met, subject to approval of the Executive Committee:

(1) Another ARP Solar Participant assumes the ARP Solar Participant's Solar Rate Commitment;

(2) An All-Requirements Project Participant assumes ARP Solar Participant's Solar Rate Commitment;

(3) An FMPA Member that is not an All-Requirements Project Participant assumes the financial entitlement to ARP Solar Participant's percentage share of the PPA and commits that it will take on the associated financial obligation in a form suitable to the Executive Committee; or

(4) ARP Solar Participant pays all stranded cost obligations, as determined by FMPA, to hold the other, non-terminating, ARP Solar Participants harmless from the costs associated with ARP Solar Participant's termination. For purposes of this SECTION 1(c)(4), stranded cost obligations are defined as an estimate of the solar energy costs (defined in 10.1 of Rate Schedule B-1) that the ARP will pay for the terminating ARP Solar Participant's Solar Rate Commitment during each remaining month of the remaining term of the Solar PPA based on (i) a forecast of expected solar production and (ii) a reasonable assessment of unforeseen costs, and are to be paid at the time of exit. 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 0.3% 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 term.

(d) Solar PPA Early Termination, Term Extension and ARP Solar Committee. The Solar PPA includes several provisions that allow FMPA 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. In order to make Discretionary Term Decisions, ARP Solar Participant and all other ARP Solar Participants will each designate a representative to serve on the ARP Solar Committee. The Committee will meet in advance of any Discretionary Term Decisions provided for under the Solar PPA, and as FMPA or any ARP Solar Participant may request, with 30 day advance Notice (or less if the matter at hand so requires). The ARP Solar Committee shall meet not less than 180 days prior to the expiration of the Initial Term, or a Renewal Term, if any, to decide whether to extend the Term of the Solar PPA. In making any Discretionary Term Decision, the ARP Solar Committee will vote on the matter. If the ARP Solar Committee unanimously decides to exercise a Discretionary Term Decision, then such unanimous consent shall be presented to the FMPA Executive Committee as a recommendation for action on the matter. If one or more ARP Solar Participants do not wish to exercise a Discretionary Term Decision, then the other ARP Solar Participants may elect to assume the Solar Rate Commitment of those ARP Solar Participant(s) that do not wish to exercise the Discretionary Term Decision. In such event, the non-exercising ARP Solar Participant(s)' ARP Solar Participation Agreement shall be terminated, and the ARP Solar Participation Agreement of the assuming Project Participant(s)', and Rate Schedule B-1, shall be amended to reflect the revised Solar Rate Commitments. In the event that the ARP Solar Participant(s) that wish to exercise the Discretionary Term Decision cannot agree to assume 100% of the terminating Project Participant(s)' Solar Rate Commitment, then the Discretionary Term Decision shall not be exercised.

(e) No amendment shall be made to SECTION 1(c) or SECTION 1(d) of this Agreement without a contemporaneous amendment to the step-up provision in Rate Schedule B-1 of the ARP Contract.

SECTION 2. Solar Rate Commitment

(a) Solar Rate Commitment. ARP Solar Participant agrees to be bound by all terms and conditions of section 10 of Rate Schedule B-1, a copy of the most recent version of which as of the Effective Date is attached hereto as Appendix A, or its successor provision. ARP Solar Participant hereby commits during the Term of this Agreement to be financially responsible for its Solar Rate Commitment, which percentage share is set forth in Appendix A of this Agreement.

(b) Payment. On each ARP Solar Participant's monthly ARP bill, FMPA shall add an amount, as calculated pursuant to section 10 of Rate Schedule B-1 of the ARP Contract, or its successor provision, which represents FMPA's Solar Rate Commitment share. Such amount shall be a Revenue Requirement, as that term is defined in the ARP Contract, of the All-Requirements Power Supply Project.

SECTION 3. Solar Capacity Value

(a) ARP Solar Participant acknowledges that, as of the Effective Date, FMPA has excess capacity, and, as long as FMPA continues to have excess capacity, the Solar Facility will be given no capacity value and will have no impact on ARP demand billing. If, in the future, FMPA no longer has excess capacity and the Executive Committee determines that: (1) the Solar Facility can provide some degree of capacity to the ARP Project; and (2) that capacity provided by the Solar Facility has value to the ARP Project, then the ARP Solar Participant may gain financial rights to that capacity value through a revised rate schedule as determined by the FMPA Executive Committee. If such financial rights are granted through a revision to the ARP Rate Schedule then: (i) the amount of solar capacity will be determined through statistical analysis of the Solar Facility Electric Energy output against the FMPA coincident peak on a monthly or seasonal basis and may vary month-to-month, and (ii) the financial value of solar capacity will be treated in an equivalent manner as Load Management discussed in Section 8(g) of the ARP Contract.

SECTION 4. Miscellaneous

(a) Definitions. Capitalized terms used in this agreement that are not otherwise defined in this Agreement shall have the meaning set forth in the Solar PPA.

IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement 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.

[Signature page follows]

FLORIDA MUNICIPAL POWER AGENCY

(SEAL)

By: _____
General Manager & CEO

Attest:

Date: _____

Secretary or Assistant Secretary

[insert Member utility]

(SEAL)

By: _____
Title

Attest:

Date: _____

Secretary

APPENDIX A

**FLORIDA MUNICIPAL POWER AGENCY
POWER SUPPLY RATE SCHEDULE
FOR
ALL-REQUIREMENTS PROJECT PARTICIPANTS**

insert revised Rate Schedule B-1

THE RIDERS TO THE ARP RATE SCHEDULED ARE NOT ATTACHED.

DRAFT

**FLORIDA MUNICIPAL POWER AGENCY
POWER SUPPLY RATE SCHEDULE
FOR
ALL-REQUIREMENTS PROJECT PARTICIPANTS**

1. **Applicability.** Electric service for All-Requirements Services and Back-up and Support Services as defined in the All-Requirements Power Supply Project Contract for their own use and for resale.
2. **Availability.** This Schedule B-1 is available to the Project Participants purchasing electric capacity and energy from FMPA under the terms of the All-Requirements Power Supply Project Contracts as All-Requirements Services and, if applicable, as Back-Up and Support Services.
3. **Character of Service.** Electricity furnished under this Schedule B-1 at one or more Points of Delivery as set forth in Schedule A shall be sixty-hertz, three phase, alternating current.
4. **Billing Rate for All-Requirements Services.**
 - (a) For electricity furnished hereunder as All-Requirements Services, the charges for each month shall be determined as follows:

Customer Charge	For each Project Participant, previously referred to as the "East Group" (Clewiston, Fort Pierce, Green Cove Springs, Jacksonville Beach, Key West, Lake Worth, Starke and Vero Beach) the charge is \$1,345.00 per Point of Delivery. For each Project Participant previously referred to as the "West Group" (Bushnell, Leesburg, Ocala, Ft. Meade, Havana, Kissimmee and Newberry) the charge is \$740.00 per Point of Delivery. Notwithstanding the above, the charge for a Project Participant that has both (1) established its Contract Rate of Delivery and (2) does not receive Network Integration Transmission Service under an ARP agreement is \$0.00.
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Demand Capacity Charge	\$ 19.56 per kilowatt ("kW") of capacity billing demand
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Demand Transmission	\$ 2.82 per kilowatt ("kW") of
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transmission billing demand

Demand Transmission Kissimmee Utility Authority	\$ 0.82 per kilowatt ("kW") of transmission billing demand
Energy Charge	\$ 27.05 per megawatt-hour ("MWh") for all energy supplied as All-Requirements Services
Solar Energy Surcharge	A \$ per megawatt-hour ("MWh") rate, as calculated monthly in accordance with 10 below, for all energy pursuant to the <u>applicable</u> solar Power Purchase Agreement(s) (<u>solar "PPA"</u>) between the ARP and NextEra Florida Renewables, or its successors or assigns ("the Solar Seller") , as specifically agreed to by individual Project Participants pursuant to a Solar Participant Agreements between the ARP and individual Project Participants (hereinafter "Solar Participants").
Reactive Demand Charge	\$0.00 per kilo-var ("kVAR") of excess billing reactive demand

- (b) Delivery Voltage Adjustment for All-Requirements Services. The Billing Rates under paragraph (a) are based on delivery of electric capacity and energy to the Project Participant at 115,000 volts or higher. Where capacity and energy is delivered at voltages less than 115,000 volts, the Billing Rates under paragraph (a) shall be increased as follows:

<u>Delivery Voltage</u>	<u>Demand Charge Adjustment</u>	<u>Energy Charge Adjustment</u>
69,000 volts	\$0.00/kW	\$0.00/kWh
12,000/25,000 volts	<u>.722/kW</u>	\$0.0000
Under 12,000 volts	<u>.722/kW</u>	\$0.0000

5. **Billing Metering For All-Requirements Services.** The metered demand in kW in each month shall be the individual Project Participant's total 60 minute integrated demand at the time of the highest 60 minute integrated demand for the total of all ARP system Project Participants (or corrected to a 60 minute basis if demand registers other than 60 minute demand registers are installed) measured during the month.

The metered reactive demand in kVAR in each month shall be the reactive demand, which occurred during the same 60-minute demand interval in which the metered kilowatt demand occurred.

Demand and energy meter readings shall be adjusted, if appropriate, as provided in Schedule A of the All-Requirements Power Supply Project Contract.

6. **Billing Demand-Capacity for All-Requirements Services.** The billing demand capacity in any period shall be the metered demand for the period as determined under paragraph 5, giving effect to all adjustments, less the Project Participant's, Excluded Power Supply Resources capacity, if any.
7. **Billing Demand-Transmission for All-Requirements Services.** The billing demand capacity in any period shall be the metered demand for the period as determined under paragraph 5, giving effect to all adjustments, but including the Project Participant's, Excluded Power Supply Resources capacity, if any.
8. **Billing Reactive Demand for All-Requirements Services.**
The billing reactive demand for any month shall be the amount of reactive demand in kVAR by which the metered reactive demand exceeds one-half of the metered kilowatt demands, or such other amount as shall be determined from time to time by FMPA.
9. **Energy Cost Adjustment for All-Requirements Services.**
The monthly bill computed hereunder shall adjust the base energy rate by an amount to the nearest one-thousand of a cent, determined by use of the formula below:

$$ER = \$0.02705/\text{kWh} \pm ETCA$$

Where:

ER = Energy Rate to be applied each kWh of billed energy.

ETCA = Energy Total Cost Adjustment to be determined according to the following procedure:

1. The number days of available cash will be determined each month and rounded to the nearest five days.
2. A confidence percentage based on following table will be selected to determine the amount of the total cost adjustment. The Confidence Percentage will then be applied to the output of the probabilistic model discussed below.

Days of Available Cash	Associated Confidence Percentage
30 day or less	95%
35 days	88%
40 days	80%
45 days	73%
50 days	65%
55 days	58%
60 days	50%
65 days	43%
70 days	35%
75 days	28%
80 days	20%
85 days	13%
90 days and over	5%

3. A probabilistic model will be used to estimate next four months of projected energy total cost and projected total kWh sales for providing the All-Requirements Project power supply. For purposes of this adjustment, FMPA's owned and controlled generating units including purchased power or interchange power purchased by FMPA from other suppliers less the energy cost of sales to other utilities, will be used in the calculations.

4. A probabilistic model will also be used to allocate the most current ARP Participant over-recovery and under-recovery balance as listed ARP's Comparative Statement of Net Asset report. This balance will be applied over the next four months and tied to the appropriate percentage level listed in the table above.

10. Solar Energy Surcharge.

The Solar Energy Surcharge shall equal the difference between the adjusted energy rate calculated in 9 above (ER) and the actual monthly cost per MWh of the solar energy (note the surcharge could be negative). The following provisions shall apply to the calculation of the surcharge:

1. Solar energy costs shall equal the sum of the applicable solar PPA charges, FMPA A&G charges allocated to the Solar-solar PPA(s), the return to the Agency Development Fund of the costs advanced to enter into and implement the solar PPA(s), and other costs or charges that the ARP may incur related to utilizing solar energy as part of its resource portfolio, e.g. increased regulation charges assessed by the ARP's Balancing Authority.

2. The following All-Requirements Project Participants have responsibility for solar energy (MWh) in each hour that solar energy is produced under the applicable solar PPA(s):

Phase I solar PPAs between the ARP and NextEra Florida Renewables, or its successors or assigns:

The City of Jacksonville Beach	17.241%
Fort Pierce Utilities Authority	5.173%
Utility Board, City of Key West	8.621%
Kissimmee Utility Authority	51.724%
The City of Ocala	17.241%

Phase II solar PPAs between the ARP and Origis Energy, or its successors or assigns:

<u>The City of Jacksonville Beach</u>	<u>xx%</u>
<u>Fort Pierce Utilities Authority</u>	<u>xx%</u>
<u>The Town of Havana</u>	<u>xx%</u>
<u>Utility Board, City of Key West</u>	<u>xx%</u>
<u>Kissimmee Utility Authority</u>	<u>xx%</u>
<u>The City of Newberry</u>	<u>xx%</u>
<u>The City of Ocala</u>	<u>xx%</u>

3. In the event that one or more of the Solar Participants defaults by not paying the Solar Energy Surcharge, the defaulting Project Participant(s) shall remain liable for all payments to be made on its part pursuant to this Rate Schedule B-1. In such event, each non-defaulting Solar Participant's All-Requirements bill shall be increased, on a pro rata basis based on its respective Solar Energy

Surcharge percentage of the applicable solar PPA(s), the amount in default unless and until FMPA shall recover from the defaulting Solar Participant(s) all amounts owed, upon which FMPA shall reimburse the non-defaulting Solar Participants. If all Solar Participants default by not paying the Solar Energy Surcharge, the All-Requirements Project will be obligated for the applicable Power Purchase Agreement(s) and the solar costs will become part of the Energy Rate (ER) above applicable to all All-Requirements Project Participants, including the defaulting Solar Participants, unless and until FMPA shall recover from at least one of the defaulting Solar Participants all amounts owed by all Solar Participants, upon which FMPA shall reimburse the All-Requirements Project Participants either through rates or through such other method as directed by the Executive Committee

4. A Solar Participant may only exit from the financial obligation to pay the Solar Energy Surcharge if one of the following four conditions are met, subject to approval of the Executive Committee:
 - a. One or more Solar Participants assumes the exiting Solar Participant's entire Solar Energy Surcharge financial obligation to the ARP;
 - b. One or more All-Requirements Project Participants assumes the exiting Solar Participant's entire Solar Energy Surcharge financial obligation to the ARP
 - c. One or more FMPA Members that is not an All-Requirements Project Participant assumes the financial entitlement to the Solar Participant's percentage share of the applicable solar PPA(s) and commits that it will take on the (i) associated financial obligation and (ii) obligation to take solar energy, in a form suitable to the ARP; or
 - d. Pay stranded cost obligations, as determined by FMPA in its sole discretion, to hold the other Solar Participants harmless from the costs associated with the Solar Participant's exit.

Stranded cost obligations are defined as an estimate of the solar energy costs (defined in 10.1) that the ARP will

pay for the exiting Solar Participant's solar energy entitlement during each remaining month of the remaining term of the applicable solar PPA(s) based on (i) a forecast of expected solar production and (ii) a reasonable assessment of unforeseen costs, and are to be paid at the time of exit. 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 (PV Syst or its successor/peer products) reflective of a degradation rate of 0.3% 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 applicable solar PPA(s) term.

11. Demand and Transmission Cost Adjustment for All-Requirements Services.

The monthly bill computed hereunder shall adjust the base demand capacity rate by an amount to the nearest one-thousand of a cent, determined by use of the formula below:

DR = Demand or Transmission per kW/month \pm DTCA

Where:

DR = Demand Rate to be applied each kW of billed demand.

DTCA = Demand Total Cost Adjustment to be determined according to the same procedure as the ETCA except where kWh will be replaced by kW in item 3 within section 9.

12. Funding for Participants Load Retention Programs.

Each Participant shall be credited with an amount equal to the Participants monthly billing energy times \$0.30 per MWh. This credit may be used by the Participant to fund Load Retention Programs approved by the Participants' governing body, or for other lawful usage.

13. Tax Adjustment Clause for All-Requirements Services.

In the event of the imposition of any tax, or payment in lieu thereof, by any lawful authority on FMPA for production, transmission, or sale of electricity, the charges

hereunder may be increased to pass on to the Project Participant its share of such tax or payment in lieu thereof.

14. **Late Payment Charge.** FMPA may impose a late payment charge on the unpaid balance of any amount not paid when due. Such charge shall be equal to the interest on the unpaid balance from the due date to the date of payment, with the interest rate being the arithmetic mean, to the nearest one-hundredth of one percent (.01%) of the prime rate values published in the Federal Reserve Bulletin for the fourth, third, and second months prior to the due date. The interest required to be paid under this clause will be compounded monthly.
15. **Month.** The month shall be in accordance with a schedule established by FMPA.
16. **Special Jacksonville Beach Charge.** In the event that FMPA pays or is billed for any amounts by the JEA for back-up transmission capability and/or transmission services and /or back-up electric service supplied by JEA for the City of Jacksonville Beach, such amounts shall be added to any amounts otherwise billed to the City of Jacksonville Beach by FMPA pursuant to this Schedule B-1, less one-third of such amounts, at such times as FMPA shall determine.

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 FMPPA Solar II Project Participant(s) to make payments owed to FMPPA under the applicable FMPPA Solar II Project Power Sales Contract, to pay to Buyer such non-defaulting FMPPA Solar II Project Participant's pro rata share of the amounts owed by the defaulting FMPPA 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 FMPPA Solar II Project Power Sales Contract.

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

"FMPPA Solar II Project Participant Entitlement Share" means, as to each FMPPA 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.

"FMPPA Solar II Project Power Sales Contracts" means a Power Sales Contract between a FMPPA Solar II Project Participant and Buyer for the sale of FMPPA Solar II Project Participant Entitlement Share by Buyer to such FMPPA 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 1st through October 31st. 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 (10th) 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]

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:]

Member	Share	Rice Creek	Whistling Duck
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%
ARP Totals:	97.25	53%	77%

[FMPA Solar II Project Participants and their respective shares:]

Member	Share	Rice Creek	Whistling Duck
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%
Solar II Totals:	81	47%	23%

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

Milestone	Expected Completion	Status	Notes
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 Green Cove Springs Contract
Rate of Delivery (CROD) Amount**

**Executive Committee
December 12, 2019**



EC 8d – Approval of Contract Rate of Delivery Amount for Green Cove Springs

FMIPA Executive Committee

December 3, 2019

Supplemental Agreement Simplifies Green Cove Springs CROD Transition, but CROD Amount Must Still be Set

- Green Cove Springs' Contract Rate of Delivery (CROD) will be effective 1/1/2020
- Supplemental agreement obviates the need for FMPA and Green Cove Springs to deal with mechanics of implementing CROD next year
 - No CROD Responsibility Agreement needed
 - No changes to transmission agreements needed
 - No CROD energy schedules or “true-up” amounts
- However, FMPA is still contractually required to set the CROD amount for Green Cove Springs in December (based on Green Cove Springs' load over period December 2018 – November 2019)

Green Cove Springs Preliminary CROD Range

Through Oct. 2019; Final Calculation through Nov. 2019 ^[3]

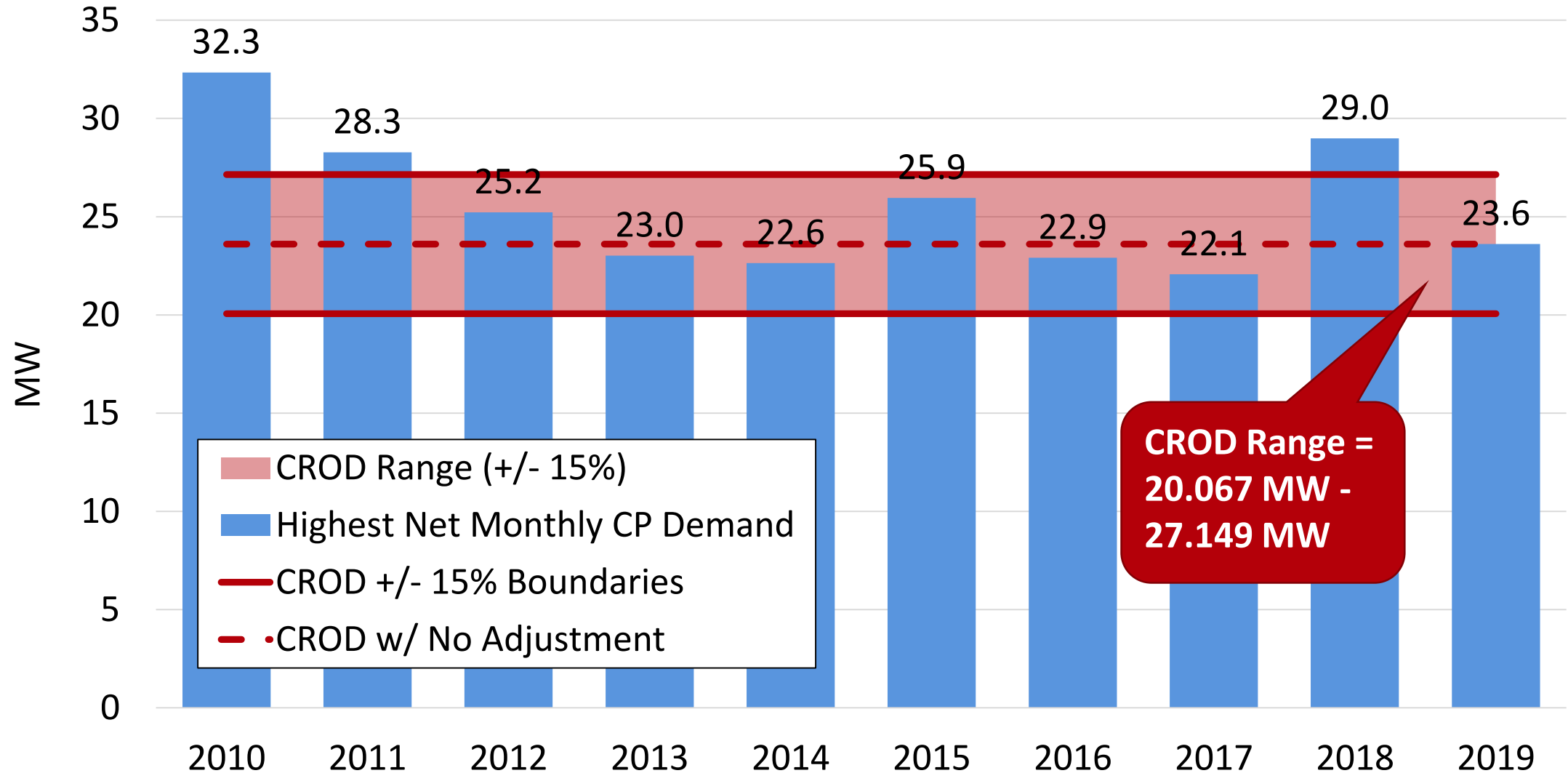
	-15% Adjustment	No Adjustment	+15% Adjustment
Green Cove Springs CP Demand w/ ARP (Dec. 2018 – Nov. 2019) (kW) [1]	25,130	25,130	25,130
Less: Green Cove Springs Resources:			
St. Lucie Project Entitlement Capacity (kW) [2]	<u>-1,522</u>	<u>-1,522</u>	<u>-1,522</u>
Green Cove Springs Net “All-Requirements Services” Demand (kW)	23,608	23,608	23,608
Adjustment to CP Demand for CROD Calculation (%)	-15%	0%	+15%
Adjustment to CP Demand for CROD Calculation (kW)	<u>-3,541</u>	<u>0</u>	<u>3,541</u>
Adjusted CP Demand for CROD Calculation (kW)	20,067	23,608	27,149
Less Green Cove Springs Capacity Credit Resources (kW)	<u>0</u>	<u>0</u>	<u>0</u>
Green Cove Springs CROD Amount (kW)	20,067	23,608	27,149

[1] Green Cove Springs’ highest coincident peak demand with the ARP over the period December 2018 through September 2019 occurred on June 25, 2019.

[2] Represents Green Cove Springs’ ARP summer season demand credit for its St. Lucie Project entitlement.

[3] Will be updated with final data through November, but should not change

Green Cove Springs CROD Range Compared to Historical Annual CP Demand (w/ ARP)*



EC Must Decide Whether to Adjust the CROD Amount

- The CROD adjustment:
 - Can be any percentage between +/- 15%
 - Is at the Executive Committee's sole discretion
 - Is intended to keep the ARP whole by providing "optimal utilization of the FMPA power supply resources"
- Considerations for adjusting the CROD amount up or down can include whether the Participant's election of CROD will...
 - Increase rates for the remaining ARP Participants
 - Defer the need for capacity additions
 - Leave the ARP with marketable (or unmarketable) excess capacity

Staff Recommends No CROD Adjustment

- Since Green Cove Springs has entered into the Supplemental agreement, staff recommends no adjustment be made to Green Cove Springs' CROD amount
 - No financial impact to ARP or Green Cove Springs during the term of the Supplemental agreement
- This is consistent with the approach taken when Fort Meade entered into its Supplemental agreement with the ARP
- EC retains its right to the +/- 15% adjustment in the event the Supplemental agreement is terminated in the future

Recommended Motion

- Move approval of establishing the Green Cove Springs CROD amount effective January 1, 2020, at 23.608 MW, which includes no adjustment upward or downward by the Executive Committee, with the understanding that the Executive Committee may revisit the adjustment in the event the Supplemental Power and Ancillary Services Agreement between Green Cove Springs and FMPA is terminated during the remaining term of Green Cove Springs' All-Requirements Power Supply Project Contract.

AGENDA ITEM 8 – ACTION ITEMS

e) Approval of Selection of Bond Counsel

**Executive Committee
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

- 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

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

**Nixon or
BMO**

- Considered a 3rd 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

- Motion: Finance Committee recommends 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 8 – ACTION ITEMS

- f) Approval of Homestead Power Purchase Agreement**

**Executive Committee
December 12, 2019**



EC 8f – Approval of Homestead Power Purchase Agreement

FMIPA Executive Committee

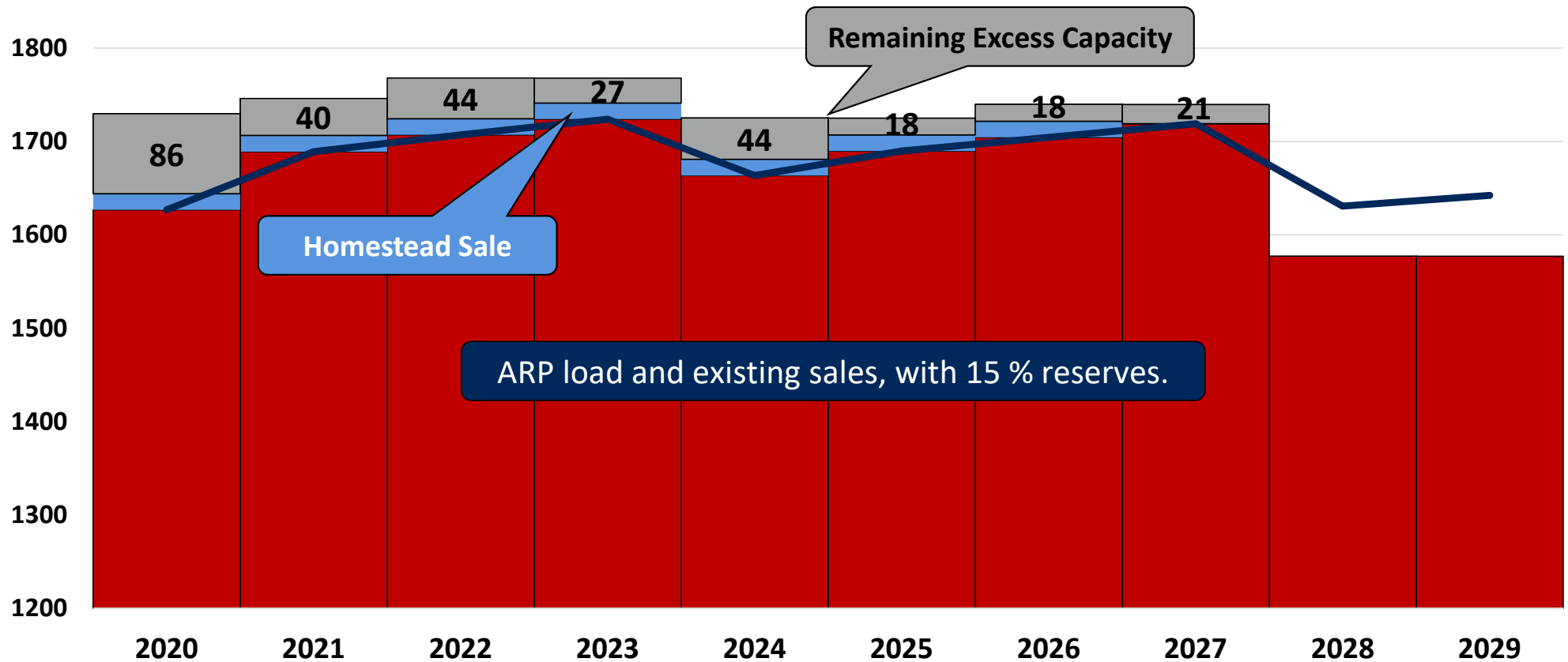
December 12, 2019

Homestead Power Purchase Agreement

Begins January 1, 2020 through December, 31 2026

- FMPA offered Baseload and Intermediate proposals in response to Homestead RFP
- Homestead selected FMPA to serve a portion of their power supply needs for the next 7 years
 - ARP will provide 15 MW of Intermediate capacity and energy
- Homestead will have ability to schedule energy, blending with other power supply resources to optimize mix
- Homestead City Council approved PPA at their November meeting

Most of ARP Excess Capacity Has Been Sold



Wholesale Sales Lower the ARP Rate

- Homestead will pay for full capacity amount regardless of energy schedules
 - Projected return to ARP fixed costs of approximately \$500k per year, \$.08/MWh average ARP rate reduction
- Homestead will pay for energy as scheduled
 - Energy charges indexed to natural gas
 - Fixed heat rate
 - Flat variable operations & maintenance charge
 - Potential for additional return to fixed costs depending on dispatch

Recommended Action

- Move approval of the Agreement for Purchase and Sale of Electric Capacity and Energy Between The City of Homestead and Florida Municipal Power Agency (All-Requirements Power Supply Project) and authorize the CEO & General Manager to execute the agreement.

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

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AGREEMENT FOR PURCHASE AND SALE OF ELECTRIC CAPACITY AND ENERGY

This AGREEMENT FOR PURCHASE AND SALE OF ELECTRIC CAPACITY AND ENERGY (this "Agreement") is entered into as of the _____ day of _____, 2019, by and between THE CITY OF HOMESTEAD, a municipal corporation in the State of Florida, duly constituted under Florida law ("Homestead"), and FLORIDA MUNICIPAL POWER AGENCY (ALL-REQUIREMENTS POWER SUPPLY PROJECT), a governmental legal entity created and existing pursuant to Florida law ("FMPA"). Homestead and FMPA are referred to also in this Agreement individually as a "Party," or collectively as the "Parties."

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

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

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

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

WHEREAS, Homestead is seeking wholesale power supplies ("Wholesale Electric Service") to serve its customers and to that end has issued a request for proposals ("RFP") for the provision by third parties of such power supplies;

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

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

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

ARTICLE 1 DEFINITIONS

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

"Ancillary Services" shall mean interconnected operations services identified by the Federal Energy Regulatory Commission or other regulatory bodies or agreements as necessary to effect a transfer of capacity and energy from FMPA to Homestead.

"Applicable Law" shall have the meaning set forth in Section 21.11.

"Business Day" means any day except a Saturday, Sunday, or NERC holiday.

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

"Capacity Quantity" shall have the meaning set forth in Section 2.1.

"Change in Law Costs" shall have the meaning set forth in Section 21.11.

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

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

“Delivery Point” shall have the meaning set forth in Appendix C.

“Delivery Costs” shall have the meaning set forth in Section 4.2.

“Due Date” shall have the meaning set forth in Section 6.1(c).

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

“Energy Quantity” shall have the meaning set forth in Section 2.1.

“Event of Default” shall have the meaning, with respect to FMPA set forth in Section 16.1, and with respect to Homestead set forth in Section 16.2, of this Agreement.

“FERC” shall mean the Federal Energy Regulatory Commission.

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

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

“FMPP” shall mean the Florida Municipal Power Pool.

“FPL” means Florida Power and Light.

“FPL Transmission Agreement” means a transmission agreement executed by and between Homestead and FPL for the transmission of Wholesale Electric Service from the Delivery Point to the Metering Point.

“FRCC” shall mean the Florida Reliability Coordinating Council.

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

“Interest Rate” shall have the meaning set forth in Section 6.1(c).

“kWh” shall mean kilowatt-hour.

“MWh” shall mean Megawatt-hour or 1000 kWh.

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

“Losses” shall mean transmission line losses on the FPL transmission system for Wholesale Electric Service between the Delivery Point and the Metering Points, as determined in accordance with FPL’s Open Access Transmission Tariff.

“Metering Point(s)” shall mean the points of interconnection between the FPL transmission system and the Homestead transmission system.

“NERC” shall mean the North American Electric Reliability Corporation, or such successor entity approved by FERC.

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

“OATT” shall mean Open Access Transmission Tariff.

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

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

“Requesting Party” shall have the meaning set out in Section 19.2.

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

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

“Transmission Service” shall mean FPL Network Integration Transmission Service.

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

ARTICLE 2 WHOLESALE ELECTRIC SERVICE

Section 2.1 Wholesale Electric Service.

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

Beginning January 1, 2020 at 12:00 a.m. EST, through December 31, 2026 at 11:59 p.m. EST, a variable, partial-requirements supply of fifteen (15) MW of capacity (the “Capacity Quantity”) and associated energy as scheduled by Homestead (the “Energy Quantity”) pursuant to Article 11.

ARTICLE 3 TERM

Section 3.1. Effective Date.

With the exceptions of the rights and obligations of the Parties with respect to the delivery and sale of Wholesale Electric Service, which shall be subject to fulfillment or waiver in writing by FMPA of conditions precedent of Homestead under Section 12.2 and the fulfillment or waiver in writing by Homestead of conditions precedent of FMPA under Section 12.1, this Agreement shall be in force and effect on the latest date signed by the Parties (the “Effective Date”).

Section 3.2. Service Date.

The obligations of the Parties in respect of the supply, delivery, purchase and receipt of Wholesale Electric Service shall commence on January 1, 2020 at 12:00 a.m. E.S.T (the “Service Date”).

Section 3.3. Term.

This Agreement shall remain in effect through December 31, 2026 (the “Term”), unless terminated earlier under the terms of this Agreement. Termination or expiration of this Agreement shall not affect or excuse the performance of either Party under any provision of this Agreement that by its nature or terms survives any such termination or expiration.

ARTICLE 4 OBLIGATIONS OF HOMESTEAD AND FMPA

Section 4.1. Obligations of Homestead.

(a) Homestead shall, during the Term, buy and receive from FMPA Wholesale Electric Service at the prices and amounts set forth in Appendix A.

(b) Homestead shall receive delivery of and accept and shall pay FMPA a monthly payment for Wholesale Electric Service on the applicable Due Date in accordance with Section 6.1.

(c) As of the Service Date, Homestead shall for the Term maintain Transmission Service on FPL's transmission system to accept capacity and energy under this Agreement and shall designate Wholesale Electric Service as a designated network resource pursuant to its transmission service agreement with FPL.

(d) Homestead shall separately secure any required Ancillary Services necessary to accept the Wholesale Electric Service.

(e) Homestead acknowledges and agrees that FMPA shall have no responsibility for the distribution and resale to Homestead's electric system customers of the electricity delivered to the Delivery Point by FMPA and the collection of any payments from Homestead's electric system customers.

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

Section 4.2. Obligations of FMPA.

(a) FMPA shall sell and deliver to Homestead at the Delivery Point Wholesale Electric Service for the duration of the Term. Homestead acknowledges and agrees that FMPA shall not, with the exception of FMPA's undertaking to use reasonable efforts to deliver Wholesale Electric Service to alternative delivery points, be responsible for reductions in Wholesale Electric Service during the period of time that deliveries of Wholesale Electric Service to the Delivery Point cannot be made as a result of problems or limitations on any transmission system necessary for the delivery of Wholesale Electric Service. In the event that FMPA is able to find alternate resources not affected by such third party transmission problem or limitation during such periods of time, Homestead shall directly reimburse FMPA for such additional direct costs FMPA incurs to provide Wholesale Electric Service to such alternate delivery points ("Delivery Costs"). If scheduling requirements of such alternate resources allow sufficient time for FMPA to confer with Homestead, FMPA will contact Homestead's designated representative and provide Homestead the opportunity to direct FMPA not to pursue the alternative delivery points.

(b) FMPA shall operate and maintain its generating resources and transmission system assets and equipment with Prudent Utility Practice.

(c) FMPA shall calculate the amount due on a monthly basis for all Wholesale Electric Service provided in the prior calendar month and shall submit an invoice to Homestead for payment. The monthly invoice shall be calculated for the Charges in accordance with Section 6.1.

ARTICLE 5 SALE AND PURCHASE

(a) FMPA shall at its cost and expense sell and deliver Wholesale Electric Service (i) to the Delivery Point and (ii) in the event of a problem or limitation affecting any transmission system necessary to deliver Wholesale Electric Service, to such alternate delivery points as FMPA, with commercially reasonable efforts, can arrange to accept delivery of the Wholesale Electric Service. Homestead shall purchase and receive Wholesale Electric Service at the Delivery Point or alternate delivery points (as applicable) during the Term. The Charges for such sale and purchase shall be as set forth in Section 6.1.

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

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

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

ARTICLE 6 PRICE AND BILLING

Section 6.1 Billing and Payment.

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

(b) In addition to the payments set forth in Section 6.1(a) (Billing and Payment), each FMPA invoice shall include the following adjustments:

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

(2) any billing corrections, including charges or credits, that the parties have mutually agreed upon or otherwise resolved in accordance with Section 6.4 (Billing

Adjustments) subsequent to the last invoice, which are subject to interest in accordance with Section 6.4 (Billing Adjustments); and

(3) any delinquent amounts, which are subject to interest in accordance with Section 6.1(c) (Billing and Payment).

(c) Each monthly payment by Homestead shall be due and payable on or before the 15th day after the date the invoice is transmitted to Homestead, or the next business day if such day falls on a non-business day (the "Due Date"). Homestead shall make payment to FMPA in accordance with Section 6.2 (ACH Deposit). If payment in full has not been received by FMPA on or before the Due Date, then Homestead shall pay interest on the amount of Homestead's monthly invoice not paid, in whole or in part, by the Due Date, from the Due Date until such amount is paid in full, together with all accrued interest. Such interest shall be compounded daily at the prime interest rate as published in the Wall Street Journal (the "Interest Rate") plus 2%. In any 24-month rolling period where Homestead twice does not make full payment by the Due Date, Homestead shall within 15 days of FMPA's notice, deposit cash or secure a Letter of Credit for FMPA in an amount equal to the monthly average billing over the prior 12 months. FMPA shall return the cash deposit on the first billing after this condition is no longer in effect or Homestead can terminate the Letter of Credit.

Section 6.2 ACH Deposit.

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

ACH/ETF:

Bank Name:	Wells Fargo Bank, N.A.
Routing Number:	121000248
Account Number:	4943550913

Wire Transfers

Bank Name:	Wells Fargo Bank, N.A.
Routing Number:	121000248
Account Number:	4943550913
Account Name:	FMPA All Requirements O&M

Section 6.3 Disputed Bills Must be Paid.

(a) If, after receiving an invoice (or any other statement or bill pursuant to this Agreement), Homestead reasonably questions or disputes the amount or propriety of any payment or amount claimed by FMPA to be due pursuant to this Agreement, Homestead shall provide FMPA with written notice of such disputed invoice amount. FMPA and Homestead shall cooperate in good faith to resolve any question or dispute prior to the Due Date. However, notwithstanding the notice of a disputed invoice amount, Homestead shall make all payments in full in accordance

with all invoices issued by FMPA. Adjustments with interest shall subsequently be made, if appropriate, as set forth in Section 6.4 (Billing Adjustments).

Section 6.4 Billing Adjustments.

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

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

(c) Not later than the 15th day after receipt by Homestead of written notification from FMPA of a billing adjustment pursuant to this Section 6.4 (Billing Adjustments), the Party required to make such payments, if any, shall make payment to the other Party in immediately available funds. If a billing adjustment made pursuant to this Section 6.4 (Billing Adjustments) results in a payment by FMPA to Homestead, such amount shall include interest, compounded daily, at the Interest Rate from the date payment was received by FMPA until the date such payment together with all added interest is paid.

Section 6.5 Availability of Records.

Until the end of twelve (12) months after the receipt of any invoice, each Party shall, at its own expense with respect to any invoice submitted or payment requested under this Agreement for Wholesale Electric Service provided to Homestead, make available to the other Party and each Party may audit, such books and records of the other Party (or other relevant information to which such Party has access) as are reasonably necessary to calculate and determine the accuracy of amounts shown on such invoice to verify the appropriateness of the invoiced amounts. Upon written request and reasonable notice, each Party shall make available to the other Party copies of or access to such books and records during normal business hours, at such requesting Party's sole expense for purposes of conducting such an audit. In the event either Party determines that an invoice was not accurate or appropriate, it shall notify the other Party in writing of the alleged discrepancy and, in its opinion, the necessary correction. Within 15 days following receipt of such notice, the Party receiving such notice shall make such payments or take such other actions as are necessary to correct or dispute the alleged discrepancy.

Section 6.6. Taxes, Fees and Levies, Sales for Resale.

(a) FMPA shall be obligated to pay all present and future applicable taxes, fees and levies that may be assessed upon FMPA by any governmental authority not controlling or

controlled by FMPA on the sale to Homestead of Wholesale Electric Service or any component thereof. FMPA shall promptly notify Homestead of the commencement of any legislative, regulatory, administrative or other governmental action, of which it becomes aware, imposing such taxes, fees and/or levies upon the sale of Wholesale Electric Service. Each such tax, fee and levy shall be identified in a separate line item on the monthly invoice from FMPA to Homestead for Wholesale Electric Service. Homestead shall reimburse FMPA for the increase in any such taxes, fees and levies paid by FMPA as a result of providing Wholesale Electric Service to Homestead under this Agreement.

(b) All Wholesale Electric Service delivered by FMPA to Homestead hereunder shall be sales for resale by Homestead. Homestead shall not use the electric capacity and energy purchased under this Agreement to make wholesale sales or to serve wholesale customers of any type. Homestead shall obtain and provide FMPA with any certificates reasonably requested by FMPA to evidence that the deliveries hereunder are sales for resale.

ARTICLE 7 RESERVED

ARTICLE 8 RESERVED

ARTICLE 9 CONTINUITY OF SERVICE

Section 9.1. Interruptions.

FMPA shall supply and deliver Wholesale Electric Service hereunder to the Delivery Point with the firmness and priority equal to FMPA's Firm Load. FMPA shall not be responsible for any failure to deliver Wholesale Electric Service due to (a) transmission system operations outside of FMPA's transmission system or (b) interruptions of transmission service necessary to deliver Wholesale Electric Service to Homestead if initiated by the FRCC reliability coordinator. FMPA disclaims any liability for third-party claims arising out of any failure to supply Wholesale Electric Service hereunder, or for interruption, reversal or abnormal voltage of the supply.

Section 9.2. Capacity Shortfalls.

During the Term, in the event of a capacity shortfall that requires load interruption, FMPA shall take such action as set forth in Section 11.4 showing no adverse distinction between Homestead and FMPA's Firm Load.

Section 9.3. Shortfall Notification.

FMPA will promptly inform Homestead as soon as possible under the circumstances upon becoming aware of any event, occurrence or circumstance that will result in load shedding or

otherwise cause a material reduction or an interruption or suspension of delivery of Wholesale Electric Service to Homestead.

ARTICLE 10 DELIVERY VOLTAGE

The delivery voltage at each Delivery Point shall be as agreed between FPL and FMPP. FMPP and Homestead shall maintain close coordination with respect to future delivery points in the interests of system reliability. Each Party shall endeavor, to the extent practicable, to keep the other Party advised of significant developments related to their respective power supply facilities.

ARTICLE 11 DELIVERY, LOSSES, AND SCHEDULING

Section 11.1. Delivery.

Wholesale Electric Service shall be delivered by FMPP to Homestead at the Delivery Point. Title to and risk of loss related to the Wholesale Electric Service shall transfer from FMPP to Homestead at the Delivery Point free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point. FMPP shall not incur any expense or risk beyond the Delivery Point and Homestead shall not incur any expenses or risk up to and at the Delivery Point.

Section 11.2. Losses.

Losses for Wholesale Electric Service will be accounted for in the Electronic Tag whereby the amount of Energy Quantity received by Homestead at the Homestead electric distribution system in each hour will be less than the Energy Quantity delivered by FMPP at the Delivery Point by the amount of Losses. Homestead is responsible for supplying capacity and energy to serve Losses.

Section 11.3 Scheduling.

Homestead shall have the right but not the obligation to schedule an Energy Quantity. Homestead shall be responsible for all tagging and other generation scheduling activity necessary for the delivery of the Energy Quantity, which shall be a flat amount in any whole MW increment between zero (0) and the maximum Capacity Quantity (as specified in Section 2.1) for a minimum of sixteen (16) consecutive hours each day. Notification shall be made to FMPP's trading desk by recorded phone line or instant message no later than 7 AM Eastern Prevailing Time (EPT) on the Business Day prior to the schedule start.

Section 11.4 Constancy of Service.

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

(b) Notwithstanding any other provision of this agreement, during the Term, in the event that FMPA, or one of its agents, determines in its sole discretion that it is necessary or appropriate for FMPA or the FMPA's control area to shed, interrupt, or curtail Firm Load (including for reason that adequate resources are not available), and FMPA or the control area operator does shed, interrupt or curtail such loads, then the Wholesale Electric Service schedules will be curtailed on a pro rata basis. Thereafter, Wholesale Electric Service will be restored consistent with the restoration of service to FMPA's and the control area similar firm or interruptible/curtailable loads. For actions taken pursuant to this Section 11.4(b), neither FMPA, nor its agents shall be in breach of this agreement by reason of, and shall have no liability whatsoever to Homestead and FMPA hereby expressly disclaims all third party liability for, any failure to make capacity available under this agreement, or for any failure to deliver or any interruption in the delivery of energy under this Agreement or for any deficiency in the quality of service under this Agreement unless such failure is the sole result of the gross negligence or willful misconduct of FMPA.

(c) Homestead shall follow FMPP operator instructions regarding schedule curtailment. If Homestead does not follow the instructions of the system operations agent, and Homestead's inaction results in FMPA having to purchase emergency or other energy, or results in any imbalance, unreserved use or other penalties to either FMPA or Homestead, or any other penalties or costs, FMPA shall not be responsible for any such costs incurred by FMPA or Homestead, or both.

ARTICLE 12

CONDITIONS PRECEDENT

Section 12.1. Conditions to Obligations of Homestead.

The obligations of Homestead under this Agreement to purchase and receive Wholesale Electric Service shall commence on the Service Date, and such obligations are subject to the fulfillment and satisfaction of each of the following conditions on or before December 31, 2019, any one of more of which may be waived only in writing, in whole or in part, by Homestead:

(a) Representations, Warranties and Covenants True at the Effective Date.

(i) All representations and warranties of FMPA contained in this Agreement shall be true and correct in all material respects as of the date when made and at and as of the Effective Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), except (A) for changes contemplated by this Agreement and (B) where the failure to be true and correct will not have a material adverse effect on Homestead's rights, remedies or benefits under this Agreement; (ii) FMPA shall have performed and complied with, in all material respects, its obligations that are to be performed or complied with by it hereunder prior to or on the Effective Date; and (iii) FMPA shall have delivered a certificate signed by one of its duly authorized officers certifying as to the fulfillment of the conditions set forth in the foregoing clauses (i) and (ii).

(b) No Material Adverse Change. No change in the business, properties, assets, generating resources, transmission system, financial condition, results of operations or prospects

of FMPA shall have occurred and be continuing or with the passage of time, the giving of notice or both, shall be reasonably likely to occur which have a material adverse effect on FMPA's ability to perform its obligations under this Agreement.

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

(d) Required Approvals. This Agreement shall have been approved by the FMPA Executive Committee and the Homestead City Council.

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

(f) Transmission Service. Homestead has obtained transmission service from FPL necessary to receive Wholesale Electric Service at the Delivery Point and deliver Wholesale Electric Service to Homestead's electric system.

Section 12.2. Conditions to Obligations of FMPA.

The obligations of FMPA under this Agreement to sell and deliver Wholesale Electric Service shall commence on the Service Date, and such obligations are subject to the fulfillment and satisfaction of each of the following conditions on or before December 31, 2019, any one or more of which may be waived only in writing, in whole or in part, by FMPA:

(a) Representations, Warranties and Covenants True at the Effective Date.

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

(b) Required Approvals. This Agreement shall have been approved by the FMPA Executive Committee and the Homestead City Council.

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

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

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

(f) Transmission Service. Homestead has obtained transmission service from FPL necessary to receive Wholesale Electric Service at the Delivery Point and deliver Wholesale Electric Service to Homestead's electric system.

Section 12.3. Coordination.

Homestead and FMPA shall cooperate with each other and use all commercially reasonable efforts to (a) promptly prepare and file all necessary documentation, (b) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, and (c) obtain all necessary consents, approvals and authorizations, including those of other parties necessary or advisable to consummate the transactions contemplated by this Agreement, all of which are set forth in Appendix B.

Each Party shall keep the other Party reasonably apprised of the status of the conditions precedent to the occurrence of the Service Date applicable to it. The Parties shall reasonably coordinate so that subject to the satisfaction of other prior conditions, the certificates and opinions to be delivered by a Party hereunder in connection with the Effective Date have been provided by the Effective Date.

ARTICLE 13 TERMINATION

Section 13.1. Termination Prior to Service Date.

If the conditions precedent to Homestead's and FMPA's obligations hereunder set forth in Article 12 hereof have not been satisfied or waived on or prior to the express date specified therein notwithstanding the reasonable effort of the Party to satisfy or waive the condition, then at any time thereafter, either Party may terminate this Agreement on written notice of termination to the other Party, without any liability or obligation of any Party to the other as a result of such termination, unless prior to the delivery of any such written notice of termination the condition or conditions precedent which had not been satisfied are satisfied.

Section 13.2. Notice.

Each Party shall notify the other Party promptly if any information comes to its attention prior to the Effective Date or prior to the Service Date, as applicable, that it believes will potentially excuse such Party from the performance of its obligations under this Agreement or might reasonably cause any condition set forth in Article 12 not to be satisfied on or prior to the Service Date.

ARTICLE 14

REPRESENTATIONS AND WARRANTIES

Section 14.1. General Representation and Warranties.

Each Party hereby represents and warrants to the other that:

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

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

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

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

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

(f) There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of such Party, threatened against or affecting such Party at law or in equity, before any federal, state, municipal or other governmental court, department, commission, board, arbitrator,

bureau, agency or instrumentality which prohibits or impairs its ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby. Such Party has not received written notice of and otherwise is not aware of any such pending or threatened investigation, inquiry or review by any governmental entity.

Section 14.2. Disclaimers.

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

ARTICLE 15 SECURITY

Section 15.1. FMPA Security.

FMPA shall maintain a rating on senior unsecured debt securities of FMPA by Standard and Poor's Corporation, Moody's Investors Service, Inc., Fitch IBCA or another nationally recognized rating service reasonably acceptable to Homestead of BBB+ (Standard and Poor's), Baa1 (Moody's) or BBB+ (Fitch) or its equivalent, or a rating equivalent to Homestead senior unsecured debt securities, if any, whichever is lower. In the event that FMPA's credit rating fails to meet said credit standing and FMPA fails to restore its credit rating to such specified minimum rating standing within 12 months after its rating has fallen, FMPA shall notify Homestead thereof and shall upon request by Homestead provide a Letter of Credit, cash or bond equal to the Capacity Charge for the next 12 months.

Section 15.2. Homestead Security.

Homestead shall maintain a rating on senior unsecured debt securities of Homestead by Standard and Poor's Corporation, Moody's Investors Service, Inc., Fitch IBCA or another nationally recognized rating service reasonably acceptable to FMPA of BBB+ (Standard and Poor's), Baa1 (Moody's) or BBB+ (Fitch) or its equivalent, or a rating equivalent to FMPA senior unsecured debt securities, if any, whichever is lower. In the event that Homestead's credit rating fails to meet said credit standing and Homestead fails to restore its credit rating to such specified minimum rating standing within 12 months after its rating has fallen, Homestead shall notify FMPA thereof and shall upon request by FMPA provide a Letter of Credit, cash or bond equal to the Capacity Charge for the next 12 months.

ARTICLE 16

EVENTS OF DEFAULT

Section 16.1. Events of default by FMPA.

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

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

(b) A default shall occur in the performance of any other material covenant or condition to be performed by FMPA hereunder (other than a default specified in Section 16.1(a)) and such default shall continue unremedied for a period of thirty (30) days after notice from Homestead specifying the nature of such default; provided, however, that if such default (other than the failure to make payments when due) cannot reasonably be remedied by FMPA within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, FMPA shall have up to an additional ninety (90) days to remedy the default.

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

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

Section 16.2. Events of default by Homestead.

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to Homestead:

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

(b) A default shall occur in the performance of any material covenant or condition to be performed by Homestead hereunder (other than a default specified in Section 16.2(a)) and such default shall continue unremedied for a period of thirty (30) days after notice from FMPPA specifying the nature of such default; provided, however, that if such default cannot reasonably be remedied by Homestead within thirty (30) days, subject to commencement of action to remedy the default within such thirty (30) day period, Homestead shall have up to additional ninety (90) days to remedy the default.

Section 16.3. Remedies.

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

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

(b) In addition to the remedies set forth in Section 16.3(a), either Party may pursue against the other Party any legal rights and remedies made available under Florida Law.

ARTICLE 17 LIMITATION OF LIABILITY

Section 17.1. No Consequential Damages.

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

ARTICLE 18 INDEMNIFICATION

Section 18.1. Indemnification by FMPA.

To the extent permitted by Florida law and subject to the limitations set out in Article 17, and subject to the limited waiver of sovereign immunity recovery limits provided for in section 768.28(5), Florida Statutes, FMPA shall indemnify, defend and hold harmless Homestead and its respective officials, officers, directors, agents, representatives and employees from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

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

Section 18.2. Indemnification by Homestead.

To the extent permitted by Florida law and subject to the limitations set out in Article 17, and subject to the limited waiver of sovereign immunity recovery limits provided for in section 768.28(5), Florida Statutes, Homestead shall indemnify, defend and hold harmless FMPA, its officers, directors, agents, employees and Affiliates from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all Claims relating to or arising out of:

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

ARTICLE 19

DISPUTE RESOLUTION

Section 19.1. Resolution By Officers of the Parties.

Except as otherwise expressly, specifically set forth herein, in the event of any dispute between the Parties as to a matter referred to herein or as to the interpretation of any part of this Agreement, including this Section 19.1 or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement or as to the calculation of any amounts payable under this Agreement, the Parties shall refer the matter to their respective duly authorized representatives, for resolution. Should such representatives of the respective Parties fail to resolve the dispute within twenty (20) days from such referral, the Parties agree that any such dispute shall be first referred to non-binding mediation in accordance with Section 19.2. Should mediation be unsuccessful within the time specified in Section 19.2, the Parties may pursue any legal or equitable remedies available under Florida law.

Section 19.2. Mediation Procedures.

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

Section 19.3 Settlement.

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

Section 19.4. Legal Remedies.

If mediation is unsuccessful, either Party may pursue any legal rights and remedies made available under Florida Law. The Parties agree that the exclusive venue for any dispute arising hereunder that is not resolved through the dispute resolution procedures set forth in Section 19.1 and 19.2 shall be the appropriate federal, state, or county court located in Florida.

Section 19.5. Continued Performance.

Except to the extent a Party has the right to suspend performance under Section 16.3 hereof, no dispute shall interfere with the Parties' continued fulfillment of their obligations under this Agreement pending the outcome of the mediation process or a decision by the Florida courts.

ARTICLE 20 FORCE MAJEURE

Section 20.1. Force Majeure Standard.

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

Section 20.2. Force Majeure Definition.

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

Section 20.3. Obligation to Diligently Cure Force Majeure.

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

(a) Provide written notice to the other Party promptly but in no event later than five (5) days after the occurrence of the event or condition giving an estimate of the expected duration and the probable impact on the performance of its obligations hereunder;

- (b) Exercise all reasonable efforts to continue to perform its obligations hereunder;
- (c) Expeditiously take reasonable action to correct or cure the event or condition excusing performance, provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of the affected Party; and
- (d) Exercise all reasonable efforts to mitigate or limit damages to the other Party.

ARTICLE 21 MISCELLANEOUS

Section 21.1. Assignment; Successors and Assigns.

This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the Parties, including any successor to any Party by consolidation, merger, or acquisition of all or substantially all of the assets of such Party. No assignment by any Party (or any successor or assignee thereof) of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party in each case obtained (which in the case of an assignment by FMPA shall include approval by the City Council of Homestead), which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the immediately preceding sentence, FMPA or any permitted assignee of FMPA may assign this Agreement as collateral security to any lender from time to time providing financing to FMPA in connection with the transactions contemplated hereby, provided that FMPA is not relieved of any obligation or liability hereunder as a result of such assignment. Homestead, at the cost and expense of FMPA, shall execute and deliver such documents as may be reasonably requested by FMPA which are necessary to accomplish any such assignment, transfer, pledge or other disposition of rights and interests to any such lender so long as Homestead's rights, remedies, benefits and privileges under this Agreement are not thereby materially altered, amended, diminished or otherwise impaired. Any assignments by any Party shall be in such form as to ensure that such Party's obligations under this Agreement will be assumed, accepted and honored fully and timely by any transferee, assignee or successor party.

Section 21.2. Notices.

With the exception of communications within the ordinary course of the day to day performance and administration of this Agreement, all notices, requests and other communications hereunder (herein collectively a "notice" or "notices") shall be deemed to have been duly delivered, given or made to or upon any Party if in writing and delivered by hand against receipt, or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next business day delivery or sent by telecopy (with confirmation by return telecopy) to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 21.2.

IF TO FMPA:

Chief Operating Officer
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819
Tel. 407-355-7767
Email: ken.rutter@fmpa.com

With required copy to:

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

IF TO HOMESTEAD:

City of Homestead, City Manager
100 Civic Court
Homestead, Florida 33030
Tel: (305) 224-4403
Email: ggretsas@cityofhomestead.com

With required copy to:

City of Homestead, Electric Utilities Director
675 N. Flagler Ave.
Homestead, FL 33030
Tel: (305) 224-4700
Email: bquinones@cityofhomestead.com

City of Homestead, City Attorney
200 E. Broward Blvd., Suite 1900
Fort Lauderdale, FL 33301

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

Section 21.3. Governing Law.

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

Section 21.4. Confidentiality.

Each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's Affiliates) or use for any purpose other than the performance, administration, management and enforcement of this Agreement (except with the written authorization of the other Party), any information received from the other that is designated as confidential or proprietary by the other Party unless legally compelled by the Florida Sunshine Law (Chapter 119, Florida Statutes) disclosure requirements, deposition, inquiry, request for documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other regulatory authority, or by requirements of any securities law or regulation or other legal requirement or as necessary to enforce the terms of this Agreement. This Section 21.4 shall survive the termination of this Agreement for a period of two (2) years. If any Party is compelled to disclose any confidential information of the other Party that is exempt from the disclosure requirements of the Florida Sunshine Law, such Party shall, at the cost and expense of the other Party, provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party, at such other Party's costs and expense, to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resist or narrow the scope of any required disclosure. The Parties shall reasonably coordinate in the preparation and issuance of all publicity relating to this Agreement.

Section 21.5. No Partnership.

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

Section 21.6. Fees and Expenses.

Except as otherwise provided herein, Homestead and FMFA shall each pay for its own costs, fees and expense in connection with, or in anticipation of, this Agreement and the consummation of the transactions contemplated hereby.

Section 21.7. Captions.

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

Section 21.8. Entire Agreement and Amendments.

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

Section 21.9. Severability.

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

Section 21.10 Further Assurances.

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

Section 21.11 Laws and Regulations; Changes in Law.

This Agreement and the rights, obligations, and performances of the Parties under this Agreement are subject to all applicable state and federal laws, and to all duly promulgated orders and other duly authorized actions of governmental authorities having jurisdiction (“Applicable Laws”). Each Party hereto shall be responsible for taking all necessary actions to satisfy any

regulatory and other requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such Party hereunder.

In the event that there is any change in Applicable Law that is promulgated after the Effective Date of this Agreement and that results in any additional or new costs, expenses, charges, fees and/or assessments (other than tax adjustments) that are attributable or related (in whole or in part) to the production and/or provision of Wholesale Electric Service, including environmental-related costs, renewable portfolio standards (only if applicable to wholesale contracts), charges, fees, or expenses incurred by FMPA to supply the Wholesale Electric Service and such costs, whether incurred as part of a voluntary or compulsory measure, are to be recovered through FMPA's wholesale electric rates ("Change in Law Costs"), Homestead shall reimburse FMPA for Homestead's pro-rata share of such costs, expenses, charges, fees and/or assessments, which amounts shall be calculated and recovered as determined by FMPA in a commercially reasonable manner. FMPA shall allocate variable Change in Law Costs to energy charges and fixed Change in Law Costs to demand charges. Change in Law Costs resulting from capital expenditures shall be allocated over the economic life of the asset(s). Change in Law Costs shall not include any costs recovered in the fuel charge. The determination of additional cost by FMPA shall be net of any reductions in costs associated with the change in Applicable Laws. FMPA shall promptly notify Homestead upon the determination of any additional or new costs, expenses, charges, fees and/or assessments and the calculation of the pro rata portion of such costs proposed to be recovered from Homestead.

Section 21.12. Counterparts.

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

Section 21.13. Interpretation.

In the event of any dispute concerning the construction or interpretation of this Agreement or any ambiguity hereof, there shall be no presumption that this Agreement or any provision hereof be construed against the Party who drafted this Agreement. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa; the term "includes" or "including" shall mean including, without limitation; references to an Article, Section, Appendix or Schedule shall mean an Article, Section, Appendix or Schedule of this Agreement; and the terms "hereof", "herein", "hereto", "hereunder", and "herewith" refer to this Agreement as a whole. Reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented and restated through the date as of which such reference is made.

Section 21.14. Independent Relationship.

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

Section 21.15. No Third-Party Beneficiaries.

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

Section 21.16. Waivers.

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

Section 21.17. Duty to Mitigate.

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

Section 21.18. All-Requirements Project Responsibility.

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

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

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

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

By: _____

Jacob Williams, General Manager and CEO

CITY OF HOMESTEAD

ATTEST:

By: _____

Elizabeth Sewell, MPA, MMC, City Clerk

By: _____

City Manager George Gretsas

(seal)

Approved as to correctness and form:

By: _____

_____, City Attorney

APPENDIX A

PRICING FOR WHOLESALE ELECTRIC SERVICE

Wholesale Electric Service rendered to Homestead under this Agreement will be billed by FMPPA at the aggregate of the monthly charges set forth as follows:

(1) Capacity Charge:

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

The monthly billing determinant to which the Capacity Charge is applied is 15 MW.

(2) Non-Fuel Energy Charge: █████/MWh

The billing determinant to which the Non-Fuel Energy Charge is applied is the total amount of energy scheduled pursuant to Section 11.3 in the billing month.

(3) Fuel Charge: █████ MMBtu/MWh multiplied by the Gas Index*

The billing determinant to which the Fuel Charge is applied is the total amount of energy scheduled pursuant to Section 11.3 in the billing month.

*Gas Index:

$$Gas\ Index = \frac{(GD\ FGT\ Zn\ 3 + \text{████})}{(1 - FGT\ Fuel\%)} + FGT\ Variable\ charges$$

For Hours Ending 1 through 10, the Daily Price Survey Midpoint gas price for Florida Gas Transmission (“FGT”) Zone 3 as published in Platts Gas Daily for the prior Gas Day plus █████ plus all variable charges associated with FGT’s then-current Tariff Rate Schedule FTS-2. For Hours Ending 11 through 24, the Daily Price Survey Midpoint gas price for Florida Gas Transmission (“FGT”) Zone 3 as published in Platts Gas Daily for the day of scheduled energy plus █████ plus all variable charges associated with FGT’s then-current Tariff Rate Schedule FTS-2.

APPENDIX B
REQUIRED APPROVALS AND AGREEMENTS

FMPA

1. Approval of this Agreement by the FMPA Executive Committee.

Homestead

1. Approval of this Agreement by the City Council of Homestead.
2. Designation of this agreement by Homestead as a network resource pursuant to its transmission service agreement with FPL.

APPENDIX C

DELIVERY POINTS

Delivery of Wholesale Electric Service shall be to FMPA's interfaces with FPL (the "Delivery Point").

FMPA's primary Delivery Point will be the PFE-FPL interface, however, from time to time (and as transmission is available) FMPA may deliver to any point on the FPL transmission system.

Homestead will designate the Wholesale Electric Service as a Homestead Network Resource pursuant to Homestead's Network Integration Transmission Service Agreement with FPL.

Homestead is fully responsible for any and all transmission studies and network upgrades required for designating the Wholesale Electric Service as Homestead Network Resources.

APPENDIX D
EXAMPLE FORM OF INVOICE



FMPA Invoice Date 2/8/2019

City of Homestead
Baseload Service Provided by FMPA
For the Month Of
January, 2020



Supporting information is included as an Attachment, as applicable.

Payment due on	Tuesday - Feb 25, 2020	Invoice No. - 031161
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AGENDA ITEM 9 – INFORMATION ITEMS

a) Update on Rate Protection Account Status

**Executive Committee
December 12, 2019**



EC 9a – Update on Rate Protection Account Status

Executive Committee – December 12, 2019

Rate Protection Account Overview

- ARP received \$105.4 million at closing from Vero Beach system sale in December 2018
- EC approved use of Vero Beach proceeds
 - ~\$75 million to be used to pay down outstanding ARP Bonds and swaps
 - ~\$30 million to establish Rate Protection Account (RPA) to protect Participants from adverse rate impacts due to ARP taking on Vero Beach project entitlements
- Activity through 9/30/19 generally following initial projections
- Staff projects higher usage of RPA funds, that could result in a small negative balance-not to exceed \$2M in 2021

Rate Protection Account Current Ending Balance ~ Projected Amount

Summary of ARP Rate Protection Account Activity for FY 2019 (\$Millions)

Description	Actual Amount [1]	Original Projection [1] [2]
Beginning Balance (Net of Debt Defeasance) [3]	\$30.8	\$29.8
Deposits:		
Interest and Dividends [3] [4]	0.9	0.5
Debt Savings [3] [4]	3.3	4.8
Withdrawals:		
FY 2019 Project Costs > Market [4]	(16.3)	(16.1)
Ending Balance @ 10/31/19	\$18.7	\$19.0

[1] Amounts may not total due to rounding.

[2] Amounts shown have been adjusted from the projections developed in fall 2017 to reflect timing differences associated with the one-month lag in account transfers from the month in which expenses are incurred.

[3] Actual amounts shown differ from the original projection primarily due to the debt defeasance occurring later in FY 2019 from what was originally anticipated

[4] Due to the one-month lag in account transfers, amounts shown reflect expenses through September 2019.

Projected Use of Rate Protection Account in Next Few Years Higher than Originally Anticipated

Several Factors Have Changed Since Calculation of “Make Whole” Payment in 2017

- Original analysis assumed Stanton 1 retirement at end of FY 2019
 - Continued operation adds \$3 - \$5 million per year in fixed costs for Vero entitlement
- Coal units operating above expected levels
- Higher capital costs
 - Stanton 1 and 2 turbine upgrades
 - Landfill expansion schedule advanced and at over 50% higher cost than original budget
- A portion of the Vero Beach payment was set aside to cover such contingencies
- Actual gas prices are running 12% below forecast used for original projections, which means overall Participant rates are ~ \$2.50/MWh (4%) below expected levels

Rate Protection Funds May Run Out for a Period in FY 2021, but Rate Impact Can be Mitigated

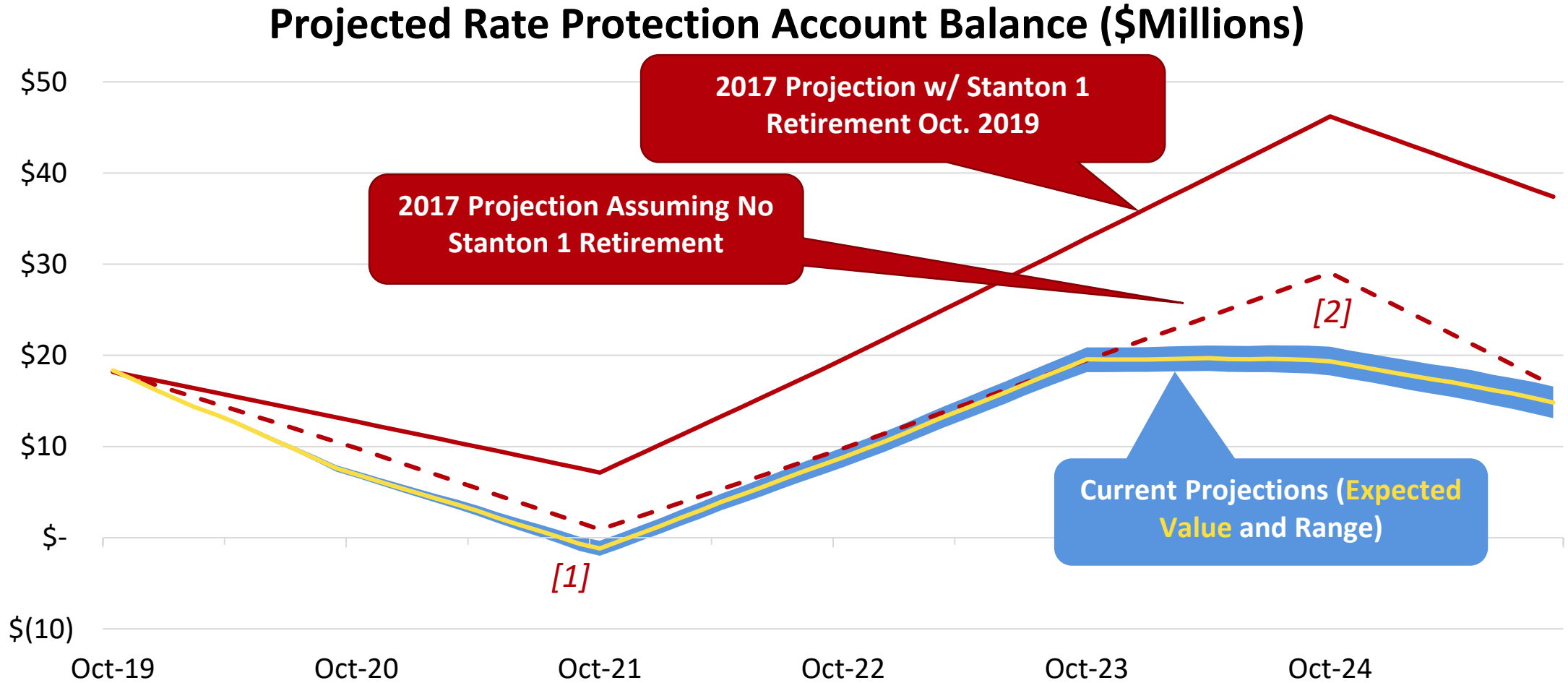
Larger Debt Savings Will Replenish Account Beginning in FY 2022

- Incremental project costs exceed debt savings in 2019 - 2021
- Largest debt savings (>\$20M/yr) occur in 2022 and 2023
- If RPA runs out of money (projection not to exceed \$2M), EC could decide to recover costs in one of the following ways:
 - Through rates
 - Short-term borrowing (e.g., pooled loan, draw on line of credit)
 - Capacity system sales

Not All Value of Vero Entitlements Currently Captured in Rate Protection Account Activity

- As ARP sells more excess capacity to others, Vero entitlements will have some capacity value
 - The calculation of the Vero Beach withdrawal payment reflected no capacity value
- Capacity revenues from Vero capacity used in off-system sales (e.g., Winter Park) currently planned to be used to lower Participant rates but could alternatively be deposited to Rate Protection Account
 - Based on Winter Park pricing, Vero entitlement capacity revenues between \$1.2M - \$2.4M per year, or \$12M total through FY 2027

Rate Protection Account - Current vs. Original Projections



[1] Negative balances shown in the chart (currently estimated to be up to \$2 million) would be recovered through rates unless alternative action taken by EC.

[2] Differences between the specific debt maturities originally projected to be defeased and those actually defeased are the primary drivers of the variance shown in FY 2024 and FY 2025 between the current projections and the prior projections.

Staff Will Continue to Provide Updates on Rate Protection Account

- Monthly activity will continue to be provided in rate call package
- Annual activity summaries (such as this presentation) will be provided
- If it becomes apparent that the Rate Protection Account will run out of money for a period, staff will notify the EC in advance and provide options for mitigating cost impact

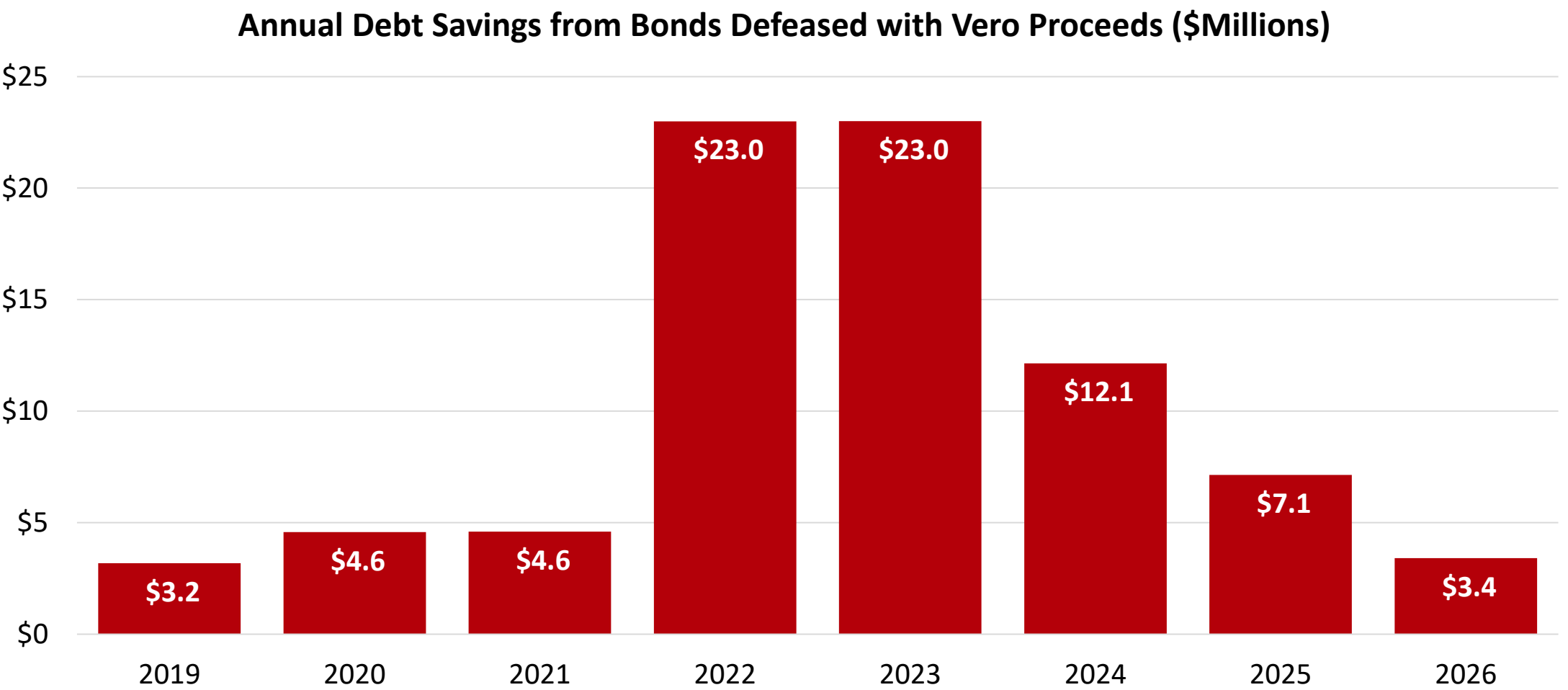
Recommended Motion

- For information only. No action requested.



Supplemental Information

Annual Debt Savings are Not Level



AGENDA ITEM 9 – INFORMATION ITEMS

b) Update on LAIR and Spread Reduction

**Executive Committee
December 12, 2019**



EC 9b - FY 2019 Incentive Rates and Cost Spread Reduction Program Summary

FMIPA Executive Committee

December 3, 2019

FY 2019 ARP Incentive Rates and Cost Spread Reduction Program Summary

- Incentive Rates: No Participant received either the Load Attraction Incentive Rate (LAIR) or the Economic Development Rate credits in FY 2019
 - Bushnell began receiving LAIR credit in October 2019 after completing cutover for its service territory acquisition (\$5.40/MWh benefit to Bushnell in October)
- In its first year, the Cost Spread Reduction Program (CSRP) achieved a 12% reduction in the FY2019 average Participant Demand and Energy \$/MWh cost spread at a cost to members of only \$0.02/MWh
 - 12-mo. cost spread reduced from \$11.42/MWh to \$10.00/MWh; only ~50% of \$200k maximum allowed credits used
 - 4 cities shared a total of \$98k in net benefits from CSRP in FY 2019
- Bushnell received ~50% of CSRP credits in FY 2019; however, LAIR credits should remove it from among highest cost cities moving forward and allow other cities to receive CSRP benefits

Overview of Load Attraction Incentive Rate (LAIR)

- Provides 50% discount on ARP base demand for new loads for 1st year
 - Discount decreases by 10% each year, thereafter, through 5th year
 - After 5th year, the new load is charged the full ARP demand rate
- Minimum size requirements apply for new loads to qualify
 - Participants > 35 MW: 500 kW at single delivery point or 1 MW for new service territory
 - Participants < 35 MW: 250 kW at single delivery point or 1 MW for new service territory
- No discounts to the ARP energy or transmission rates
- Load receiving the discount must be separately metered
- Sunset date for start of new service is December 31, 2024
- Availability limited to first 30 MW of load to begin service under any ARP incentive rate rider

Overview of Economic Development Rate (EDR)

- Reduced demand charge for new load for 10-year period
- Energy charge tied to heat rate X natural gas prices + VOM adder
- The new load must be a minimum of 5 MW for each month and energy-intensive
- Electricity price must be a significant determining factor in the site selection decision of the new or expanded business
- Participant must pass the EDR demand rate and energy rates directly to the new customer
 - Participant must discount its own distribution, metering, and customer charges through a fixed adder to the EDR demand rate
 - No adders to EDR energy rate permitted
- Load receiving the discount must be separately metered
- Sunset date for start of new service is December 31, 2020

Incentive Rate Utilization – Bushnell in Place, but More Expected to Come

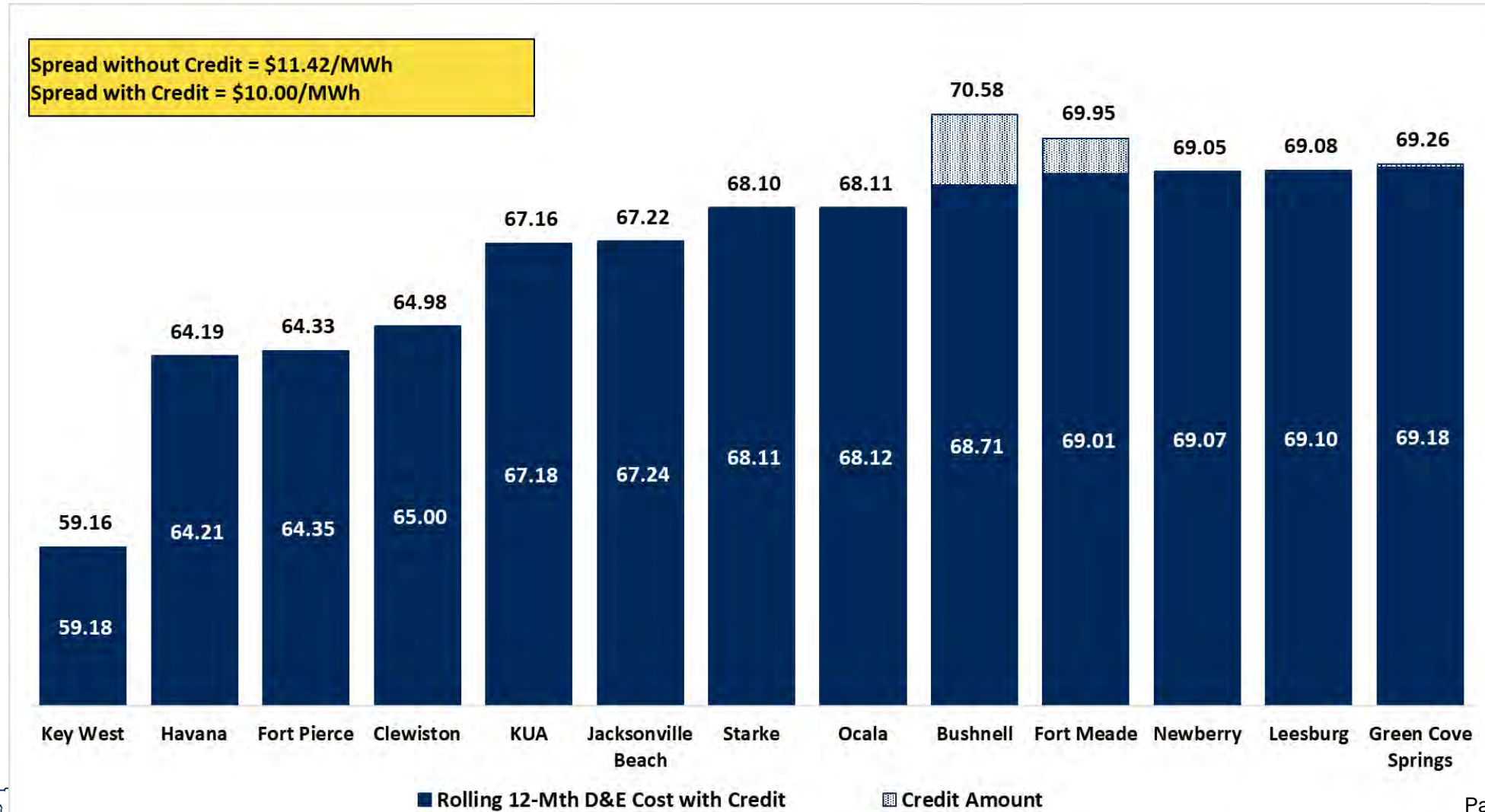
- Bushnell began receiving LAIR credit in October 2019 after completing cutover for its service territory acquisition
 - LAIR credit provided \$5.40/MWh benefit to Bushnell on its October billed costs
- Fort Meade should be next Participant to utilize LAIR (Valmont facility) in coming months
- Several Participants have made inquiries regarding potential uses of the incentive rates, but no additional “firm” opportunities known
 - FMPPA supported economic development bid for Kissimmee

Overview of Cost Spread Reduction Program (CSRP)

- Designed to reduce 12-month rolling average Demand and Energy \$/MWh cost spread among Participants
- Approved program term is October 1, 2018, through September 30, 2020
- All Participants contribute to the payment each month, and all Participants are eligible to receive the credit, regardless of size
- Total contribution to highest-cost Participants is a maximum of \$200k over a 12-month period
 - Monthly amount is a maximum of (i) ~\$16.7k/month (\$200k/12), or (ii) the amount needed to bring the 12-month rolling average Demand and Energy cost spread of lowest-cost to highest-cost Participants to \$10/MWh, whichever is less
- Participants' respective dollar contributions computed such that the payments have an equivalent \$/MWh increase across all Participants' respective 12-month rolling average Demand and Energy costs
- Credit limitations:
 - No Participant can receive an amount that would cause its 12-month rolling average Demand and Energy \$/MWh cost to be reduced below the next highest Participant's cost
 - No Participant can receive more than 50% of total monthly credit

FY 2019 Cost Spread Reduced to \$10/MWh after Reflecting CSRP Credits

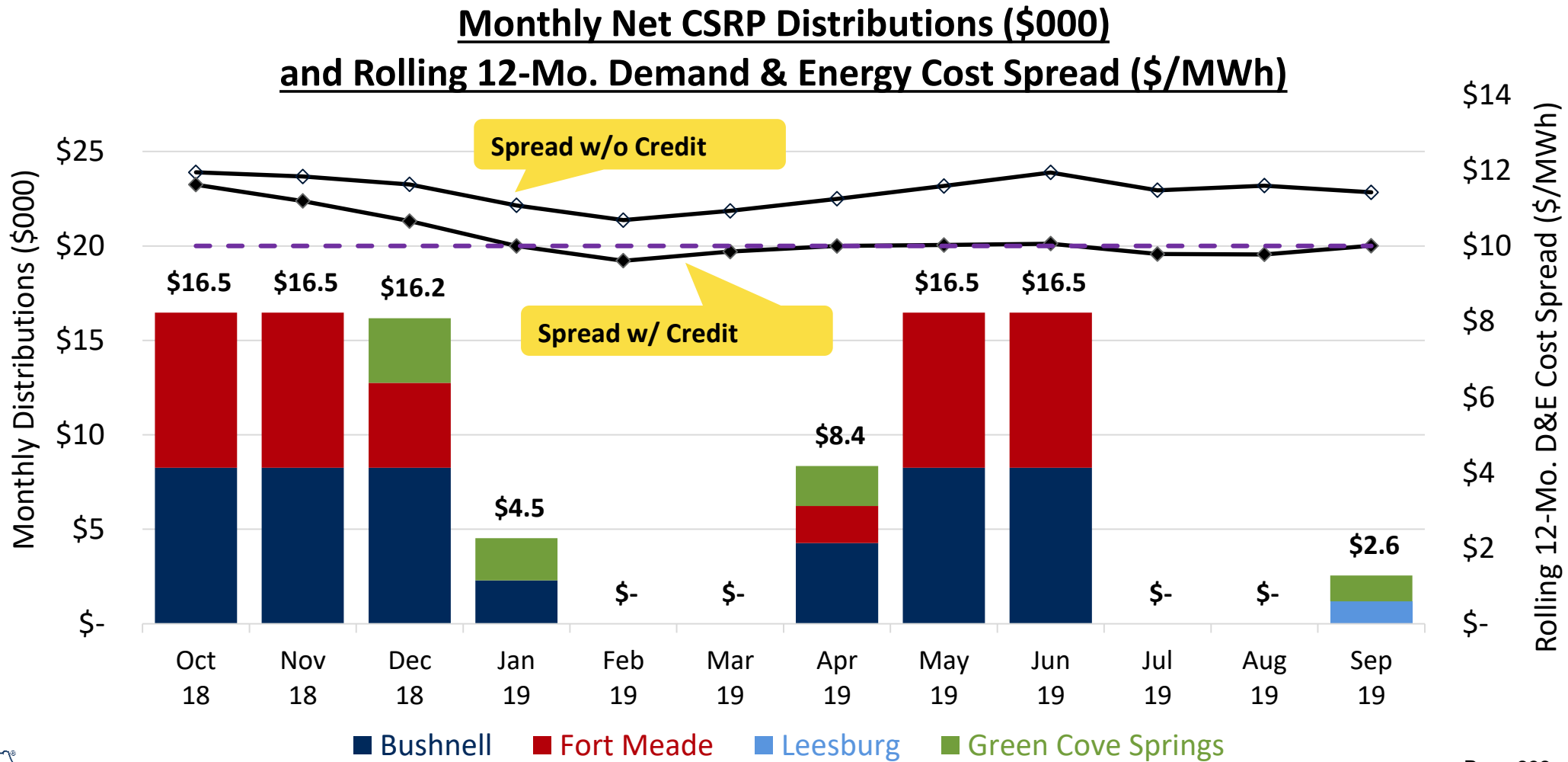
12-Month Rolling Avg. D&E Costs before and after Credit Impact (\$/MWh)



Cost Spread Reduction Program Successfully Reduced ARP

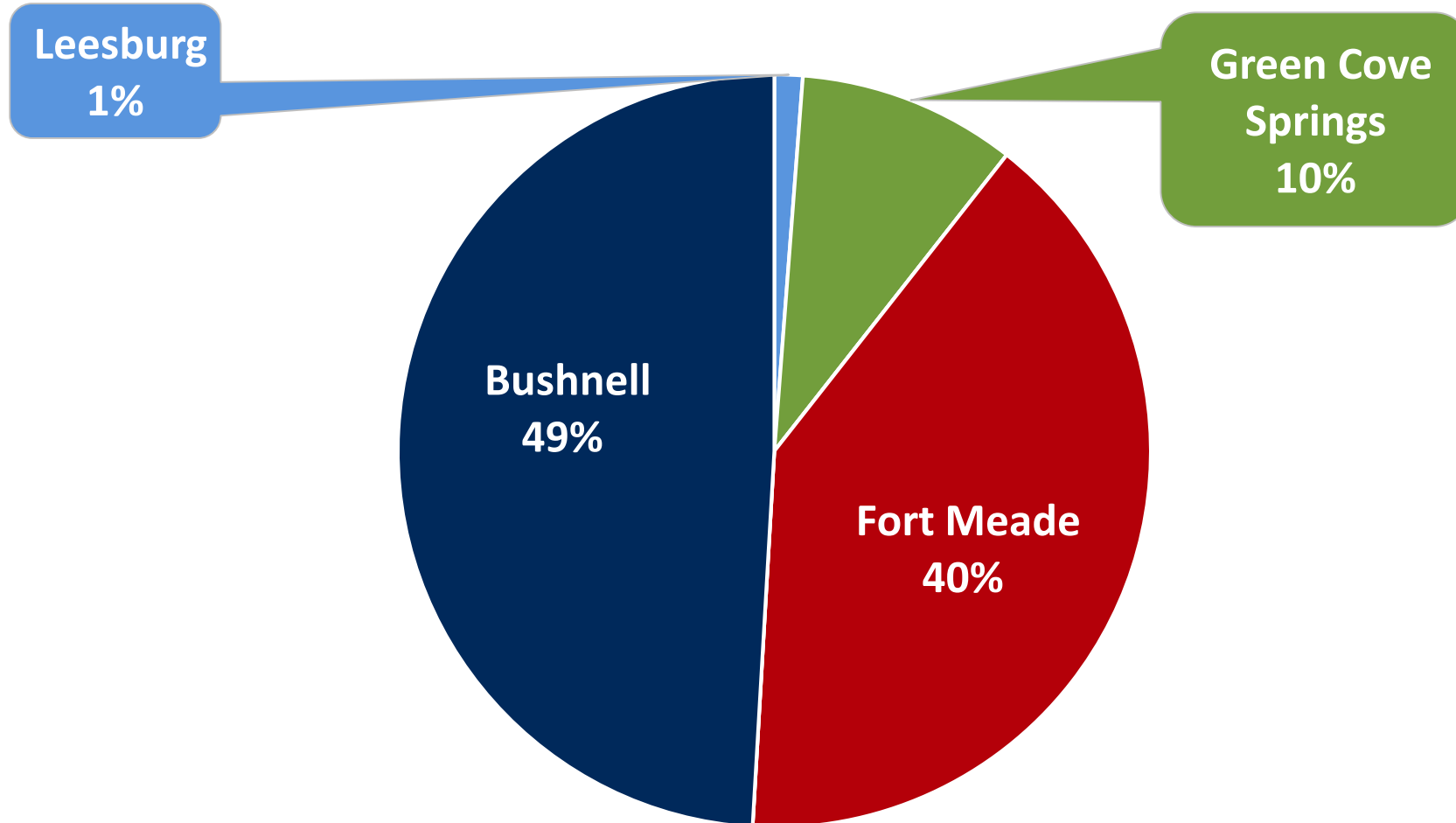
FY 2019 Cost Spread by \$1.42/MWh (12%)

Cost to Members only \$0.02/MWh or \$98k (50% of \$200k Max)



4 Cities Received a Total of \$98k in Net Benefits from Cost Spread Reduction Program in FY 2019

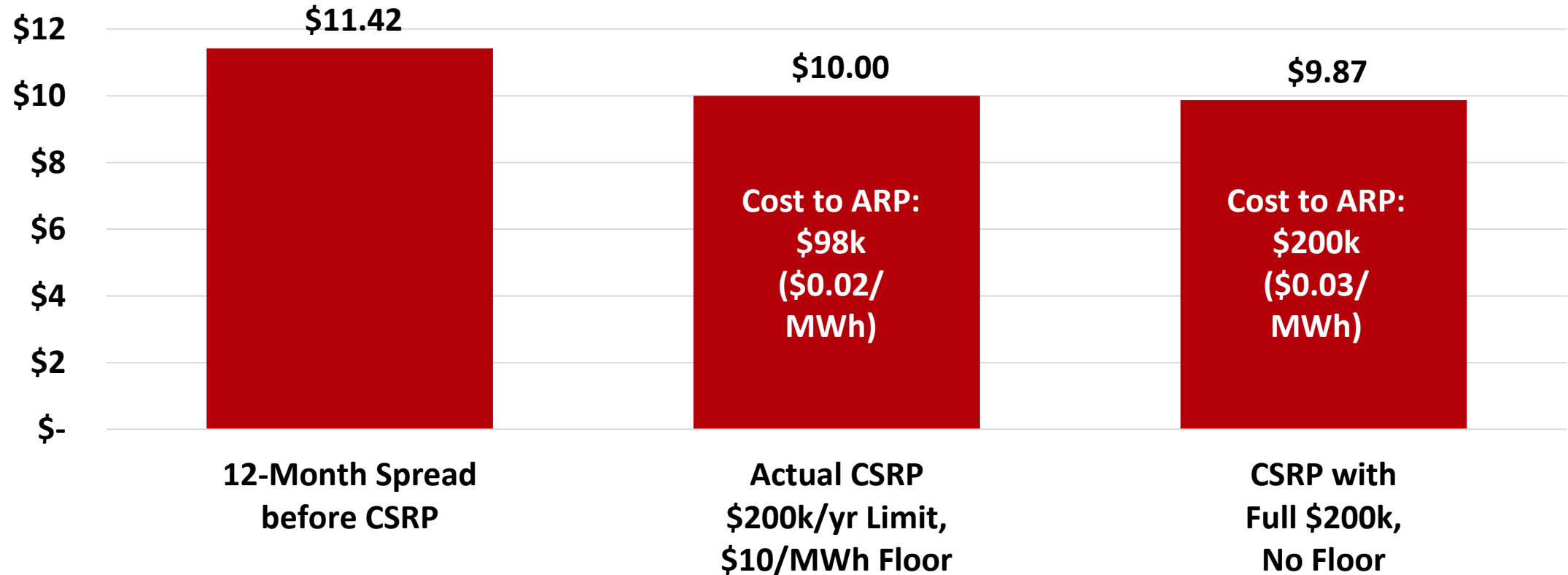
Percent of 12 Mo. Total Net Credits Received



What Would the Results Have Been if the Full \$200,000 Had Been Distributed (Ignoring \$10/MWh Floor)

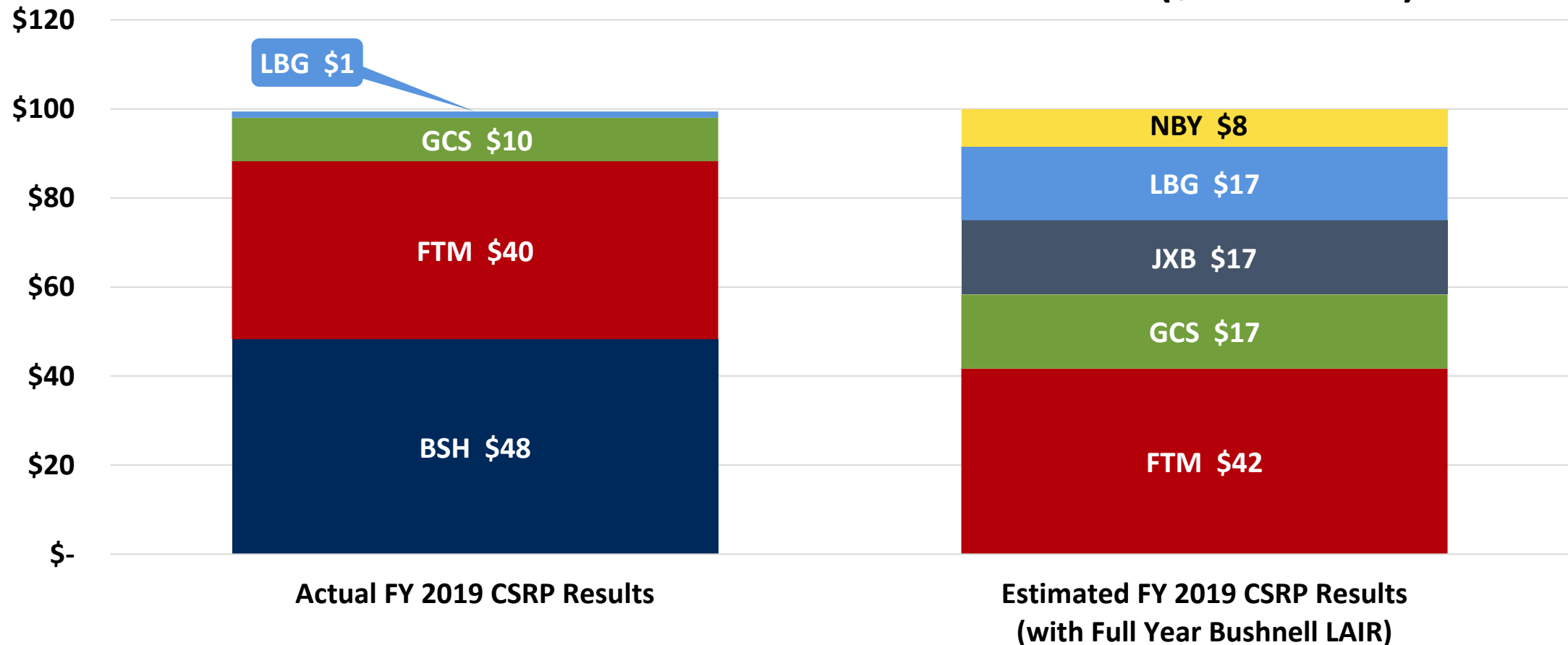
Additional \$102k Would Have Reduced Spread \$0.13/MWh

FY 2019 Cost Spread Under Various Scenarios (\$/MWh)



Bushnell LAIR Credits Will Remove It From Among the Highest Cost Cities, Allow Others to Receive CSRP Benefit

Comparison of Estimated CSRP Credits Paid for FY 2019
if Bushnell Had Received Full Year of LAIR Credits (\$Thousands)



Recommended Motion

- No action required. For information only.

AGENDA ITEM 9 – INFORMATION ITEMS

c) Update on ARP Prepaid Gas Transactions

**Executive Committee
December 12, 2019**



9c – Update on ARP Prepaid Gas Transactions

Executive Committee

December 11, 2019

ARP Participates in Four Prepaid Gas Transactions

Projected Fiscal Year 2020 Savings of \$0.47 per MWh

Prepaid Gas Transactions	Daily MMBtu Volume	Discount off of First of Month Price*	Annual Savings	Saving Start Date
Main Street / RBC	2,750	\$0.40	\$401,500	April 1, 2019
Main Street / Macquarie	2,500	\$0.30	\$273,500	April 1, 2019
Main Street / TD Bank	8,000	\$0.31	\$905,200	July 1, 2019
Black Belt Energy / Morgan Stanley	10,000	\$0.32	\$1,168,000	November 1, 2019
Totals	23,250		\$2,748,000	

* Includes estimated annual interest earnings

Prepaid Gas Saved ARP \$566,735 in Fiscal Year 2019

Prepaid Gas Transactions	Daily MMBtu Volume	MWh reduction	FY 2019 Savings
Main Street / RBC	2,750	\$0.059	\$201,300
Main Street / Macquarie	2,500	\$0.040	\$137,275
Main Street / TD Bank	8,000	\$0.126	\$228,160
Total			<u>\$566,735</u>

AGENDA ITEM 9 – INFORMATION ITEMS

**d) Pricing Update Report on the Series 2019
A&B Bonds**

**Executive Committee
December 12, 2019**



EC 9d – Pricing Update Report on the 2019 Bonds

Executive Committee

December 11, 2019

ARP 2019A/B Bonds Exceeded Expectations

- Fitch Rating Upgrade to AA-, Moody's reaffirmed at A+
- Termination of all Swaps in the Project
- Combined Present Value Savings \$295,909.53
- Final Payment on ARP Debt now 10/2031 vs. 10/2035
- Elimination of LIBOR exposure
- Fixed Rate Debt Transaction

Exceeded Internal Targets

Final Numbers Compared to Resolution/Debt Policy

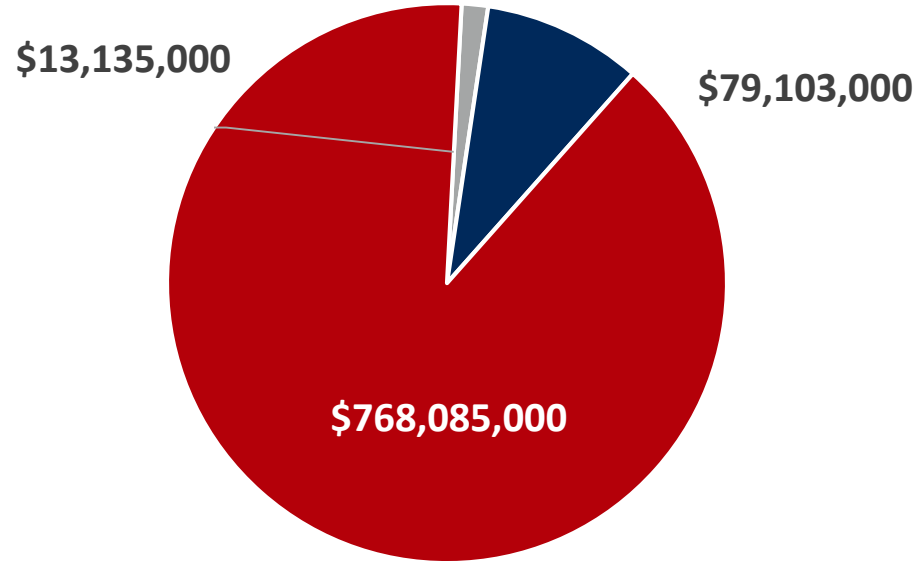
Description	Actual	Limit Per Resolution or Debt Policy
Bonds Issued A	\$75.22 million	\$90 million
Bonds Issued B	\$ 6.67 million	\$8.0 million
All-In Interest Rate (A)	4.31013%	5.00%
True Interest Cost (B)	2.21238%	4.00%
Present Value Savings	\$295k	(\$500,000) per Resolution
Final Maturity	10/2031	10/2035

Description	Actual	Limit Per Resolution or Debt Policy
Issue Costs	\$403,900	N.A.
Underwriters Discount	\$2.93 per \$1,000	\$5.00 per \$1,000
Method of Sale	negotiated	negotiated
Closing Date	11/7/2019	May 31, 2020
Redeemed Date	11/7/2019	
Underwriters	Barclays Capital and BofA Securities Inc.	Barclays Capital and BofA Securities Inc.

ARP Debt Portfolio Structure

After Refinancing Project 99.4% Fixed Rate Debt

Portfolio Structure Before 11/7/2019

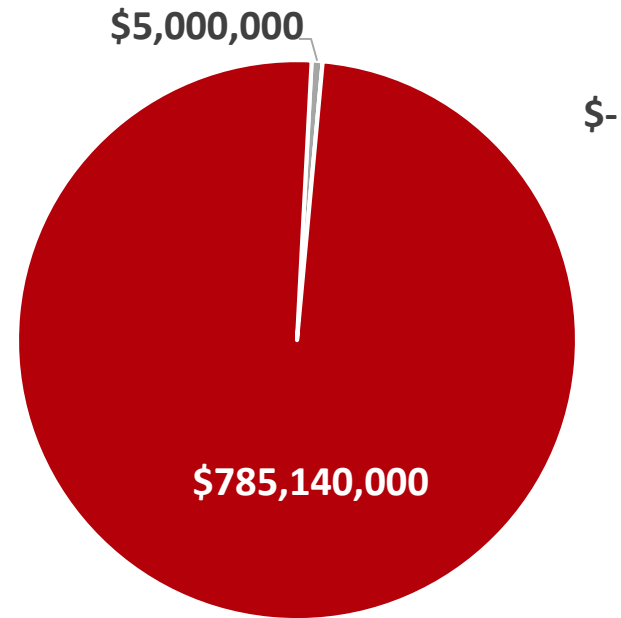


■ Variable / Line of Credit

■ Synthetically Fixed Rate Bonds:

■ Fixed Rate Bonds:

Portfolio Structure After 11/7/2019



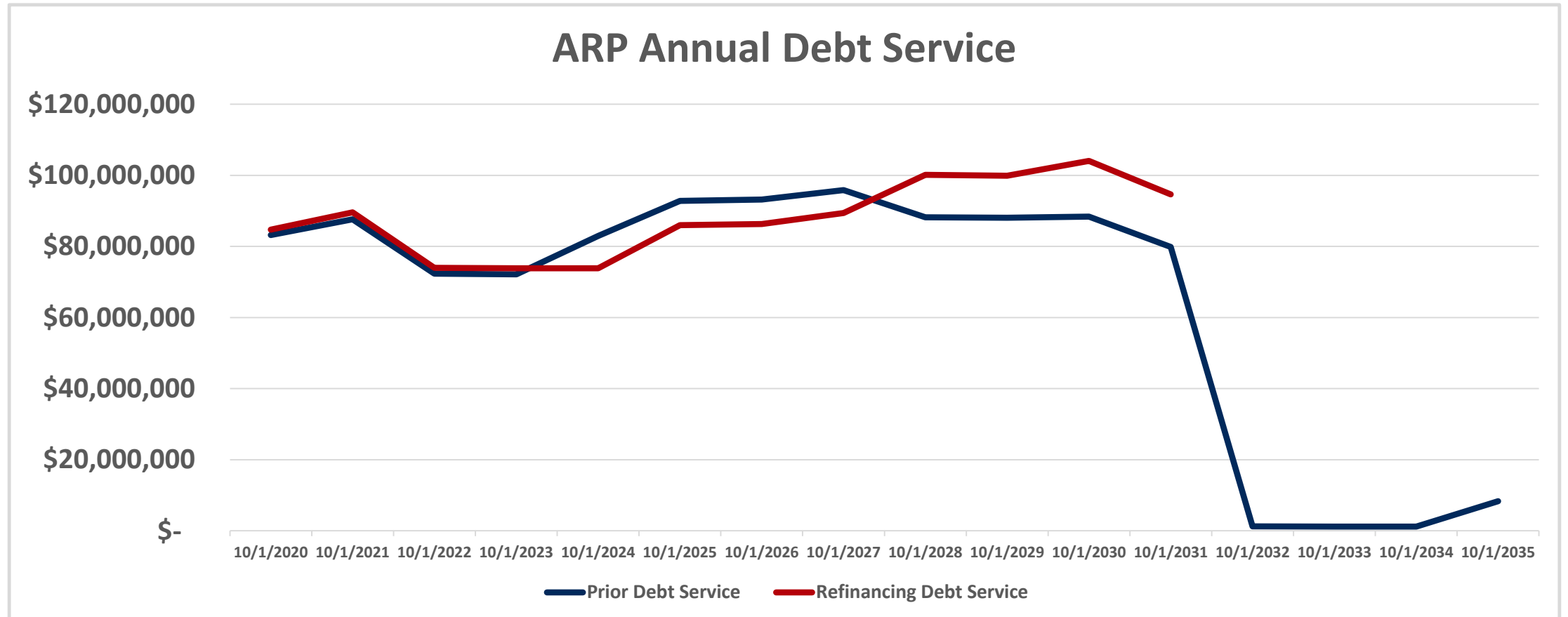
■ Variable / Line of Credit

■ Synthetically Fixed Rate Bonds:

■ Fixed Rate Bonds:

Debt Payments Better Match Load Growth

St Lucie and Stanton II Payments Decrease By 2027





QUESTIONS

AGENDA ITEM 9 – INFORMATION ITEMS

e) FY 2019 Preliminary Financial Results

**Executive Committee
December 12, 2019**



FYE 2019 Preliminary Financial Results

9a Finance Committee
9b Board of Directors
9e Executive Committee

December 12, 2019

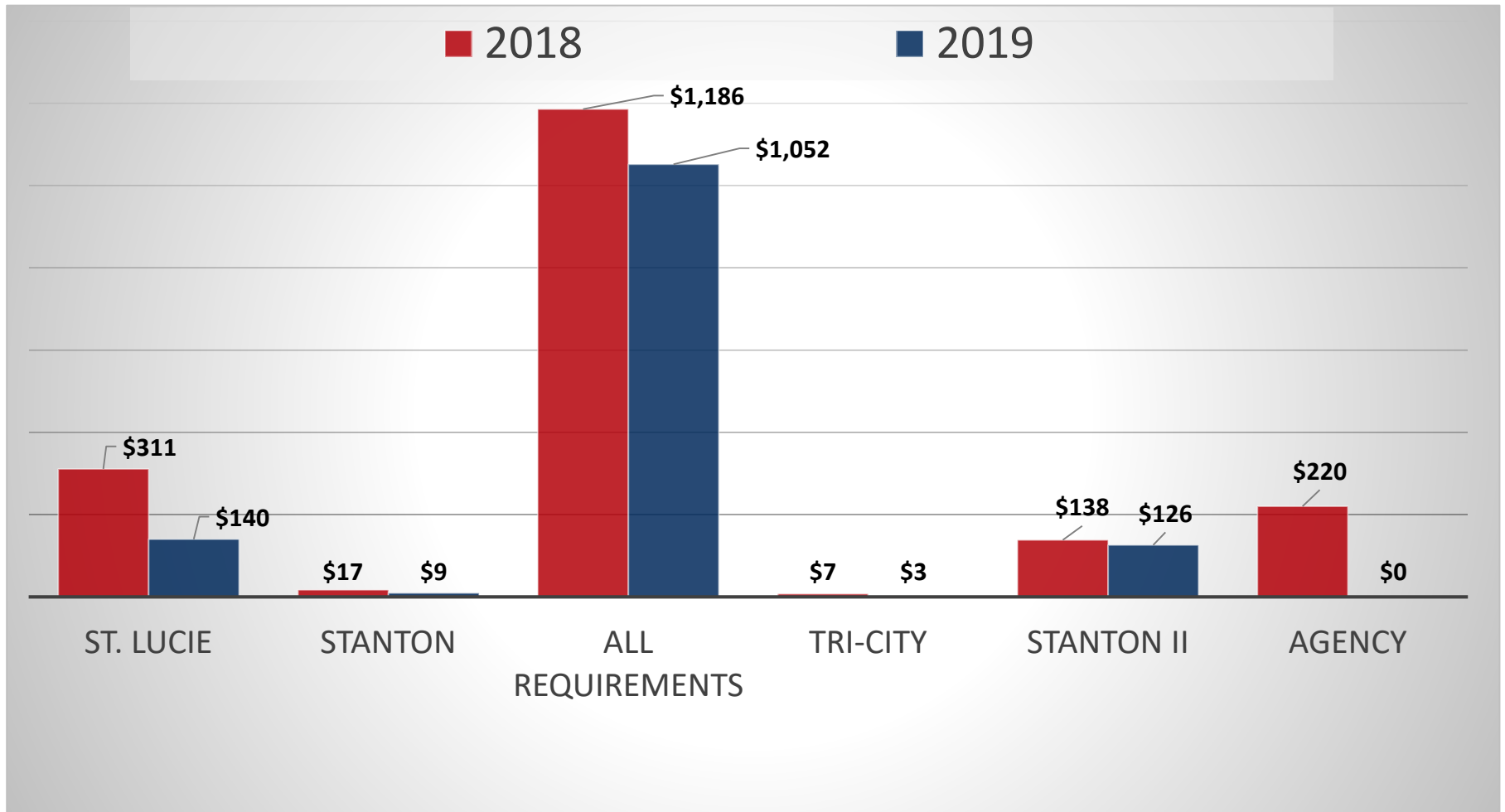
Financial Statement Highlights

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

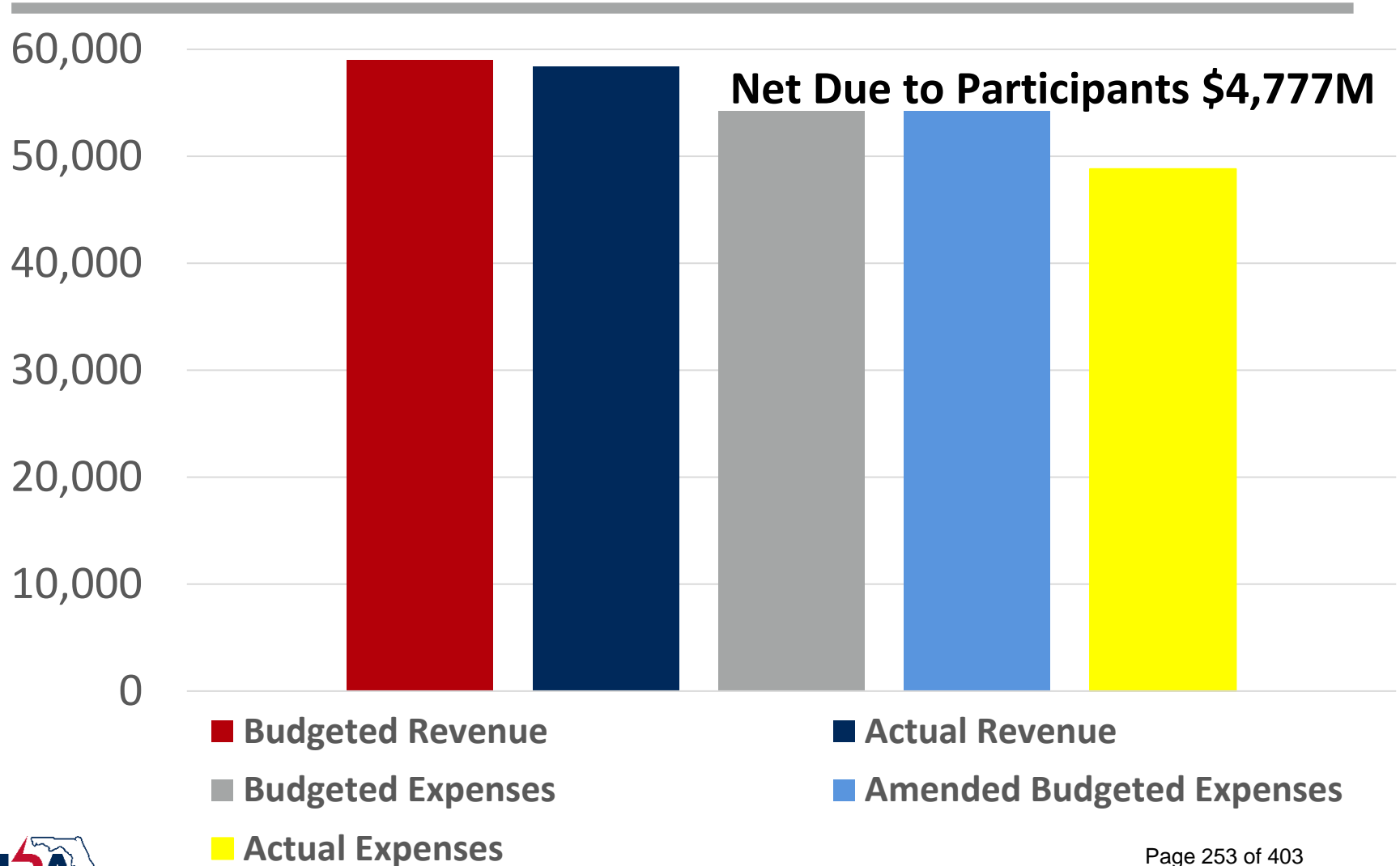
Long Term Debt by Project

Overall Reduction of \$329M



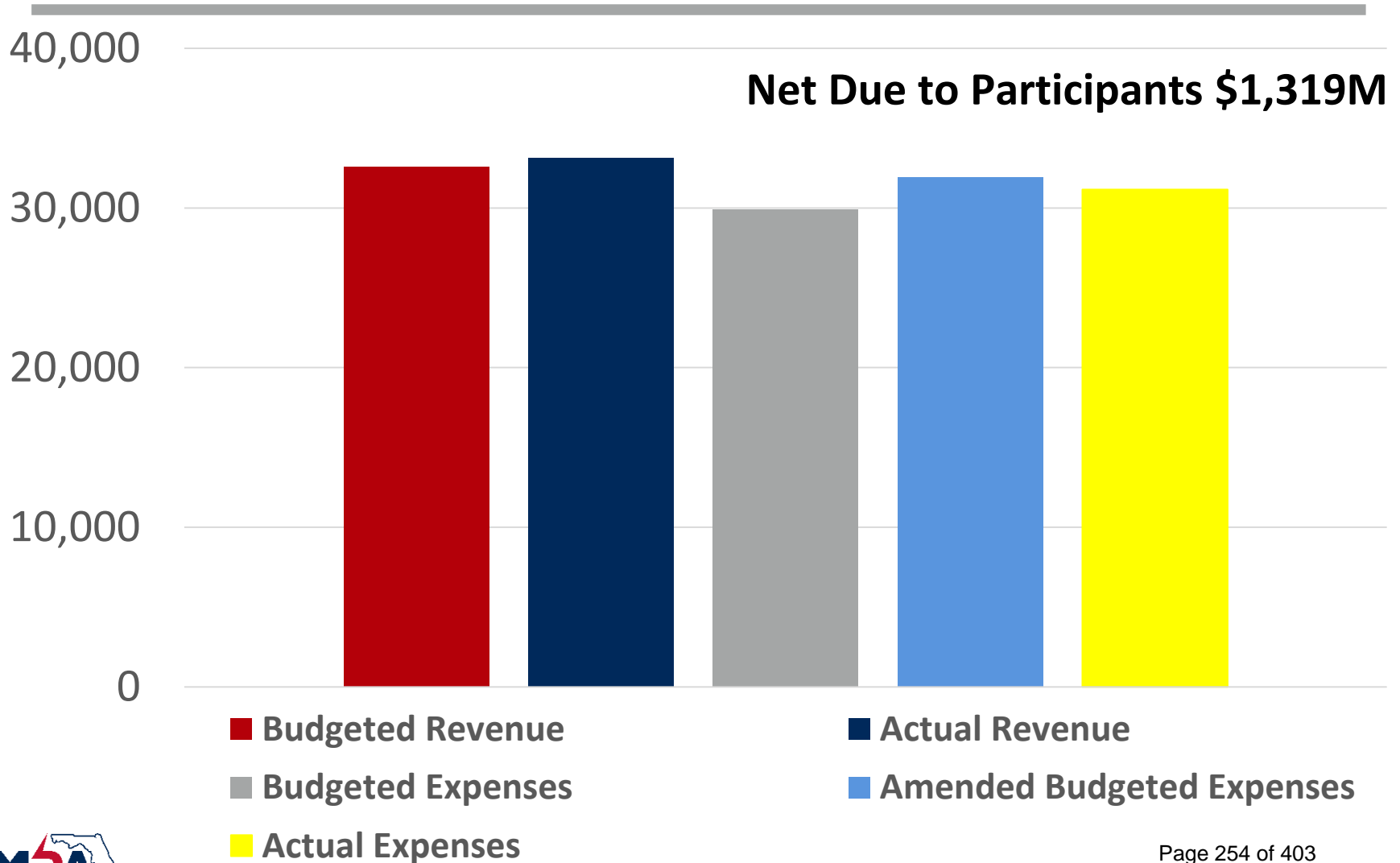
Budget to Actual Comparison (\$000s)

St. Lucie



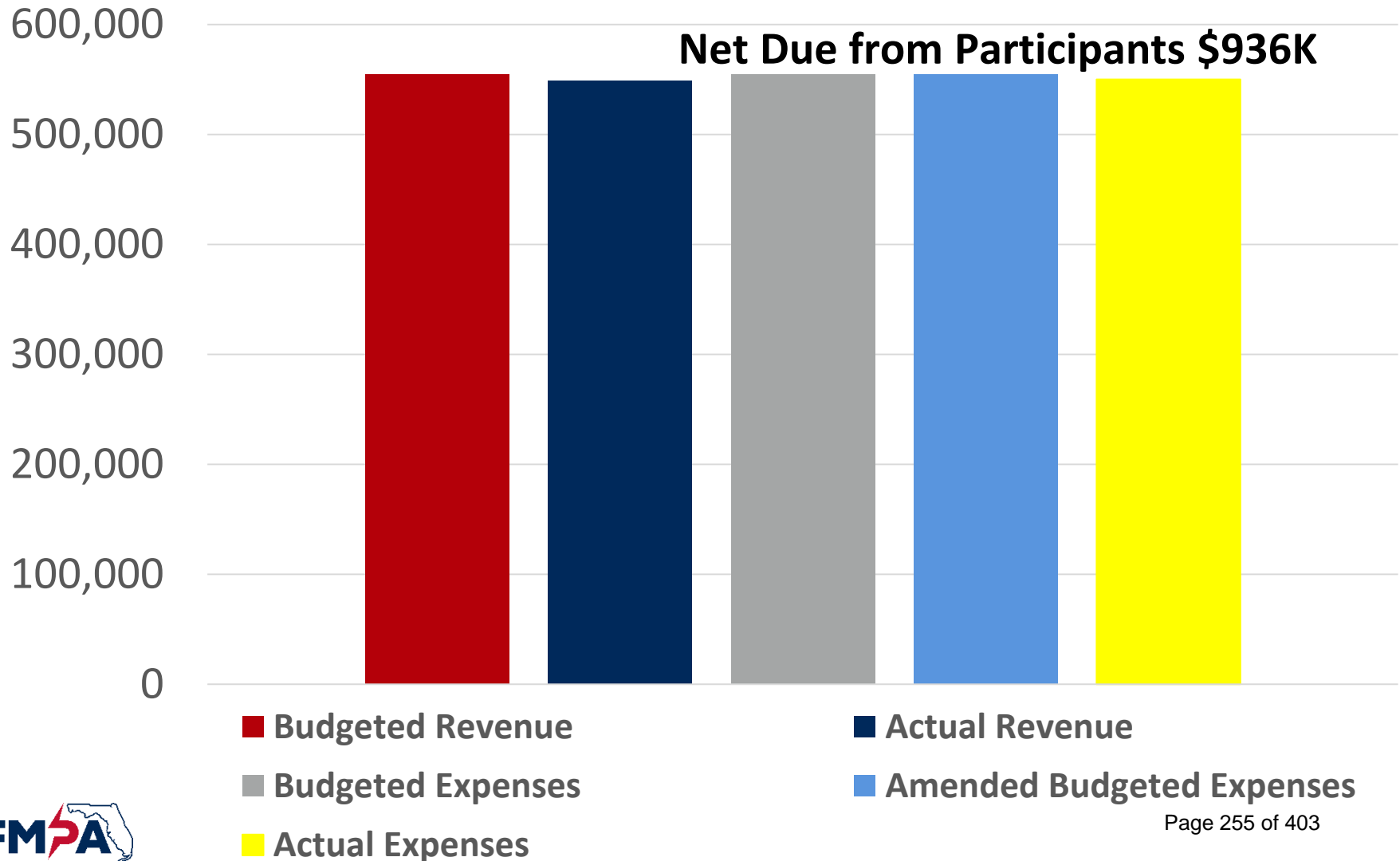
Budget to Actual Comparison (\$000s)

Stanton



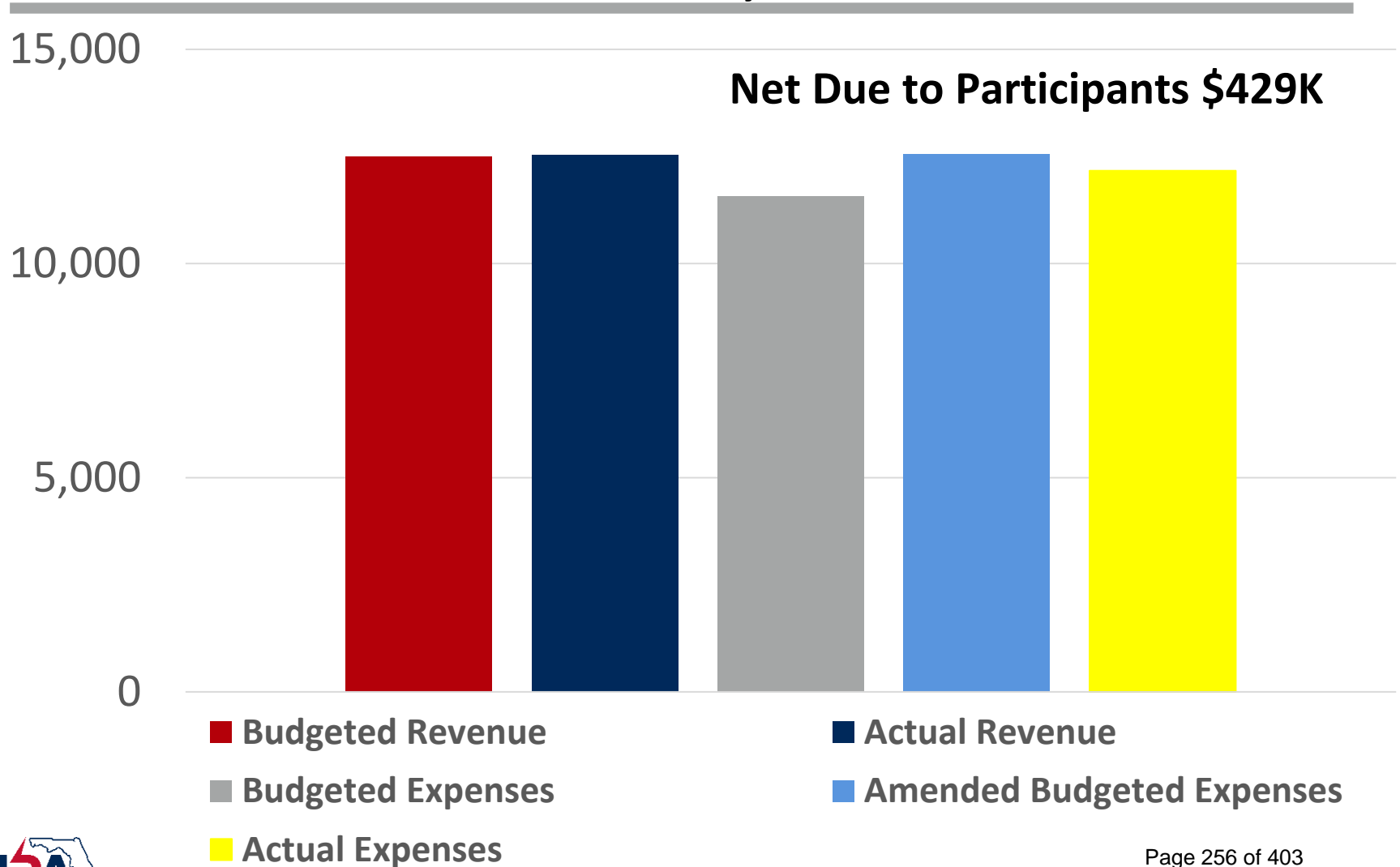
Budget to Actual Comparison (\$000s)

All Requirements



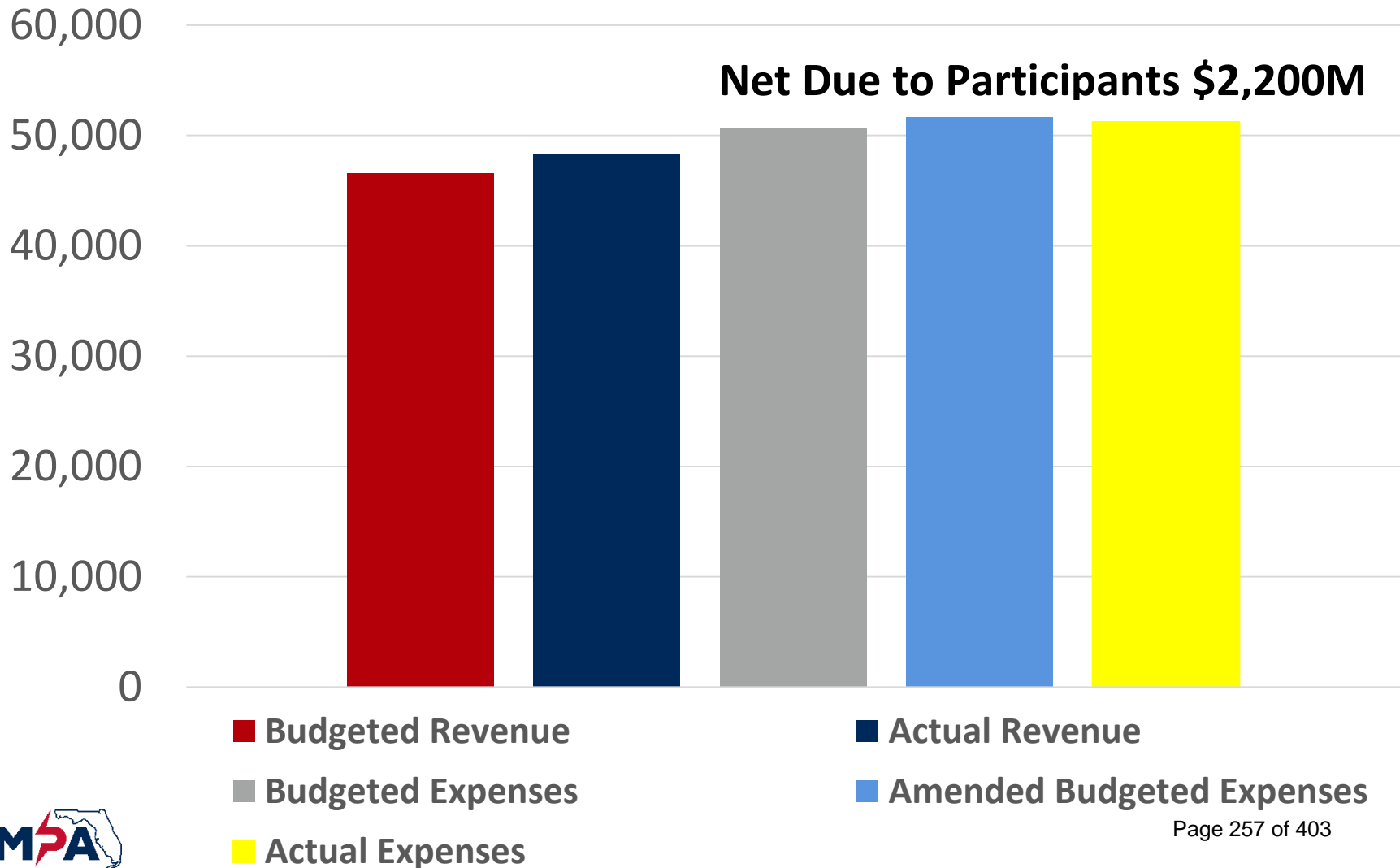
Budget to Actual Comparison (\$000s)

Tri-City



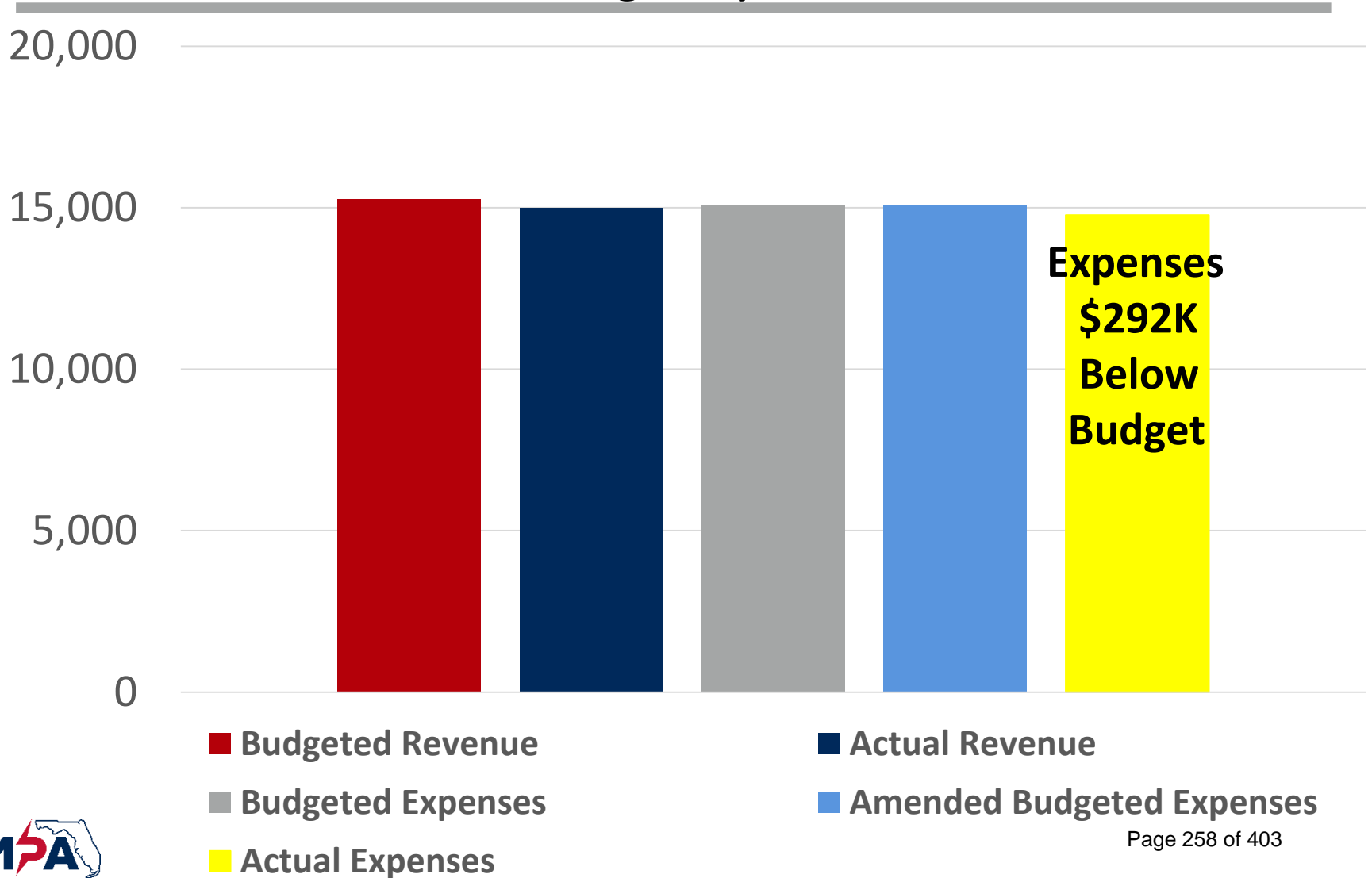
Budget to Actual Comparison (\$000s)

Stanton II



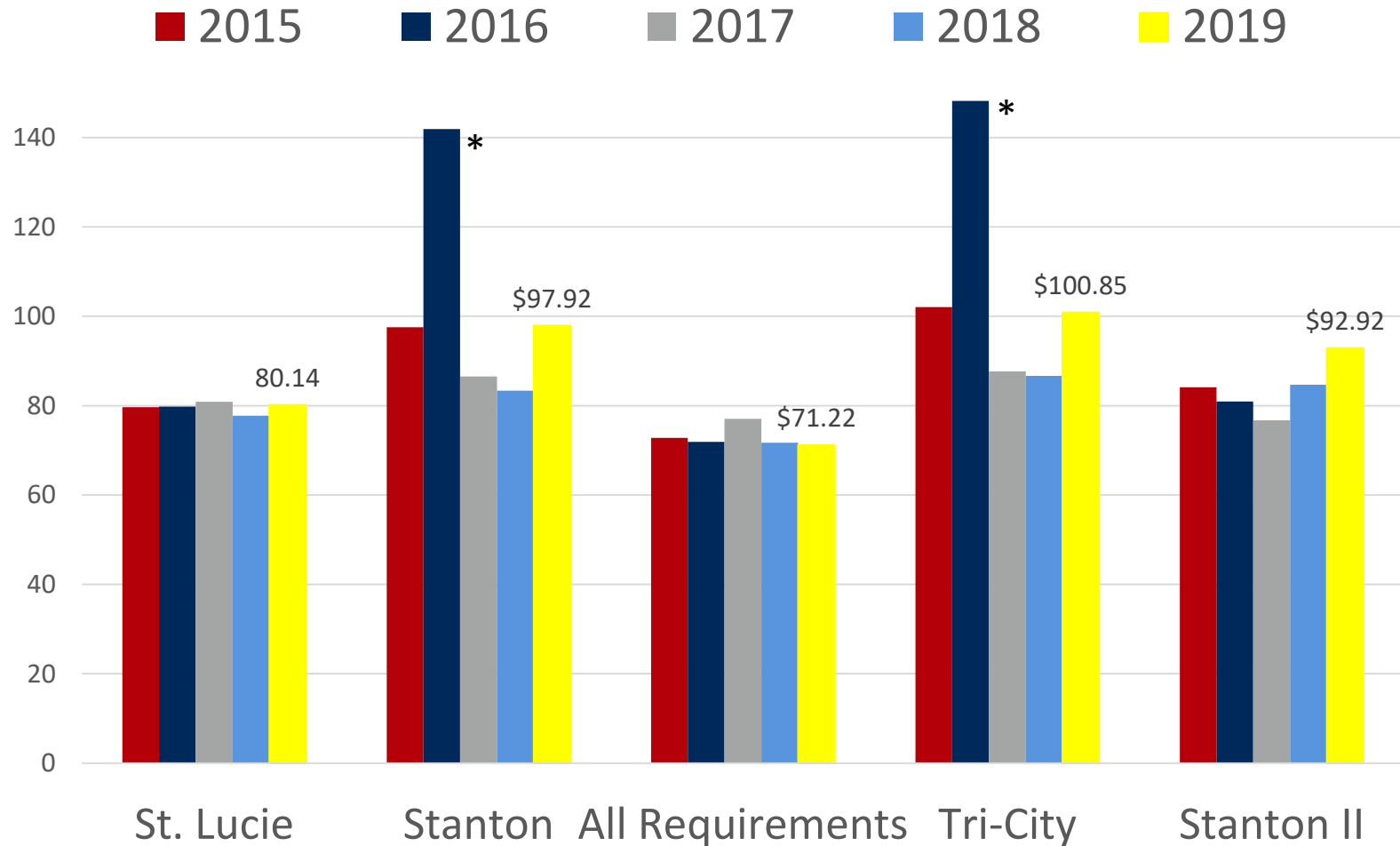
Budget to Actual Comparison (\$000s)

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

f) Summary of Finance Committee Items

**Executive Committee
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

g) Solar Phase I Poinsett PPA Revisions

**Executive Committee
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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¹ Seller NTD: The Table of Contents may need to be renumbered again once the A&R REPPA is finalized.

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Exhibit B	Description of Project
Exhibit C	Description of Delivery Point and One-Line Diagram
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Exhibit E	Purchase Option
Exhibit F	Form of Guaranty
Exhibit G	Form of Letter of Credit
Exhibit H	Seller Insurance Requirements
Exhibit I	Site Description; Map
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Exhibit K	Milestones With Delay Damages
Exhibit L	Certificate – Commercial Operations
Exhibit M	REC Bill of Sale
Exhibit N-1	Consent to Assignment
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 16th 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 agreed 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 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 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 1st through October 31st 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 1st through October 31st 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 15th preceding the first Contract Year or forty-five (45) Days prior to the commencement of the first Contract Year; and (ii) January 15th 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 (10th) 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

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 [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 [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)

$$R \times \text{██████████} \times CE_{b,2y} \times \frac{(h - h_e)}{h} - DE_{b,2y}$$

$$\frac{\text{██████████}}{\text{MWh}} \times \left(\text{██████████} \times \text{██████████ MWh} \times \frac{(\text{██████████})}{\text{██████████}} - \text{██████████ MWh} \right)$$

$$\frac{\text{██████████}}{\text{MWh}} \times (\text{██████████} \times \text{██████████ MWh} \times \text{██████████} - \text{██████████ MWh})$$

$$\frac{\text{██████████}}{\text{MWh}} \times (\text{██████████ MWh} - \text{██████████ MWh})$$

$$\frac{\text{██████████}}{\text{MWh}} \times (\text{██████████ MWh})$$

████████████████████

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

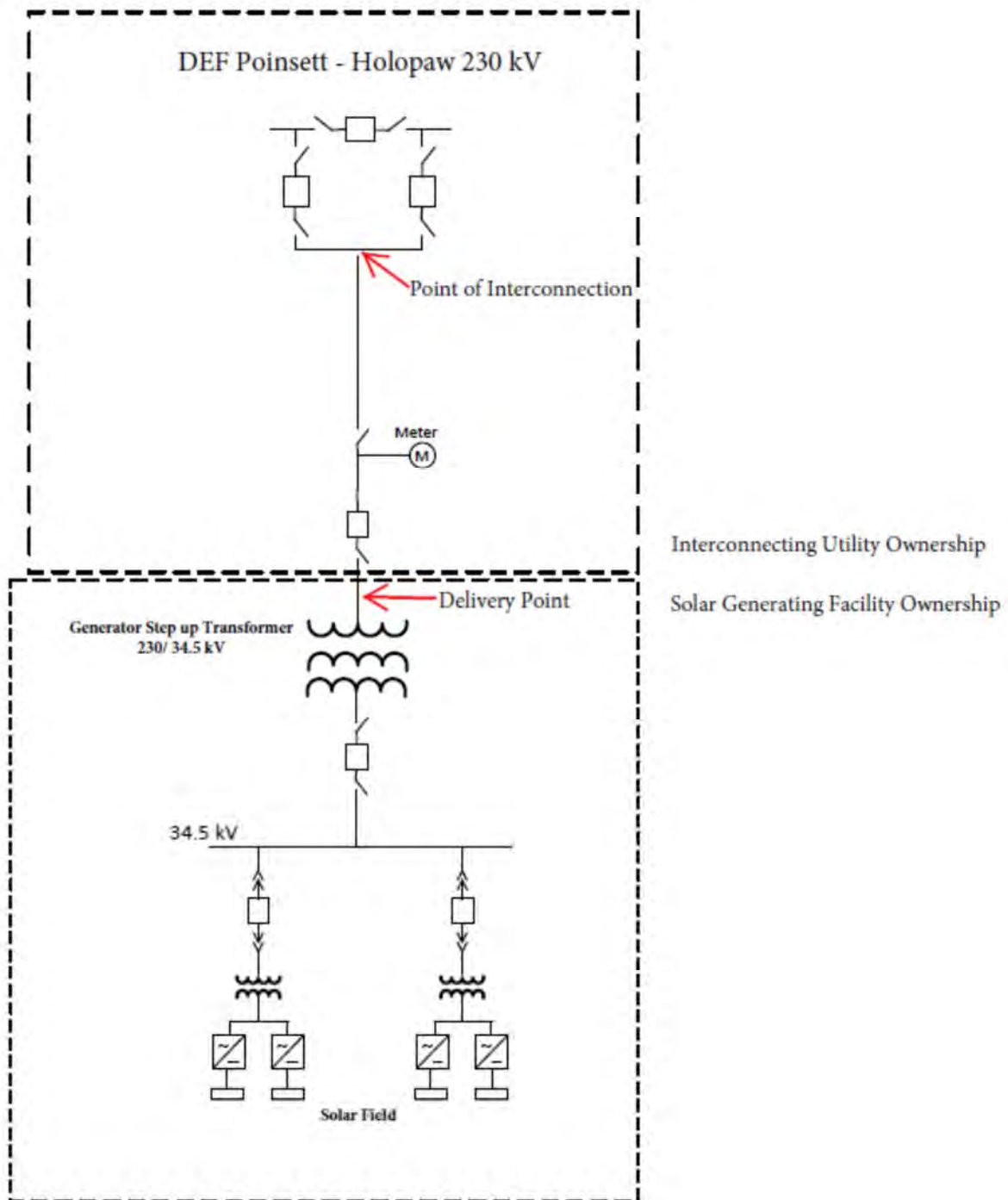


EXHIBIT D

PROJECT QUANTITY

Period	Project Quantity (MWh)
Jul-Dec 2020 2023	
2021 2024	
2025 2022	
2026 2023	
2027 2024	
2028 2025	
2029 2026	
2030 2027	
2031 2028	
2032 2029	
2033 2030	
2034 2031	
2035 2032	
2036 2033	
2037 2034	
2038 2035	
2039 2036	
2040 2037	
2041 2038	
2042 2039	
2040	
2041	
2042	
2043	
2044	
2045	
2046	
2047	
2048	
2049	
Jan-Jun 2050 2043	

EXHIBIT E

PURCHASE OPTION

Purchase Date	Minimum Purchase Price
Last day of the Initial Term	
Last day of first Renewal Term	

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

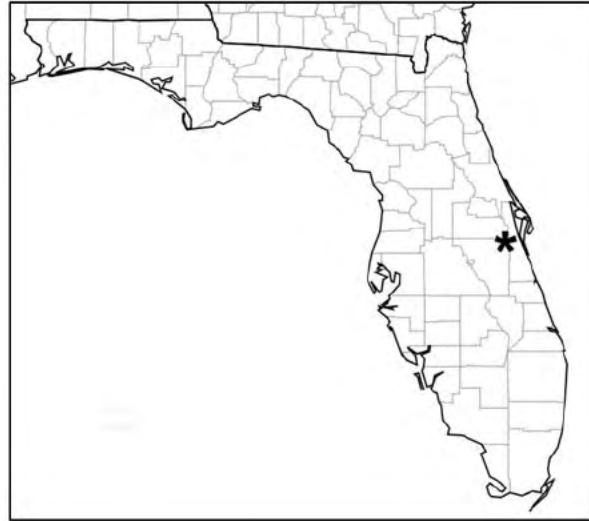


EXHIBIT J **INTERIM MILESTONE SCHEDULE**

Anticipated Date (as of the Effective Date and subject to extensions as permitted in the Agreement)	Milestone	Section
May 30, 2018 2021	Seller Management Approval	6.1(a)(v)
November 20, 2018 2020	Site Control	6.1(a)(iii)
October 20, 2019 2020	Receipt of all Governmental Approvals	6.1(a)(iv)
January 2, 2020 2023	Large Generator Interconnection Agreement execution	6.1(a)(i)
February 15, 2020 2023	Initial Energy Delivery Date	3.3
May 30, 2020 2023 (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, 2020 , 2023	Guaranteed Commercial Operation Date	4.3, 6.1(a)(vi)
December 27, 2020 2023	Guaranteed Commercial Operation Date with 180 days Permitted Extensions	4.3, 4.4, 6.1(a)(vi)
August 24 , 2021 23, 2024	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

Date	Milestone	Section
May 30, 2019 <u>2022</u>	Florida Department of Environmental Protection - Environmental Resource Permit Received	4.1(j)
January 1, 2020 <u>2023</u>	Start of Construction	4.1(j)
June 30, 2020 <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_{ac} 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_{AC}): _____

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)]² 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

² 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)]³ 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)]⁴, 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

³ 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.

⁴ 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:

The Contracting Party:

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

Buyer and Other Buyers (as applicable)	Buyer's Share and Other Buyer's Share (as applicable)
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

Project	Buyer or Other Solar Project Buyer (as applicable)	Buyer or Other Solar Project Buyer (as applicable) Share of Project	Buyer or Other Solar Project Buyer (as applicable) Share of the Solar Project Portfolio
"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

h) Parliamentary Procedure to Suspend the Rules for Reading Resolution Titles

**Executive Committee
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

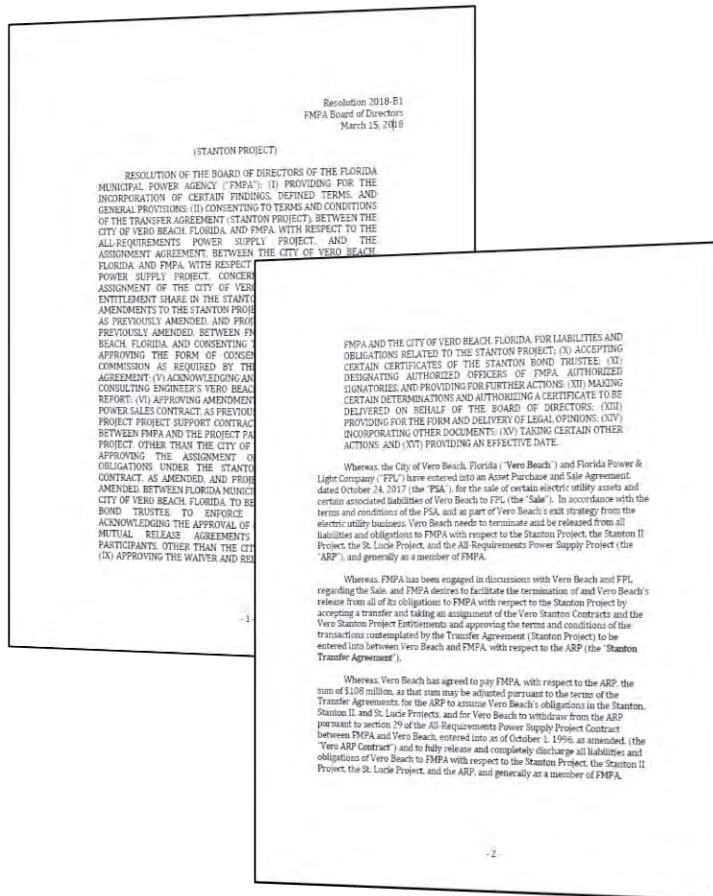
Reading Resolution Titles: Why?

- 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?

- 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!

- § 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!

- 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 9 – INFORMATION ITEMS

i) Transmission Provider Rate Increases

**Executive Committee
December 12, 2019**



EC 9i – Transmission Provider Rate Increases

Executive Committee
December 3, 2019

Transmission Filings Increasing in Frequency; Costs Going Up

Staff Seeking Feedback on Setting a Budget for Support

- FMPA entering a much more active period with transmission provider rate-related activity
- Duke Energy, FPL and OUC have all implemented transmission rate increases this past year
- FMPA has intervened and filed protests with FERC for the Duke and FPL filings
- This has led to an increase in staff time spent on these efforts, as well as increase in legal and consulting spending to support
- Staff is providing a summary of the activity over the past year
- Staff is also requesting feedback as to whether the EC wishes to approve an overall budget for legal and consulting spending for these efforts

Duke Energy Florida

Nov. 2018 Ancillary Service (Reactive) Rate Increase Filing

- Duke filed with FERC for increase to Schedule 2 (Reactive Supply & Voltage Control) ancillary service charges to be effective 1/1/19
- Filed rate of \$182.72/MW-mo. represented 66% increase from prior rate of \$110.00/MW-mo. (last adjusted in 1998)
- Estimated annual cost impact of as-filed rates to ARP ~\$320k
- FMPA and Seminole protested the filing and requested 5-month suspension
- On 12/31/18, FERC suspended the increase for 5 months to 6/1/19
- In July 2019, FMPA, Seminole & Duke agreed to settled rate of \$148.68/MW-mo. effective 6/1/19

Duke Energy Florida

2019 Anticipated Ancillary Services Revisions/Rate Increase Filing

- In October, Duke alerted major wholesale customers that they are planning to file for revisions, including rate increases, to several ancillary service schedules:
 - Schedule 1 (Scheduling, System Control & Dispatch): Increase from \$67/MW-mo. to \$109.86/MW-mo.
 - Schedule 2 (Reactive Supply & Voltage Control): Increase from \$148.68/MW-mo. to \$214.26/MW-mo.
 - Schedules 3 (Regulation & Frequency Response), 3A (Generator Regulation), 5 (Operating Reserve - Spinning), and 6 (Operating Reserve - Supplemental) also revised, but ARP does not purchase these services from Duke
- Estimated annual cost impact to ARP based on proposed rates is ~\$480k (\$330k for partial year FY 2019)
- Duke, Seminole, and FMPPA attempting to reach pre-file settlement; otherwise, DEF plans to file with FERC around 12/9/19

Florida Power & Light

2019 Transmission Formula Rate/Rate Increase Filings

- In August, FPL filed with FERC to convert transmission rate from a stated rate to a forward looking formula rate with annual update (similar to Duke's annual updates), to be effective 11/1/19
 - Filed rate of \$2.10/kW-mo. for final 2 months of CY 2019 represented 32% increase from current rate of \$1.59/kW-mo. (last rate increase was in 2011), with annualized cost impact to ARP of ~\$2.4M (~\$0.40/MWh)
 - Primary driver is multi-billion dollar transmission capital plan
 - Filing included 70% increase in Schedule 2 Reactive charge (not applicable to ARP – under settlement rate)
- FMPA, coordinating with Seminole, Lee County Electric Coop and Fla. Keys Coop, protested the filing and asked FERC to suspend FPL's proposed increase for the maximum 5-month period
- In September, FPL filed 2020 annual update, which would increase rate to \$2.36/kW-mo. (later corrected to \$2.32/kW-mo.) effective 1/1/20 and result in additional \$1M annual impact to ARP
- In October, FERC accepted the formula rate but suspended it for the maximum 5-month period to 4/1/20, subject to refund
- Settlement judge has been assigned

Florida Power & Light

Potentially to Come in 2020 - Transmission Losses

- FPL's transmission loss factor of 1.85% has been in effect since 2011 (established per settlement agreement)
- Loss factors for Duke (currently 1.39%) and OUC (currently 1.21%) have generally declined over the past decade
- Based on informal analyses, FPL's loss factor appears overstated, with estimated annual cost impact to ARP ~ \$250k - \$300k
- Attempting to resolve through transmission rate filing effort, but separate complaint to FERC may be required
 - May require additional consulting and legal support
- FMIPA coordinating with Seminole, Lee County, and FKEC

OUC

2019 Transmission Rate Increase

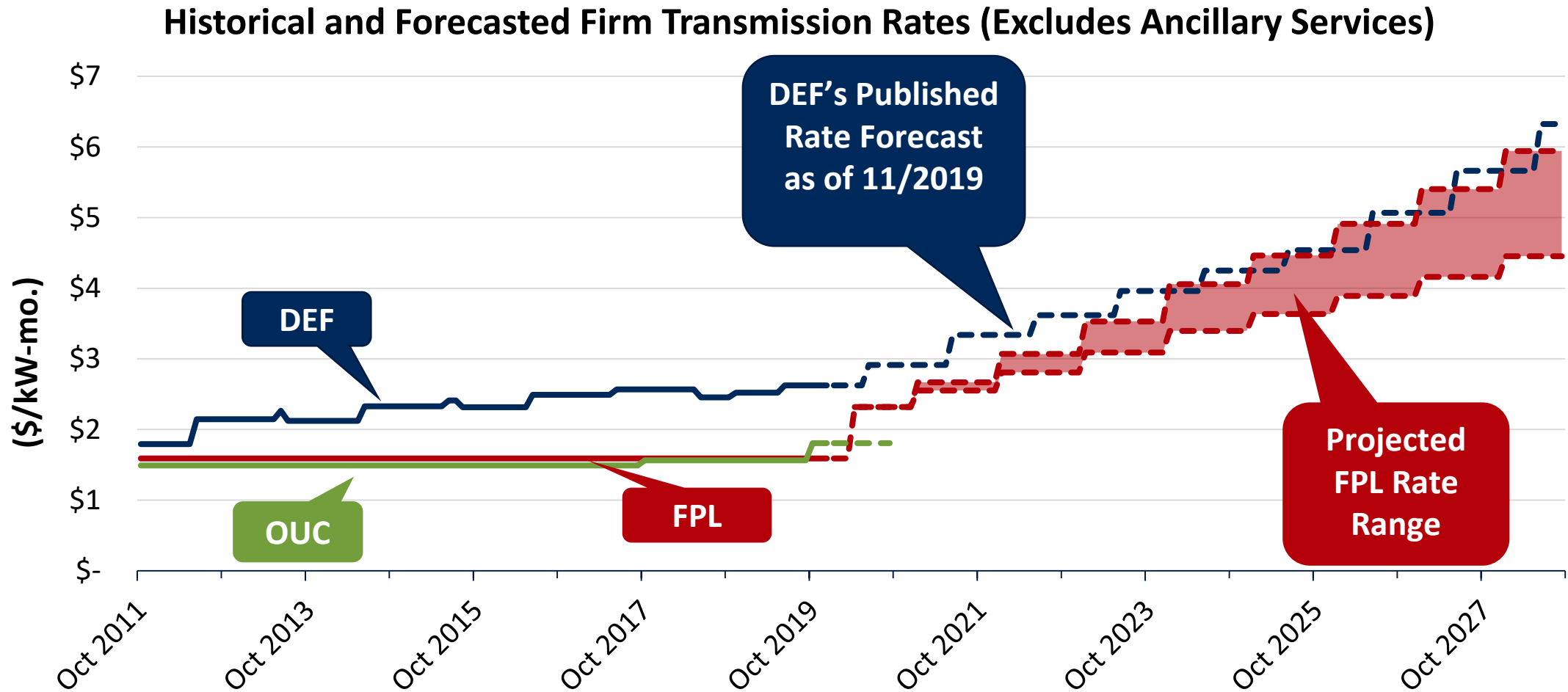
- In July, OUC notified FMPA of transmission rate increases to be effective 10/1/19
 - Contract transmission rate (all OUC transmission charges for FMPA except for Stanton A) increased 9.8% from \$1,504/kW-mo. to \$1,652/kW-mo.
 - OATT transmission rate (Stanton A only) increased 15.5% from \$1,565/kW-mo. to \$1,808/kW-mo.
- Most recent rate increase was 10/1/17
- 10% OUC rate increase was reflected in FY 2020 budget
- Staff submitted data request to OUC regarding drivers of increase and is reviewing responses received from OUC

As Filed, ~\$5 Million (~\$0.88/MWh) Combined Cost Impact to the ARP for FY 2020

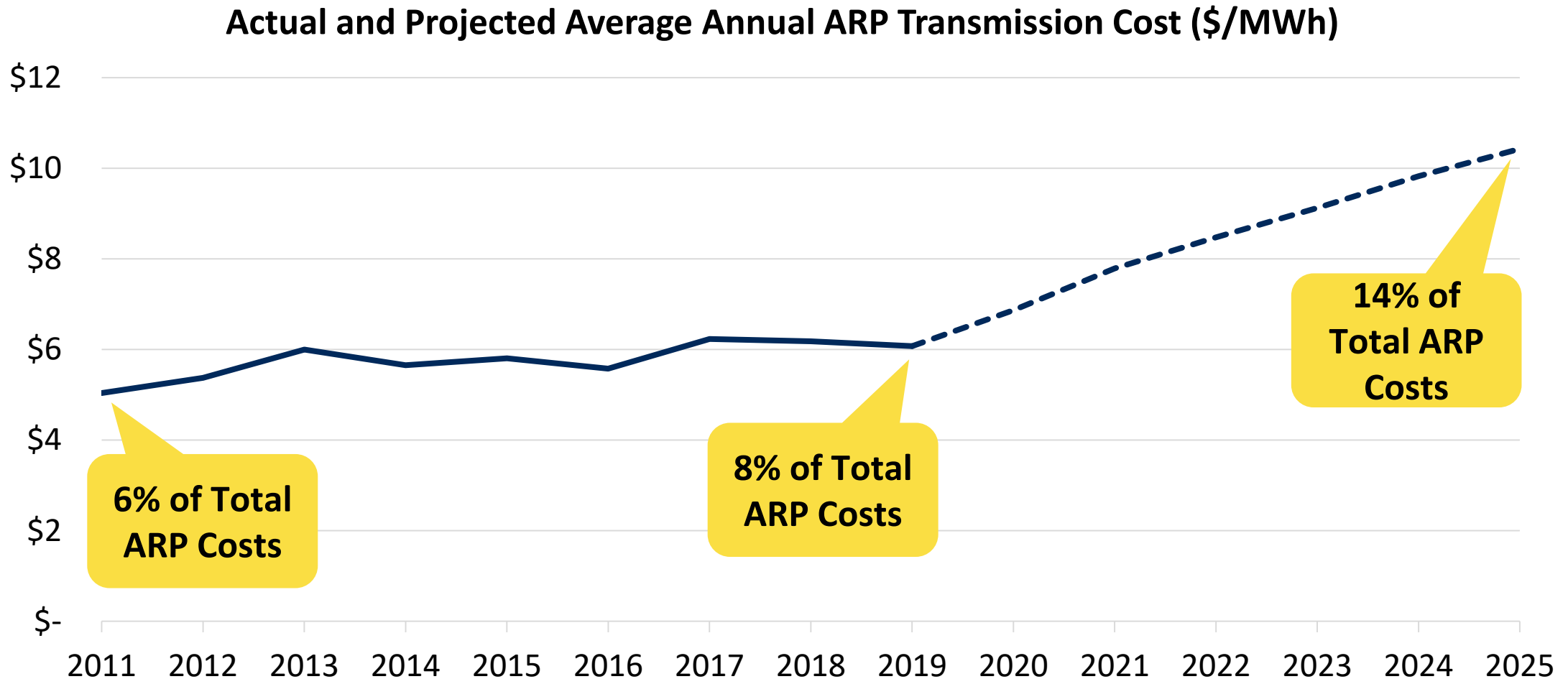
Utility	Transmission Rate Filings	FY 2020 ARP Cost Impact Based on “As Filed” Rates
DUKE	<ol style="list-style-type: none"> 2019 Formula Rate Update [1] 2018 Schedule 2 Filing [1] 2019 Schedules 1 & 2 Filing (Pending) 	\$0.9 Million
FPL	<ol style="list-style-type: none"> 2019 Formula Rate & Rate Increase Filing 	\$3.2 Million
OUC	<ol style="list-style-type: none"> Contract Rate [1] Open Access Transmission Rate [1] 	\$0.9 Million
	TOTAL	\$5.0 Million

[1] Estimates for these cost increases were included in the FY 2020 budget

Significant Transmission Rate Increases Expected Over Next Decade



“Renting” Transmission Projected to Become Much More Costly



Note: Data shown excludes KUA, which does not pay the ARP transmission rate

FMPA Staying Involved to Ensure Transmission Filings and Rate Increases are Reasonable and Appropriate

- Working with IOUs to attempt to reach pre-filing settlements, if possible
- Intervening at FERC and filing formal challenges as necessary
- Utilizing outside consulting and legal expert support
- Working jointly with other major transmission customers (e.g., Seminole, Lee County and Florida Keys Coop) when interests are aligned to share in consulting analyses and associated costs
- Participating in the FERC proceedings/settlement discussions

We've Achieved Some Victories

2019 Settlements and/or FERC Rulings

Provider/Filing	"As Filed" Rate (\$/MW-mo.)	Settled Rate (\$/MW-mo.)	Comments
DEF 2018 Annual Update/ 2017 Cost Review	\$2,675	\$2,615	Total savings = \$260,000.
DEF 2019 Annual Update/ 2018 Cost Review	\$2,624	In Process - TBD	Duke has already agreed to resolve a major issue, removing \$55 million in distribution-related capital additions from the formula rate.
DEF Schedule 2 - Reactive and Voltage Control	\$182.72	\$148.68	Total estimated FY 2019 savings due to 5-month suspension and subsequent lower settlement rate was \$125k.
FPL Transmission Formula Rate/Rate Increase Filing	<ul style="list-style-type: none"> \$2,100 for Nov. & Dec. 2019 \$2,320 (corrected) for CY 2020 	In Process - TBD	Rate for November & December 2019 no longer applicable due to FERC ordering 5-month suspension. 2020 rate now will not be in effect until April 2020. Estimated savings to ARP from 5-month suspension is \$1.1 million.

FMPA's Outside Costs Increasing to Support Protests

Costs More than Offset by Achieved Savings, However

- Spiegel & McDiarmid - FERC Legal Support
 - FPL Transmission Rate Proceeding – \$100,000 - \$150,000 [1]
 - Duke Energy Proceedings - \$25,000
- nFront Consulting – Analytic and expert witness support:
 - FPL Transmission Rate Proceeding - \$200,000 [1]
 - Duke Energy Proceedings – Total \$120,000
 - 2018 Annual Update/CY 2017 Rate Calculation Review - \$30,000
 - 2019 Annual Update/CY 2018 Rate Calculation Review - \$50,000
 - 2018 Schedule 2 Reactive - \$20,000
 - 2019 Ancillary Services - \$20,000
- GDS Associates – Analytic and expert witness support:
 - FPL Transmission Rate Proceeding - \$15,000 (FMPA's portion of costs shared with Seminole, Lee County, and FKEC) [1]

Recommended Motion

- No formal action requested at this time. For information only.
- Staff seeking feedback as to whether the EC wants to approve an overall spending budget for these efforts.
- If so, we will return in January for approval.

AGENDA ITEM 10 – MEMBER COMMENTS

**Executive Committee
December 12, 2019**

AGENDA ITEM 11 – ADJOURNMENT

**Executive Committee
December 12, 2019**