



FMPA BOARD OF DIRECTORS AGENDA PACKAGE

**February 13, 2020
9:00 a.m. [NOTE TIME]
Dial-in Info 877-668-4493 or 650-479-3208
Meeting Number 734 795 278#
PASSWORD – 8553**

Board of Directors

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

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

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

MEMORANDUM

TO: FMPA Board of Directors
FROM: Jacob A. Williams, General Manager and CEO
DATE: February 4, 2020
RE: **FMPA Board of Directors Meeting – 9:00 a.m., February 13, 2020 [NOTE TIME]**
PLACE: Florida Municipal Power Agency
8553 Commodity Circle, Orlando, FL 32819
DIAL-IN: **DIAL-IN INFO 877-668-4493 or 650-479-3208, Meeting Number # 734 795 278# – PASSWORD – 8553**
(If you have trouble connecting via phone or internet, call 407-355-7767)

AGENDA

Chairperson Barbara Quiñones, Presiding

1. **Call to Order, Roll Call, Declaration of Quorum** 4
2. **Recognition of Guests**..... 5
3. **Public Comments (Individual public comments limited to 3 minutes)**..... 6
4. **Set Agenda (by vote)** 7
5. **Report from the General Manager (Jacob Williams)**..... 9
6. **Sunshine Law Update (Dan O’Hagan)**..... 18
7. **Consent Agenda**
 - a. **Approval of the Minutes for the Meeting Held January 16, 2020** 20
 - b. **Approval of the Projects’ Preliminary Financials as of December 31, 2019** .. 26
 - c. **Approval of the Treasury Reports as of December 31, 2019** 28

8. Action Items	
a. Approval of Risk Management Policy Changes (Liyuan Woerner)	32
b. Approval of Allocation of Development Fund Expenses (Chris Gowder).....	175
c. Approval Solar Phase I Poinsett PPA Revisions * (Chris Gowder)	182
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a. Mobile Substation Discussion (Cairo Vanegas).....	298
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***Also on the Executive Committee agenda.**

JW/su

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

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

**Board of Directors Meeting
February 13, 2020**

**AGENDA ITEM 2 – RECOGNITION OF
GUESTS**

**Board of Directors Meeting
February 13, 2020**

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

**Board of Directors Meeting
February 13, 2020**

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

**Board of Directors Meeting
February 13, 2020**

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

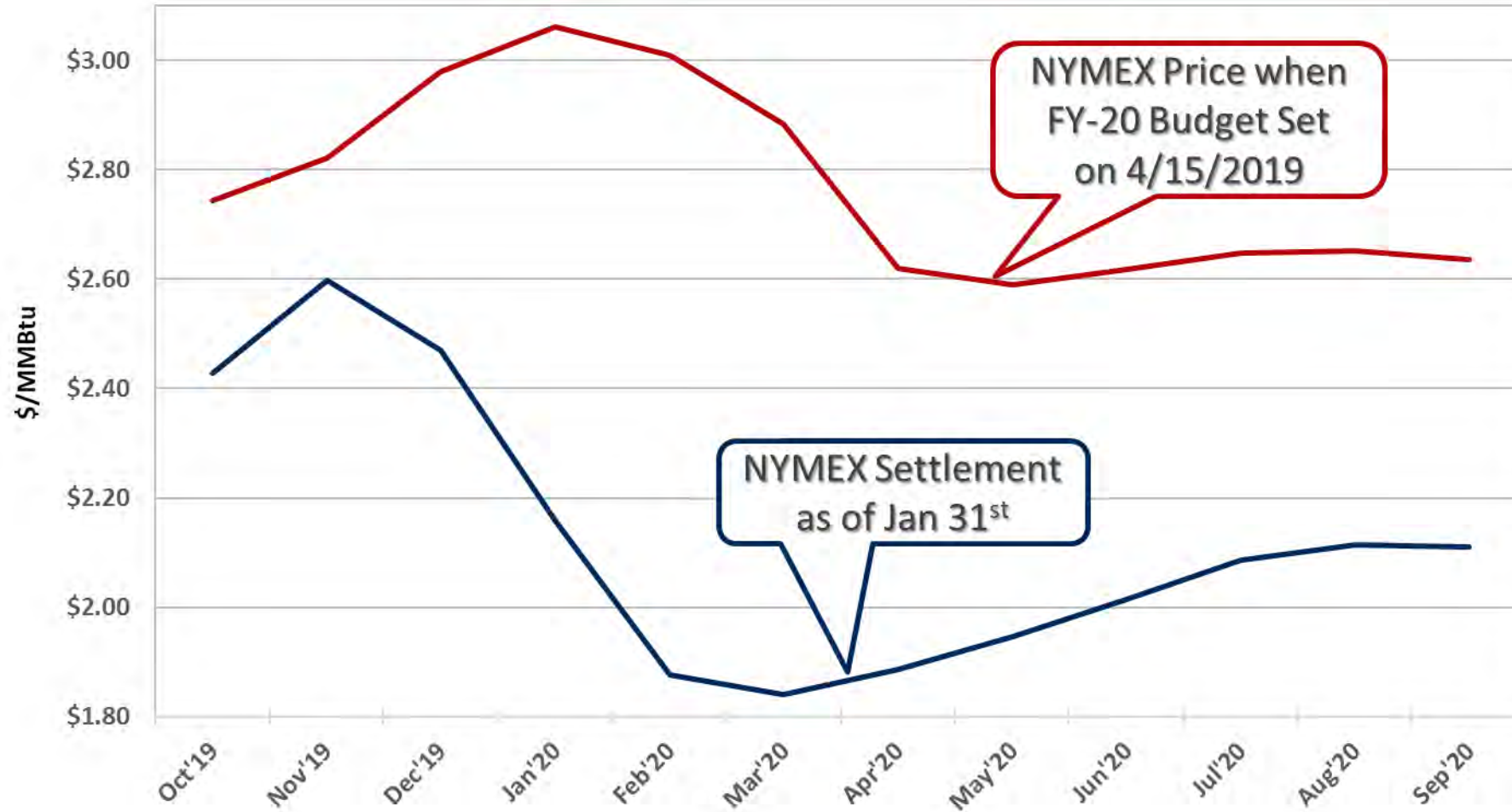
**Board of Directors Meeting
February 13, 2020**

Fiscal 2020 Management Goals Scorecard, as of January 31, 2020

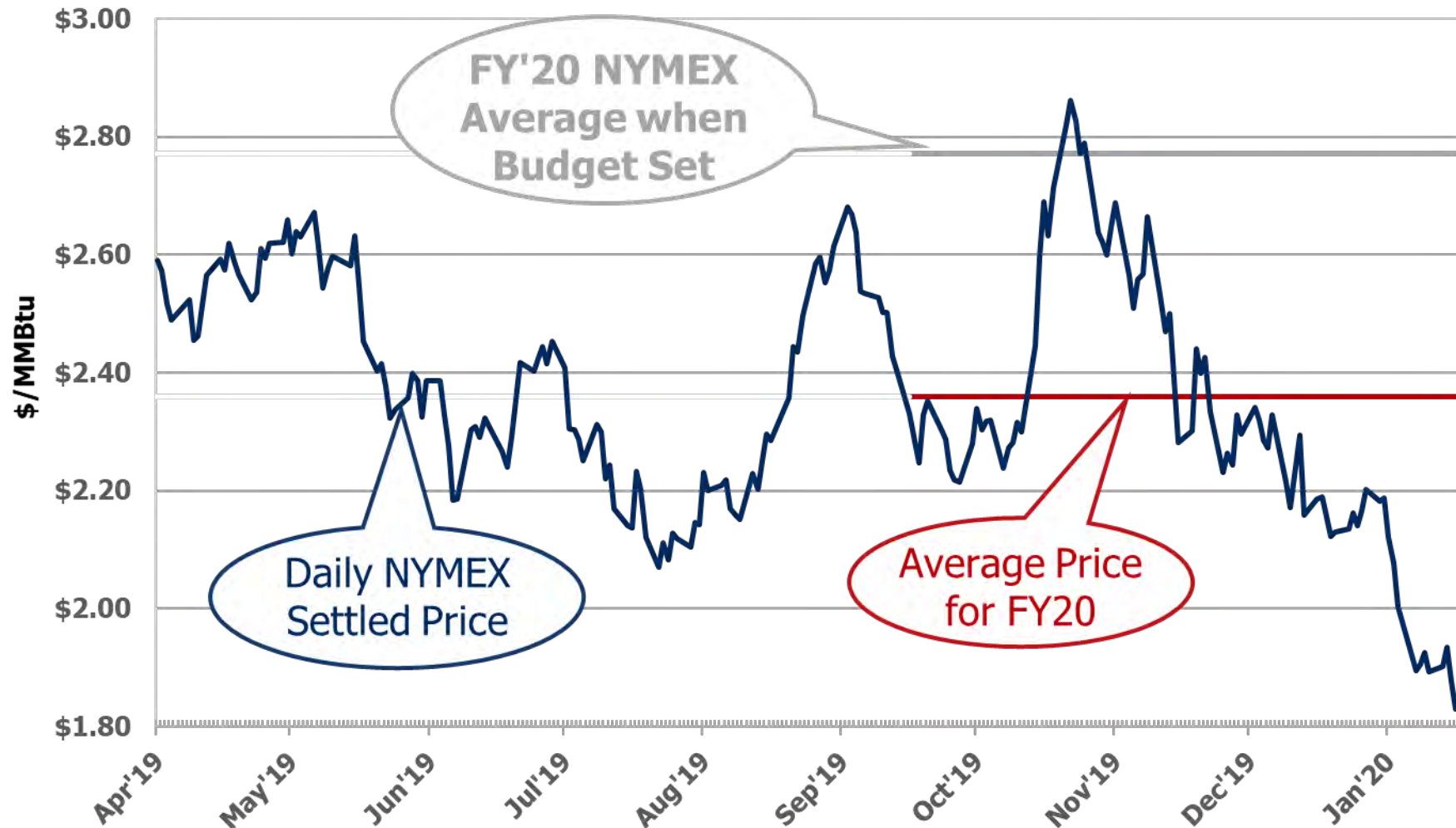


Goal	Status	Actual	YTD Actual	YTD Target	FY'20 Target	Comment
1. Safety (no lost-time accidents for employees/agents)		0	0	0	0	Zero lost time accidents.
2. Compliance (no violations that are not self-reported)	Environ.	0	0	0	0	Zero compliance violations.
	Financial	0	0	0	0	
	Regulatory	0	0	0	0	
3. Cyber Security (zero cyber breaches: Corp IT & Plant Ops)		0	0	0	0	
Members APPA Scorecard		2	5	2	12	
Phishing Testing		5.8%	8.3%	5% or <	5% or <	Time off request denied – email from ADP (4 clickers)
4. Low Costs (\$/MWh)	Non-Fuel	\$56.14	\$50.13	\$53.86	\$48.55	Updates through December and will be updated prior to the meeting. YTD MWh sales 0.4% above target. Primary drivers of all-in costs ~8% (\$6.01/MWh) below target is fuel expenses 10% below target (\$2.28/MWh) and O&M expenses 7% below target (\$3.73/MWh).
	Fuels	\$20.05	\$21.77	\$24.05	\$24.09	
	All-in	\$76.19	\$71.90	\$77.91	\$72.64	
5. Reliability	CC EAF	100%	88.9%	86.4%	88%	% reliability for all base load units in January.
	KWS Blk Start					
	SAIDI Reduction	4	n/a	n/a	7	

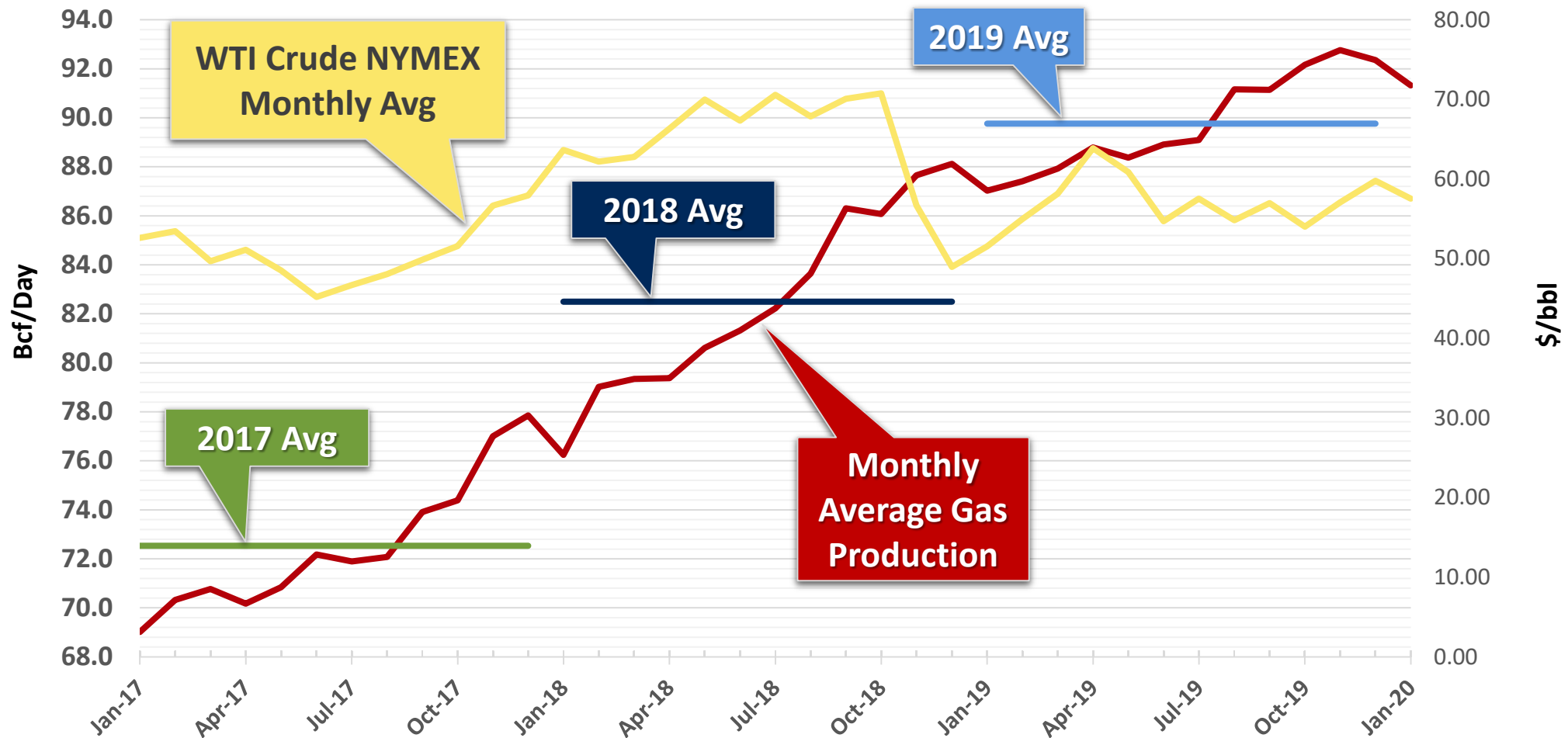
FY 2020 NYMEX Contract \$0.64/MMBtu Below Budget



Daily NYMEX Strip Action for since FY20 Budget Set

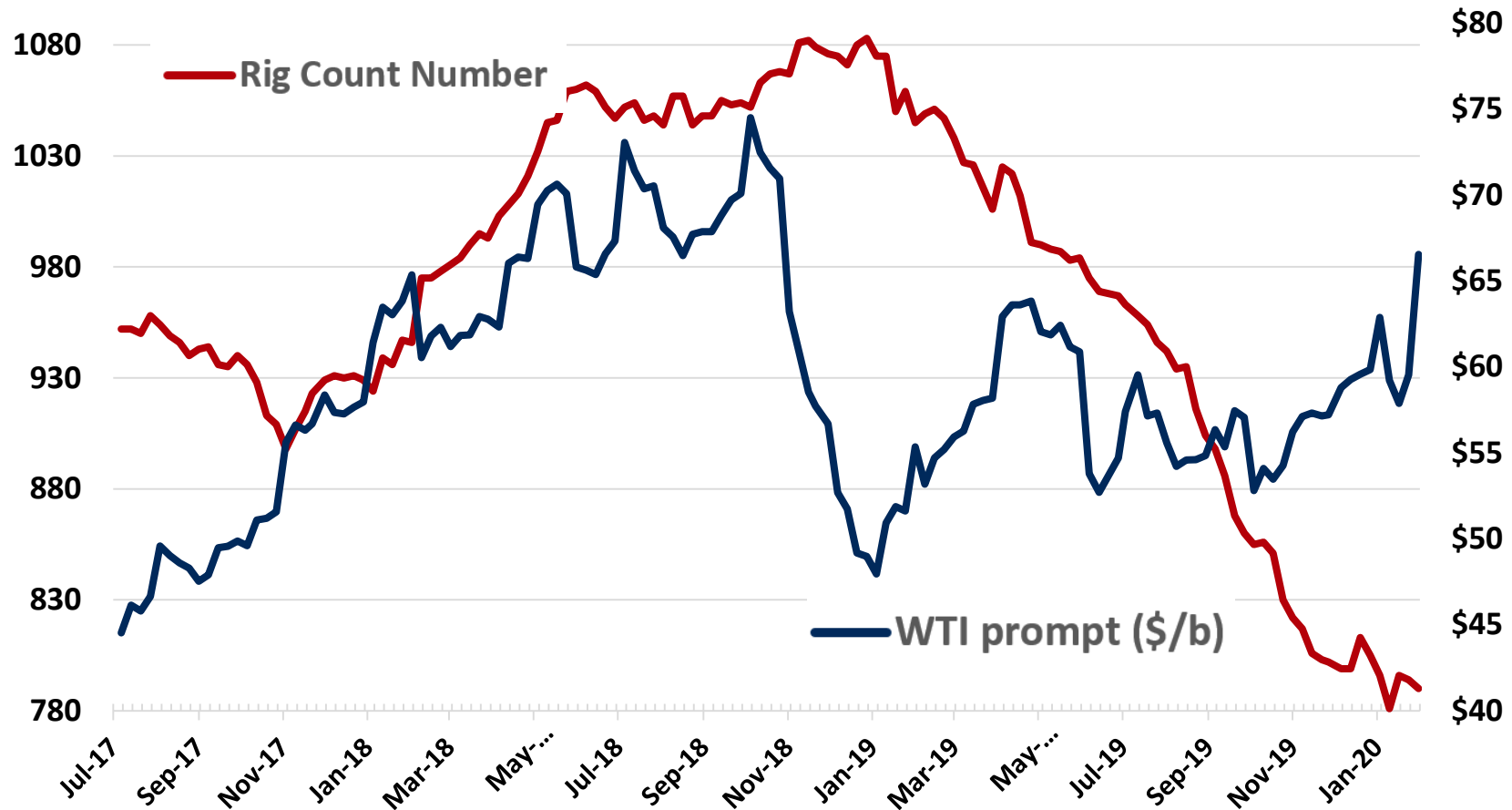


Natural Gas Production Following Changes in Oil Prices

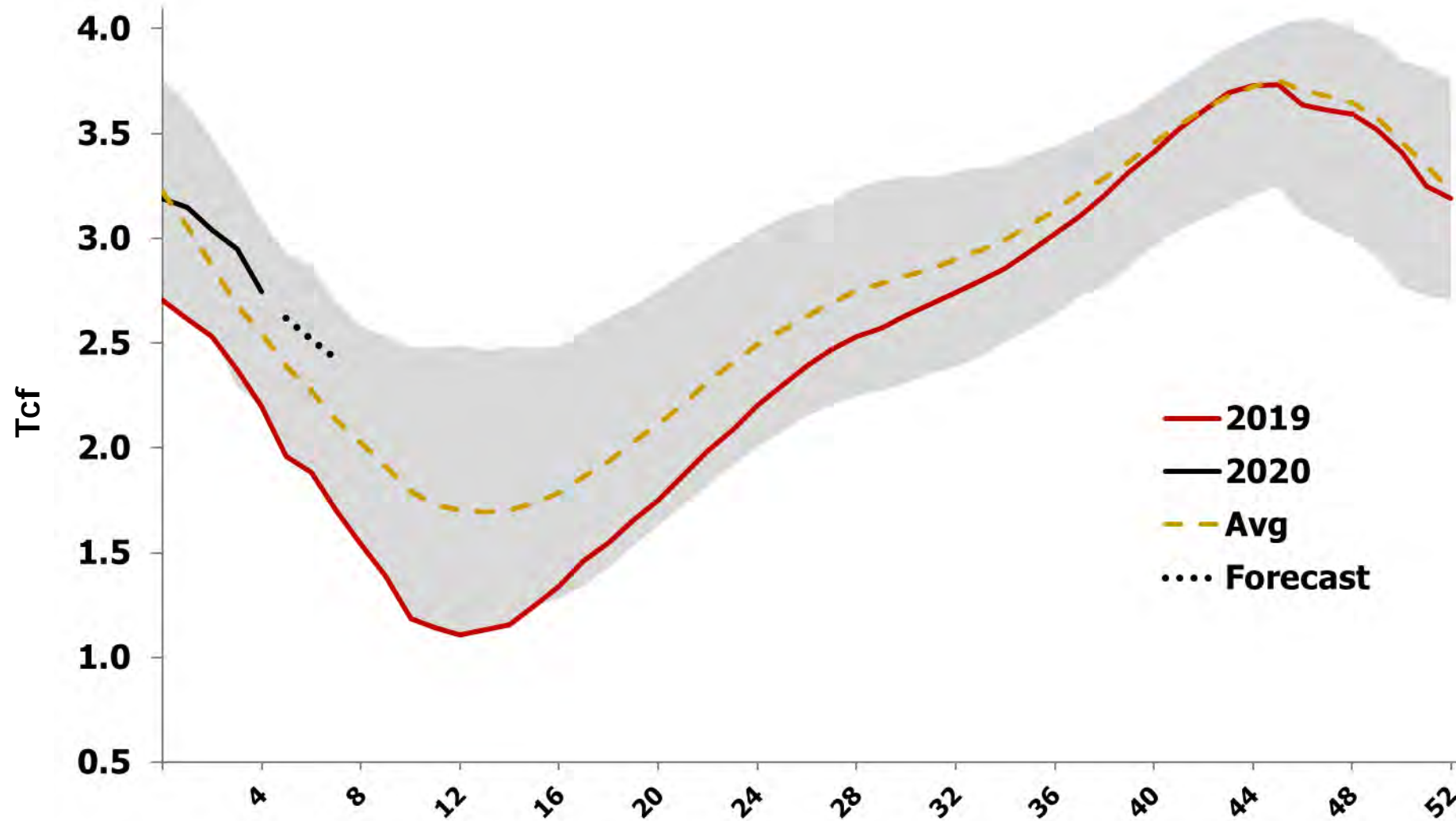


Drilling Rig Count Continues Decline Despite Oil Price Increase

US Drilling Rig Count vs WTI Prompt

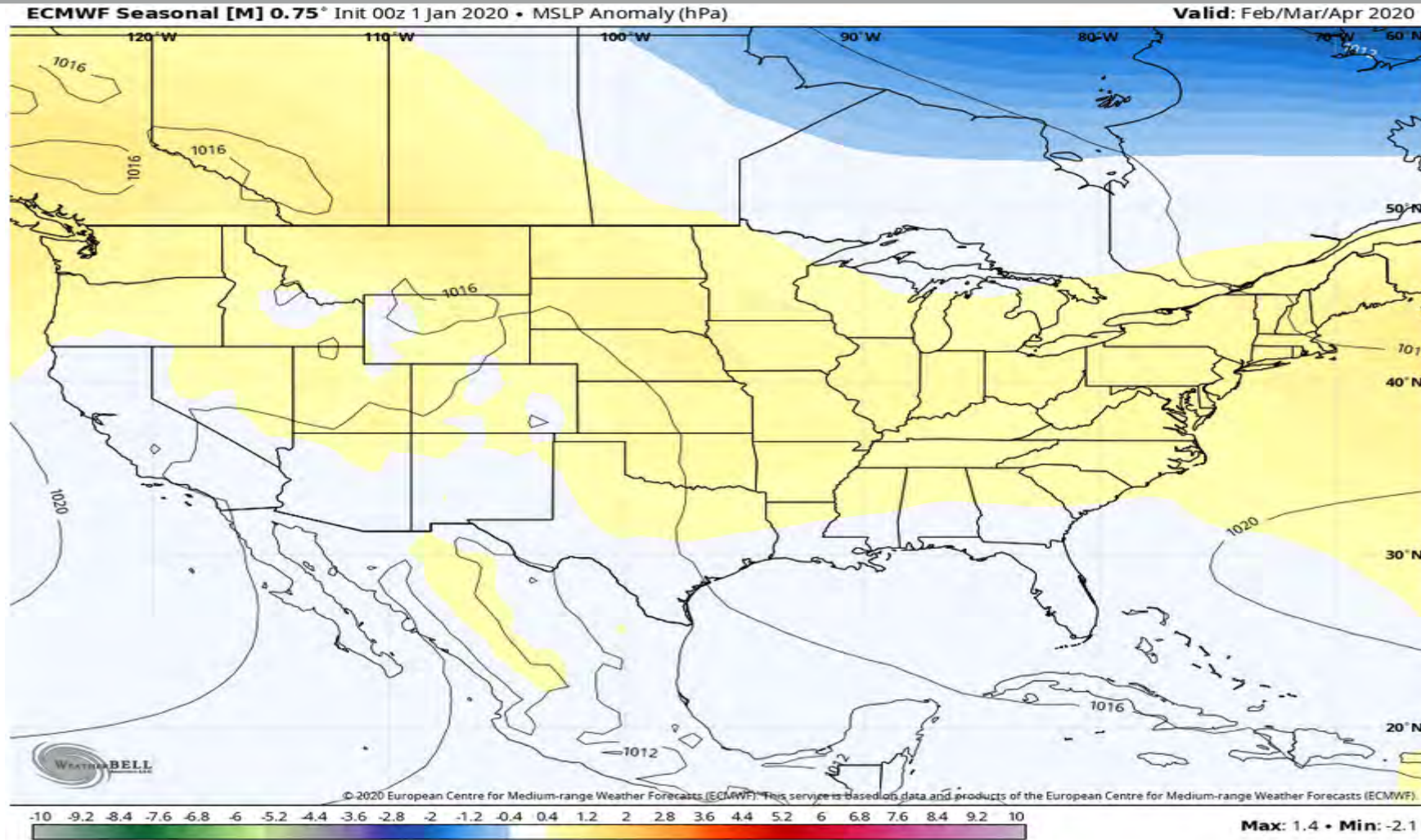


Gas Storage Inventory as of Week Ending January 24th



February into April Continental US Temperature Forecast

Temps projected to be normal to slightly above into April



(Continued) Management Goals Scorecard, as of January 31, 2020



Goal	Status	Comment
6. Energy/Capacity Sales - Execute wholesale agrmts. with projected margin value \$3.5M for FY2020-2024		Reedy Creek 35 MW off-peak energy sale for last half of Jan and all of Feb. Mount Dora selected OUC as top bidder in their RFP, FMPA proposal ranked 2 nd .
7. Enhance Pool – for future significant solar resources - Hire new Exec. Dir. - Devel. practices for extra reserves and fast start needs - Devel. mkt. compensation products to manage new solar resources		FMPP Solar Task Force working with consultants to model impact of solar on pool operations.
8. Member Services Visits by Leadership Team (75 visits)		9 visits in January – total to date is 21.
Member Services 15 project oversight		9 YTD; 4 new projects in January: Keys training, Williston mapping & protection coordination, Clewiston financial planning support, Keys IT peer review
Assist solar subscription service - 6		<ul style="list-style-type: none"> Actively working on subscription rates for 3 members. Detailed introductory information shared with 2 additional interested members. Solar members are encouraged to contact FMPA if interested in investigating solar subscriptions for your city.

(Continued) Management Goals Scorecard, as of January 31, 2020



Goal	Status	Comment
<p>9. Promoting Value of Utilities Update Member Reports – 16 Public Presentations by Members or FMPA - 10</p>		<ul style="list-style-type: none"> • Base PowerPoint documents have been developed for 12 of 16 members. • Revised data is being analyzed and incorporated into the base documents. • Outreach to individual members is in progress. • Members are encouraged to contact FMPA if interested in public presentations.
<p>10. Solar Project - Execute Phase 2 Solar Agreements - Assist Members marketing Phase 1 groundbreaking & energize Phase 1</p>		<ul style="list-style-type: none"> • Phase II Agreements fully executed; currently distributing electronic and hard copy versions to members. • Phase I construction photos for marketing and promotion being distributed / posted on a regular basis. • Phase I development issues for Poinsett and Harmony being resolved. • Phase I Harmony and Taylor Creek on schedule for June 2020 COD.
<p>11. ARP Restructuring - Reach agreement on desired path of Members</p>		<p>Workshop scheduled for March 18.</p>
<p>12. People - Development opportunities/cross training/Back-Up – at least 8</p>		<p>Development opportunities are on going in accounts payable, SCADA training, Member Services project management and Public Relations.</p>
<p>- FMPA Fleet Team Sharing – 80 days</p>		<p>Total of 76 days FYTD. Cane Island staff at Stock Island 47 days in January.</p>

VERBAL REPORT

AGENDA ITEM 6 – SUNSHINE LAW UPDATE

**Board of Directors Meeting
February 13, 2020**

**AGENDA ITEM 7 – CONSENT
AGENDA**

- a. Approval of the Minutes for the
Meeting Held January 16, 2020**

**Board of Directors Meeting
February 13, 2020**

MINUTES
FMPA BOARD OF DIRECTORS MEETING
FLORIDA MUNICIPAL POWER AGENCY
8553 COMMODITY CIRCLE
ORLANDO, FL 32819
THURSDAY, JANUARY 16, 2020
9:00 A.M.

MEMBERS PRESENT Brad Hiers, Bartow
Jody Young, Bushnell (via telephone)
Lynne Mila, Clewiston
Fred Hilliard, Fort Meade (via telephone)
John Tompeck, Fort Pierce
Bob Page, Green Cove Springs
Billy Branch, Homestead (via telephone)
Allen Putnam, Jacksonville Beach
Lynne Tejada, Key West
Larry Mattern, Kissimmee
Ed Liberty, Lake Worth
Brad Chase, Leesburg (via telephone)
Steve Langley, Mount Dora*
Bill Conrad, Newberry (via telephone)
Joe Bunch, New Smyrna Beach
Sandra Wilson, Ocala (via telephone)
Claston Sunanon, Orlando
Rob McGarrah, Tallahassee (via telephone)
James Braddock, Wauchula (via telephone)

*joined after roll call.

OTHERS PRESENT Paul Jakubczak, Fort Pierce
Karen Nelson, Jacksonville Beach
Eric Weaver, Ocala Electric
Craig Dunlap, Dunlap & Associates, Inc.
Bill Herrington, WHH Enterprises
Ken Morgan, Speaker
Matthew Ganoë, Purvis, Gray & Co.
Time Westgate, Purvis, Gray & Co.
Jonathan Nunes, nFront

STAFF PRESENT Jacob Williams, General Manager and CEO
Jody Finklea, General Counsel and CLO
Ken Rutter, Chief Operating Officer
Linda S. Howard, Chief Financial Officer
Carol Chinn, Chief Information and Compliance Officer

Mark McCain, Assistant General Manager, Member Services and Public Relations
Dan O'Hagan, Assistant General Counsel and Regulatory Compliance Counsel
Rich Popp, Treasurer and Risk Director
Sue Utley, Executive Asst. /Asst. Secy. to the Board
Liyuan Woerner, Audit Manager
Mike McCleary, Manager of Member Services Development
Sharon Adams, Human Resources Director
Cairo Vanegas, Manager of Member Services Development
Chris Gowder, Business Development and Planning Manager
Luis Cruz, Information Technology Manager
Isabel Montoya, Information Technology Intern
Susan Schumann, Manager of External Affairs and Solar Projects
David Schumann, Power Generation Fleet Director
Carter Manucy, Cyber Security Manager
Danyel Sullivan-Marrero, Controller

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

Vice Chair Lynne Tejeda, Key West, called the Board of Directors meeting to order at 9:01 a.m. on Thursday, January 16, 2020, 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 18 members present representing 31.0 votes out of a possible 47.5. Brad Hiers, Bartow, arrived after roll call bringing the total members present to 19 present representing 32 votes out of a possible 47.5

ITEM 2 – Recognition of Guests

Vice Chair Lynne Tejeda welcomed Tim Westgate and Matt Ganoe of Purvis, Gray & Co.

Ms. Tejeda said that in 2019 Public Power had a great year with JEA taking the sale of the utility off the table and deregulation did not make it on the ballot.

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

None

ITEM 4 – SET AGENDA (by vote)

MOTION: Larry Mattern, Kissimmee, moved approval of the agenda as amended, deleting 8c and moving 9a to before Item 8. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 32 – 0.

ITEM 5 – REPORT FROM THE GENERAL MANAGER

Jacob Williams reported on the following items:

1. Goals Scorecard

2. Fitch update for Issuer Default Ratings for Stanton II and St. Lucie resulted in the following:

- Ratings affirmed (A+ and A, respectively)
- Outlook changed from Negative to Stable on Stanton II
- Outlook changed from Stable to Negative on St. Lucie

3. Engineering and Member Services departments met with the consultant proposing a mobile transformer solution for the munis. Staff wanted to learn about their capabilities as we explore ways that FMPA could craft a joint action project for interested members. We will prepare an agenda item for discussion at the February meeting.

ITEM 6 – SUNSHINE LAW UPDATE

Dan O'Hagan reported on noteworthy Sunshine Law related bills.

ITEM 7 – CONSENT AGENDA

- a. Approval of Minutes – Meeting Held December 12, 2019
- b. Approval of the Projects' Preliminary Financials as of November 30, 2019
- c. Approval of the Treasury Reports as of November 30, 2019

MOTION: Allen Putnam, Jacksonville Beach, moved approval of the Consent Agenda as presented. John Tompeck, Fort Pierce, seconded the motion. Motion carried 32 – 0.

Item 9a moved to before Action Items.

Ken Morgan, Ph.D., geologist and former Director of Texas Christian University's Energy Institute, presented information on Energy and the Environment – A Historical View.

ITEM 8 – ACTION ITEMS

a. Approval of Guidelines for a Significant Amount of Staff Time for an Individual Member Project

Mark McCain presented the guidelines for a significant amount of staff time for an individual member project.

MOTION: Bob Page, Green Cove Springs, moved approval of revisions to FMPA's Guidelines for Development of Member Services. Allen Putnam, Jacksonville Beach, seconded the motion. Motion carried 32 – 0.

b. Approval of the External Audit Report and Audited Financial Statements

Danyel Sullivan-Marrero introduced Tim Westgate and Matthew Ganoe of Purvis, Gray & Company. Tim and Matt went over the FY 2019 audit and audited financial statements.

MOTION: Allen Putnam, Jacksonville Beach, moved approval of the fiscal year ended September 30, 2019 AAFR, and the associated Purvis Gray & Company report. Bob Page, Green Cove Springs, seconded the motion. Motion carried 32 – 0.

c. Approval Solar Phase I Poinsett PPA Revisions

This item was removed from the agenda.

d. Approval of Parliamentary Procedure to Suspend the Rules for Reading Resolution Titles

Jody Finklea presented Procedure #4 for Reading of Resolutions.**MOTION:** Bob Page, Green Cove Springs, moved approval of Parliamentary Procedure to Suspend the Rules for Reading Resolution Titles. Joe Bunch, New Smyrna Beach, seconded the motion. Motion carried 32 – 0.

e. Approval of Audit Adjustment Policy

Linda Howard presented the audit adjustment policy.

MOTION: Allen Putnam, Jacksonville Beach, moved approval of recommended Audit Adjustment Policy. Bob Page, Green Cove Springs, seconded the motion. Motion carried 32 – 0.

f. Approval of Risk Management Policies

This item was removed from the agenda.

ITEM 9 – INFORMATION ITEMS

a. Energy and the Environment: Historical View

Moved to before Action Items.

b. HR Quarterly Report

Sharon Adams presented the HR quarterly report.

c. Summary of Finance Committee Items

Linda Howard summarized the action items from the Finance Committee.

ITEM 10 – MEMBER COMMENTS

Vice Chair Tejeda said February is a busy month with the upcoming FMEA Legislative Rally, FMPA meetings and the APPA Legislative Rally.

ITEM 11 – ADJOURNMENT

There being no further business, the meeting was adjourned at 10:51 a.m.

Lynne Tejeda
Vice Chairperson, Board of Directors

Larry Mattern
Secretary

Approved: _____

Seal

BQ/LM/su

**AGENDA ITEM 7 – CONSENT
AGENDA**

- b. Approval of the Projects’
Preliminary Financials as of
December 31, 2019**

**Board of Directors Meeting
February 13, 2020**



Linda S. Howard, CPA, CFP
Chief Financial Officer

AGENDA PACKAGE MEMORANDUM

TO: FMPA Board of Directors
FROM: Linda Howard
DATE: February 4, 2020
ITEM: 7b – Approval of Projects’ Financials as of December 31, 2019

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

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

LH/GF

**AGENDA ITEM 7 – CONSENT
AGENDA**

- c. Approval of the Treasury Reports
as of December 31, 2019**

**Board of Directors Meeting
February 13, 2020**

AGENDA PACKAGE MEMORANDUM

TO: FMPA Board of Directors
FROM: Sena Mitchell
DATE: February 4, 2020
ITEM: BOD 7(c) – Approval of Treasury Reports as of December 31, 2019

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

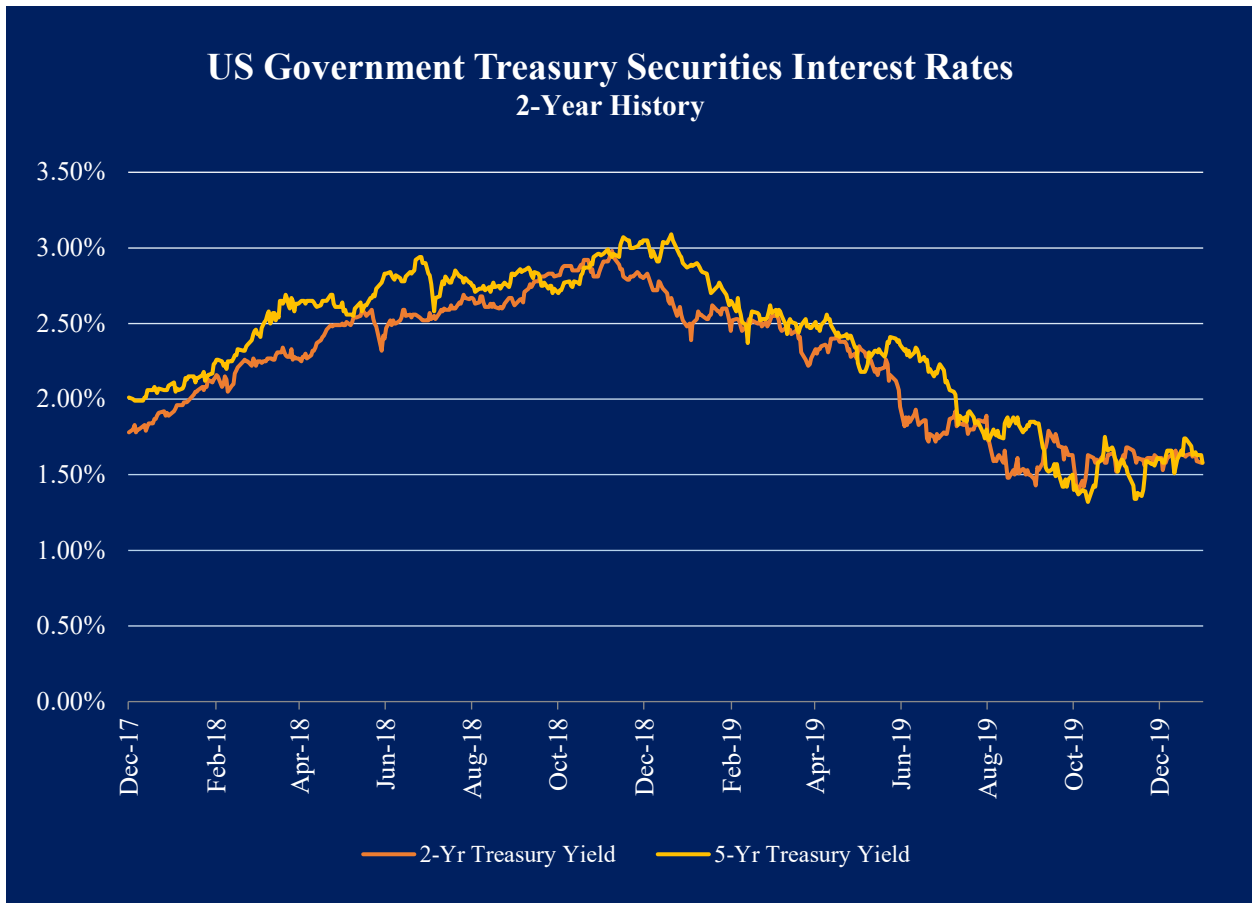
The Treasury Department reports for December are posted in the member portal section of FMPA’s website.

Debt Discussion Below is a summary of the total debt outstanding and the percentage of debt that was fixed, variable or synthetically fixed with interest rate swaps as of December 31, 2019.

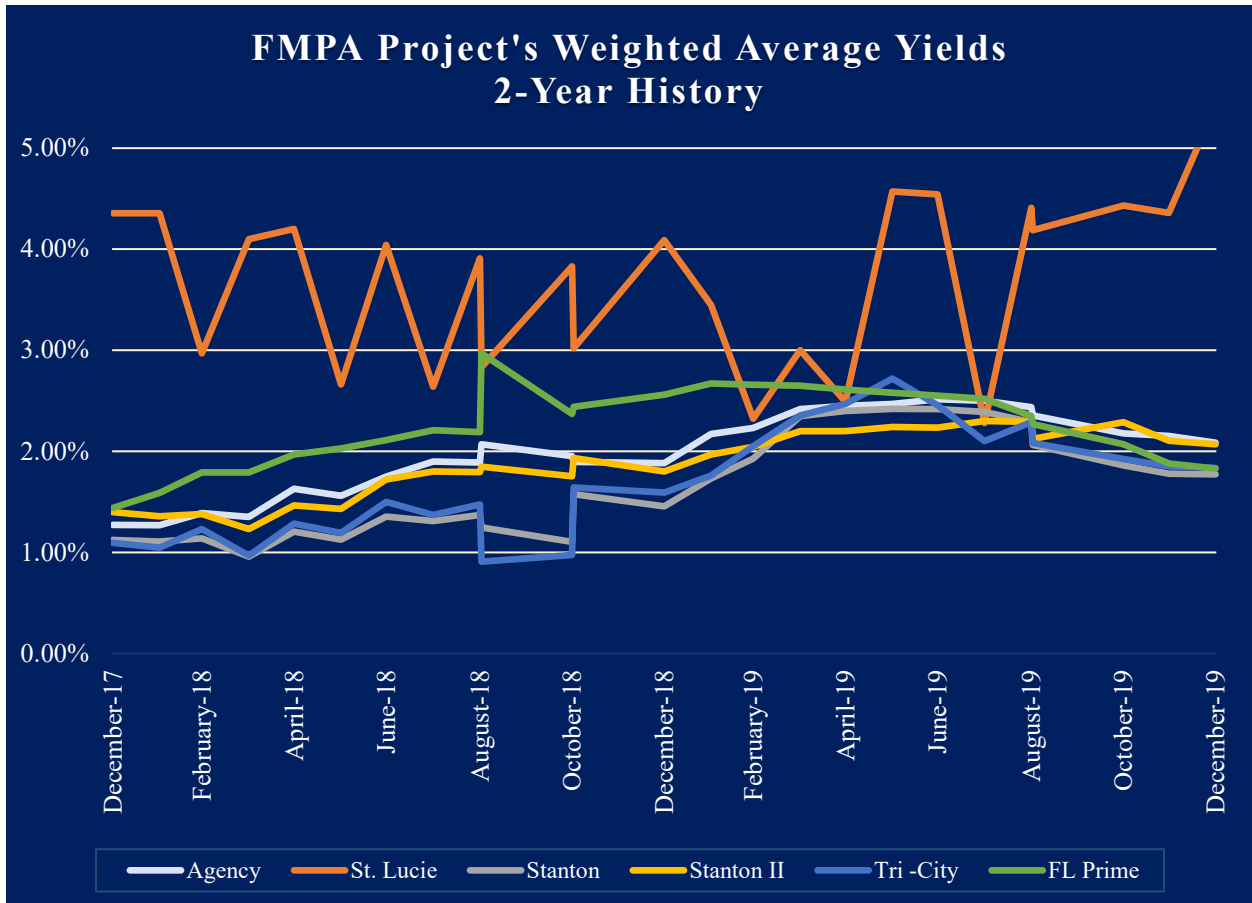
	Total debt Outstanding	Fixed Rate	Variable Rate	Synthetically Fixed
Agency	0.00	0%	0%	0%
St Lucie	117,135,000	100%	0%	0%
Stanton	0.00	0%	0%	0%
Stanton II	112,054,000	100%	0%	0%
Tri City	0.00	0%	0%	0%

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

Below is a graph of US Treasury yields for the past 2 years. The orange line is the 2-year Treasury which closed the month of December at 1.58%. The yellow line is the 5-year Treasury which was 1.69%.



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



Recommended
Motion

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

AGENDA ITEM 8 – ACTION ITEMS

- a. Approval of Risk Management
Policy Changes**

**Board of Directors Meeting
February 13, 2020**



8a – Approval of Risk Management Policies and Compliance Reports

Board of Directors
February 13, 2020

Board Responsibility

Risk Management Policies

- Board approves all changes and exceptions to Risk policies. The initial review is conducted by the Finance Committee:
 - The mission of the Finance Committee (FC) is to oversee the administration of the Risk Management Policy including all appendices (each appendix covers a specific risk area at FMPA)
 - To fulfill this mission , the FC shall regularly hear reports form staff on the risk management activities including detailed reports from staff
- Internal Audit staggers the policy reviews such that each area is reviewed once a year
- See list of policies/appendices on next page

Risk Areas Identified

Appendices in the Risk Management Policy

Risk Area	Appendix
Fuel Management	Appendix A
Debt Management	Appendix B
Investment Management	Appendix C
Insurance Program Management	Appendix D
Credit Risk Management	Appendix E
Contract Administration	Appendix F
Statutory and Regulatory Matters	Appendix G
Power Supply and Resource Planning	Appendix H
Asset Management and Operations	Appendix I
Accounting and Internal Controls	Appendix J
Origination Transaction Management	Appendix K
Records Management	Appendix L
Contingency Planning	Appendix M
Human Resource Management	Appendix N
Information Technology	Appendix O

Summary of Policy Review Process

- Policies are reviewed annually to
 - Determine operational effectiveness
 - Increase awareness and compliance
 - Serve as a tool for revision of policies as necessary

Policies Covered This Cycle

- Debt Risk Management Policy (title changes only)
- Records Management Policy (title changes only)
- Human Resource Policy (HR)
- Information Technology (IT) Policy
- Insurance Program Policy
- Accounting Policy
- Asset Management and Operations Policy

Debt Risk Management Policy

Major Areas Covered

- Financial Advisor role in the execution of debt.
- Debt portfolio mix at appropriate levels as approved by appropriate governing body.
- Debt Financing Team (DFT) explained risks of any proposed structure or transaction to appropriate governing body.
- Policy requirements were met for any refunding bonds.
- CFO and DFT ensured active management of interest rate hedging program.

Records Management Policy

Major Areas Covered

- Record retention schedules are posted on the Intranet.
- IT Manager assigned staff appropriate access rights to the electronic records management system.
- IT conducted biennial technical training for all employees.
- HR Department coordinated with legal counsel to present formal records retention training initially for new employees and annually for existing employees.

Human Resource Policy

Major Areas Covered

- Review of payroll controls.
- Review of health and wellness plan and records.
- Consistent application of Compensation Policy.
- Third party review of salary ranges.
- Employee training and maintaining records.
- Employment laws and regulations followed consistently and fairly.

Human Resource Policy

Recommended Changes

- Section 4.3: Eliminate requirement for national firm to determine maximum and minimum salary ranges. Process can be done by local or regional firm.
- Various Sections: Title changes updated.

Information Technology Policy

Major Areas Covered

- Information Technology Steering Committee (ITSC) maintained list of current applications/system owners and logged any security breaches and provided monthly reports as necessary
- Market review of anti-virus software conducted every three years.
- Maintained and reviewed firewall rule set per policy requirements.
- User and IT staff training programs
- Annual reports presented to ITSC and FC (Board)

Information Technology Policy

Recommended Changes

- Section 4.3: Regulatory Compliance that falls under NERC standards is now managed by Legal Department
- Section 6.2: Annual report changed from September to annually.
- Various Sections: Title changes updated.

Insurance Policy

Major Areas Covered

- The Treasurer and Risk Manager is designated as the Agency Risk Manager
- Reviews overall business activity of the Agency to ensure adequate property and liability insurance (does not include workers compensation)
- Requires a competitive selection process for insurance services providers
- Requires Agency Risk Manager (and team) review of contracts >\$10MM
- Requires an annual insurance report be developed

Insurance Policy

Recommended Changes

- Section 5.1: Market review of brokerage services change from conducting every 5 years to every 7 years.
- Section 6.0: Changed required annual report from January 31 to annually

Accounting Policy

Major Areas Covered

- Deviations from the Policy
- Accounting procedures
- Administrative update for personnel title changes
- External audit
- Internal Controls
- Reporting

Accounting Policy

Recommended Changes

4.6 Capitalization Threshold:

Capital purchases are approved as part of the annual budgets approved by the governing bodies. The following thresholds will be used for capitalizing assets:

- Building, structures, facilities and other improvements exceeding \$25,000 in costs. Capitalization should include all costs related directly to the acquisition or construction (materials, labor, overhead during construction, attorney and engineering fees, permits).
- Equipment includes vehicles, office equipment, computer equipment and other equipment having a value of \$5,000 (each) or more and a useful life expectancy of two or more years. Capitalization should include all set-up and labor costs related to preparing the equipment for operations such as the initial installation cost.
- The purchase and/or development of new computer software or major modifications/upgrades to existing software which costs less than \$25,000 shall be expensed. Software over \$25,000 shall be capitalized.
- All capital lease arrangements for land, buildings, structures and equipment shall be capitalized in accordance with GASB 87.
- As of 10/1/2020, interest shall not be capitalized on any construction project in compliance with GASB 89.

Asset Management and Operations Policy

Major Areas Covered

- Deviations from the Policy
- Asset management and operations procedures
- Administrative update for personnel title changes
- Ensure applicable laws and regulations are followed related to the operation and maintenance of electric power generating units
- Internal Controls
- Reporting

Asset Management & Operations Policy

Recommended Changes

4.2.2 Reliability Centered Maintenance (“RCM”):

FMPA will maintain the balance of plant and auxiliary equipment in accordance with RCM. RCM establishes safe minimum levels of maintenance, changes to operating procedures and strategies, and the establishment of capital maintenance regimes and plans based on historic operational data and maintenance history.

FMPA shall strive to ensure that long-lead critical items for base load gas and steam turbine units can be obtained within a ~~six~~-12 month time frame from within the ARP fleet, provided through the OEM, or through a partnership fleet arrangement. The following items are excluded from this ~~six~~12 month requirement: Iso-phase bus, disconnect switches, switchgear, and CTPT metering units.



Discussion/Questions

Motion on Policy Changes

- Move approval of recommended policy changes.

FLORIDA MUNICIPAL POWER AGENCY
RISK MANAGEMENT POLICY - APPENDIX B
DEBT RISK MANAGEMENT POLICY
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DEBT RISK MANAGEMENT POLICY FOR FLORIDA MUNICIPAL POWER AGENCY

This Debt Risk Management Policy (the “Policy”) and any effective subordinate procedures establish the governance, framework and the controls under which Florida Municipal Power Agency (FMPA) may engage in activities to identify, measure and minimize future business risk resulting from the issuance and management of all FMPA debt financing. This Policy is Appendix B of the FMPA Risk Management Policy.

1.0 Policy Statement

The Executive Committee (“EC”) and Board of Directors (“BOD”) of FMPA recognize that FMPA is exposed to various risks in the normal course of business activities. There may be times when FMPA will determine that certain risks are above the preferred risk tolerance level of FMPA and its governing bodies. FMPA staff is hereby authorized to put mechanisms into place, such as those more fully described in Section 4.0 of this Policy, which will control, transfer, or mitigate these risks to avert adverse effects on FMPA’s ability to access capital markets at reasonable rates and with reasonable credit terms.

This Policy covers the planning and management of debt financing. The appropriate governing body may approve exceptions to this Policy for specific debt transactions.

The following summarizes the Policy of the EC and BOD:

- ❖ The debt management program shall conform to all applicable federal, state and local legal requirements regarding the issuance and management of debt (Section 2.0).
- ❖ The EC and BOD must approve all forms of FMPA debt issuance (Section 2.0).
- ❖ Authority is delegated to the Chief Financial Officer (“CFO”) to create procedures to facilitate the management of debt and administer this Policy (Section 3.0).
- ❖ FMPA’s Debt Financing Team (the “DFT” as defined by this Policy) shall be active participants in all contemplated debt transactions (Section 4.1).
- ❖ FMPA’s Financial Advisor shall provide a written recommendation to the appropriate governing body prior to approval of any debt issuance (Section 2.0).

- ❖ FMPA’s DFT shall fully explain the risks associated with any given structure and the financial instruments to be used to the ~~General Manager~~CEO as required in Section 4.3
- ❖ FMPA shall manage its debt portfolios to contribute to the goal of maintaining credit ratings of no less than “A-” or “A3” as required in Section 4.0.
- ❖ Interest rate hedging strategies may only be employed as detailed in Section 5.0 of this Policy. No new interest rate hedging will be considered by the All Requirements Project (“ARP”) after May, 2015 unless specifically approved by the EC.
- ❖ The Treasurer and Risk Director shall report on the debt portfolio as required in Section 7.1 of this Policy.
- ❖ The Agency Risk ~~Manager~~Director shall report deviations from this Policy to the Finance Committee (“FC”) as required in Section 7.3.

2.0 Scope and Authority

FMPA has the authority to undertake and finance projects including, among other things, to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend, or otherwise participate jointly in those projects and issue debt obligations for the purpose of financing or refinancing the costs of such projects. The debt management program shall further conform to all federal, state, and local legal requirements governing the issuance and management of debt.

The EC and BOD, respectively, is responsible for the approval of all forms of FMPA debt issuance and the details associated therewith. The ~~General Manager~~CEO has ultimate responsibility for administration of FMPA’s financial policies. The CFO or designee coordinates the administration and issuance of debt, and is responsible for the attestation of financial disclosures and other bond related documents. The CFO or designee, in consultation with the DFT, must also recommend to the ~~General Manager~~CEO and appropriate governing body the following:

1. the selection of any external agents,
2. review proposed annual capital expenditures which require a debt issuance,
3. identify specific projects for such debt financing or re-financing,
4. a written recommendation provided by the Financial Advisor.

3.0 Types of Debt Issuance Risk

This Policy is intended to provide guidance for the types of debt issued, given FMPA's risk tolerance and awareness of recent market fluctuations, capital market outlooks, future capital needs, tax implications, rating agency considerations, and industry competition. The CFO will cause Debt Management Procedures to be created that identify risks in the areas noted below and provide ways to measure, control and mitigate FMPA's exposure to those risks. The FMPA Risk Management Policy identifies ten risks that compose FMPA's common risk framework. While not intended to be a comprehensive listing of risks encountered by FMPA during the normal course of the business cycle, the framework provides insight into the major areas of risk exposure for FMPA. The following selected risks in the framework are those risks presented by typical debt management and interest rate hedging activity.

3.1 Market Risk

The risk of potential change in the value of a portfolio caused by adverse changes in market factors. When considering debt management including interest rate hedging, the types of market risk that FMPA is most exposed are interest rate risk and basis risk. An example of interest rate risk occurs when a change in interest rates inversely affects a bond's value, such as when higher interest rates cause bond value to fall. This risk can be reduced by diversifying (issuing fixed rate debt with different durations) or hedging (such as interest rate swaps). An example of basis risk can occur in a floating-to-fixed rate swap when there is a difference between the interest rate paid on variable rate demand obligations and the rate received from the swap counterparty. This mismatch in rates could result in higher than expected interest rate costs.

3.2 Credit Risk

The potential of financial loss due to the failure of a counterparty to fulfill the terms of a contract. When considering debt management including interest rate hedging, the types of credit risk that FMPA is most exposed to are counterparty risk and concentration risk. An example of counterparty risk would be if FMPA depends on the performance of a counterparty to provide interest payments under a swap agreement. The failure of that counterparty to make interest payments as required under the swap

agreement might expose FMPA to current market conditions, which may or may not be favorable at the time of non-performance. An example of counterparty concentration risk might occur if a counterparty with several swap agreements fails to make the required payments. This failure might cause FMPA to terminate several swap agreements and expose FMPA to market conditions on a greater scale.

3.3 Regulatory Risk

The potential adverse impact of an action or direction from an administrative body such as, but not limited to, FERC, DOE, or the Treasury Department. An example of regulatory risk might occur if tax laws are changed, and the Agency becomes ineligible to issue tax-exempt debt. This change would expose the Agency to the market rate for taxable debt and increase the cost of debt issuance.

4.0 Debt Issuance

Effective debt management includes an analysis of what level of debt is acceptable given a particular set of circumstances and assumptions. FMPA's debt portfolios shall contribute to the goal of maintaining at least "A-" or "A3" credit ratings, in coordination with strategic plans and member needs. Management of the Agency's credit ratings is addressed in the FMPA Risk Management Policy.

FMPA may consider issuing bonds, short term debt, and other debt instruments as allowed by law, each subject to the approval of the appropriate governing body. Debt may only be issued for capital projects with an asset life of five years or more. Short term capital needs should be provided for in the budget process.

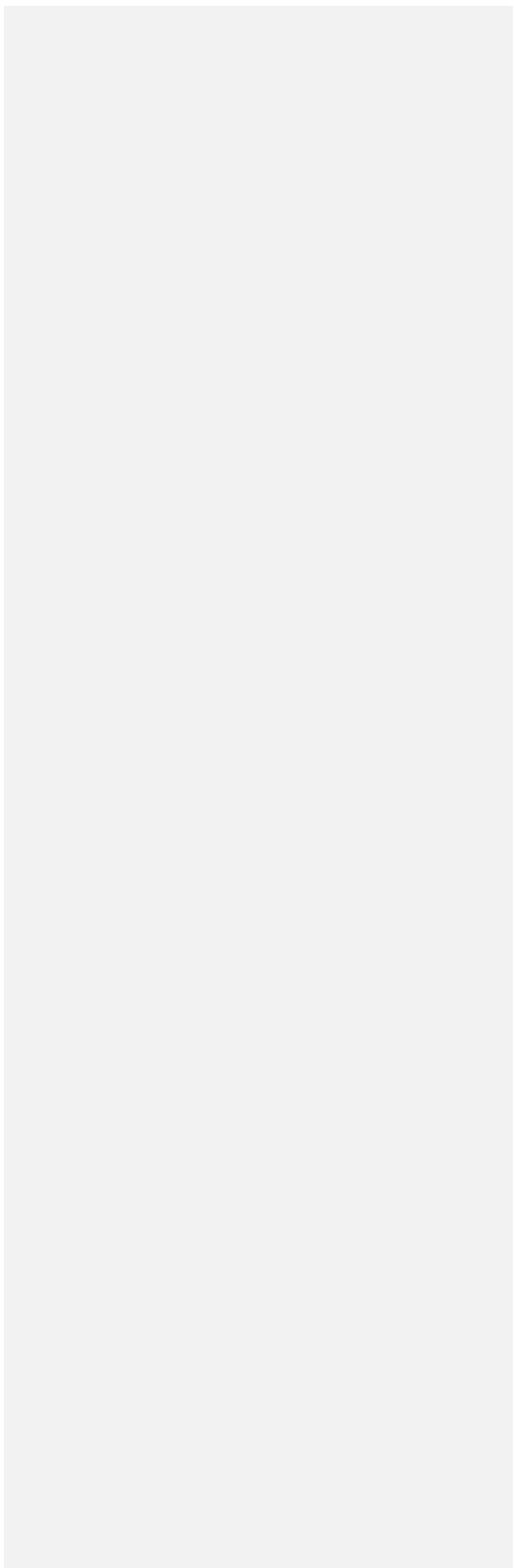
4.1 Debt Financing Team

A team of FMPA staff and advisors shall determine the details of all debt transactions to be proposed to and approved by any governing body. The DFT shall, at a minimum, consist of the personnel listed below. Others may be assigned as needed.

- CFO (Chairperson)
- Treasurer and Risk Director

Chief Legal Officer

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~~Risk Management Department Representative~~

FMPA's Financial Advisor

- ~~Resource and Strategic Planning Manager~~ ~~System Planning Manager~~ (as necessary)
- FMPA's Swap Advisor (as necessary)
- Bond Counsel (as necessary)

The DFT shall ensure that any proposed debt issuance complies with the requirements of this Policy. The CFO, as Chairperson of the DFT, shall present all DFT recommendations to the ~~General Manager~~ CEO.

4.2 Selection of Bond Professionals

The issuance of bonds or debt in any form is a significant event and should be managed in a way to protect FMPA from any number of risks. Engaging competent professionals is a key step in mitigating such risks. Underwriters, bond counsel, financial and swap advisors, trustees, and arbitrage/rebate consultants are key advisors in a successful issuance process. FMPA staff will pursue a competitive selection process to occur for all professionals associated with FMPA's debt using a Request for Proposal (RFP), a Request for Qualification (RFQ) or some other competitive selection process. The competitive selection process document should describe the scope of services desired, the length of the engagement, evaluation criteria, and the selection process. Best practices recommendations of relevant professional bodies should be considered in the development of the competitive selection document as well as in the selection process.

4.2.1 Qualifications

The selected individual(s) or firm(s) shall have a well-established practice at a level of sophistication and standing in their respective field of practice commensurate with FMPA's needs, the Bond Resolution and any other relevant legal document(s) or requirements imposed by external entities such as the Securities and Exchange Commission (SEC), the Municipal Securities Rulemaking Board (MSRB) and the Commodity Futures Trading Commission (CFTC) as examples. Sufficient depth of staff should be present in order to ensure timely and consistent professional service when such services are required.

4.2.2 Selection

Qualified individuals or firms will be invited to submit a proposal for professional services to be considered for selection. The proposal response must document the individual's or firm's qualifications, registrations, applicable experience, knowledge of FMPA and its issues or practices, any sanctions or warnings from any relevant professional bodies, insurances in force, and fee structures. The proposals will be evaluated by the DFT and rank in order of preference, providing the resulting ranking and associated rationale to staff for presentation to the FC. The FC shall either approve or reject the DFT top ranked proposal. If the top ranked proposal is rejected, the FC will consider the next highest ranked proposal for approval. If none are found acceptable by the FC, the DFT will evaluate the FC's feedback and begin the process over. Once the FC has approved a recommended proposal, the selected individual(s) or firm(s) will be presented to the EC/BOD, as appropriate, for final approval.

4.2.3 Terms of Service

The selected individual(s) or firm(s) shall provide services for no more than one five year base term per each single contract period. The selected individual(s) or firm(s) may provide services beyond the base term for no more than two individual one-year extensions. At the end of any contract term (either base or extension), the incumbent individual(s) or firm(s) will not be excluded from submitting a new proposal for the subsequent competitive selection process. The selected individual(s) or firm(s) may perform the services requested on a negotiated fee basis.

4.3 Types of Debt

FMPA's capital structure may consist of fixed rate and variable rate debt in traditional as well as synthetic form, along with hedging instruments such as interest rate swaps, caps, collars, and other non-speculative derivative products. The DFT shall fully explain the risks associated with any given structure and the financial instruments used to those who must decide and approve any such structure. No debt will be issued without written evidence of absolute authority, including all required regulatory

approvals, for FMPA to proceed with the capital expenditures relating to the proposed debt issuance.

The debt mix for each of FMPA's projects shall be measured at the time of each debt issuance and comply with the limits defined in Appendix B of this Policy. The governing body issuing debt may approve exceeding such limits when a particular type of debt issue would be prudent given market conditions.

4.4 Structure

The following structuring guidelines shall govern the issuance of new money financing:

- The maturity of debt shall be less than or equal to the useful economic life of the item financed, not to exceed the remaining length of relevant FMPA Project. The table below shows the assumed useful economic life for different types of financed generation assets to be used at the time of debt issuance:

Financed Generation Assets	Useful Economic Life
Combined-Cycle	30
Combustion Turbine	25
Coal Plant	30
Nuclear	30
Photovoltaic	25

Exceptions may be approved by the appropriate governing body. The Power Resources Division shall determine the useful economic life of financed generation assets not contained in the table above.

- The use of a cash funded debt service reserve shall always be evaluated against the use of a surety or other debt service reserve product.
- The DFT shall evaluate the costs and benefits of call provisions for each debt issue.

- Non-rated securities may be issued if obtaining a credit rating on the issue does not perform any economic benefit or add any value to capital market participants; for example bank loans.

4.5 Tax Status

FMPA may issue either taxable or tax-exempt debt. The DFT shall consider the economic value of tax status and on the advice of legal counsel (bond and/or tax counsel as appropriate) recommend a taxable or tax-exempt debt issuance, unless a taxable debt issuance is required by law.

4.6 Credit Enhancement

The use of credit enhancement (including bond insurance, letter of credit, and other securitization products) shall be evaluated on a maturity-by-maturity basis. The DFT shall analyze the benefits and costs of issuing debt without credit enhancements, with consideration of the risks and restrictions of using credit enhancement. Credit enhancement shall only be used when the benefits exceed the costs. Post-issuance, the Treasurer and Risk Director shall monitor any credit enhancement associated with variable-rate debt for possible effects on credit or basis risk.

4.7 Methods of Sale

FMPA's policy is to sell public debt using the method of sale expected to achieve the best result, taking into consideration short-term and long-term implications. Decisions on selecting either a competitive or negotiated sale are the responsibility of the DFT. The DFT shall evaluate whether to seek funding by way of a private placement or bank loan where the size of the borrowing does not justify the incurrence of typical bond issuance expenses or market conditions favor such funding. The CFO and FMPA's Financial Advisor, if used, shall compare the overall costs of a private placement with those of a public offering and recommend the most cost effective approach.

4.8 Debt Service Coverage

Debt service coverage shall conform to any respective bond resolutions and remain at or above those levels to ensure that FMPA's credit rating is not adversely impacted.

4.9 Refunding Bonds

Refunding bonds may be issued to achieve debt service savings on outstanding bonds by redeeming high interest rate debt with lower interest rate debt. Refunding bonds may also be issued to restructure debt or modify covenants contained in the bond documents. Current tax law limits to one time the issuance of tax-exempt advance refunding bonds to refinance bonds issued after 1986. There is no current similar limitation for taxable bonds.

4.9.1 Structure

The life of the refunding bonds shall not exceed the remaining life of the assets financed. Refunding bonds should generally be structured to achieve the desired objectives of the authorizing governing body.

4.9.2 Present Value

Refunding bonds issued to achieve debt service savings should have a minimum savings level measured on a present value basis equal to 3% of the par amount of the bonds being refunded. The 3% minimum target savings level for refunding should be used as a general guide to guard against prematurely using the one advance refunding opportunity for post-1986 bond issues. However, because of the numerous considerations involved in the sale of refunding bonds, the 3% target shall not prohibit exercising refunding when the circumstances justify a deviation from the guideline.

4.10 Defeasance

Defeasance is a provision that allows the exchange of one type of collateral, such as pledged revenues for another type of collateral (normally US Treasury securities), where the borrower sets aside cash or bonds sufficient to service the borrowers' debt. FMPA may use this tool when financially beneficial and as allowed by bond covenants. Allowable securities would be purchased by FMPA and held by an Escrow Agent, with the principal and interest earned on the securities sufficient to meet all payments of principal and interest on the outstanding bonds when they become due.

4.11 Disclosure Policy and Procedures Relating Thereto

FMPA is committed to ensuring that disclosures made in connection with its municipal finance offerings and required periodic filings related thereto are fair, accurate, and comply with applicable federal and state securities laws including common law antifraud provisions under state law and all other applicable laws. Further, it is the policy of FMPA to satisfy, in a timely manner, its contractual obligations undertaken pursuant to continuing disclosure agreements entered into in connection with municipal finance offerings. In furtherance of these objectives and policies, the ~~General Manager~~CEO and FMPA's Chief Legal Officer shall cause municipal finance disclosure procedures to be drafted and presented to the EC and BOD for review and adoption in order to establish a framework for compliance by FMPA, with its disclosure and/or contractual obligations regarding the securities it issues or that are issued on its behalf, pursuant to the requirements of the disclosure undertakings made by FMPA in accordance with the provisions of Rule 15c2-12, as amended ("Rule 15c2-12"), promulgated by the United States Securities and Exchange Commission (the "SEC") pursuant to the Securities Exchange Act of 1934, as amended, and other applicable rules, regulations, and orders ("Disclosure Procedures"), which shall be disseminated to FMPA staff. These Disclosure Procedures are intended to formally confirm and enhance FMPA's existing practices regarding compliance with federal securities laws relating to its disclosure responsibilities in order to:

- a. **Educate:** To ensure that staff sufficiently understands FMPA's disclosure policy and FMPA's obligations under the federal securities laws and other applicable laws, and
- b. **Reduce Borrowing Costs:** To reduce borrowing costs by promoting good investor relations, and
- c. **Protect the Public:** To avoid damage to third parties from misstatements or omissions in, or failure to timely file, its disclosure documents, and
- d. **Comply with Law and Contract:** To facilitate compliance with applicable law and existing contracts when preparing and distributing disclosure documents in connection with municipal finance offerings and continuing disclosure documents, and
- e. **Reduce Liability:** To reduce exposure (of FMPA and its officials and employees) to liability for damages and enforcement actions based on misstatements and omissions in, or failure to timely file, its disclosure documents.

5.0 Interest Rate Hedging

As of May⁷, 2015, no new interest rate hedging may be employed for the ARP unless specifically approved beforehand by the EC. The remainder of this Section is only applicable to other FMPA Projects or ARP interest rate hedges put in place prior to May, 2015. Upon any specific EC approval for the hedging of interest rates in the future, this Section would then apply.

FMPA and its Projects are exposed to volatility in interest rates both during the period between a known capital project and its associated debt issuance and with the issuance of any variable interest rate debt. Management defines interest rate hedging as balancing gains and losses to an asset by taking offsetting positions in a derivative product. FMPA's business purpose for the interest rate hedging program is to balance interest rate volatility risk with obtaining the lowest reasonable cost of capital. FMPA will not enter into interest rate hedging transactions that have no authorized business purpose, as determined by the DFT and affirmed by the appropriate governing body.

The use of interest rate swaps and any other derivative instruments such as interest rate caps or collars shall only be upon the express approval of the appropriate governing body, and pursuant to the requirements of this Policy. The CFO, as Chairperson of the DFT, shall present all interest rate hedging recommendations to the ~~General Manager~~[CEO](#) before such recommendations are made to any governing body.

The CFO, in consultation with the DFT, shall ensure active oversight of the interest rate hedging program according to these standards. See Section 7.0 for reporting requirements.

5.1 Hedging Objectives

FMPA's objective for interest rate hedging is to manage interest rate risk for each Project's debt portfolio. The benefits and risks of a specific interest rate hedge should be compared to fixed rate bonds or future interest rate projections, with consideration that an expected lower interest cost should be obtained if the derivative product

contains an element of basis risk or if the product is long-dated (greater than 10 years in duration).

5.2 Transaction Management

The DFT shall review any interest rate hedging transaction before it is presented to the appropriate governing body for consideration. The DFT shall specifically review:

- Existence of associated debt
- Existence of all necessary project approvals, including all required regulatory approvals, prior to issuance or interest rate hedging authorization.
- Purpose of proposed interest rate hedge
- Type of interest rate hedge instrument and counterparty(s) to be used
- Duration of interest rate hedge
- Expected results and probabilities of achieving those results
- Risks of the interest rate hedge strategy or transaction

As Chairperson of the DFT, the CFO or designee shall notify rating agencies, applicable insurers, and other interested parties before entering into an interest rate swap agreement.

5.3 Counterparty Risk

Interest rate swap counterparties must have long-term bond ratings of A1/A+ or higher when the interest rate swap transaction is entered into. Where possible, counterparties shall be required to collateralize their obligations if their ratings are down-graded below the counterparty's rating at the time the interest rate swap is entered into, dependent upon the specific terms of the approved ISDA agreement. Interest rate hedging counterparties must be specifically approved by the appropriate governing body.

The Treasurer and Risk Director shall notify the DFT of any collateral calls and/or collateral returns within 1 business day of such call/return.

The CFO shall report any default of an interest rate swap transaction by or with a counterparty to the DFT, ~~General Manager~~CEO and FC, EC₂ and BOD chairs within 1 business day of such default.

5.4 Hedging Criteria

Products shall be favored which have well-established and liquid markets to facilitate liquidity of the hedging contract. Interest rate hedging products can be transacted on a negotiated or competitive basis, as determined by the DFT. Interest rate swap agreement documentation shall include a standard ISDA Master Agreement, a Schedule to the Agreement, a Credit Support Agreement or Guarantee (if required) and trade confirmations as the primary documents for terms and conditions.

5.5 Provider Diversification

No more than 35% of any single debt provider of a Project's total debt shall be hedged with interest rate swaps, caps or other hedging instruments, in the aggregate to be measured at the time of purchase and annually thereafter. In the event that a single debt provider exceeds the 35% maximum, the CFO shall cause such condition to be reported to the FC and submit for approval a strategy for addressing that condition, including an appropriate timeline for implementation.

5.6 Termination

The appropriate governing body must approve the initiation of optional termination by FMPA. In general, FMPA shall not agree to terms that permit a counterparty to terminate a swap at its unconditioned option unless giving the counterparty such right is in the best interest of FMPA, taking into consideration the purposes for and circumstances under which the Agency is entering into the swap. Criteria for termination/default events are found in each respective ISDA Schedule and/or agreement.

5.7 Collateral at Risk

The CFO shall cause any amounts posted for interest rate hedging collateral to be reported to the FC at each regular meeting along with a strategy for handling the

collateral at risk level. Such strategy shall consider liquidity requirements, termination costs, rating downgrade posting thresholds, and the resulting impact on rates. Amounts posted for collateral shall also be included in the monthly swap report detailed in Section 7.1 below.

5.8 Dodd-Frank ISDA Compliance

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the implementing U.S. Commodity Futures Trading Commission (CFTC) regulations, including external business conduct standards applicable to FMPA, impose a number of new compliance obligations on FMPA in regards to providing information about its swap agreements. This Section 5.8 of the Debt Risk Management Policy is specifically focused on the Dodd-Frank Act compliance responsibilities of FMPA staff.

5.8.1 Recorded Communication

Each person at FMPA who has discussions with a swap counterparty regarding an existing swap transaction or a proposed swap transaction or the master agreement (including the related schedule and credit support annex, if applicable) that governs or will govern such swap transaction acknowledges and agrees that the discussions will be recorded by the swap counterparty and consents to the recording and agrees to sign an annual acknowledgement form stating that they acknowledge that they have read and understand the policies and procedures regarding discussions of swap documentation.

5.8.2 Dodd-Frank Supplement

FMPA will take the necessary steps to comply with its representations, agreements and notice requirements in the ISDA August 2012 DF Supplement, published on August 13, 2012 by the International Swaps and Derivatives Association, Inc., and in any other ISDA protocol documentation entered into by FMPA (directly or through incorporation by reference into existing ISDA master agreements) from time to time.

5.8.3 Qualified Independent Representative

FMPA will enter into a contract with a firm or firms that will have the qualifications to act as a qualified independent representative to FMPA in accordance with the requirements of CFTC Regulation §23.450 and its related safe harbor provisions. Each such contract will require the firm(s) to make representations and provide agreements to satisfy the requirements and safe harbor provisions of CFTC Regulation §23.450 in a manner satisfactory to FMPA.

5.8.3.1 FMPA shall utilize the services of such qualified independent representative when entering into, modifying or terminating (in whole or in part) any swap transaction.

5.8.3.2 FMPA shall monitor the continued performance of each qualified independent representative by requesting certifications annually, as a minimum, from each qualified independent representative restating that the representations and agreements in the contract described above (in Section 5.8.3) are true and correct and that no breach of the contract has occurred. Such certification shall include reference that any notice of failure of a representation or agreement provided by the qualified independent representative was true and correct and promptly provided.

6.0 Internal Controls

The CFO shall cause to be established a system of written internal controls to manage debt issuance and related activities, consistent with this Policy, established Debt Management Procedures and in accordance with all policies and procedural guidelines established in the FMPA Risk Management Policy. FMPA will continue to commit the resources necessary to debt management activities to be viewed by investors in the most favorable light, doing so with highest ethical principles, and consistent with all applicable rules and laws.

The Agency Risk ~~Manager-Director~~ shall be responsible to review all documented internal controls and procedures established to ensure they comply with the FMPA Risk Management

Policy and adequately mitigate all applicable risks. If, after review, the Agency Risk ~~Manager~~ Director identifies areas of concern, the documented internal controls weakness(s) will be communicated to the CFO and FC as appropriate.

The CFO or designee is responsible for issuance of debt. Accounting staff shall maintain accounting records for debt transactions, but shall not have any responsibility for the process of financing assets.

6.1 Policy and Procedure Compliance

The Agency Risk ~~Manager~~ Director shall cause compliance with this Policy and associated Procedures to be monitored on an ongoing basis. This shall include a review of policy compliance following *each* debt issuance. Any unresolved compliance issues will be presented to the FC by the Agency Risk ~~Manager~~ Director.

6.2 Post Issuance

Following the issuance of bonds for any project, the Treasurer and Risk Director shall cause the following requirements to be met:

- Primary Disclosure: As required by the Florida Division of Bond Finance.
- Continuing Disclosure: MSRB/EMMA as required, in compliance with SEC rule 15c2-12 concerning primary and secondary market disclosure.
- Arbitrage Rebate Reports: To be completed annually by a qualified third party. Amounts calculated as liabilities will be reported in the annual audited financial statements. Rebate payments, if required, will be paid for each bond issue as required by regulatory requirements.
- Investor Relations: See the Accounting, Internal Controls & Audit Policy; Appendix J of the FMPA Risk Management Policy, for financial reporting requirements.
- Economic Life Evaluation: Treasurer and Risk Director shall provide outstanding debt information in a timely manner to the System Planning Manager for any required evaluations of outstanding term to remaining economic life per the Power

Supply & Resource Planning Policy, Appendix H of the FMPA Risk Management Policy.

7.0 Reporting

Required reports shall be obtained from information maintained in the Agency's treasury database software (such as Integrity) which is subject to mid-office oversight. Reports not obtained from such software shall be subject to additional oversight as deemed appropriate by the Agency Risk ~~Manager~~Director.

7.1 Debt Portfolio Reports

The Treasurer and Risk Director is responsible for completion of the following reporting requirements:

- A. Monthly swap report to be posted on FMPA's member website and will include, at a minimum, the following:
 - 1) Description of each interest rate swap agreement, including the effective date, notional amount, pay and receive coupon rates, counterparty, and any other relevant information as appropriate.
 - 2) Market value as of report date from an independent third party source (such as Bloomberg or FMPA's swap advisor). Value per counterparty may be used when independent market value is not widely obtainable.
 - 3) Collateral posting thresholds per counterparty.
 - 4) Collateral posted with/by counterparties.
 - 5) Interest earned on collateral postings.

- B. Annual debt report presented to the EC and BOD at their first regularly scheduled meeting following approval of audited financial statements. Such annual debt report shall include, at a minimum, the following:
 - 1) Percentage of portfolio that is fixed rate, variable rate, and synthetic fixed rate at fiscal year-end.
 - 2) Total cost of debt (effective interest rate) per Project for the previous fiscal year.
 - 3) Interest rate swap counterparty diversification report.
 - 4) Debt outstanding for each Project by respective participants.

- C. The Treasurer and Risk Director shall report on the current risk environment affecting FMPA's debt outstanding to the DFT, as needed. The DFT shall engage in any necessary discussion before recommending action to the appropriate governing body.

7.2 Post-closing Report

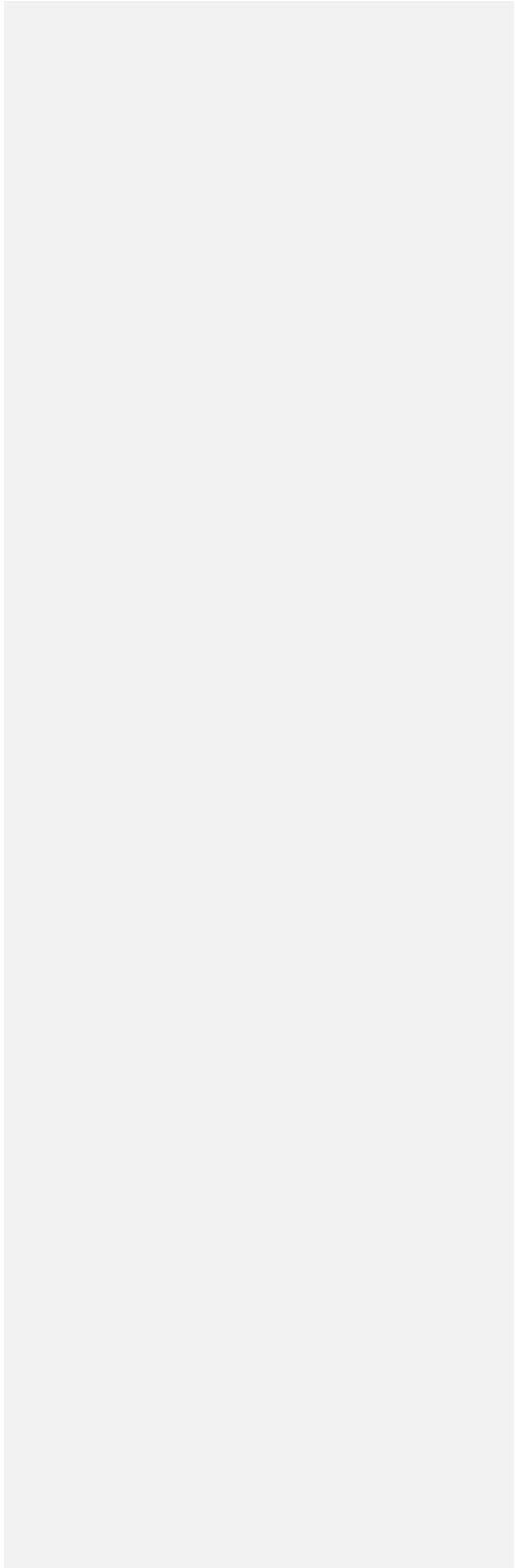
The CFO, as chairperson of the DFT, is responsible for completion of a post-closing debt report. Such report shall be made to the appropriate governing body at their next regular meeting following the closing of a debt financing transaction. The report shall include, at a minimum, the total cost of debt financing, type of debt issued and effect on the portfolio mix, any associated interest rate swaps, any credit enhancement, method of sale, and underwriter diversification for the Project.

7.3 Oversight Structure

The Agency Risk ~~Manager~~ Director shall cause any deviations from this Policy to be reported according to the guidelines set forth in Section 4.1 of the FMPA Risk Management Policy. An annual report on the operation and effectiveness of this Policy shall be completed by the FC as described in Section 7.0 of the FMPA Risk Management Policy.

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Appendix A

Florida Municipal Power Agency Risk Management Reporting Calendar Debt Management Policy Reporting Requirements				
Reporting Item	Frequency of Report	Responsible Party	Policy Section Reference	Policy Category Reference
Collateral Call or Return	As Needed	Treasurer and Risk Director	Section 5.2	Transaction Management
Swap Transaction Defaults	As Needed	CFO	Section 5.3	Counterparty Risk
Swap Diversity Exceptions	As Needed	CFO	Section 5.5	Provider Diversification
Collateral Posted	As Needed	CFO	Section 5.7	Collateral at Risk
Policy and Procedure Compliance	As Needed	Treasurer and Risk Director Agency Risk Manager	Section 6.1	Policy and Procedure Compliance
Primary and Continuing Disclosure	As Needed	Treasurer and Risk Director	Section 6.2	Post Issuance
Interest Rate Swap Report	Monthly	Treasurer and Risk Director	Section 7.1	Debt Portfolio Reports
Recorded Communication Consent Form	Annually (As Needed)	Treasurer and Risk Director	Section 5.8.1	Recorded Communication
QIR qualification attestation	Annually	Treasurer and Risk Director	Section 5.8.3	Qualified Independent Representative
Annual Debt Report	Annually	Treasurer and Risk Director	Section 7.1	Debt Portfolio Reports
Post-Closing Report	Upon Debt Issuance	CFO	Section 7.2	Post-closing Report
Deviations from Policy	As Needed	Treasurer and Risk Director Agency Risk Manager	Section 7.3	Oversight Structure

Policy Operating and Effectiveness	Annually	Finance Committee	Section 7.3	Oversight Structure
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Appendix B

The table below shows the approved debt portfolio mix as described in Section 4.3 of this Debt Risk Management Policy.

LIMITS OF EXECUTIVE COMMITTEE DEBT PORTFOLIO MIX			
	Minimum Fixed Rate	Maximum Fixed Rate	Maximum % of Debt w/ Interest Rate Swaps
All-Requirements Project	60%	100%	25%

LIMITS OF BOARD OF DIRECTORS DEBT PORTFOLIO MIX			
Stanton Project	60%	100%	25%
Stanton II Project	60%	100%	25%
St. Lucie Project	60%	100%	25%
Tri-City Project	60%	100%	25%

This Policy compliance review is conducted by the Internal Audit Department (IAD) to assess the status of risk management practices for the time period noted below. The Internal Audit Department completes this form and submits to responsible manager(s) for additional information and comment. Documentation or attestation of compliance may be required during this review. The final form is submitted to the appropriate Executives and the CEO prior to being presented to the Finance Committee (FC) as an information item.

Review period **December 2018 to November, 2019**

Responsible Manager(s): Rich Popp, Treasurer and Risk Director

<i>Policy Compliance:</i> Indicate whether the following items required in the Debt Risk Management Policy were completed during the review period.			
REQUIREMENT	YES	NO	EXPLANATION
Financial Advisor provided written recommendations to the appropriate governing bodies prior to execution of debt. (Section 2.0)	X		Recommendations were contained in the respective debt resolutions presented for approval.
The CFO caused Treasury Procedures to be established. (Section 6.0)	X		
CFO presented all Debt Financing Team (DFT) recommendations to CEO. (Section 4.1)	X		All DFT recommendations become formal Agenda items which are set and approved by the CEO
Debt Financing Team explained risks of any proposed structure or transaction to the appropriate governing body. (Section 4.3)	X		
Debt portfolio mix levels were measured at time of debt issuance, and any deviations approved by appropriate governing body. (Section 4.3)	X		Only fixed rate debt that is in the respective debt resolution presented for approval.
Policy requirements were met for any refunding bonds issued. (Section 4.9)	X		ARP refinancing was done to eliminate swap derivatives, and LIBOR exposure
Derivatives were entered into only with the approval of the appropriate governing body. (Section 5.0)			N/A - None transacted during review period.
CFO, in consulting with Debt Financing Team, ensured active management of interest rate hedging program. (Section 5)	X		Swap Advisor is a regular participant in scheduled DFT Meetings
External entities were advised as required per Policy before entering into swap agreements. (Section 5.2)			N/A - None transacted during review period.
Treasurer notified Debt Financing Team (DFT) of any collateral calls or collateral returns within 1 business day. (Section 5.3)			N/A – None occurred during review period

<i>Policy Compliance continued:</i>			
REQUIREMENT	YES	NO	EXPLANATION
Hedging counterparties had long-term bond ratings of A-1/A+ or higher at time of execution. (Section 5.3)			N/A - None transacted during review period.
CFO reported interest rate swap transaction defaults to the Debt Financing Team, CEO, and governing body chairs within 1 business day. (Section 5.3)			N/A – No occurrence during review period
CFO reported to the FC when more than 35% of a Project’s total debt was hedged with any one provider. (Section 5.5)			N/A – There was no swap counterparties.
Appropriate governing body approved any optional interest rate swap terminations. (Section 5.6)	X		
Treasurer completed all post-issuance reporting and compliance requirements. (Section 6.2)	X		Required reports completed
CFO caused posted collateral to be reported to each FC with a strategy for handling related risk level. (Section 5.7)			N/A – None occurred during review period
Debt Portfolio reports were issued as required. (Section 7.1)	X		Report presented during February 2019 EC and BOD meeting
Post-closing reports were issued as required. (Section 7.2)			N/A

<i>Internal Control Assessment:</i> Evaluate the effectiveness of the current process in achieving the following control objectives. Use a scale of 1 to 4 as defined on attached page.					
OBJECTIVE	1	2	3	4	EXPLANATION
Controls are in place to identify and assess risks related to issuance of debt.			X		
Debt portfolio contributes to at least an A- or A3 credit rating.			X		
The cost and benefit of all aspects of proposed debt structures are fully considered.			X		
Debt service coverage remains at levels to comply with bond covenants.			X		

Internal Control Assessment: continued

OBJECTIVE	1	2	3	4	EXPLANATION
Controls are in place to identify and assess risks related to interest rate swap transactions.			X		
Hedging transactions have authorized business purposes and measured risk.			X		
Sufficient segregation of duties is maintained.			X		
Off-balance sheet obligations are reported to the FC or higher governing body.			X		None known by Treasury.

Are there any concerns related to debt risk management which should be brought to the attention of the CEO as part of this review? Yes No If yes, describe below.

Are there internal control concerns related to debt risk management which require immediate attention? Yes No If yes, describe below including any change to risk inventory controls score.

Rate the overall functioning of debt risk management practices using a scale of 1 to 4 as defined on attached page.

1	2	3	4	EXPLANATION
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Additional comments from responsible Manager(s):

Are there any emerging risks or environmental changes which impact debt risk management?

Yes No If yes, describe below including any proposed changes to risk inventory.

Other comments:

All interest rate swaps have been eliminated as of November 7, 2019.

Rating scale for Policy compliance reviews:

- 1 = Risk management practices not in place.
- 2 = Risk management practices in place are not effective in meeting Policy requirements.
- 3 = Risk management practices in place meet Policy requirements.
- 4 = Risk management practices in place exceed Policy requirements.

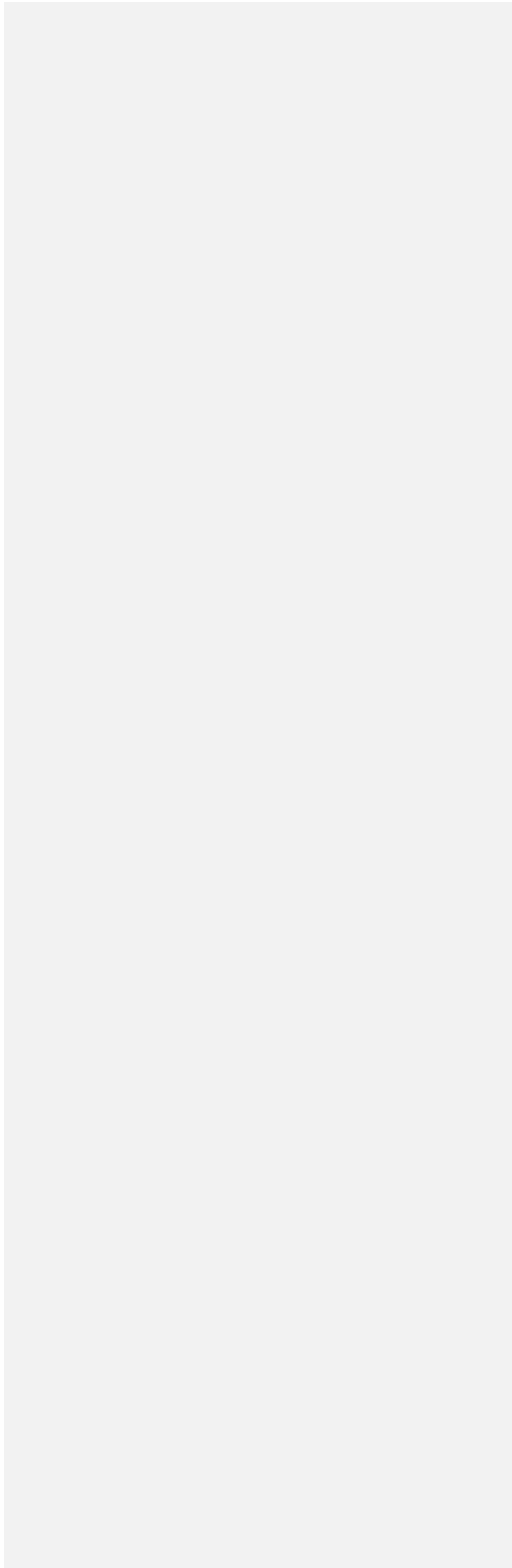
Standard of compliance:

Completion of this review indicates that the Risk Management Reviewer has verified existence of applicable procedures or process documentation and believes them to be reasonably sufficient and up-to-date.

<small>DocuSigned by:</small> <i>Liquan Woerner</i> <small>4592B56DD85A42A...</small>	12/23/2019
Risk Management Reviewer	Date
<small>DocuSigned by:</small> <i>Rich Popp</i> <small>B57815048B01AF...</small>	12/23/2019
Responsible Manager Signature	Date
Risk Director Signature	
<small>DocuSigned by:</small> <i>Linda Howard</i> <small>69932754136419B...</small>	12/26/2019
Responsible Executive Officer Signature	Date

**RISK MANAGEMENT POLICY
APPENDIX L
FLORIDA MUNICIPAL POWER AGENCY
RECORDS MANAGEMENT RISK MANAGEMENT POLICY
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|

**RECORDS MANAGEMENT
RISK MANAGEMENT POLICY
FOR FLORIDA MUNICIPAL POWER AGENCY**

This Records Management Policy (the “Policy”) and any effective subordinate procedures establish the governance, framework and controls under which Florida Municipal Power Agency (“FMPA”) may engage in activities to identify, measure and minimize future business risk resulting from the potential loss of records. Records in this context include written documents, electronic versions of documents, and email. This Policy is Appendix L of the FMPA Risk Management Policy.

1.0 Policy Statement

The Board of Directors and Executive Committee of FMPA recognize that FMPA is exposed to various risks in the normal course of business activities. There may be times when FMPA will determine that certain risks are above the preferred risk tolerance level of FMPA and its members. FMPA is hereby authorized to put mechanisms into place, such as those more fully described in Section 5.0 of this Policy, which will control, transfer, or mitigate these risks to avert an adverse impact on the financial or legal position of the Agency.

It is the Policy of the Board of Directors and Executive Committee that:

- ❖ The records of the Agency be stored, managed, and retained according to applicable laws.
- ❖ The ~~General Manager~~CEO exercises overall responsibility for FMPA’s records management system.
- ❖ The ~~General Manager~~CEO shall cause procedures to be created to implement this Policy.
- ❖ Deviations from this Policy shall be reported to the ~~Audit and Risk Oversight~~Finance Committee.

2.0 Scope

This Policy applies to all business records of the Agency including contracts, correspondence (including emails and other electronic communications), and any other corporate records.

The ~~General Manager~~CEO exercises overall responsibility for FMPA's records management system. Each employee of the Agency is responsible for complying with records retention regulations. The Records Management staff in the Information Systems Department is responsible for managing all centrally stored physical and electronic records of the Agency. The Agency has adopted an electronic records management system to reduce legally required records to an electronic format which are stored in the system for easy retrieval. Presently, the Agency follows two Records Retention Schedules established by the State of Florida – GS1-L and GS14.

Records are destroyed only after the retention period established by either GS1-L or GS14 has been satisfied. Records may be retained longer than the state mandated retention period if beneficial to FMPA.

3.0 Types of Risk

This Policy establishes minimum standards to support an Agency-wide atmosphere of proper control levels to safeguard the Agency's assets. The ~~General Manager~~CEO shall cause procedures to be created that identify risks in the areas noted below and provide ways to measure, control and mitigate FMPA's exposure to those risks. While not intended to be a comprehensive listing of risk encountered by FMPA related to Records Management, the following provides insight into the major areas of records management risk exposure for FMPA.

3.1 Operational Risk: The risk that the Agency will not be able to conduct business as needed. An example of operational risk would be if the executed original of a power supply contract was lost and the Agency was unable to enforce a clause in the contract. Operational risk is mitigated if the documents are protected and copied electronically with off-site back-up of the copy.

3.2 Regulatory Risk: The risk of potential adverse impact of an action or direction from an administrative body such as FERC, DOE, or Treasury Department. The State of Florida, FRCC, and the IRS require that certain documents be retained and available on demand. Should those documents not be available the Agency could suffer negative financial or other consequences.

3.3 Legal Risk: The risk of financial or economic losses incurred by an organization through an unauthorized deviation from any legal obligations imposed by laws, rules, regulations, ordinances, or contracts. As a public agency, FMPA is required to retain certain documents for specific periods of time. Failure to do so is a violation of state or other laws.

4.0 Records Management

The ~~General Manager~~[CEO](#) is designated as the First Assistant Secretary to the Board of Directors and Executive Committee in the Agency's By-Laws. As First Assistant Secretary, the ~~General Manager~~[CEO](#) has the responsibility to ensure that all books, documents, and papers of the Agency are kept in accordance with standard record keeping practice for utilities, and as may also be required by law, rule or regulation.

Employees shall use the Florida Records Retention Schedules GS1-L and GS14 as a reference for the minimum maintenance requirements and disposal guidelines for records. The Schedules are available on FMPA's Intranet. The Agency's legal

counsel shall provide a final opinion in cases where an employee requests clarification of the Records Retention Schedules.

The Agency utilizes an electronic records management system. The ~~Manager of Information Systems~~ [IT Manager](#) shall ensure that all employees are assigned access rights to the electronic records management system appropriate to their position and department. In addition to electronic records, physical copies of some vital business records are kept at the Agency's headquarters in the vault, a secure fire-resistant location. Access to the vault shall be restricted to appropriate staff members.

Each employee is responsible for ensuring documents under their control are properly retained either electronically or physically. Managers and supervisors are responsible for their subordinates' adherence to this Policy. When a subordinate is no longer employed by the Agency, the immediate supervisor is responsible for safeguarding in accordance with this Policy all records that were in the former employee's control, until such time as responsibility for those records is transferred to another employee.

5.0 Internal Controls

The ~~General Manager~~ [CEO](#) shall cause to be established a system of written internal controls to safeguard the Agency's business records, consistent with this Policy and Records Management Procedures, and in accordance with all policies and procedural guidelines established in the FMPA Risk Management Policy. The controls shall be designed to meet the requirements of all applicable laws, including all applicable Florida records retention schedules. FMPA shall use a cost-benefits analysis when making decisions regarding the implementation of internal controls.

5.1 System of Controls: The system of internal controls includes the Employee Manual issued by the Agency to all employees. The FMPA Employee Manual

includes guidelines for the Public Records Law Policy. Further internal controls shall be established to govern the input of documents into the records management system and the destruction of documents that have fulfilled the state mandated retention period.

5.2 Ongoing Training: The ~~Manager of Information Systems~~IT Manager shall ensure that technical training on the proper use of the electronic records management system is conducted at least biennially for all employees. The Human Resources Department shall ensure that all new employees receive records retention training during orientation, and shall arrange for FMPA's legal counsel to present formal records retention training annually to all employees. Sufficient records shall be maintained in personnel files to show compliance with these training requirements.

5.3 Policy Compliance: Risk Management ~~staff~~team shall ~~cause~~ monitor compliance with this Policy ~~to be monitored~~, which at a minimum shall include performing an annual review ~~of staff usage of the electronic records management system~~. Results of such annual reviews shall be reported to the ~~Risk Oversight Committee~~Finance Committee.

6.0 Reporting

The ~~General Manager~~CEO shall cause any deviations from this Policy to be reported according to the guidelines set forth in the FMPA Risk Management Policy, Section 4.1. The ~~Audit and Risk Oversight~~Finance Committee shall cause to be completed an annual report on the operation and effectiveness of this Policy as described in the FMPA Risk Management Policy, Section 7.0. Managers shall report as needed on the current risk environment affecting records management to the Risk Management ~~Department~~team, and engage any necessary discussion before moving related items to ~~Advisory or Board~~Finance Committees.

**Florida Municipal Power Agency
Risk Management Reporting Calendar
Records Management Reporting Requirements**

Reporting Item	Frequency of Report	Responsible Party	Policy Reference	Policy Reference
Records Management Training	Every two years	IT Manager	Section 5.2	Ongoing Training
Records Retention Training	Annually	FMPA's legal counsel	Section 5.2	Ongoing Training
Policy Compliance	Annually	Risk Manager/Internal Audit Department	Section 5.3	Policy Compliance
Deviations from Policy	As Needed	CEO	Section 6.0	Reporting
Policy Operation & Effectiveness	Annually	Finance Committee	Section 6.0	Reporting

This Policy compliance review is conducted by the Internal Audit Department (IAD) to assess the status of risk management practices for the time period noted below. The Internal Audit Department completes this form and submits to responsible manager(s) for additional information and comment. Documentation or attestation of compliance may be required during this review. The final form is submitted to the appropriate Executives and the CEO prior to being presented to the Finance Committee (FC) as an information item.

Review period: November, 2018 to October, 2019

Responsible Manager(s): Luis Cruz, IT Manager; and Sharon Adams, Human Resource Director

<i>Policy Compliance:</i> Indicate whether the following items required in the Records Management Policy were completed during the review period.			
REQUIREMENT	YES	NO	EXPLANATION
CEO caused procedures to be created. (Section 3.0)	X		
Record retention schedules GS1-L and GS14 are posted on the Intranet. (Section 4.0)	X		
IT Manager assigned staff appropriate access rights to the electronic records management system. (Section 4.0)	X		
IT Manager conducted technical training at least biennially for all employees. (Section 5.2)	X		
The HR Department ensured all new employees received records retention training during orientation. (Section 5.2)	X		
The HR Department coordinated with legal counsel to present formal records retention training to all employees annually. (Section 5.2)	X		Public Record Law & Sunshine Law training is completed

Internal Control Assessment: Evaluate the effectiveness of the current process in achieving the following control objectives. Use a scale of 1 to 4 as defined on attached page.

OBJECTIVE	1	2	3	4	EXPLANATION
Controls are in place to identify and assess risks related to the security of the Agency's business records.			X		
Agency records are retained in compliance with legal requirements and Agency policy.			X		
Access to the vault is restricted to appropriate staff members.			X		
Managers are held responsible for their subordinates' compliance with records retention policies.			X		

Are there any concerns related to records management risk management which should be brought to the attention of the General Manager as part of this review?

Yes No If yes, describe below.

Are there internal control concerns related to records management risk management which require immediate attention?

Yes No If yes, describe below including any change to risk inventory controls score.

Rate the overall functioning of records management risk management practices using a scale of 1 to 4 as defined on attached page.

1	2	3	4	EXPLANATION
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Additional comments from responsible Manager(s):

Are there any emerging risks or environmental changes which impact records management risk management?

Yes No If yes, describe below including any proposed changes to risk inventory.

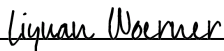
Other comments:

Rating scale for Policy compliance reviews:

- 1 = Risk management practices not in place.
- 2 = Risk management practices in place are not effective in meeting Policy requirements.
- 3 = Risk management practices in place meet Policy requirements.
- 4 = Risk management practices in place exceed Policy requirements.

Standard of compliance:

Completion of this review indicates that the Risk Management Reviewer has verified existence of applicable procedures or process documentation and believes them to be reasonably sufficient and up-to-date.

DocuSigned by:


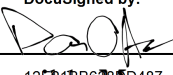
Risk Management Reviewer
1502B565D25112E
12/30/2019

Date

DocuSigned by:

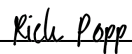

Responsible Manager Signature
450B1F104E744CC
12/30/2019

Date

DocuSigned by:


Responsible Manager Signature
12E1BB6730D487
1/3/2020

Date

DocuSigned by:


Risk Director Signature
857B650AB3041E
1/2/2020

Date

DocuSigned by:


Responsible Executive Officer Signature
30475221FC51467
12/30/2019

Date

**RISK MANAGEMENT POLICY
APPENDIX N**

FLORIDA MUNICIPAL POWER AGENCY

HUMAN RESOURCES RISK MANAGEMENT POLICY

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HUMAN RESOURCES RISK MANAGEMENT POLICY FOR FLORIDA MUNICIPAL POWER AGENCY

This Human Resources Risk Management Policy (the “Policy”) and any effective subordinate procedures establish the governance, framework and the controls under which Florida Municipal Power Agency (FMPA) may engage in activities to identify, measure and minimize future business risk resulting from employment practices. This Policy is Appendix N of the FMPA Risk Management Policy.

1.0 Policy Statement

The Board of Directors and Executive Committee of FMPA recognize that FMPA is exposed to various risks in the normal course of business activities. There may be times when FMPA will determine that certain risks are above the preferred risk tolerance level of FMPA and its members. FMPA is hereby authorized to put mechanisms into place, such as those more fully described in Section 5.0 of this Policy, which will control, transfer, or mitigate these risks to avert an adverse impact on FMPA’s legal or financial standing.

It is the Policy of the Board of Directors and Executive Committee that:

- ❖ Functions of the Human Resources (HR) Department shall comply with all applicable laws and regulations, and Board or Executive Committee approved policies.
- ❖ The HR Department shall oversee employee benefits and compensation and strive to maintain a competitive and cost-effective program.
- ❖ The HR Department shall coordinate with management to oversee and guide the recruitment, hiring, and termination of personnel.
- ❖ Authority is delegated to the Human Resource Director to create procedures to implement this Policy.
- ❖ Deviations from this Policy shall be reported to the Finance Committee.

This Policy serves to create a framework that enables the Human Resource Director to document controls that will minimize FMPA's exposure to risk and enable compliance with established employment and payroll laws and regulations, as well as all Board or Executive Committee approved policies.

2.0 Scope

This Policy applies to all personnel management practices of the Agency, regardless of the normal office location of the employee. As used in this Policy, references to "employee" shall mean any full-time, part-time, casual part-time, or intern staff member employed directly by the Agency. This Policy does not apply to consultants or other professionals engaged by the Agency.

Authority for day-to-day actions is hereby granted to the Human Resource Director, under the direction of the ~~Assistant General Manager of Public Relations & Human Resources~~CEO. The Human Resource Director is responsible for ensuring that all minimum standards and procedures regarding personnel management are in compliance with federal and state laws, rules, and regulations. The HR Policy that was approved by the BOD is being followed.

3.0 Types of Risk

This Policy establishes minimum standards to support an Agency-wide atmosphere of proper control levels to safeguard the Agency's personnel and assets. The Human Resource Director will cause procedures to be created that identify risks in the areas noted below and provide ways to measure, control and mitigate FMPA's exposure to those risks. While not intended to be a comprehensive listing of risk encountered by FMPA during the normal course of the business cycle, the following provides insight into the major areas of personnel management risk exposure for FMPA.

- 3.1 Operational Risk:** The risk that internal practices, policies, procedures or systems will not perform as intended. An example of operational risk would be if a failure in internal control processes in the HR Department resulted in the processing of inaccurate or fraudulent payroll. This type of failure in the payroll process could cause financial and reputation loss to the Agency.
- 3.2 Legal Risk:** The risk of financial or economic losses incurred by an organization through an unauthorized deviation from any legal obligations imposed by law, rules, regulations, ordinances, or contracts. An example of legal risk would be violating federal or state regulations concerning discrimination in the workplace. Such a violation could cause financial and reputation loss to the Agency.
- 3.3 Strategic Risk:** The risk that the actions of management or the governing body do not promote the successful attainment of organization objectives. An example of strategic risk might occur if FMPA's Compensation Policy is not applied consistently across the Agency. Such a failure could lead to employee dissatisfaction, increased turnover, or an inability to attract qualified personnel which could impede the Agency in meeting its goals.

4.0 Personnel Management

FMPA's HR Department is responsible for maintaining all personnel records, coordinating the hiring, orientation, and termination processes, administering benefits and compensation programs, and coordinating personnel related activities such as performance evaluations, wellness programs, and professional development opportunities. The Employee Manual addresses many of these responsibilities. The following provides further risk-related detail for significant areas within the HR Department.

4.1 Payroll: The Agency’s payroll function is completed by the HR Department. Sufficient segregation of duties shall be in place to ensure that payroll entries are approved at appropriate levels and verified for accuracy. The Agency currently uses a professional third-party vendor to process payroll, which mitigates risk of noncompliance with tax laws and federal filing requirements.

The HR Department must maintain adequate backup documentation to support time worked by employees, to record employee absences due to vacation, sick leave or other leave, and to document payments for overtime worked or other pay types (such as retroactive pay or bonuses). The HR Department shall cooperate with reviews of these controls conducted by internal or external auditors.

Additional guidelines regarding employee payroll and leave during specific Events are located in the Contingency Planning Policy, Appendix M of this FMPA Risk Management Policy.

4.2 Benefits Administration: All employee health and wellness records shall be maintained per Health Insurance Portability and Accountability Act (“HIPAA”) regulations. The HR Department is responsible for securing all employee information regarding personal health and wellness as required by HIPAA. The Human Resource Director shall cause to be completed employee enrollment in eligible benefits. The HR Department shall also ensure that benefit eligibility records are properly maintained for all employees.

The Human Resource Director shall cause an annual review of FMPA’s health and wellness plans to be conducted to assess competitiveness and cost effectiveness of the benefits program.

4.3 Compensation: FMPA’s Compensation Policy is contained within the Employee Manual. The Compensation Policy can only be modified by approval of the Board of Directors. The HR Department is responsible for enforcing consistent application of the Compensation Policy across the Agency.

Salary ranges are reviewed and may be adjusted to market during the annual budget process. As required in the Compensation Policy in the Employee Manual, the Human Resources ~~Manager~~ Director shall cause to be completed on a biennial basis a professional third-party review of salary ranges. Such a review shall be conducted ~~by a national firm who shall~~to determine maximum and minimum salary range points based on a statistically validated range. In the alternating year, any proposed salary range adjustment shall be based on the Consumer Price Index year change announced in the ~~month of March~~ prior year.

The HR Department is also responsible for ensuring that all personnel are classified correctly and that all payroll laws and regulations are followed, as required in the Fair Labor Standards Act (“FLSA”). The HR Department shall also strive to ensure that the Agency’s compensation structure remains competitive with industry standards.

4.4 Employment: The HR Department shall ensure that all employment laws and regulations are followed consistently and fairly. This includes, but is not limited to, FLSA, Americans with Disabilities Act (“ADA”), Family Medical Leave Act (“FMLA”), HIPAA, Consolidated Omnibus Budget Reconciliation Act (“COBRA”), and Equal Opportunity Employment (“EEO”) requirements. The Human Resource Director and FMPA’s labor law attorney, in consultation with General Counsel, shall cause to be implemented legal

requirements and advise management to ensure compliance with applicable employment laws.

4.5 Succession Planning: The HR Department shall provide support to management in the recruitment and development of employees, so that employees are prepared for advancement within the organization. The HR Department shall assist management in identifying and preparing suitable employees for succession opportunities. Succession planning shall ensure that existing employees are prepared for new leadership opportunities and the Agency's operations are not adversely impacted by the departure of key personnel. If a key management position will be vacated through a planned retirement, a placement in advance of the expected departure date is desirable to minimize the risks of an ineffective succession.

5.0 Internal Controls

The Human Resources ~~Manager~~ Director shall cause to be established a system of written internal controls to safeguard the Agency's personnel and financial assets, consistent with this Policy and Human Resources Procedures, and in accordance with all policies and procedural guidelines established in the FMPA Risk Management Policy. The controls shall be designed to meet the requirements of applicable legal regulations. FMPA shall use a cost-benefits analysis when making decisions regarding the implementation of internal controls.

5.1 System of Controls: The system of internal controls includes the Employee Manual issued by the Agency to all employees. The FMPA Employee Manual includes guidelines for complying with legal requirements, recruitment and employment practices, compensation, employee conduct, benefits, and a variety of Agency procedures. Further internal controls are established in the HR Department governing the separation of payroll duties.

5.2 Ongoing Training: The Human Resource Director shall ensure that all employees receive any training as required by law or regulation. Records must be maintained by the Human Resource Director sufficient to show compliance with training requirements.

The Human Resource Director and other appropriate human resource staff shall be required to complete annually (each fiscal year) 4 hours of continuing professional education in subject courses of study related to personnel management.

5.3 Policy Compliance: Risk Management ~~staff~~Team shall monitor compliance with this Policy, to include recommendations to the Finance Committee (FC) for external legal compliance reviews when determined necessary. Results of such reviews shall be reported to the Risk Management ~~Department~~Team and FC.

6.0 Reporting

The Human Resource Director shall cause any deviations from this Policy to be reported according to the guidelines set forth in the FMPA Risk Management Policy, Section 4.1. The Finance Committee shall cause to be completed an annual report on the operation and effectiveness of this Human Resources Policy as described in the FMPA Risk Management Policy, Section 7.0. Managers shall report as needed on the current risk environment affecting human resource management to the Risk Management Team, and engage any necessary discussion before moving related items to Advisory or Board Committees.

**Florida Municipal Power Agency
Risk Management Reporting Calendar
Human Resource Management Reporting Requirements**

Reporting Item	Frequency of Report	Responsible Party	Policy Reference	Link to Policy Reference
Review of Health and Wellness Plans	Annually	Human Resources Manager-Director	Section 4.2	Benefits Administration
Review of Salary Ranges	Biennially	Human Resources Manager-Director	Section 4.3	Compensation
Policy Compliance	As Needed	Risk Management Team	Section 5.3	Policy Compliance
Deviations from Policy	As Needed	Human Resources Manager-Director	Section 6.0	Reporting
Policy Operation & Effectiveness	Annually	Finance Committee	Section 6.0	Reporting

This Policy compliance review is conducted by the Internal Audit Department (IAD) to assess the status of risk management practices for the time period noted below. The Internal Audit Department completes this form and submits to responsible manager(s) for additional information and comment. Documentation or attestation of compliance may be required during this review. The final form is submitted to the CEO prior to being presented to the Finance Committee (FC) as an information item.

Review period: December 2018 to November 2019

Responsible Manager(s): Sharon Adams, Human Resources Director

<i>Policy Compliance:</i> Indicate whether the following items required in the Human Resources Policy were completed during the review period.			
REQUIREMENT	YES	NO	EXPLANATION
HR Director caused procedures to be established (Section 3.0)	X		
HR Department cooperated with reviews of payroll controls by internal or external auditors. (Section 4.1)	X		
Employee health and wellness records were maintained per HIPAA regulations. (Section 4.2)	X		
An annual review of health and wellness plan was conducted by HR Department. (Section 4.2)	X		The health and wellness plan was reviewed in October 2019
HR Department enforced consistent application of the Compensation Policy across the Agency. (Section 4.3)	X		
During the budget process, either (in alternating years) a third party review of salary ranges was conducted or the CPI year change announced in March was used for proposed range changes. (Section 4.3)	X		Recommend changes to national firm requirement.
HR Department ensured employment laws and regulations were followed consistently and fairly. (Section 4.4)	X		
HR Director caused a system of internal controls to be established. (Section 5.0)	X		
HR Director ensured all employees received required training and maintained records of such. (Section 5.2)	X		EEOC Training Public Records
HR Director and appropriate staff completed 4 hours of professional education related to personnel management. (Section 5.2)	X		HR Director attended training May 2019

<i>Internal Control Assessment:</i> Evaluate the effectiveness of the current process in achieving the following control objectives. Use a scale of 1 to 4 as defined on attached page.					
OBJECTIVE	1	2	3	4	EXPLANATION
Controls are in place to identify and assess risks related to personnel management activities.			X		
Employee benefits and compensation are competitive and cost-effective.			X		
Appropriate segregation of duties is maintained related to the payroll function.			X		
Employees are enrolled in eligible benefits and eligibility records are maintained.			X		ADP Electronic Benefit Management System
Personnel are correctly classified, and all payroll laws and regulations are followed.			X		On-going
Succession planning is sufficiently supported and implemented across the Agency.			X		Through performance evaluation process.
External legal compliance reviews are conducted as deemed necessary by the CEO and/or General Counsel.			X		

Are there any concerns related to human resources risk management which should be brought to the attention of the CEO as part of this review?

Yes No If yes, describe below.

Are there internal control concerns related to human resources risk management which require immediate attention?

Yes No If yes, describe below including any change to risk inventory controls score.

Rate the overall functioning of human resources risk management practices using a scale of 1 to 4 as defined on attached page.

1	2	3	4	EXPLANATION
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Additional comments from responsible Manager(s):

Are there any emerging risks or environmental changes which impact human resources risk management?

Yes No If yes, describe below including any proposed changes to risk inventory.

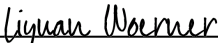
Other comments:

Rating scale for Policy compliance reviews:

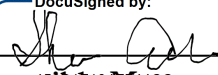
- 1 = Risk management practices not in place.
- 2 = Risk management practices in place are not effective in meeting Policy requirements.
- 3 = Risk management practices in place meet Policy requirements.
- 4 = Risk management practices in place exceed Policy requirements.

Standard of compliance:

Completion of this review indicates that the Risk Management Reviewer has verified existence of applicable procedures or process documentation and believes them to be reasonably sufficient and up-to-date.

DocuSigned by:

592856DD85442A
Risk Management Reviewer

12/30/2019
Date

DocuSigned by:

45913140417146C
Responsible Manager Signature

1/2/2020
Date

DocuSigned by:

D857BC50ABB041AF
Risk Director Signature

1/2/2020
Date

DocuSigned by:

38471226125146Z
Responsible Executive Officer Signature

1/2/2020
Date

FLORIDA MUNICIPAL POWER AGENCY

**RISK MANAGEMENT POLICY
APPENDIX O**

INFORMATION TECHNOLOGY RISK MANAGEMENT POLICY

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INFORMATION TECHNOLOGY RISK MANAGEMENT POLICY FOR FLORIDA MUNICIPAL POWER AGENCY

This Information Technology Risk Management Policy (the “Policy”) and any effective subordinate procedures establish the governance, framework and the controls under which Florida Municipal Power Agency (“FMPA”) may engage in activities to identify, measure and minimize future business risk resulting from the use of information technology (“IT”) assets and resources. This Policy is Appendix O of the FMPA Risk Management Policy.

1.0 Policy Statement

The Board of Directors and Executive Committee of FMPA recognize that FMPA is exposed to various risks in the normal course of business activities. There may be times when FMPA will determine that certain risks are above the preferred risk tolerance level of FMPA and its governing bodies. FMPA staff is hereby authorized to put mechanisms into place, such as those more fully described in Section 4.0 of this Policy, which will control, transfer, or mitigate these risks to avert an adverse effect on FMPA’s ability to utilize its IT assets and resources.

The following summarizes the Policy of the Board of Directors and Executive Committee:

- ❖ Information technology management shall conform to applicable regulatory and legal requirements.
- ❖ Authority is delegated to the Information Technology Manager (“ITSC”) to create procedures to facilitate the management of IT and administer this Policy.
- ❖ The ITSC shall recommend procedures and operational policies for specific IT activities as specified in Section 4.2.
- ❖ FMPA’s ITSC shall present all recommendations to the General Manager for approval as required in Section 4.2.

- ❖ The Information Technology Manager shall report on ITSC activities as required in Section 6.0 of this Policy.
- ❖ The Agency Risk Manager shall report deviations from this Policy to the ~~Audit and Risk Oversight~~ Finance Committee (“AROCFC”).

2.0 Scope

This Policy applies to all IT assets utilized by FMMPA whether at office or generation asset locations, except those Operational Technology IT ~~assets defined as Critical Cyber Assets under~~ subject to NERC CIP standards which shall be governed by policies or procedures established by the CIP Senior Manager ~~Regulatory Compliance Officer~~. For this Policy “information technology assets and resources” are defined as the staff, software, hardware, phone systems and facilities that are used to electronically store, retrieve and/or manipulate business information at FMMPA.

The Records Management Risk Management Policy (Appendix L of the FMMPA Risk Management Policy) addresses management of the Agency’s business records, except where superseded by NERC/FERC regulations.

All users of FMMPA’s IT assets and resources are responsible for the proper care and use of IT assets and resources under their direct control as defined in this Policy, the Employee Manual and all associated policies and procedures.

3.0 Types of Information Technology Risk

This Policy establishes minimum standards to support an Agency-wide atmosphere of proper control levels to ensure effective and efficient operation of information technology assets and resources. The IT Manager will cause procedures to be created that identify risks in the areas noted below and provide ways to measure, control and mitigate FMMPA’s exposure to those risks. The FMMPA Risk Management Policy

identifies ten risks composing FMPA's common risk framework. While not intended to be a comprehensive listing of risks encountered by FMPA during the normal course of the business cycle, the framework provides insight into the major areas of risk exposure for FMPA. The following selected framework risks are those risks presented by typical information technology activities.

3.1 Regulatory Risk: The potential adverse impact of an action or direction from a regulatory body. An example of regulatory risk impacting IT assets might occur if regulatory standards are issued which require a higher level of IT security than currently in place. Non-compliance to such standards could expose FMPA to fines or other regulatory action.

3.2 Administrative Risk: The potential of financial loss due to deficiencies in internal control structure and management reporting due to human error, fraud or a system failure. An example of administrative risk for IT assets would be if unauthorized system changes were made to a financial information system. Such changes could allow fraud or financial misstatement to occur, resulting in financial loss to FMPA. Not being able to detect such unauthorized changes would make this risk more pronounced.

3.3 Strategic Risk: The risk that the policies and actions of a governing body or management do not promote the successful attainment of strategic goals and objectives. An example of strategic risk related to IT assets would be if decisions regarding implementation of new software were not tied to FMPA's strategic goals. This lack of coordination could result in separate business decisions which do not support the achievement of FMPA's goals, resulting in financial and/or reputation loss.

4.0 Information Technology Management

This Policy establishes broad measures to secure FMPA's IT assets and resources against theft, fraud, malicious or accidental damage, and/or breach of integrity.

4.1 Information Technology Ownership: A custodian is responsible for IT assets or resources under their control as described below.

The IT Manager is custodian of the infrastructure of all Agency-wide systems, including all hardware, software, and voice and data networks associated with such systems. This includes items such as, but not limited to, email and network servers, internet connections, firewalls and virus protection.

Managers are custodians of all applications and systems under each manager's direct control. The ITSC shall maintain a list of current application and system owners, in accordance with procedures established as prescribed in Section 4.2.

All Staff are custodians of computing systems or telecommunication devices issued for their exclusive use, regardless of length of time of use. This includes, but is not limited to, desktop and laptop computers, cell phones, and storage media. The Employee Manual further addresses staff responsibilities and disciplinary actions resulting from misconduct.

4.1.1 Security Breaches: All custodians are responsible for notifying the IT Manager of security breaches that require actions beyond the custodian's ability or authority. A security breach is defined for this Policy as data or actions which intentionally or unintentionally violate this Policy. The IT Manager shall log all such reported breaches and provide a monthly summary report (if breaches occur) to the Agency Risk Manager.

4.1.2 Software Licenses: All staff are responsible for complying with applicable copyright laws and with the terms and conditions of any

contract or software licenses for purchased, leased, or acquired software. ITSC procedures regarding software approval and installation shall be followed by all staff prior to installing, distributing or copying software.

4.2 Information Technology Steering Committee (ITSC): The ITSC is an FMPA staff group that shall review and collaborate on strategic issues related to the IT assets and resources of the Agency. The ITSC shall review and make recommendations regarding software initiatives, IT policies and procedures, IT budget development, standards and overall IT performance, and coordination of priorities between IT and Agency departments.

The ITSC Charter maintained by the IT Manager further details the duties, voting structure and meeting organization of the group.

At a minimum, the ITSC should recommend policies and/or procedures supportive of this Policy to include:

- User access approval process
- Software patching
- System, application and network logging
- Application and network security standards
- Change management processes
- Database administration and management
- Software approval and installation

The IT Manager, as Chairperson of the ITSC, shall present all ITSC recommendations to the General Manager for approval prior to implementation.

The ITSC shall at a minimum consist of the following members:

- IT Manager (Chairperson)
- ~~Assistant General Manager Power Resources~~ Chief Operating Officer

- ~~Assistant General Manager, Finance and Information Technology and CFO~~
- Assistant General Manager, Member Services, Human Resources, and Public Relations
- ~~Regulatory Compliance Officer~~
- [Chief Information Security Officer](#)
- Other members as deemed necessary by Chairperson or General Manager
- Risk ~~Department~~Team representative as a non-voting member

4.3 System Availability and Integrity: The Continuity Planning Policy (Appendix M of the FMPA Risk Management Policy) contains the current minimum restoration times for key applications. The IT Manager shall comply with those Policy requirements along with applicable results from biennial disaster recovery tests in determining the maximum allowable downtime for Agency-wide systems.

At a minimum, FMPA shall utilize a co-location facility for off-site data storage and back-up that is sufficient to meet the timeframes established by the standards above. Preference shall be given to locations with SAS 70 audit compliance.

~~The IT Manager shall coordinate with the Regulatory Compliance Officer to ensure compliance with applicable NERC standards (see Statutory and Regulatory Policy, Appendix G of the FMPA Risk Management Policy). The IT Manager and/or other designated staff should participate in the FRCC Critical Infrastructure Protection Committee or its subcommittees, working groups or task forces, as permitted by regulations.~~

4.4 Security and Privacy Standards: Protective measures shall be taken by all custodians to ensure compliance to any applicable regulations and to maintain

the integrity of FMMPA’s IT assets and resources. Satisfactory controls shall be directed at reducing probable high impact risk events, such as preventing access of unauthorized users.

The ITSC may recommend to the General Manager operating policies and procedures which expand on the following minimum privacy and security standards:

4.4.1 Physical security: Server rooms or other sensitive IT asset and resource locations shall maintain the following minimum safeguards against unauthorized access:

- Doors shall remain locked when not occupied by authorized personnel.
- Non-IT Department persons shall not be granted access without IT Dept staff present.
- Sites without IT Department staff on-site shall have a staff person designated as the IT asset custodian. Only authorized personnel may access and/or modify IT assets and resources. Access to IT assets and resources shall be monitored as determined by guidelines to be established by the ITSC.

4.4.2 User Access:

- Requirements for passwords shall be determined by the risk level of each system or application, as shown in the table below:

Risk Level	Password Complexity
High	64-bit information entropy
Low	32-bit information entropy

- Risk levels shall be assigned to each application or system as prescribed in applicable ITSC procedures.

|

- It is recommended that unique user names be utilized.
- Inactivity periods must be enforced on all FMPA computing assets. The system must automatically suspend the session after a maximum of 15 minutes of inactivity, and re-establishment of the session shall only be allowed upon resubmission of the password.
- The Human Resources Director is responsible for notifying IT of access changes required prior to cease of employment of any staff.
- Managers must follow the “Access Control Procedures” (as recommended by ITSC and approved by General Manager) to request staff access changes to systems or applications, including new hires.
- Manager owners shall perform annual user access reviews for systems under their control, as defined in “Access Control Procedures”. The IT Manager shall annually provide each owner with applicable user access reports to facilitate such a review.

4.4.3 Virus Protection:

- The IT Manager shall maintain anti-virus software on all vulnerable systems. The IT Manager shall maintain documentation for any systems that are not current with anti-virus software with rationale for such status.
- At a minimum such anti-virus software should attempt to check all software, data and attachments for viruses, provide software tools to detect and remove viruses, and isolate infected items quickly to allow for removal.
- The IT Manager shall cause to be conducted a market review of anti-virus software no less than every three years to verify that existing software meets then current industry standards. Results shall be reported to the ITSC for consideration in the budget development process.

4.4.4 Firewalls:

- The IT Manager shall coordinate and document an annual internal review of the firewall ruleset to ensure it is reasonably restrictive, limiting access to only necessary ports and protocols.
- The IT Manager is responsible for documenting the business need for each rule within the firewall configuration
- FMPA shall maintain a system which documents changes to firewall rulesets.

4.4.5 Change Management:

- FMPA shall maintain a representative test environment which allows appropriate testing for compatibility before additions to or updates of systems or applications.
- The ~~Assistant General Managers (AGMs)~~Senior Leadership Team have discretion to approve modifications in applications/systems for which their respective division managers are custodians. The AGMs must comply with the ITSC Charter.

4.4.6 System, Application and Network Logging:

- The IT Manager shall ensure that logging is taking place for all critical Windows, border router, and application events by maintaining a centralized application and network log aggregation, monitoring, and alerting solution.
- Logs should be aggregated from key business applications, servers and network devices including firewalls and routers.
- The IT Manager shall maintain such logs in accordance with the Records Management Policy.

5.0 Internal Controls

The IT Manager shall cause to be established a system of written internal controls to manage IT assets and resources, consistent with this Policy and associated Procedures, and in accordance with all policies and procedural guidelines established in the FMPA Risk Management Policy.

5.1 Policy and Procedure Compliance: The Agency Risk Manager shall cause compliance with this Policy and associated procedures to be monitored on an annual basis. Any unresolved compliance issues will be presented to the [AROCFC](#) by the Agency Risk Manager. Violations involving personnel issues shall be handled through FMPA's standard disciplinary process.

5.2 Internal Controls: Establishment of internal controls within the IT Department will be addressed by the policies identified in Section 4.4 and any associated procedures. The acceptable level of internal controls may change with the Agency's IT assets and resources. The IT Department will strive to maintain a segregation of duties between system administrators and programmers. To the extent such segregation of duties is not possible, compensating controls shall be established and documented by the IT Manager.

5.3 Staff Training: New employees shall be notified of this Policy during orientation. The IT Manager shall develop an ongoing user training program to address common security topics. These topics may include:

- Viruses, worms, Trojan horses
- Social engineering attacks
- Mobile device security
- Strong password construction
- Safe computing habits

Staff training may be conducted through formal training, written communications, or web-hosted training materials.

5.4 Continuing Education: The IT Manager and other appropriate IT Department staff are recommended to complete at least 8 hours of continuing education annually in subject courses of study related to IT assets, system management, and/or security as it pertains to job duties.

6.0 Reporting

The IT Manager is responsible for completion of the following reporting requirements:

6.1 Report to ITSC: An annual report to the ITSC on the activities of the IT Department during the past year. The ITSC shall review the report and provide an analysis of any problems and solutions for inclusion in the annual AROCFC report described below. The ITSC annual report shall at a minimum include the following:

1. Summary of system downtimes (planned and unplanned outages)
2. Support tickets resolved and outstanding
3. Rationale for non-current anti-virus software (4.4.3)
4. Summary of firewall ruleset changes (4.4.4)
5. Unresolved ITSC agenda items

6.2 Report to AROCFC: An annual report ~~at the September~~ will be presented to the AROCFC meeting on the activities of the ITSC during the previous year. Such report shall at a minimum include the following:

1. Security breaches
2. ITSC approved exceptions as allowed by Policy
3. List of General Manager approved IT policies and procedures

4. Significant changes to IT risks since last report
5. ITSC analysis of problems and solutions, as applicable

The Agency Risk Manager shall cause any deviations from this Policy to be reported according to the guidelines set forth in Section 4.1 of the FMPA Risk Management Policy. An annual report on the operation and effectiveness of this Policy shall be presented to the AROCFC as described in Section 7.0 of the FMPA Risk Management Policy. The IT Manager shall report on the current risk environment affecting FMPA's information technology to the Risk Management Department as needed and engage any necessary discussion before recommending action to the appropriate governing body.

**Florida Municipal Power Agency
Risk Management Reporting Calendar
Information Technology Reporting Requirements**

Reporting Item	Frequency of Report	Responsible Party	Policy Reference	Policy Reference
Security Breaches to Risk Manager	Monthly	IT Manager	Section 4.1.1	Security Breaches
User access reports to Managers	Annually	IT Manager	Section 4.4.2	User Access
AROG FC annual report	Annually	IT Manager	Section 6.0	Reporting
ITSC annual report	Annually	IT Manager	Section 6.0	Reporting
Policy Operation & Effectiveness	Annually	The AROG The FC	Section 6.0	Reporting

This Policy compliance review is conducted by the Internal Audit Department (IAD) to assess the status of risk management practices for the time period noted below. The Internal Audit Department completes this form and submits to responsible manager(s) for additional information and comment. Documentation or attestation of compliance may be required during this review. The final form is submitted to the appropriate Executives and the CEO prior to being presented to the Finance Committee (FC) as an information item.

Review period: November, 2018 to October, 2019

Responsible Manager(s): Luis Cruz, IT Manager

Policy Compliance: Indicate whether the following items required in the Information Technology Risk Management Policy were completed during the review period.

REQUIREMENT	YES	NO	EXPLANATION
IT Manager caused procedures to be established. (Section 3.0)	X		All procedures are on IT SharePoint site .
ITSC maintained list of current applications/systems owners. (Section 4.1)	X		On SharePoint
IT Manager logged reported security breaches and provided monthly report to Agency Risk Manager. (Section 4.1.1)	X		No issues to report
All ITSC recommendations were approved by General Manager prior to implementation. (Section 4.2)	X		No action items
Minimum standards for restoration times and off-site data storage were followed. (Section 4.3)	X		Monthly vendor support
Server rooms met minimum safeguards against unauthorized access. (Section 4.4.1)	X		Only IT and Facility Dept have access
Password strength for systems and applications was set per the assigned risk level. (Section 4.4.2)	X		
Inactivity periods were enforced. (Section 4.4.2)	X		
User access changes followed ITSC procedures. (Section 4.4.2)	X		
Manager owners performed annual user access reviews. (Section 4.4.2)	X		Send annually
Anti-virus software was maintained per policy requirements. (Section 4.4.3)	X		

<i>Policy Compliance continued:</i>			
REQUIREMENT	YES	NO	EXPLANATION
Market review of anti-virus software conducted every three years. (Section 4.4.3)	X		IT reviewed in 2018
IT Manager maintained and reviewed the firewall rule set per policy requirements. (Section 4.4.4)	X		Stored in SharePoint
FMPA maintained a test environment. (Section 4.4.5)	X		
IT Manager ensured logging and maintained logs per policy requirements. (Section 4.4.6)	X		Splunk is the software application
User training program was completed per policy requirements. (Section 5.3)	X		Phishing password, access, etc.
IT staff completed a minimum of 8 hours of education. (Section 5.4)	X		SharePoint training reports or with HR
IT Manager gave annual report to ITSC.(Section 6.1)	X		September 2019 presented
IT Manager presented annual report to the FC (Section 6.2)		X	Detailed IT report presented to the Board in September

<i>Internal Control Assessment:</i> Evaluate the effectiveness of the current process in achieving the following control objectives. Use a scale of 1 to 4 as defined on attached page.					
OBJECTIVE	1	2	3	4	EXPLANATION
Internal controls in place to secure IT assets from theft, fraud, damage, or breach of integrity.			X		
Custodians are responsible for IT assets under their control.			X		
Security breaches are reported to Risk Manager.			X		
All staff comply with copyright laws, contracts, and software licenses.			X		
Appropriate segregation of duties is maintained within the IT Department.			X		

Are there any concerns related to information technology risk management which should be brought to the attention of the General Manager as part of this review? Yes No If yes, describe below.

Are there internal control concerns related to information technology risk management which require immediate attention? Yes No If yes, describe below including any change to risk inventory controls score.

Rate the overall functioning of information technology risk management practices using a scale of 1 to 4 as defined on attached page.

1	2	3	4	EXPLANATION
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Regular communication with staff, budget requests met, and trainings provided.

Additional comments from responsible Manager(s):

Are there any emerging risks or environmental changes which impact information technology risk management?

Yes No If yes, describe below including any proposed changes to risk inventory.

Other comments:

Rating scale for Policy compliance reviews:

- 1 = Risk management practices not in place.
- 2 = Risk management practices in place are not effective in meeting Policy requirements.
- 3 = Risk management practices in place meet Policy requirements.
- 4 = Risk management practices in place exceed Policy requirements.

Standard of compliance:

Completion of this review indicates that the Risk Management Reviewer has verified existence of applicable procedures or process documentation and believes them to be reasonably sufficient and up-to-date.

DocuSigned by:
Lynnan Woerner 1/2/2020
Risk Management Reviewer Date

DocuSigned by:
Luis Cruz 1/3/2020
Responsible Manager Signature Date

DocuSigned by:
Rich Popp 1/2/2020
Risk Director Signature Date

DocuSigned by:
Carol Chinn 1/2/2020
Responsible Executive Officer Signature Date

RISK MANAGEMENT POLICY
APPENDIX D
FLORIDA MUNICIPAL POWER AGENCY
INSURANCE PROGRAM RISK MANAGEMENT POLICY
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**INSURANCE PROGRAM RISK MANAGEMENT POLICY
FOR FLORIDA MUNICIPAL POWER AGENCY**

This Insurance Program Risk Management Policy (the “Policy”) and any effective subordinate procedures establish the governance, framework, and the controls under which Florida Municipal Power Agency (FMPA) may engage in insurance operations.

1.0 Policy Statement

The Board of Directors and Executive Committee of FMPA recognize that FMPA is exposed to various risks in the normal course of business activities. There may be times when FMPA will determine that certain risks are above the preferred risk tolerance level of FMPA and its members. FMPA is hereby authorized to put mechanisms in place, such as those more fully described in this Policy, that will control, transfer or mitigate these risks so that, to the extent possible, there will not be an adverse effect on FMPA’s ability to protect its employees and material assets from damage or loss.

It is the Policy of the Board of Directors and Executive Committee that:

- ❖ Authority is delegated to the Treasurer and Risk Director to create procedures and administer this Policy.
- ❖ Potential exposures to loss shall be systematically and continuously identified.
- ❖ An analysis of the balance of probability of frequency and severity of loss shall guide the selection of an optimal level of insurance coverage.
- ❖ Risk exposures shall be reduced, eliminated, or transferred to other parties where appropriate.
- ❖ The Treasurer and Risk Director shall report deviations and other reports as required in this Policy to the Finance Committee (FC).

This Policy serves as a framework that enables the Treasurer and Risk Director to direct insurance activities by establishing minimum standards to systematically identify potential exposure to risk, measure the possible impact of those risks, and implement strategies to mitigate those risks.

2.0 Scope and Authority

This Policy applies to all aspects of the Agency's business and its Projects.

2.1 Delegation of Authority: The Board of Directors and Executive Committee delegate authority to the Treasurer and Risk Director to administer this Policy and oversee the day-to-day operation of this Policy. The Treasurer and Risk Director may deviate from this Policy with approval of the **General Manager-CEO** but must report all deviations to the FC within 5 business days.

2.2 Reporting Claims: All claims except workers' compensation shall be reported to and handled by the Treasurer and Risk Director. Claims related to workers' compensation shall be reported to and handled by the Human Resources Department.

3.0 Types of Risk

This Policy establishes minimum standards to support an Agency-wide atmosphere of proper control levels to safeguard the Agency's ability to limit exposure to financial loss events related to employees and material assets. The Treasurer and Risk Director shall cause procedures to be written that identify the risks noted below and provide ways to measure, control, and mitigate FMPA's exposure to those risks. While not intended to be a comprehensive listing of insurance related risk encountered by FMPA during the normal course of the business cycle, the following provides insight into FMPA's risk exposure.

3.1 Operational Risk: The risk that internal practices, policies, procedures or systems will not perform as intended. An example of operation risk involving insurance might occur if a hurricane damaged the FMPA offices, but there was insufficient insurance to cover losses. This lack of adequate insurance could cause financial loss to FMPA.

3.2 Reputational Risk: The risk that customers or the public will negatively perceive the Agency. An example of reputational risk might occur if an employee is hurt while on the job and the Agency did not have appropriate worker's compensation insurance, resulting in negative public reaction. This negative perception could cause financial or reputation loss to FMPA.

4.0 Potential Exposures to Loss

The Treasurer and Risk Director is responsible for overseeing Agency and FMPA Projects' liability and property insurance activities through the Insurance Program. This shall include a systematic and continuous identification of potential exposure to loss. Insurance needs other than liability and property are the responsibility of the Human Resources Manager.

4.1 Annual Review: The Treasurer and Risk Director shall cause areas of potential exposure to be reviewed not less than annually. This review shall include, at a minimum, FMPA operations, services and service delivery methods, real and personal property and other exposures. The review shall also include an analysis of losses and loss history trends. An annual review of health and wellness plans is required by the Human Resources Risk Policy, Appendix N of this FMPA Risk Management Policy

4.2 Exposure Awareness: The Treasurer and Risk Director shall cause activities to be conducted that will increase the level of awareness of division and

department heads as to risk impact of new programs, projects, procurements, and activities.

4.3 Reduce or Eliminate Exposure: The Treasurer and Risk Director shall cause systematic reviews of identified exposures to be completed and make recommendations to the appropriate manager or governing body as to the reduction or elimination of those exposures where feasible.

4.4 Transfer Exposures: All contracts entered into by FMPA that exceed \$10,000,000, or other contracts at the discretion of the ~~General Manager~~CEO, shall be reviewed by the TRD to identify and reduce any contractual liability being assumed by FMPA. When determined appropriate by the Treasurer and Risk Director, FMPA shall transfer risk to persons operating FMPA facilities or performing any operations for or on behalf of FMPA whenever possible.

All contracts for services shall clarify the status of the contractor as an independent contractor, where appropriate. All contracts and agreements are to be “Reviewed as to Form” and approved by the General Counsel’s office.

4.5 Analysis: The Treasurer and Risk Director shall cause to be completed an analysis on remaining risk exposures for the probability of frequency and severity of loss, as well as the variety and types of claims and their probable financial impact. This analysis should contribute to the selection of an optimal level of insurance coverage. For risks that cannot be eliminated or transferred, FMPA shall either purchase insurance or ~~self-insure~~self-insure and handle claims as an operating cost.

5.0 Internal Controls

The Treasurer and Risk Director shall cause to be established a system of written internal controls to regulate insurance activities, consistent with this Policy, and in

accordance with all policies and procedural guidelines established in the FMPA Risk Management Policy. The Treasurer and Risk Director is responsible for the day-to-day transactions undertaken, pursuant to this Policy, and for regulating the activities related to risk management.

5.1 Competitive Selection of Insurance Services: The Treasurer and Risk Director shall cause to be conducted a market review of brokerage and other needed services no less than every ~~five-seven (75)~~ years. The Treasurer and Risk Director shall review and update the insurance specifications for required coverage, desired forms, deductible options and limits prior to submission to the insurance market. The selection process shall follow the guidelines of the Procurement Policy, Appendix O of this FMPA Risk Management Policy.

5.2 Claims Procedures: The Treasurer and Risk Director shall develop and implement procedures for the reporting and handling of accidents and losses related to property and liability claims. The Human Resources Manager shall notify FMPA's General Counsel, ~~General Manager~~CEO, and Treasurer and Risk Director when a workers' compensation claim has been made.

5.3 Continuing Education: The Treasurer and Risk Director and other appropriate risk management staff are recommended to complete 8 hours of continuing professional education (CPE's), or as required by State Regulations, in subject courses of study related to risk management products and techniques.

6.0 Reporting

The Treasurer and Risk Director shall make recommendations for levels of insurance and limiting exposures to the FC as necessary, but no less than once a year. The Treasurer and Risk Director shall also provide an ~~annual~~ report to the FC ~~no later than January 31 each year~~ annually. This annual report shall include, but is not limited to, the following:

- Prior year actuals for premiums, claims, and losses.
- Cost of insurance coverage.
- Change of coverage limits, amounts, or other material aspects of the policy within the current policy period year.
- Recommend changes to coverage limits, amounts, or other material aspects of the policy within a future policy period.
- Any additional coverage purchases within the current or future policy periods.

The Treasurer and Risk Director shall cause any deviations from this Policy to be reported according to the guidelines set forth in the FMPA Risk Management Policy, Section 4.1. The FC shall cause to be completed an annual report on the operation and effectiveness of this Policy as described in the FMPA Risk Management Policy, Section 7.0. Treasurer and Risk Director shall report as needed on the current risk environment affecting the insurance program to the ~~General Manager~~CEO as needed, and engage any necessary discussion before moving items to the FC or governing bodies.

Insurance Program Reporting Requirements

Reporting Item	Frequency of Report	Responsible Party	Policy Reference	Policy Reference
Deviations from Policy	As needed	Treasurer and Risk Director	Section 2.1	Scope and Authority
Review of Potential Exposure	Annually	Treasurer and Risk Director	Section 4.1	Potential Exposure to Loss
Market Review of Brokerage	Every 7 Years	Treasurer and Risk Director	Section 5.1	Competitive Selection of Insurance Services
Worker's Compensation claims	As needed	HR Director	Section 5.2	Claims Procedures
Annual Report	Annually by Jan 31	Treasurer and Risk Director	Section 6.0	Reporting
Deviations from Policy	As Needed	Treasurer and Risk Director	Section 6.0	Reporting
Policy Operation & Effectiveness	Annually	Finance Committee	Section 6.0	Reporting

This Policy compliance review is conducted by the Internal Audit Department (IAD) to assess the status of risk management practices for the time period noted below. The Internal Audit Department completes this form and submits to responsible manager(s) for additional information and comment. Documentation or attestation of compliance may be required during this review. The final form is submitted to the appropriate Executive and the CEO prior to being presented to the Finance Committee (FC) as an information item.

Review period: January 2019 to December 2019

Responsible Manager(s): Rich Popp, Treasurer and Risk Director

<i>Policy Compliance:</i> Indicate whether the following items required in the Insurance Program Policy were completed during the review period.			
REQUIREMENT	YES	NO	EXPLANATION
Deviations from Policy reported to the FC within 5 business days. (Section 2.1)	X		None during period
Treasurer and Risk Director caused Insurance procedures to be created. (Section 3.0)	X		Insurance renewal procedures updated during review period. <u>Document Path</u> P:\Risk Management\General Risk Dept info\Risk Dept procedures\
Treasurer and Risk Director caused an Annual review of areas of potential exposure to be completed. (Section 4.1)	X		See explanation above. Cyber insurance was added this review period.
Treasurer and Risk Director caused activities to be conducted to increase risk awareness of division and department heads. (Section 4.2)	X		Meetings between Rich Popp and managers from various departments were held during the year to assess any new areas of potential exposure.
Systematic reviews of identified exposures were completed. (Section 4.3)	X		See explanation above.
Contracts over \$10,000,000 reviewed by RMD to identify and reduce contract liability. (Section 4.4)	X		N/A – no contracts over \$10M threshold were entered during review period.
Competitive selection of brokerage services completed every 5 years. (Section 5.1)	X		Not due until 2020
Treasurer and Risk Director developed and implemented procedures for reporting and handling of accidents and losses. (Section 5.2)	X		None this year New Agency injury employee procedures were approved for FY 2020.
Treasurer and Risk Director and appropriate staff completed 8 hours CPE in risk management. (Section 5.3)	X		
Risk Manager presented annual report on insurance program to FC before January 31. (Section 6.0)	X		Presented at the January 2019 FC meeting

<i>Internal Control Assessment:</i> Evaluate the effectiveness of the current process in achieving the following control objectives. Use a scale of 1 to 4 as defined on attached page.					
OBJECTIVE	1	2	3	4	EXPLANATION
Controls are in place to identify and assess risks related to potential exposures to loss.			X		
A complete list of insurance carriers and policies is maintained.			X		
Insurance policies are annually reviewed for appropriate coverage and premiums.			X		
Incidents and claims are recorded, and remedial action taken as necessary.			X		
Documentation of decisions to self-insure or otherwise mitigate risk through non-insurance means is maintained.			X		Self-insurance levels set at provider minimum retention points.

Are there any concerns related to insurance program risk management which should be brought to the attention of the CEO as part of this review?

Yes No If yes, describe below.

Are there internal control concerns related to insurance program risk management which require immediate attention?

Yes No If yes, describe below including any change to risk inventory controls score.

Rate the overall functioning of insurance program risk management practices using a scale of 1 to 4 as defined on attached page.

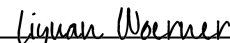
1	2	3	4	EXPLANATION
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Additional comments from responsible Manager(s):

Are there any emerging risks or environmental changes which impact insurance program risk management?

Yes No If yes, describe below including any proposed changes to risk inventory.

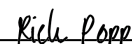
Other comments:

DocuSigned by:


Risk Management Reviewer

1/3/2020

Date

DocuSigned by:


Responsible Manager Signature

1/3/2020

Date

DocuSigned by:


Responsible Executive Officer Signature

1/3/2020

Date

Rating scale for Policy compliance reviews:

- 1 = Risk management practices not in place.
- 2 = Risk management practices in place are not effective in meeting Policy requirements.
- 3 = Risk management practices in place meet Policy requirements.
- 4 = Risk management practices in place exceed Policy requirements.

Standard of compliance:

Completion of this review indicates that the Risk Management Reviewer has verified existence of applicable procedures or process documentation and believes them to be reasonably sufficient and up-to-date.

**FLORIDA MUNICIPAL POWER AGENCY
RISK MANAGEMENT POLICY - APPENDIX J
ACCOUNTING AND INTERNAL CONTROLS POLICY
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ACCOUNTING AND INTERNAL CONTROLS RISK MANAGEMENT POLICY FOR FLORIDA MUNICIPAL POWER AGENCY

This Accounting and Internal Controls Risk Management Policy (the “Policy”) and any effective subordinate procedures establish the governance, framework and the controls under which Florida Municipal Power Agency (“FMPA”) may engage in activities to identify, measure, and minimize future business risk resulting from accounting processes and asset control. This Policy is Appendix J of the FMPA Risk Management Policy.

1.0 Policy Statement

The Executive Committee (“EC”) and Board of Directors (“BOD”) of FMPA recognize that FMPA is exposed to various risks in the normal course of business activities. There may be times when FMPA will determine that certain risks are above the preferred risk tolerance level of FMPA and its members. FMPA staff is hereby authorized to put mechanisms into place, such as those more fully described in Sections 4.0 through 6.0 of this Policy, which will control, transfer, or mitigate these risks to avert an adverse impact on the financial position of the Agency.

The following summarizes the Policy of the EC and BOD:

- ❖ All funds, property and securities of the Agency shall be recorded in accordance with prudent utility practice, generally accepted accounting principles, and all requirements set forth by law and/or regulation as required in Section 2.0.
- ❖ An independent external audit of the Agency’s financial statements shall be completed each year by a certified public accountant as detailed in Section 5.0.
- ❖ Authority is delegated to the Chief Financial Officer (“CFO”) to establish a system of documented internal controls to safeguard assets and assure reliability of financial reporting and compliance with applicable laws and regulations as detailed in Section 6.0.

- ❖ Authority is delegated to the CFO to create procedures to facilitate the management of all accounting functions and to implement this Policy as described in Section 3.0.
- ❖ The CFO shall render to each regular meeting of the EC and BOD a report on the financial condition of the Agency as detailed in Section 7.2.
- ❖ The Audit Manager shall report deviations from the requirements of this Policy to the Finance Committee (“FC”).

2.0 Scope

This Policy creates a framework that enables the CFO to cause full and accurate records of all transactions of the Agency to be maintained in accordance with all applicable accounting standards, general laws, regulations, bond covenants and other standards or requirements as set forth in the Agency’s Interlocal Agreement and/or By-laws.

The CFO manages the Finance Division within FMPA and is responsible for causing this Policy to be adhered to throughout the Division.

This Policy applies to all material accounting transactions into which FMPA enters. Transactions include, but are not limited to, all project and member revenue billings, sales for resale, accounts receivable, inventory, fixed assets, expenditures, and accounts payable.

The materiality standard for this Policy is FASB Statement of Financial Accounting Concepts No. 8, Qualitative Characteristics of Accounting Information. It states: “The omission or misstatement of an item is material if, in the light of the surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.”

3.0 Types of Risk

This Policy establishes minimum standards to support an Agency-wide atmosphere of proper control levels to safeguard the Agency’s assets. The CFO will cause procedures to be written that identify risks in the areas noted below and provide ways to measure, control and mitigate FMPA’s exposure to those risks. The FMPA Risk Management Policy identifies ten risks

that compose FMPA's common risk framework. While not intended to be a comprehensive listing of risks encountered by FMPA during the normal course of the business cycle, the framework provides insight into the major areas of risk exposure for FMPA. The following selected risks in the framework are those risks presented by typical financial and contractual transactions.

3.1 Administrative Risk:

The potential of financial loss due to deficiencies in internal control structure and management reporting due to human error, fraud or system failure. An example of administrative risk that would affect financial transactions might occur when a failure in the system of controls allows a single employee to falsify or misrepresent a transaction, or other types of fraud. This failure in the control system could cause financial and/or reputation loss to FMPA.

3.2 Reputational Risk:

The potential losses incurred when stakeholders or the public negatively perceive an organization. An example of reputational risk might occur if a prior year's audit report is restated due to a material misstatement. Such a restatement could cause negative perception of the Agency by stakeholders such as member cities, bondholders and credit rating agencies, which could result in a financial loss.

4.0 Accounting Department

The Accounting Department is responsible for ensuring that all funds, property and securities of the Agency are recorded in accordance with prudent utility practice, generally accepted accounting principles, and all requirements set forth by law and/or regulation. These activities will be governed by accounting procedures and the following practices.

4.1 Basis of Accounting:

FMPA has chosen to follow accounting pronouncements as set forth in the Governmental Accounting Standards Board (GASB). All FMPA Projects' general ledgers and subsidiary ledgers are to be maintained with the Uniform System of

Accounts of the Federal Energy Regulatory Commission and in conformity with generally accepted accounting principles using the accrual basis of accounting.

The Agency has elected to follow the accounting methods for regulatory operations of GASB 62. This accounting guidance, referred to herein as “GASB 62”, relates to the deferral of revenues and expenses to future periods in which the revenues are earned or the expenses are recovered through the rate-making process.

The Controller shall present all current and any new proposed GASB 62 transactions for approval by the FC prior to the end of each fiscal year.

4.2 Accounting Cycle:

As established in Article I, Section 4 of the Interlocal Agreement, FMPA’s fiscal year will commence October 1 and end September 30. During the fiscal year-end processing, the year-end closing time will be extended to facilitate the financial statement audit.

After the last day of the month, Accounting staff shall begin month end processing to close out all accounts and prepare any required month end reports and financial statements. Accounting staff will complete month end closing no later than 30 days after the last day of the previous month.

4.3 Inventory:

- The Audit Manager shall cause a physical count of inventory to be conducted at least every other year at ARP generation facilities under FMPA control. Such count shall include a review for obsolescence.
- The Power Generation Fleet Director shall maintain procedures which detail the following for material assets: setting of minimum and maximum inventory levels and appropriate turnover ratios, and controls over changing such levels.
- Allowable inventory levels for natural gas and fuel oil storage are set in the Fuel Portfolio Risk Management Policy, Appendix A of the FMPA Risk Management Policy.

4.4 Accounts Payable:

- FMPA shall strive to pay all presented invoices by the due date.
- Spending authority levels for all staff are approved during the annual budget process.
- All invoices shall be routed through an electronic A/P system,
- Invoices showing a credit only shall also be approved by the appropriate manager.
- Monthly financial statements presented to any governing body shall include a list showing any outstanding invoices greater than 60 days past receipt of invoice in A/P system including a brief description of the cause for any invoices greater than 90 days past receipt of invoice.

4.5 Accounts Receivable:

- The Credit Risk Policy and Contract Management Risk Policy, Appendix E and F respectively, of the FMPA Risk Management Policy define responsibilities for contract initiation and management.
- The Accounting Department is responsible for the collection process of accounts receivable but not the administration and management of contracts.
- The Accounting Department is responsible for Project Participant and power sales billing.
- The Controller will issue Project Participant invoices by the 10th calendar day of each month, using estimates if necessary, to ensure adherence to the respective Bond Resolution requirements of receiving payment by the 25th day of the billing month.
- Monthly financial statements presented to any governing body shall include a list showing any outstanding accounts receivable greater than 60 days past due and also include a brief description of the cause for any accounts receivable greater than 90 days due.
- Accounts receivable greater than 12 months old at year-end shall be evaluated for potential write-off. All write-offs must be approved by the General Manager

and CEO. Write-offs above the General Manager's spending authority level must also be approved by the appropriate governing body prior to write-off.

4.6 Capitalization Threshold:

Capital purchases are approved as part of the annual budgets approved by the governing bodies. The following thresholds will be used for capitalizing assets:

- Building, structures, facilities and other improvements exceeding \$25,000 in costs. Capitalization should include all costs related directly to the acquisition or construction (materials, labor, overhead during construction, attorney and engineering fees, permits).
- Equipment includes vehicles, office equipment, computer equipment and other equipment having a value of \$5,000 (each) or more and a useful life expectancy of two or more years. Capitalization should include all set-up and labor costs related to preparing the equipment for operations such as the initial installation cost.
- The purchase and/or development of new computer software or major modifications/upgrades to existing software which costs less than \$25,000 shall be expensed. Software over \$25,000 shall be capitalized.
- All capital lease arrangements for land, buildings, structures and equipment shall be capitalized in accordance with GASB 87.
- As of 10/1/2020, interest shall not be capitalized on any construction project in compliance with GASB 89.

5.0 External Audit:

Article VI, Section 5 of the Interlocal Agreement states: "The EC and BOD, as appropriate, shall at least once per year cause an independent external audit to be made of the Agency's books and accounts by a certified public accountant." This Policy further requires that the audit be performed by a CPA firm licensed to practice within the State of Florida.

The purpose of the audit is to determine if the Agency's financial statements and associated disclosures fairly present, in all material respects, the financial position and results of operations for the year then ended, in conformity with accounting standards generally accepted in the United States.

5.1 Auditor Qualification:

The selected audit firm shall have a well-established audit practice with adequate technical training and proficiency to perform the required audit, as defined in the Statements on Auditing Standards No. 1.

5.2 Selection of Auditor:

Qualified accounting firms will be invited to submit a proposal for audit services to be considered for selection. The proposal must document the firm's qualifications, applicable experience, and fee structures. The CFO shall provide submitted proposals to the FC. The FC shall select a firm to be recommended to the EC and BOD for final approval. The CFO will present the recommendation to the EC and BOD for approval.

The selected firm shall provide services for no more than one five-year base term. The selected firm may provide services beyond the base term for no more than two individual one-year extensions. At the end of any contract term (either base or extension), the incumbent firm will not be precluded from submitting a proposal for the subsequent competitive selection process.

5.3 Auditor Communications:

The auditor selected is required to conduct an entrance conference with the FC prior to commencing the fiscal year-end audit. The entrance conference should include observations made during the interim audit and their anticipated audit plan for year-end.

The selected auditor is required to conduct an exit conference with the FC to provide results of the year-end audit prior to the presentation of such results to the governing bodies.

At the discretion of the FC, an entrance and exit conferences can be conducted as executive sessions, meaning that FMPA staff can be excused from the conference by the FC Chairperson.

6.0 Internal Controls:

The CFO shall cause to be established a system of documented internal controls to safeguard assets, assure reliability of financial reporting, and assure compliance with applicable accounting laws and regulations, consistent with this Policy and associated Procedures, and in accordance with all policies and procedural guidelines established in the FMPA Risk Management Policy. FMPA shall use a cost-benefits analysis when making decisions regarding the implementation of internal controls.

The Audit Manager shall be responsible to review all documented internal controls and procedures established to ensure they comply with the FMPA Risk Management Policy and adequately mitigate all applicable risks. If, after review, the Audit Manager identifies areas of concern, the documented internal controls weakness(s) will be communicated to the CFO and FC as appropriate.

6.1 System of Controls

The system of internal controls includes the Employee Manual issued by the Agency to all employees. The FMPA Employee Manual includes an Executive Code of Ethics, employee conduct standards, outside employment guidelines, conflict of interest rules, and the Whistle Blower Act.

Further internal controls shall be established in accounting procedures to address separation of transaction authority from accounting and record-keeping, limitations on expenditures beyond budget authorizations, and safekeeping of records. Operational controls to prevent unauthorized access to financial and accounting

computer systems shall include password controls and reviews of authorized users, as detailed in the Information Technology Risk Management Policy, Appendix O of the FMPA Risk Management Policy.

6.2 Policy and Procedure Compliance:

The Agency Risk Manager shall cause compliance with this Policy and associated procedures to be monitored on an annual basis. Any unresolved compliance issues will be presented to the FC by the Audit Manager.

6.3 Procurement Review:

The Agency Risk Manager shall cause an annual review of FMPA's Procurement Policy requirements, including Agency issued credit cards. Any findings will be reported to FMPA's CFO and General Manager and CEO. At the sole discretion of the Agency Risk Manager, the findings may be reported directly to the Chairman of the FC if deemed appropriate.

6.4 Continuing Education:

Accounting managers and other appropriate staff shall complete at least 8 hours of continuing education annually (each fiscal year) or more as required by State Regulations, in subject courses of study related to accounting, auditing and/or finance.

7.0 Reporting

The CFO is responsible for causing completion of the following reporting requirements:

7.1 Annual Report on Late Fees:

The Controller shall report to the EC during December of each year the amount of interest paid for late fees during the preceding fiscal year, if any.

7.2 Financial Statements:

In accordance with Article IV, Section 5 of the Interlocal Agreement creating FMPA and Article IV Section 7 of the Second Revised and Restated By-Laws of FMPA

("FMPA Bylaws"), the CFO shall cause to be provided to the EC and BOD, at regular meetings or other times as directed, a statement of the financial condition of the Agency and a report of the financial transactions of the Agency. These financial statements shall include the items required by Section 4.4 and 4.5 of this Policy.

In accordance with Article VIII of the FMPA Bylaws, the General Manager shall, no later than the annual BOD meeting normally scheduled in July, present a full and accurate report of the operation of the Agency during the preceding fiscal year, a statement of the assets and liabilities of the Agency as of the end of such fiscal year, and any other information having a significant bearing on the condition and operation of the Agency. This Policy delegates responsibility to the CFO to cause financial statements and accompanying notes to be presented for approval no later than the January EC and BOD meetings. Approved annual reports shall be posted on FMPA's public facing website.

In compliance with the Agency's bond covenants, insurance, swaps and other related debt documents, the CFO shall cause to be filed an annual report within 180 days after the close of the fiscal year to applicable bond trustees. The submittal should include a Statement of Net Assets, a Statement of Revenues, Expenses and Changes in Fund Net Assets for the year then ended, and a Statement of Cash Flows for each Project. In addition to the basic financial statements and accompanying elucidatory notes, the annual report may also present supplemental information.

7.3 Management Letter Comments:

The CFO shall cause to be reported to the FC no later than August 31st of each year the status of management's response to any Management Letter Comments provided by the external auditor in the prior fiscal year's annual audit report.

7.4 Oversight Structure

The Agency Risk Manager shall cause any material deviations from this Policy to be reported according to the guidelines set forth in Section 4.1 of the FMPA Risk Management Policy. An annual report on the operation and effectiveness of this Policy shall be presented to the FC as described in Section 7.0 of the FMPA Risk

Management Policy. Finance Division directors/managers shall report on the current risk environment affecting FMPA's material financial transactions to the Risk Management Team and conclude any necessary discussion before moving items to the appropriate governing body.

Appendix A

Florida Municipal Power Agency Risk Management Reporting Calendar Accounting and Internal Controls Reporting Requirements				
Reporting Item	Frequency of Report	Responsible Party	Policy Section Reference	Policy Category Reference
GASB 62 Transactions	Annually	Controller	Section 4.1	Basis of Accounting
Accounts Payable Past Due	Monthly as needed	Controller	Section 4.44.4	Accounts Payable
Accounts Receivable Past Due	Monthly as needed	Controller	Section 4.5	Accounts Receivable
Entrance/Exit Conference	Annually	CFO/External Auditor	Section 5.3	Auditor Communications
Procurement and Credit Card Review	Annually	Internal Audit Manager	Section 6.3	Procurement Review
Late Fees Report	Annually	Controller	Section 7.1	Annual Report on Late Fees
Financial Statements	Regular EC/BOD meetings	CFO	Section 7.2	Financial Statements
Audited Annual Financials	Annually by January	CFO	Section 5.0	Financial Statements
Annual Bond Trustee Report	Annually	CFO	Section 7.2	Financial Statements
Management Letter Comments Status	Annually	CFO	Section 7.3	Management Letter Comments
Deviations from Policy	As Needed	Internal Audit Manager	Section 7.4	Oversight Structure
Policy Operation and Effectiveness	Annually	FC	Section 7.4	Oversight Structure

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This Policy compliance review is conducted by the Internal Audit Department to assess the status of risk management practices for the time period noted below. The Internal Audit Department completes this form and submits to responsible manager(s) for additional information and comment. Documentation or attestation of compliance may be required during this review. The final form is submitted to the appropriate Executives and the CFO prior to being presented to the Finance Committee as an information item.

Review period: August 2018 to July 2019

Responsible Manager(s): Danyel Sullivan-Marrero, Controller

<i>Policy Compliance:</i> Indicate whether the following items required in the Accounting & Internal Controls Risk Management Policy were completed during the review period.			
REQUIREMENT	YES	NO	EXPLANATION
CFO established procedures for Policy. (Section 3.0)	X		
All current and proposed new Regulatory Assets and Liabilities transactions presented to FC for approval prior to each fiscal year end. (Section 4.1)	X		Presented to the AROC on September 23 rd , 2018.
Staff shall complete month end closing no later than 30 days after the last day of the previous month. (Section 5.2)	X		
Internal Audit Manager caused a physical inventory count to be conducted every other year at ARP generation facilities. (Section 4.3)	X		Stock Island partial inventory count was completed in September 2019. CI inventory full inventory count was completed in September 2019. TCEC partial inventory count was completed in October 2019.
Generation Fleet Director oversees process used by Plant Managers for controlling inventory levels and turnover ratios. (Section 4.3)	X		
Credit invoices were approved by appropriate manager. (Section 4.4)	X		When credit invoices are periodically generated, each one is routed for approval by the applicable manager.
Monthly financial statements included report of outstanding accounts payable beyond Policy limits. (Section 4.4)	X		To further improve A/P process, a Sr Mgr. Report is provided monthly on the payment process
Project Participants were invoiced by the 10 th of each month. (Section 4.5)	X		

Monthly financial statements included report of outstanding accounts receivable beyond Policy limits. (Section 4.5)	X		
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<i>Policy Compliance continued:</i>			
REQUIREMENT	YES	NO	EXPLANATION
Outstanding accounts receivable evaluated for write-off at year-end. (Section 4.5)	X		
Write-offs were approved by CEO, or appropriate governing body if over spending authority. (Section 4.5)	X		
Independent audit of books and accounts was conducted once per year by qualified CPA firm. (Section 5.0)	X		
Independent auditor selection process was completed no less than every 5 years and followed Policy process. (Section 5.2)	X		An RFP was performed in 2019 for the FYE 2019 Audit. Purvis Grey & Co. was selected by the FC & approved by the B.O.D.
External auditor conducted entrance and exit conferences with FC in executive session each year. (Section 5.3)	X		
CFO caused a documented system of internal controls to be established. (Section 6.0)	X		
Manager and accounting staff completed 8 hours of CPE. (Section 6.4)	X		Manager and staff have taken college, CPA review, attended seminars and in-house training which exceeds the CPE minimum.
Controller reported interest paid for late fees to the Executive Committee during December following the close of each fiscal year. (Section 7.1)	X		
CFO caused a statement of the financial condition of the Agency to be presented to the Board of Directors and Executive Committee at regular meetings. (Section 7.2)	X		At each meeting held, a financial statement agenda item is included in the meeting packet.
The CFO presented the last completed audited financial reports to the Board of Directors and Executive Committee by January each year. (Section 7.2)	X		Presented at the January 17, 2019 meeting.
The last completed audited financial reports were filed within 180 days after close of the fiscal year to applicable bond trustees. (Section 7.2)	X		Audited financial reports filed with all applicable trustees during January, 2019.

<i>Policy Compliance continued:</i>			
REQUIREMENT	YES	NO	EXPLANATION
CFO reported the status of management letter comments to the FC no later than August 31 st each year. (Section 7.3)		X	NA – No management letter comments to report.

<i>Internal Control Assessment:</i> Evaluate the effectiveness of the current process in achieving the following control objectives. Use a scale of 1 to 4 as defined on attached page.					
OBJECTIVE	1	2	3	4	EXPLANATION
Controls are in place to identify and assess risks related to accounting processes and asset control.			X		
All transactions are recorded in accordance with GAAP, GASB pronouncements, and prudent utility practice.			X		
Access/authorization controls are in place to maintain the integrity of the chart of accounts.			X		
Access to accounting computer systems and spreadsheets is limited to the appropriate individuals.			X		
Duties are appropriately segregated in the closing process.			X		
All invoices are paid by due date and routed through the electronic accounts payable system.			X		

Are there any concerns related to accounting and internal controls risk management which should be brought to the attention of the CEO as part of this review? Yes No If yes, describe below.

Are there internal control concerns related to accounting and internal controls risk management which require immediate attention? Yes No If yes, describe below including any change to risk inventory controls score.

Rate the overall functioning of accounting and internal controls risk management practices using a scale of 1 to 4 as defined on attached page.

1	2	3	4	EXPLANATION
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Additional comments from responsible Manager(s):

Are there any emerging risks or environmental changes which impact accounting and internal controls risk management?

Yes No If yes, describe below including any proposed changes to risk inventory.

Other comments:

A credit card audit was performed during this period. The audit will be reported to the FC in December 2019.

Rating scale for Policy compliance reviews:

- 1 = Risk management practices not in place.
- 2 = Risk management practices in place are not effective in meeting Policy requirements.
- 3 = Risk management practices in place meet Policy requirements.
- 4 = Risk management practices in place exceed Policy requirements.

Standard of compliance:

Completion of this review indicates that the Risk Management Reviewer has verified existence of applicable procedures or process documentation and believes them to be reasonably sufficient and up-to-date.

<p>DocuSigned by: <i>Liyuan Woerner</i> 4592B56DD85A42A...</p> <hr/> <p>Risk Management Reviewer</p>	<p>11/27/2019</p> <hr/> <p>Date</p>
<p>DocuSigned by: <i>Danyel Sullivan Marrero</i> 314111177C84E1...</p> <hr/> <p>Responsible Manager Signature</p>	<p>11/27/2019</p> <hr/> <p>Date</p>
<p>DocuSigned by: <i>Linda Howard</i> 449111177C84E1...</p> <hr/> <p>CFO Signature</p>	<p>12/2/2019</p> <hr/> <p>Date</p>

FLORIDA MUNICIPAL POWER AGENCY

RISK MANAGEMENT POLICY - APPENDIX I

ASSET MANAGEMENT AND OPERATIONS POLICY

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ASSET MANAGEMENT AND OPERATIONS RISK MANAGEMENT POLICY FOR FLORIDA MUNICIPAL POWER AGENCY

This Asset Management and Operations Policy (the “Policy”) and any effective subordinate procedures establish the governance, framework and controls under which Florida Municipal Power Agency (“FMPA”) may engage in activities to identify, measure and minimize future business risk resulting from the operation and maintenance of electric power generating units for which FMPA has operational oversight and control, referred to as ARP Generation (i.e. Cane Island Power Park, Treasure Coast Energy Center, and Stock Island Generating Facility). The operation & maintenance function at the above ARP Generation sites is outsourced to third parties referred to in this Policy as O&M Agents (i.e. Kissimmee Utility Authority, Fort Pierce Utilities Authority, and Keys Energy Services). This Policy is Appendix I of the FMPA Risk Management Policy.

1.0 Policy Statement

The Executive Committee (“EC”) of FMPA recognizes that FMPA is exposed to various risks in the normal course of business activities. There may be times when FMPA will determine that certain risks are above the preferred risk tolerance level of FMPA and its members. FMPA is hereby authorized to put mechanisms into place, such as those more fully described in Sections 4 and 5 of this Policy, which will control, transfer, or mitigate these risks to avert an adverse impact on the reliability of the All Requirements Project’s (“ARP”) generation assets or on the financial position or reputation of the Agency.

The following summarizes the Policy of the EC:

- ❖ FMPA shall follow all applicable federal, state and local laws concerning the operation and maintenance of electric power generating units.
- ❖ FMPA shall follow all applicable rules (i.e. NERC Standards, Environmental Standards, etc.) related to the operation and maintenance of electric power generating units and shall strive to maintain an environmental record of zero Notices of Violation (“NOVs”) and/or fine assessments. (Section 5.1).

- ❖ Authority is delegated to the Chief Operating Officer (COO) to create procedures, as required, and to administer this policy. (Section 3.0)
- ❖ FMPA shall endeavor to achieve goals for each asset class as described in Section 4.3 herein.
- ❖ FMPA shall annually test the heat rates of non-peaking ARP generation units during the summer months. (Section 4.1.1)
- ❖ FMPA shall test ARP Generation peaking units when economically feasible but, as a minimum, at least every two years as described in Section 4.1.2 herein.
- ❖ FMPA shall perform an economic impact analysis for any materially significant deferred maintenance. (Section 4.2.1)
- ❖ FMPA shall communicate minimum safety standards for ARP Generation to each respective O&M Agent which support the goal of zero recordable safety incidents. (Section 4.4)
- ❖ Deviations from this Policy shall be reported to the Finance Committee (“FC”). (Section 8.0)

2.0 Scope and Authority

FMPA has the authority to own or contract for the provision of electric power generation. This Policy applies only to those ARP owned generation facilities where FMPA has operational control and oversight, referred to in this Policy as “ARP Generation”. FMPA is responsible for overseeing the operation and maintenance (“O&M”) functions at ARP Generation facilities and must coordinate these activities effectively so as to ensure reliable system operation and optimization of the ARP’s assets. O&M functions at ARP Generation facilities are currently outsourced to and conducted by O&M Agents pursuant to the respective governing O&M agreement between the Agent and FMPA.

The COO will coordinate efforts to maintain all ARP power supply resources to balance regulatory requirements, operational reliability, and maintenance to achieve an optimal economic solution using prudent utility practice and all applicable provisions of FMPA’s Risk Management Policy. The Power Generation Fleet Director has responsibility to initiate and complete the selected solutions in accordance with this Policy. Pursuant to the governing

O&M Agent Agreement, all O&M Agents are responsible for working with the Power Generation Fleet Director for implementing selected solutions and following FMPA's guidelines as an integral part of meeting the goals established by the EC.

3.0 Types of Risk

This Policy establishes minimum standards to support an Agency-wide atmosphere of proper control levels to ensure the effective and efficient generation of electric power. The COO will cause processes to be documented, as deemed appropriate, that identify risks in the areas noted below and provide ways to measure, control and mitigate FMPA's exposure to those risks. The FMPA Risk Management Policy identifies ten risks comprising FMPA's common risk framework. While not intended to be a comprehensive listing of risks encountered by FMPA during the normal course of the business cycle, the following provides insight into the major areas of risk exposure for FMPA. The following selected framework risks are those risks normally encountered with generation management.

3.1 Volumetric Risk:

The potential adverse impact of unanticipated changes in demand (requiring the dispatch of either more or less generation) or availability of generating resources. FMPA faces fuel supply risk when there is uncertainty associated with the availability of generating units which may require the dispatch of less efficient units (higher heat rate). When generating units fail, the ARP must replace the lost MWs with other generation or spot market MWh purchases, resulting in higher costs than anticipated had the generating unit not failed.

Dynamic changes in weather can significantly impact demand. Reacting to these changes in demand can require changes to the dispatch of units thereby changing (either positively or negatively) the fuel requirements of the ARP. During periods of excessively hot or cold weather, ARP Member demand will increase. In Florida, there is also an ongoing threat of extreme weather (hurricanes or tornados), which could result in transmission and/or distribution outages. This could result in an interruption in the delivery of power to members and or their customers. Either situation can lead

to an excess in fuel supply that must be sold into the market when prices are falling or an insufficient supply quantity that must be purchased when prices are rising. Either circumstance will cause an adverse financial impact to the ARP.

3.2 Operational Risk:

The potential economic loss resulting from ineffective or inefficient operation of generation or the loss of generating assets, transmission, fuel supply facilities or other related assets. An example would be a sudden forced outage of a generating unit or station accident that results in the loss of power generation. When such a loss of generation occurs, additional energy (and possibly capacity) may be required by dispatching another (potentially less economic) generating unit or through the purchase of any needed capacity and energy from the spot market. Such action may increase costs and result in an adverse financial impact to the ARP. While both volumetric and operational risk may relate to generator outages, operational risk is concerned with system reliability implications, whereas volumetric risk would relate to the cost of replacement energy.

3.3 Environmental Risk:

The potential environmental impact associated with a failure to comply with federal or state environmental regulations or approved facility specific permits. Examples of environmental non-compliance include emission violations and/or toxic spills. When a generating station or other facility is in violation, there is the potential of fines being imposed and generating output lost. Any lost resource(s) would require replacement from other units or the purchase the power at spot market prices. Either action could cause result in an adverse financial impact to the ARP. Any environmental penalty could also result in an adverse public perception and damage the reputation of FMPA.

3.4 Regulatory Risk:

The potential adverse impact of an action or direction from a regulatory body such as, but not limited to, FERC, DOE, or EPA. An example would be if a legislative or regulatory action could make it impossible for FMPA to economically operate its generation assets to reliably serve the load of ARP members. Regulatory risk occurs at

the local, state and federal level and could have a direct impact on FMPA's strategic, operational or financial decisions.

4.0 Generation Asset Operations and Maintenance

FMPA shall maintain effective operations and maintenance procedures to ensure that the ARP Generation assets maintain the desired level of efficiency based upon their respective operating profile in an economically appropriate manner. For example, a unit that is nearing its useful life and nearing a major maintenance recommendation to be performed, the associated expense may not be economically justified.

4.1 Operations:

FMPA shall follow Original Equipment Manufacturer (OEM) specifications for the operation of all non-peaking gas and steam turbine units over the economic life of the generation asset. The determination of the unit's economic life will be a collective effort of staff with the COO, or his designee, presenting staff's recommendation to the EC for approval, supported by economic and development models provided by System Operations. The OEM specifications differ between generation units and are updated as deemed necessary by the manufacturer. The latest individual unit OEM documentation can be found by referencing OEM publications such as the following or their equivalent:

- Technical Information Letters — TIL
- GE Reference — GER
- GE Requirements – GEK
- Performance Answer Case – PAC

Other sources of recommended maintenance can be obtained from other unit owners sharing their experiences through OEM User Groups.

4.1.1 Non-Peaking Unit Testing:

The Power Generation Fleet Director shall direct each O&M Agent to annually test the capacity and heat rate of each non-peaking unit during the summer months in order to document each unit's operating efficiency. The PI Historian will collect relevant data necessary for determining the heat rates of these units

as well as other key operating parameters. Capacity testing is performed in compliance with NERC standards.

4.1.2 Peaking Unit Testing:

The Power Generation Fleet Director shall direct each O&M Agent to test the heat rate and capacity of each peaking unit, as economically feasible, in order to document each such unit's operating efficiency and generating capability. Such testing will be performed, at a minimum, at least every two years or by pool procedure. Fuel Oil Testing

All dual fuel capable units shall be tested to operate on fuel oil at least once per year. Results of all such tests shall be reported to the Agency Risk Director and to System Operations.

4.2 Maintenance:

FMPA shall follow prudent maintenance practices, following OEM specifications, for maintaining combustion turbines and steam turbines for all non-peaking units. When a generating asset is nearing the end of its economic life, the COO must prudently determine whether OEM specified maintenance is economically justified to perform. If not so justified, FMPA is authorized not to follow OEM specifications.

4.2.1 Deferral of Maintenance:

The Power Generation Fleet Director must coordinate any decision to delay/defer significant maintenance with the System Operations to ensure adequate reserve margins are maintained. The Financial Planning Rates & Budget Director will also be consulted to determine any adverse rate impacts upon ARP members resulting from such delay/deferral. The Power Generation Fleet Director shall then notify the Agency Risk Director of the pending maintenance deferral along with supporting documentation.

Any decision to defer/or not perform staff identified or OEM recommended maintenance must be reviewed and approved by the COO. If deferred, economically justified OEM recommended maintenance will be performed

during the next regularly scheduled maintenance activity. Concerns related to the future availability of capital parts and adverse impacts to related warranties will not be considered without supporting documentation.

4.2.2 Reliability Centered Maintenance (“RCM”):

FMPA will maintain the balance of plant and auxiliary equipment in accordance with RCM. RCM establishes safe minimum levels of maintenance, changes to operating procedures and strategies, and the establishment of capital maintenance regimes and plans based on historic operational data and maintenance history.

FMPA shall strive to ensure that long-lead critical items for base load gas and steam turbine units can be obtained within a ~~six~~12 month time frame from within the ARP fleet, provided through the OEM, or through a partnership fleet arrangement. The following items are excluded from this ~~six~~12 month requirement: Iso-phase bus, disconnect switches, switchgear, and CTPT metering units.

4.2.3 Budget Review:

All capital/maintenance items costing in excess of \$1 million that are being considered for inclusion during the annual budgeting process shall be presented to the Power Generation Fleet Director, Financial Planning Rates & Budget Director, Agency Risk Director and Chief Operating Officer, for an economic review. These parties shall facilitate the determination that these projects are prudent and/or economically justified and should be included in the budget proposal submitted to the EC for approval.

4.2.4 Budget and Spending Authority:

Staff shall budget all necessary maintenance to ensure that reliability goals are appropriately established and achieved. The resulting ARP budget will be comprised of two primary categories for O&M expenses and capitalized

expenses. Once the ARP budget is approved, funds may not be shifted from either category for use in the other without obtaining prior approval by the applicable governing body.

The General Manager is granted the authority to approve budgeted capital items and budgeted non-fuel related O&M expenditures pursuant with existing contractual obligations. The General Manager also has authority to approve capital items and O&M expenditures which exceed the specified amounts in the approved budget but is not authorized to exceed the aggregated total budget category for either capital or O&M expenses. When the General Manager exercises such granted spending authority for a non-budgeted expenditure pursuant to a new contractual obligation exceeding \$200,000 for the term of such contract, this action must be reported to the EC at the next regularly scheduled meeting.

4.3 Generation Unit Availability Metrics:

The Power Generation Fleet Director shall present, on an annual basis, a report which details operating availability and reliability metrics of all ARP units. These metrics will be compared to related industry metric averages as a benchmark of FMPA's overall maintenance program and in meeting the organization's strategic and departmental goals as documented at the time.

Examples of the types of metrics that may be used are as follows:

- Equivalent Availability Factor or EAF
- Maintenance Outage Hours or MOH
- Planned Outage Hours or POH
- Forced Outage Hours or FOH

4.4 Safety:

FMPA shall strive to prevent and/or eliminate all accidents at ARP Generation facilities and maintain a safe working environment. FMPA employees who are authorized to

have unrestricted access to ARP Generation facilities will follow the most current APPA Safety Manual.

4.4.1 O&M Agent Safety:

Each respective O&M Agent is responsible for the safety of their employees working at each ARP generating facility and enforce their own respective safety standards. To the extent possible under the terms and conditions of each respective Agent O&M Agreement, FMPA shall encourage each Agent to utilize the most current APPA Safety Manual and communicate the minimum safety requirements that support a goal of zero reportable safety incidents. FMPA will also encourage each O&M Agent to comply with all aspects of the Occupational Safety and Health Act (“OSHA”) and any associated rules.

4.4.2 Safety Training:

Annual safety training of plant personnel is the obligation of the respective O&M Agent. In support of the O&M Agent safety training obligations, the Power Generation Fleet Director will communicate FMPA’s training goals and expectations for the coming Fiscal Year as an integral aspect of the respective Agent’s Operating Plan.

4.4.3 Accident Reporting:

All accidents must be reported immediately to the Power Generation Fleet Director who will then discuss with the Agency Risk Director. The Power Generation Fleet Director shall ensure that each ARP Generation facility provide, at a minimum, a quarterly statistical report to the Risk Management Department which details reportable accidents. For this Policy, accidents are defined as OSHA reportable lost time accidents and incidents of property damage.

4.5 Regulatory Adherence:

The COO shall ensure that all relevant NERC and CIP guidelines are followed and appropriate documentation exists to ensure compliance with any regulatory audits.

5.0 Environmental

FMPA recognizes that efficient resource use and concurrent protection of the environment are vital to provide benefit to FMPA members, surrounding communities and for the continued success of the ARP. FMPA shall strive to act as a responsible steward of the environment and shall take responsibility for achieving and maintaining compliance with environmental regulations, be responsive to local environmental needs, and where no regulations exist, shall implement appropriate standards.

5.1 Compliance:

ARP Generation facilities shall comply with Federal and State laws, rules and regulations for the environment. FMPA shall strive to achieve zero Notices of Violations (NOVs) or fines. The Power Generation Fleet Director is responsible for ensuring that all filings are complete, accurate and timely, and shall report any NOVs to the Agency Risk Director upon receipt. When so notified, the Agency Risk Director shall report the NOV at the next scheduled Finance Committee (FC) meeting.

In the event that FMPA discovers a possible violation and intends to submit a “self-report” of the discovery, all such self-report submittals shall be discussed with the interested parties, the Generation Fleet Director and FMPA General Council prior to submittal. and to the EC at the next regularly scheduled meeting by the Power Generation Fleet Director.

5.2 Emission Allowances:

Allowance credits shall be managed by the Power Generation Fleet Director. Such activity shall include an annual evaluation of the expected allowance needs for the upcoming year with the Agency Risk Director. At the end of each fiscal year, ARP Generation allowances must meet the anticipated needs for the next fiscal year. Staff may purchase allowances to achieve this level, as appropriate. Excess credits shall be reviewed for possible sale to third parties. The General Manager must approve any sale of excess credits prior to execution.

6.0 Internal Controls

The COO shall maintain evidence of a system of internal controls, as deemed necessary, to ensure the safe and efficient operation and maintenance of the ARP generation assets, consistent with this Policy and associated procedures, and in accordance with all policies and procedural guidelines established in the FMPA Risk Management Policy. FMPA shall use a cost-benefits analysis when making decisions regarding the implementation of internal controls.

6.1 Continuing Education:

The COO shall ensure that appropriate staff maintains current knowledge regarding the operation and maintenance of electric power generating units related to the ARP generating assets.

6.2 Policy Compliance:

The Agency Risk Director shall monitor compliance with this Policy and associated procedures and report such on an annual basis.

Any unresolved compliance issues will be presented to the FC, as needed, by the Agency Risk Director.

7.0 Reporting

The COO is responsible for causing the completion of the following reporting requirements:

7.1 O&M Report:

As part of the monthly scorecard to the BOD and EC, the CEO or COO should report the monthly review of ARP Generation for the prior month.

7.2 Environmental Report:

The Power Generation Fleet Director shall annually report to the FC on the ARP's environmental compliance for the prior year. This report shall include, at a minimum,

the emissions for each ARP Generation asset as compared to regulatory and permit allowances.

8.0 Oversight Structure

The Agency Risk Director shall cause any material deviations from this Policy to be reported according to the guidelines set forth in Section 4.1 of the FMPA Risk Management Policy. An annual report on the operation and effectiveness of this Policy shall be presented to the Finance Committee as described in Section 7.0 of the FMPA Risk Management Policy. The Power Generation Fleet Director shall report on the current risk environment affecting FMPA's generation assets to the Risk Management Team as needed, and engage any necessary discussion before moving items to the appropriate governing body.

Appendix A

Florida Municipal Power Agency Risk Management Reporting Calendar Asset Management and Operations Policy				
Reporting Item	Frequency of Report	Responsible Party	Policy Section Reference	Policy Category Reference
Generation Unit Testing	Annual	Power Generation Fleet Director	Section 4.1	Operations:
Spending Authority Use Activity	As Needed	General Manager	Section 4.2.4	Budget and Spending Authority:
Generation Unit Availability	Annual	Power Generation Fleet Director	Section 4.3	Generation Unit Availability Metrics: Generation Unit Availability Metrics:
Accidents at Generation Facilities	As Needed	Power Generation Fleet Director	Section 4.4.3	Accident Reporting:
Statistical Safety Report	Quarterly	Power Generation Fleet Director	Section 4.4.3	Accident Reporting:
Known Regulatory Issues	As Needed	COO	Section 4.5	Regulatory Adherence: Regulatory Adherence:
All regulatory Self-Reports	As Needed	Power Generation Fleet Director	Section 5.1	Compliance:
Environmental Notice of Violation	As Needed	Agency Risk Director	Section 5.1	Compliance:
Policy Compliance	As Needed	Agency Risk Director	Section 6.2	Policy Compliance:
O&M Report	Annual	COO	Section 7.1	O&M Report:
Environmental Report	Annual	COO	Section 7.2	Environmental Report:
Policy Operation and Effectiveness	Annual	Agency Risk Director	Section 8.0	Oversight Structure

This Policy compliance review is conducted by the Internal Audit Department (IAD) to assess the status of risk management practices for the time period noted below. The Internal Audit Department completes this form and submits to responsible manager(s) for additional information and comment. Documentation or attestation of compliance may be required during this review. The final form is submitted to the appropriate Chief Officer and the CEO prior to being presented to the Finance Committee (FC) as an information item.

Review period: October, 2018 to September, 2019

Responsible Manager(s): David Schumann, Power Generation Fleet Director

Policy Compliance: Indicate whether the following items required in the Asset Management and Operations Policy were completed during the review period.

REQUIREMENT	YES	NO	EXPLANATION
The Chief Operating Officer (COO) caused processes to be documented. (Section 3.0)	X		
Annual heat rate testing was conducted for each ARP non-peaking generation unit. (Section 4.1.1)	X		Trended and monitored real-time, published monthly
Heat rate testing was conducted at least once every two years for each ARP peaking generation unit. (Section 4.1.2)	X		FMPP performed capacity test
Annual fuel oil reliability testing was performed for each ARP dual-fuel capable generation unit. (Section 4.1.3)	X		annual testing was completed. TCEC Nov.'18, Cane 1 Mar. '19
Original Equipment Manufacturer (OEM) maintenance specifications were followed for all non-peaking ARP units prior to nearing the end of a unit's economic life. (Section 4.2)	X		Intermediate/Base units at Cane Island and TCEC follow OEM requirements during scheduled outages
The COO prudently determined whether OEM specifications were economically justified for non-peaking units nearing the end of their economic life. (Section 4.2)	N/A		None during period
Generation Fleet Director coordinated decisions to delay maintenance with System Operations Manager and Senior Financial Analyst. (Section 4.2.1)	N/A		None during period
Generation Fleet Director notified the Agency Risk Manager of pending maintenance deferrals, providing supporting documentation. (Section 4.2.1)	N/A		None during period
Maintenance deferrals were approved by the COO and presented to the CEO for final approval. (Section 4.2.1)	N/A		None during period

<i>Policy Compliance (continued):</i>			
REQUIREMENT	YES	NO	EXPLANATION
Reliability Centered Maintenance (“RCM”) operating and maintenance procedures were followed. (Section 4.2.2)	X		
All proposed capital/maintenance budget items costing in excess of \$1 million were reviewed by the GR&A prior to submission for EC budget approval. (Section 4.2.3)	X		
An annual O&M report was provided to the AROC (Section 4.3) and included specified unit metrics (Section 7.1)	X		Generation Report given at the December 2018 AROC
Policy specified budget and spending authority guidelines were followed. (Section 4.2.4)	X		
All OSHA reportable lost time accidents and incidents of property damage were reported to the Risk Management Department. (Section 4.4.3)	X		Monthly plant reports
The COO ensured that all relevant NERC and CIP guidelines were followed during the period. (Section 4.6)	X		
Each environmental “Notice of Violation” and “self-report” was reported to Agency Risk Manager and AROC by the Generation Fleet Director during review period. (Section 5.1)	X		Self-reports were reported to the Agency Risk Director
An annual evaluation of expected emission allowance needs were reviewed jointly by the Generation Fleet Director and Agency Risk Manager. (Section 5.2)	X		
The Annual Environmental Compliance Report was provided to AROC during the review period. (Section 7.2)	X		Report provided to the AROC in the May, 2019 meeting

<i>Internal Control Assessment: Evaluate the effectiveness of the current process in achieving the following control objectives. Use a scale of 1 to 4 as defined on attached page.</i>					
OBJECTIVE	1	2	3	4	EXPLANATION
Controls are in place to identify and assess risks related to the operation and maintenance of generating assets.				X	CSA agreement with GE, FM Global review and an additional borescope done annually
All applicable laws and regulations concerning the operation and maintenance of generating units are followed.			X		
Generation assets maintain a heat rate equal to or better than industry standard.			X		Heat rates continually monitored and comparisons to Industry using GE’s MyFleet, NERC GADS, PI Coresight. HR is slipping due to new technology being implemented on non-FMPA units
EAF goal was achieved across the ARP Generation fleet.				X	Policy Target Goals set higher than industry average

Long-lead critical items for base and intermediate load units are available within a six month time frame.			X	Inventory of many critical items are maintained in stock. Proactive ordering on known maintenance items with longer lead times (ie. Steam seals, generator copper).
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<i>Internal Control Assessment (continued)</i>					
OBJECTIVE	1	2	3	4	EXPLANATION
Goal of zero environmental Notice of Violation issued or related fines is achieved.				X	No NOVs issued before self-report. Annual training sessions held.
Plant site O&M agents utilize the most current APPA Safety Manual and comply with OSHA rules.			X		Plant operating agents follow their own respective safety procedures.
Goal of zero OSHA reportable lost time accidents and reporting of incidents of property damage is achieved.			X		2 LTA's this year. Reported monthly to the BOD and EC by the CEO
Appropriate staff maintains current knowledge regarding operation and maintenance of generating units.			X		FMPA Staff attendance of FM Global industry conference and 7FA Users Conference, Benchmarking with other utilities.

Are there any concerns related to asset management and operations risk management which should be brought to the attention of the General Manager as part of this review?
 Yes No If yes, describe below.

Are there internal control concerns related to asset management and operations risk management which require immediate attention?
 Yes No If yes, describe below including any change to risk inventory controls score.

Rate the overall functioning of asset management and operations risk management practices using a scale of 1 to 4 as defined on attached page.

1	2	3	4	EXPLANATION
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Additional comments from responsible Manager(s):

Are there any emerging risks or environmental changes which impact asset management and operations risk management?

Yes No If yes, describe below including any proposed changes to risk inventory.

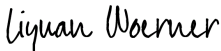
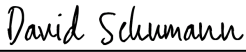


Other comments:

Rating scale for Policy compliance reviews:

- 1 = Risk management practices not in place.
- 2 = Risk management practices in place are not effective in meeting Policy requirements.
- 3 = Risk management practices in place meet Policy requirements.
- 4 = Risk management practices in place exceed Policy requirements.

Standard of compliance:

Completion of this review indicates that the Risk Management Reviewer has verified existence of applicable procedures or process documentation and believes them to be reasonably sufficient and up-to-date.

<p>DocuSigned by:  <small>62B966DB01B1479...</small></p> <hr/> <p>Risk Management Reviewer</p> <p>DocuSigned by:  <small>DC2ABBAFD81B4E2...</small></p> <hr/> <p>Responsible Manager Signature</p> <p>DocuSigned by:  <small>B57BC50ABB804AF...</small></p> <hr/> <p>Risk Director Signature</p> <p>DocuSigned by:  <small>5B40F13185DA46A...</small></p> <hr/> <p>Responsible Executive Officer Signature</p>	<p>11/22/2019</p> <hr/> <p>Date</p> <p>11/26/2019</p> <hr/> <p>Date</p> <p>11/26/2019</p> <hr/> <p>Date</p> <p>11/26/2019</p> <hr/> <p>Date</p>
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AGENDA ITEM 8 – ACTION ITEMS

**b. Approval of Allocation of
Development Fund Expenses**

**Board of Directors Meeting
February 13, 2020**



BOD 8b

Allocation of Development Fund Expenses

FMIPA Board of Directors

February 13, 2020

ARP Solar Participants' Harmony Substation Expense

Board Authorized Use of FMPA Development Fund

- ARP Solar Participants Advisory Committee met January 6th and voted to recommend approval of a substation cost sharing agreement with OUC.
 - Cost due upon commercial operation of the Harmony facility is not to exceed ~\$870,000
 - Board authorized sufficient amount from the FMPA Development Fund in October 2019
 - Request to repay the Development Fund over the first 20-years of the solar PPA
- Agreement on February Executive Committee agenda for approval

Board Action to Address Allocation and Repayment

- Previous authorization by the Board to use the Development Fund allowed the Harmony Substation cost sharing agreement to be finalized with a known funding source.
- Current action specifies who is responsible for repayment over a specified period of time.

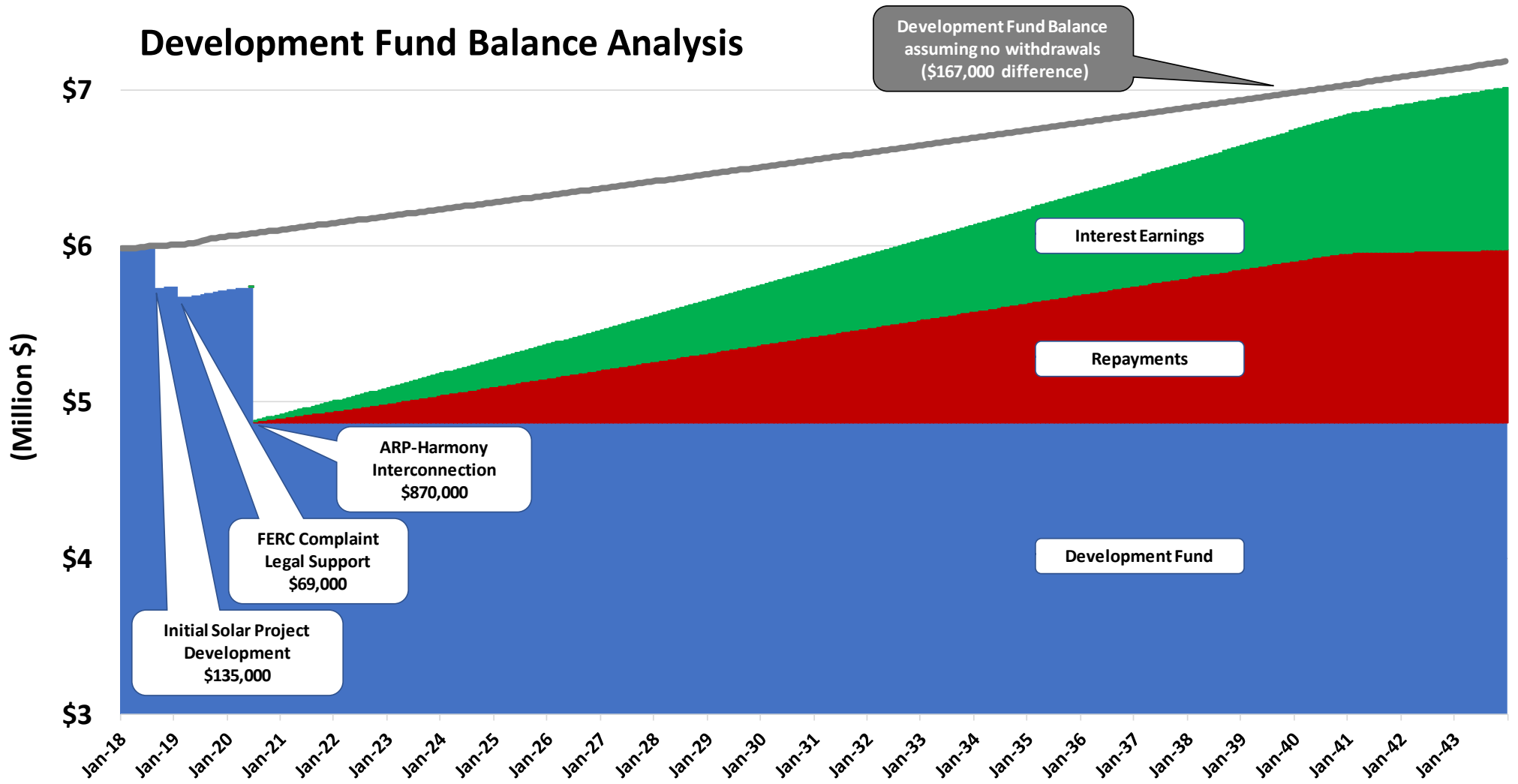
Development Fund Authorized for Solar Project Use

Allocated Based on Solar Entitlement Shares

- Board has authorized \$1,200,000 of the FMPA Development Fund to be used for Solar purposes.

Purpose	Amount	Allocation	Repayment Period
Initial Development	~\$135,000	All Phase I Participants	20 years
FERC Filing	~\$69,000	All Phase I Participants	20 years
Harmony Interconnection	~\$870,000	ARP Phase I Participants	requested 20 yrs
Future Unknown	up to \$126,000	To be determined if used.	

Development Fund Balance Analysis



Recommended Motion

- Move approval of funding Harmony Solar interconnection expenses of \$870,000 out of the FMPA Development Fund authorized amounts with such expenses being allocated to the ARP Phase I Solar Participants based on their solar entitlement ratio share to be reimbursed over 20 years as an adder to the energy charge for each MWh received from the Harmony Solar facility.

AGENDA ITEM 8 – ACTION ITEMS

- c. Approval of Solar Phase I Poinsett
PPA Revisions ***

**Board of Directors Meeting
February 13, 2020**



BOD 8c / EC 8c
Solar Phase I Poinsett PPA Revisions

FMIPA Board of Directors and Executive Committee
February 13, 2020



Florida Municipal Solar Project

Facility Allocations for Phase I Participants

Solar Phase I Facilities (Interconnection)	Total Capacity (MW)	OUC Share (MW)	ARP Share (MW)	Solar Project (MW)	OUC Share (%)	ARP Share (%)	Solar Project (%)
Taylor Creek (OUC)	74.5	74.5	-	-	100%	-	-
Harmony (OUC)	74.5	34.0	40.5	-	45.64%	54.36%	-
Poinsett (DEF)	74.5	-	17.5	57.0	-	23.49%	76.51%

Revised PPAs 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 PPAs the Solution to Poinsett Solar Delay

Lowest Contract Price offered without Renewal Terms

- Solar Project Committee and ARP Solar Participants Advisory Committee meetings in January and February for final approval of PPA revisions.
 - 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.
- Revisions to the two PPAs will be identical.



*Does not include offset from any financial damages that would have otherwise been received.

Approval of PPA Revisions Requested

- Move approval of the Amended and Restated Renewable Energy Power Purchase Agreement between Florida Municipal Power Agency and Poinsett Solar, LLC and authorize the CEO & General Manager to execute the agreement.

Note – 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.

**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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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 agreamend 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 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] [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] [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] [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 $2 \times$ [redacted] MWh = [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 x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period), expressed as a percentage.

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

$$\frac{[redacted] \text{ MWh}}{[redacted] \text{ MWh} \times \frac{[redacted] - [redacted]}{[redacted]}}$$

$$\frac{[redacted] \text{ MWh}}{[redacted] \text{ MWh} \times [redacted]}$$

$$\frac{[redacted] \text{ MWh}}{[redacted] \text{ MWh}}$$

[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)

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

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

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

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

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

████████████████████

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)

$$\blacksquare \times R \times \left(DE_{b,2y} - \blacksquare \times CE_{b,2y} \times \frac{(h - h_e)}{h} \right)$$

$$\blacksquare \times \blacksquare / MWh \times \left(\blacksquare MWh - \blacksquare \times \blacksquare \times \frac{(\blacksquare)}{\blacksquare} \right)$$

$$\blacksquare / MWh \times (\blacksquare MWh - \blacksquare \times \blacksquare \times \blacksquare)$$

$$\blacksquare / MWh \times (\blacksquare MWh - \blacksquare \times \blacksquare \times \blacksquare)$$

$$\blacksquare / MWh \times (\blacksquare MWh - \blacksquare MWh)$$

$$\blacksquare / MWh \times \blacksquare MWh$$

\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

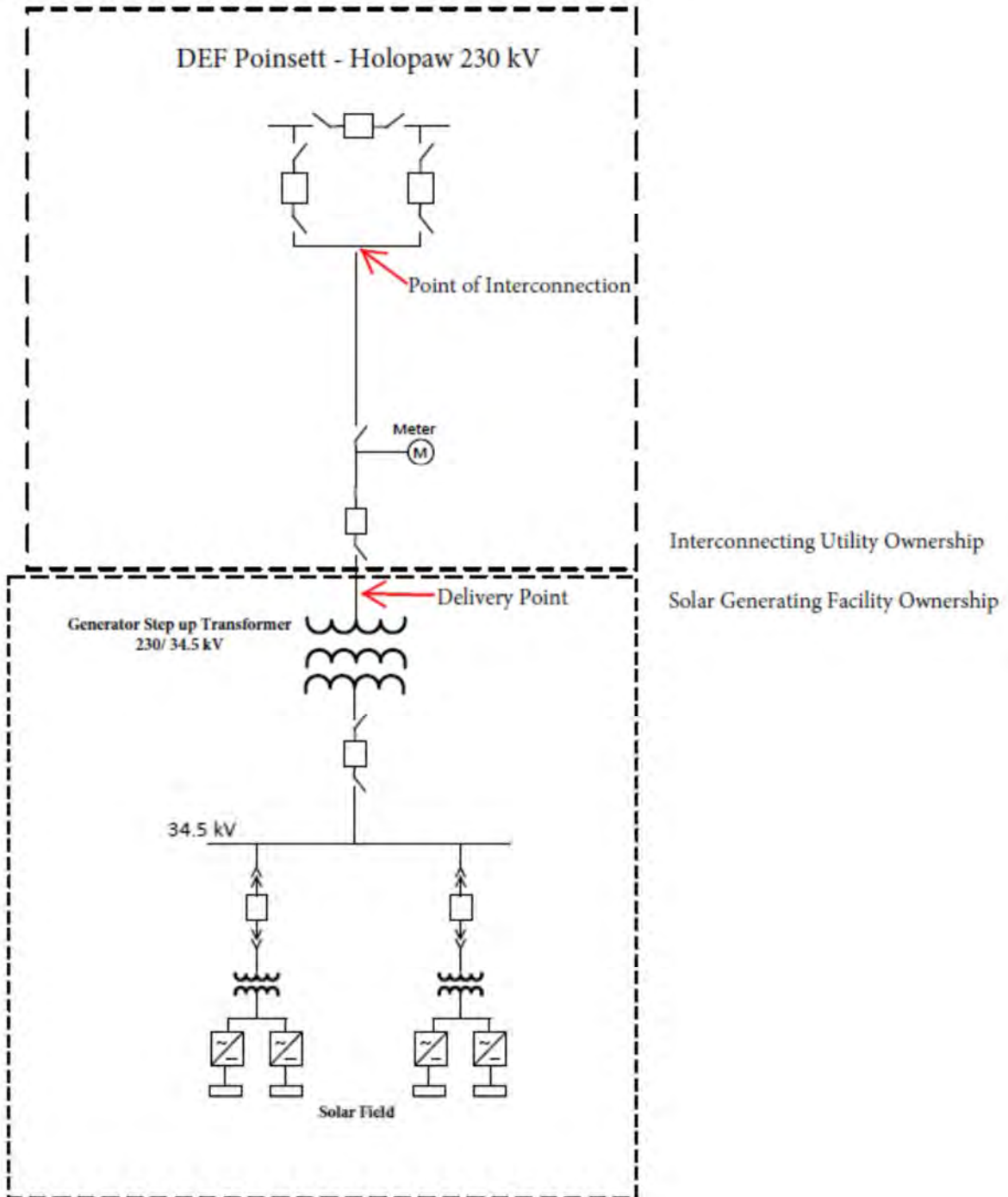


EXHIBIT D

PROJECT QUANTITY

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

EXHIBIT E

PURCHASE OPTION

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

**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: * NextEra Energy Capital Holdings, Inc. 700 Universe Blvd. Juno Beach, Florida 33408 Attn: Treasurer	TO COUNTERPARTY: _____ _____ _____ 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.

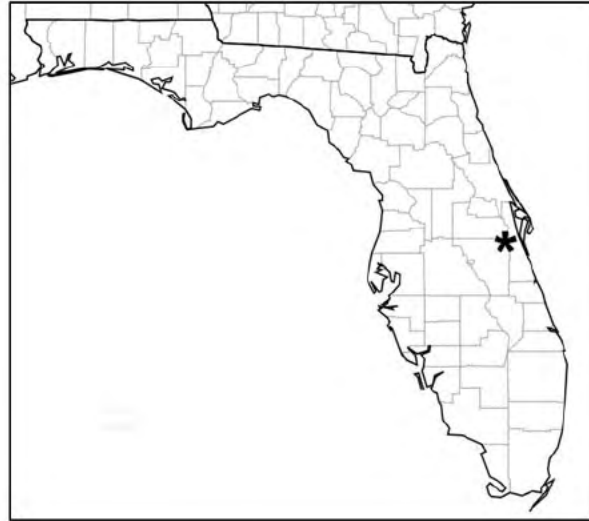
Except for Workers’ Compensation Insurance, Buyer shall be endorsed as an additional insured on Seller’s insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Buyer. All policies of insurance required to be maintained 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 <u>2021</u>	Seller Management Approval	6.1(a)(v)
November 20, 2018 <u>2020</u>	Site Control	6.1(a)(iii)
October 20, 2019 <u>2020</u>	Receipt of all Governmental Approvals	6.1(a)(iv)
January 2, 2020 <u>2023</u>	Large Generator Interconnection Agreement execution	6.1(a)(i)
February 15, 2020 <u>2023</u>	Initial Energy Delivery Date	3.3
May 30, 2020 <u>2023</u> (but in any event not later than thirty (30) days prior to the Guaranteed Commercial Operation Date)	Electric Interconnection Upgrades Complete	4.3(c)(i)
June 30, 2020, 2023	Guaranteed Commercial Operation Date	4.3, 6.1(a)(vi)
December 27, 2020 <u>2023</u>	Guaranteed Commercial Operation Date with 180 days Permitted Extensions	4.3, 4.4, 6.1(a)(vi)
August 24, 2021 <u>23,</u> <u>2024</u>	Outside guaranteed commercial operation date (which accounts for 180 days Permitted Extensions, <i>plus</i> the 240-day Project Cure Period	4.3, 4.4, 6.1(a)(vi)

EXHIBIT K

MILESTONES WITH DELAY DAMAGES

Date	Milestone	Section
May 30, 2019 2022	Florida Department of Environmental Protection - Environmental Resource Permit Received	4.1(j)
January 1, 2020 2023	Start of Construction	4.1(j)
June 30, 2020 2023, 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 _____, 20120.

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:

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**

a. Mobile Substation Discussion

**Board of Directors Meeting
February 13, 2020**



BOD 9a – Mobile Substation Project Discussion

FMIPA Board of Directors
February 4th, 2020

Agenda

- What is a mobile substation?
- What are the benefits?
- Important considerations
- Next steps

What is a Mobile Substation?

- Transformer and associated protection and switching devices permanently mounted on one or more trailers



Photo credit: Delta Star, Inc.

Benefits of a Mobile Substation

- Enable quick recovery from a failed transformer
 - Typical transformer lead time >40 weeks
- Allows for routine maintenance outage on a transformer where
 - There is no redundant transformer
 - Remaining transformer capacity not adequate
 - Adjacent feeder switching capacity not available/insufficient
- Provide temporary increase in capacity
- Serve temporary load

Other Options for Contingency Planning

- Do nothing; respond to transformer failure when it occurs
 - Rely on spare units available through by other utilities (i.e., SpareConnect)
- Invest in distribution projects
 - Single substation system: add redundant transformer
 - Multi-sub system: increase total transformer capacity, build new feeder ties

Technical and Financial Considerations

- Transformer voltage taps & MVA rating limited by size/weight restrictions
- Can be energized quickly
 - Quickest deployment in 12 - 24hrs
 - Engineering analysis and substation modifications required in advance to enable quick deployment
- Initial cost expected to be \approx \$2.5M for trailer & equipment alone
- Additional costs include
 - On-going: staging, maintenance
 - One time: substation prep
 - Per deployment: transportation, connection, commissioning

Possible Options for Interested Members

- Ownership models
 - Owned under an FMPA project
 - Vendor owns, munis pay for access
 - Vendor owns, monthly fee with option to purchase
- A vendor-owned asset is most desirable
 - Eliminates need to establish transportation

Next Steps

- Identify interested members
- Engage a consultant to perform engineering assessment
 - Identify all possible high/low voltage combinations
 - Assess existing transformer capacity versus peak loads
 - If necessary, assess available adjacent feeder switching capacity
 - Identify substation space constraints
 - Determine transportation limitations
- Engage a consultant to develop technical requirements for RFP



Questions?

**AGENDA ITEM 9 – INFORMATION
ITEMS**

b. Annual Debt Report

**Board of Directors Meeting
February 13, 2020**

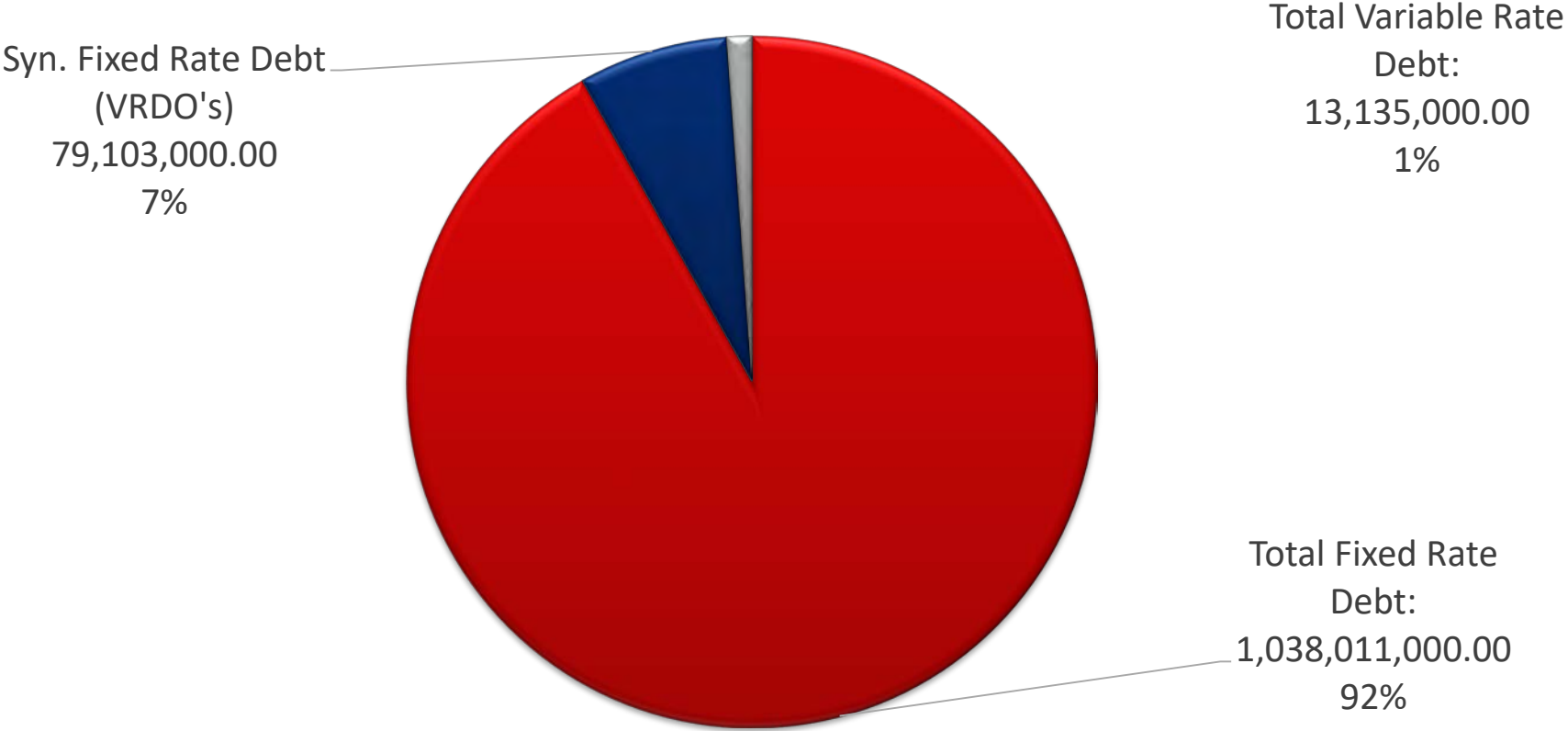


Annual Debt Report As of 9/30/2019

FMIPA Board of Directors
and Executive Committee

February 4, 2020

92% of All Project Debt is Fixed

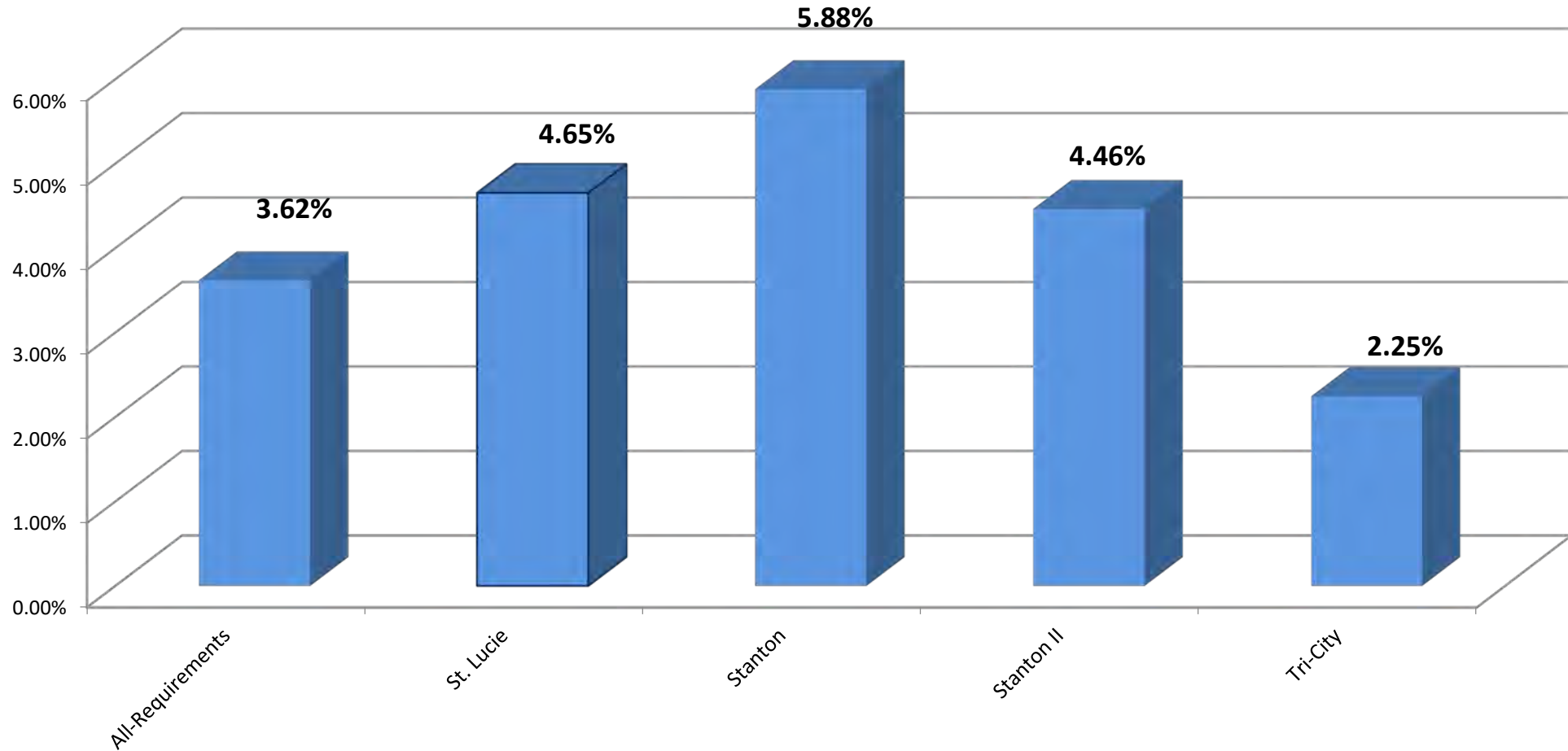


Includes All of FMPA Debt

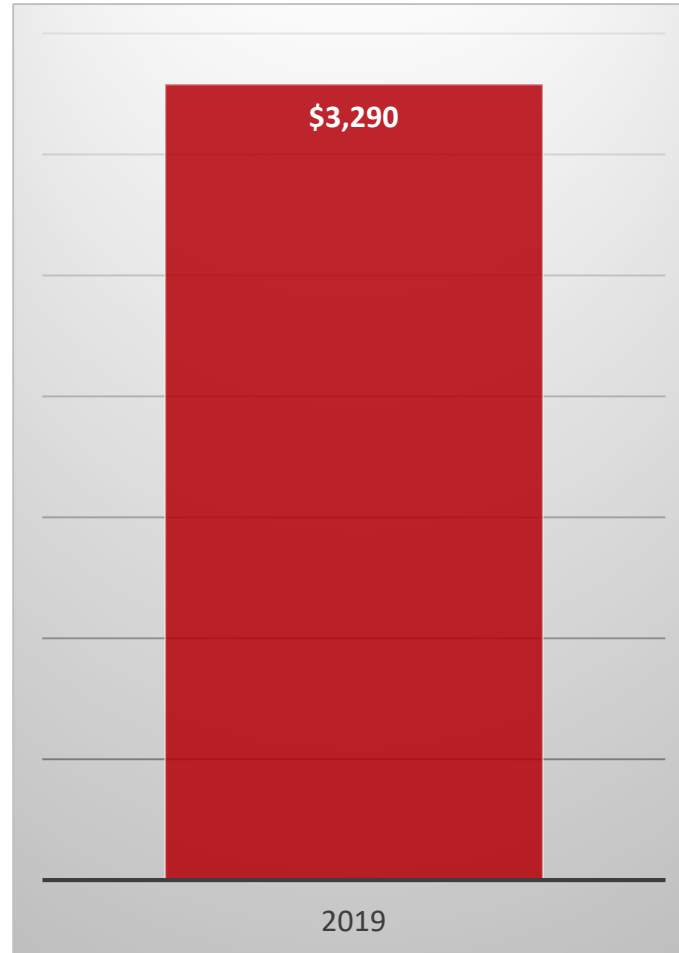
FMPA Reduces Debt by \$310.5M in 2019

Project	9/30/19 \$'s in 000's	9/30/18 \$'s in 000's	Debt Reduction
All-Requirements	860,323	979,473	<119,150>
St. Lucie	134,850	304,125	<169,275>
Stanton	8,985	17,324	<8,339>
Stanton II	122,801	133,314	<10,513>
Tri-City	3,290	6,505	<3,215>
Total	\$1,130,249	\$1,440,741	<\$310,492>

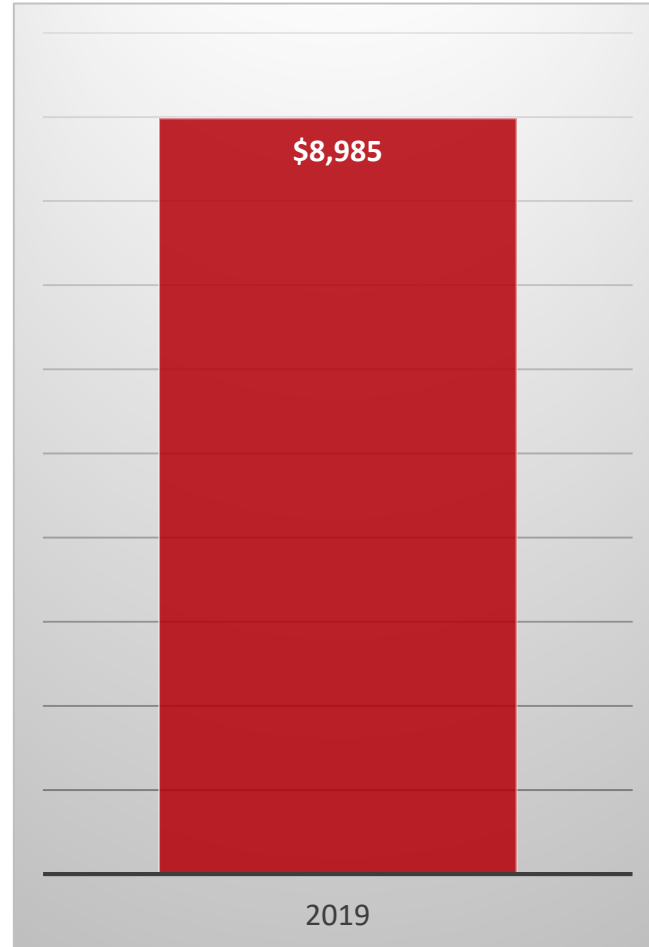
True Interest Cost of Debt by Project



Paid in full 10/1/19



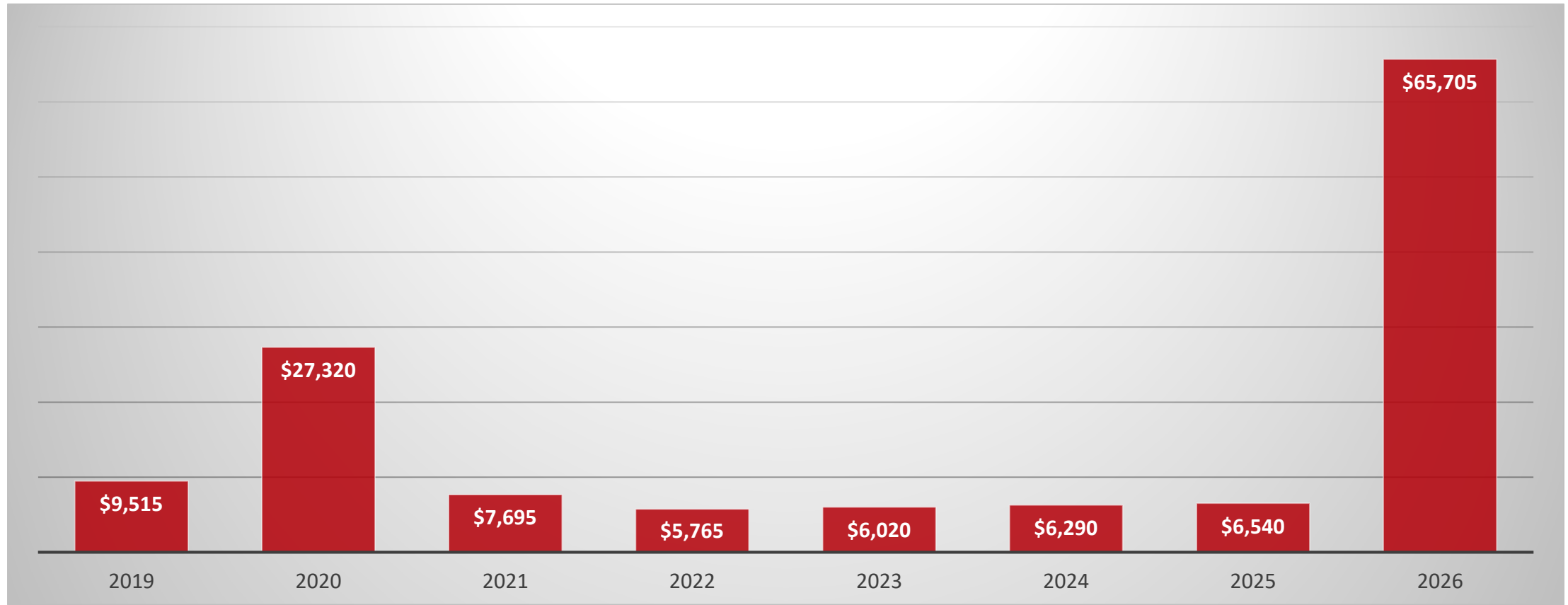
Paid in full 10/1/19



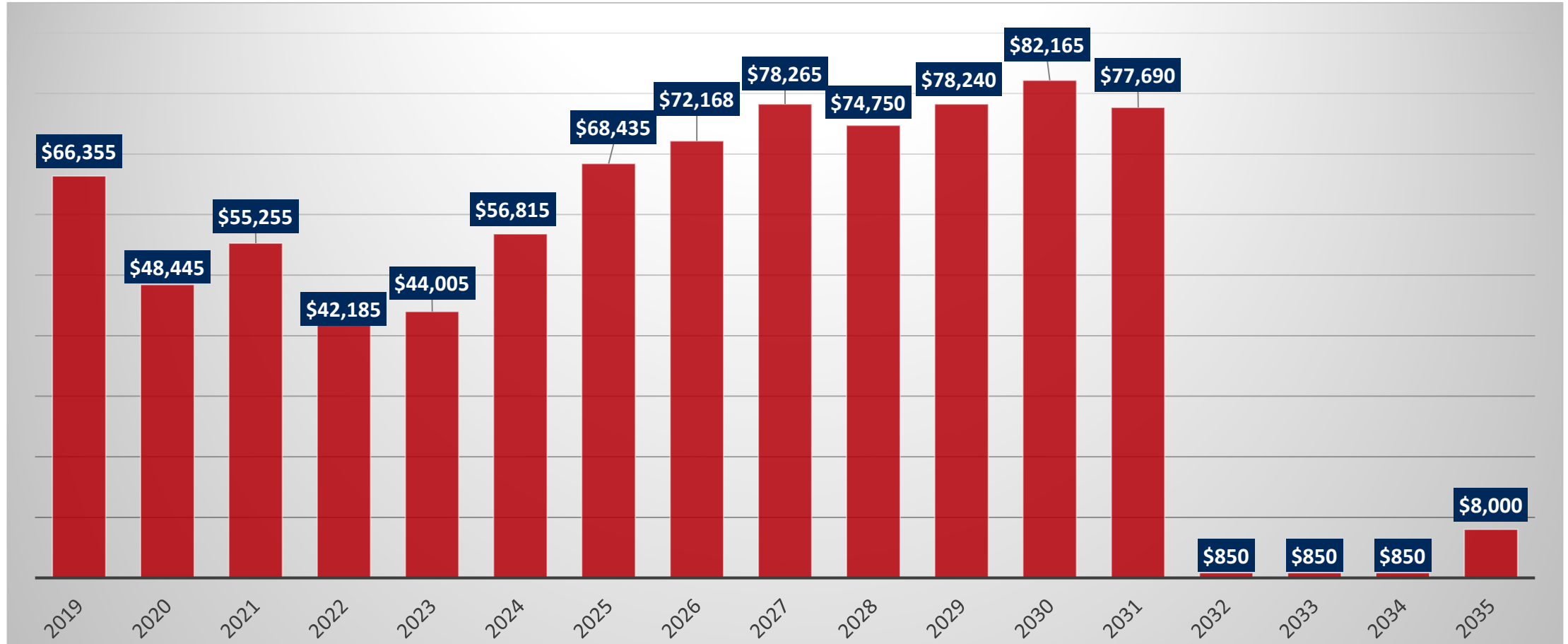
General Reserve Can Fund Final Payment



\$42M in Investments Currently Held



\$119.2M Debt Paid Down 9/30/2019



Swap Diversification Meets Policy*

Dealer	Notional Amount (\$'s in 000)	Percentage
Bank of America/Merrill Lynch	\$17,540	2%
Goldman Sachs	22,953	3%
Morgan Stanley	22,953	3%
Wells Fargo	15,656	2%
Unswapped Debt	776,220	91%
Total Debt Outstanding	\$855,323	100%

*Policy requires no counterparty exceed 35% of total Project debt



QUESTIONS

ARP Bonds Purpose of Bonds Summary

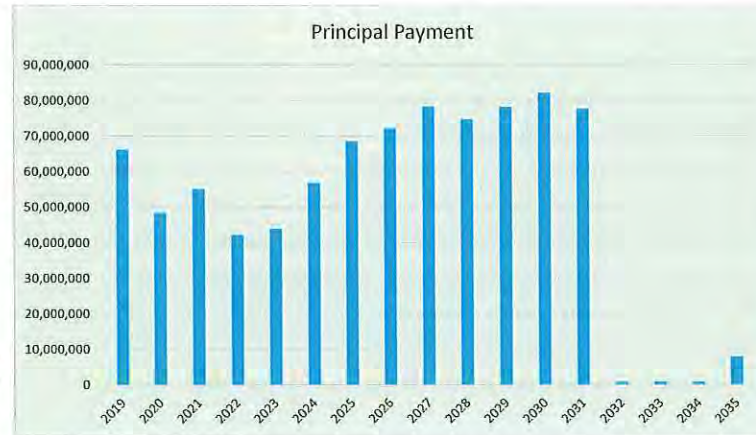
	Total Amount Issued (millions)	Purpose	Amount Outstanding as of 9/30/2019
ARP 2008A	\$509,555,000	Financing Cane Island 4, Wachovia Loans - Cane Island 3, Stanton and Stanton II Brine Plant Facilities. Partial refund 2006C and 2006B bonds. Refund 2003B-1 and 2003B-2 bonds. Refund Pooled Loan Program for Treasure Coast Energy Center #1 and Cane Island 4 Turbine Option	\$38,515,000
ARP 2008C	\$154,565,000	Partial refund 2006B bonds. Refund 2000 bonds	\$79,103,000
ARP 2009A	\$154,480,000	Financing Cane Island 4 new money	\$5,145,000
ARP 2009B	\$15,235,000	Financing Public Gas Partners capital improvements	\$15,235,000
ARP 2013A	\$15,000,000	PGP capital needs	\$8,135,000
ARP 2015B	\$115,770,000	Pay off 100% of the Taylor Swap termination fees and draws under the credit agreement	\$104,730,000
ARP 2016A	\$424,120,000	Refunded portion of 2008A and 2009A bonds	\$424,120,000
ARP 2017A	\$69,625,000	Refund 2011A-1, 2011B and interest rate swaps associated with the bonds	\$69,625,000
ARP 2017B	\$52,925,000	Refund 2011A-2 and interest rate swap associated with the bond	\$52,925,000
ARP 2018A	<u>\$57,790,000</u>	Refund all outstanding 2008A Bonds maturing on and after October 1, 2020	<u>\$57,790,000</u>
Total	<u>\$1,569,065,000</u>		<u>\$855,323,000</u>

**Non-ARP Bonds
Purpose of Bonds Summary**

Series	Total Amount Issued (millions)	Purpose	Amount Outstanding as of 9/30/2019
St Lucie 2009A	\$37,820,000	Refinance the loan from the Pooled Loan Program and finance capital improvements.	\$12,010,000
St Lucie 2010	\$20,500,000	Finance capital improvements.	\$6,330,000
St Lucie 2011A	\$34,870,000	Partial refund of the 2002 bonds and swaps	\$22,345,000
St Lucie 2011B	\$24,305,000	Finance capital improvements and pay costs of issuance	\$24,305,000
St Lucie 2012A	\$58,870,000	Partial refund of the 2000 and 2002 bonds with swaps	\$58,870,000
St Lucie 2013A	\$24,305,000	Finance capital improvements	\$10,990,000
Stanton 2008	\$37,905,000	Refund the 1997, 2000 and 2002 bonds	\$7,595,000
Stanton 2009A	\$24,305,000	Refinance the loan from the Pooled Loan Program and finance capital improvements	\$1,390,000
Stanton II 2009A	\$6,615,000	Refinance the loan from the Pooled Loan Program and finance capital improvements	\$4,705,000
Stanton II 2012A	\$77,520,000	Refund 2002. Partial refund of the 2000 and 2004 w/swaps. Finance capital improvements	\$51,410,000
Stanton II 2017A	\$21,888,000	Refund 2000 auction rate securities and swaps	\$21,501,000
Stanton II 2017B	\$50,019,000	Refund 2004 auction rate securities and swaps	\$45,185,000
Tri-City 2009A	\$2,790,000	Refinance the loan from the Pooled Loan Program and finance capital improvements	\$410,000
Tri-City 2013A	\$16,460,000	Refund 2003A bonds and finance capital improvements	\$2,880,000
Total	<u>\$438,172,000</u>		<u>\$269,926,000</u>

ARP - CALCULATION BASED ON AVERAGE FY19 BILLING DEMAND

	Average Monthly Billing Demand (MW) FY 2019	% of Total	Bonds, Notes and Loans Outstanding as of 9/30/2019 ¹
Bushnell	5.1	0.5%	4,165
Clewiston	16.1	1.5%	13,217
Fort Meade	8.2	0.8%	6,707
Fort Pierce	81.4	7.8%	66,644
Green Cove Springs	19.9	1.9%	16,285
Havana	4.3	0.4%	3,562
Jacksonville Beach	127.6	12.2%	104,496
KUA	298.0	28.5%	244,059
Key West	116.2	11.1%	95,183
Lake Worth	0.0	0.0%	0
Leesburg	94.9	9.1%	77,707
Newberry	7.5	0.7%	6,175
Ocala	254.5	24.4%	208,479
Starke	10.6	1.0%	8,643
Vero Beach	0.0	0.0%	0
Total	1,044.2	100.0%	855,323

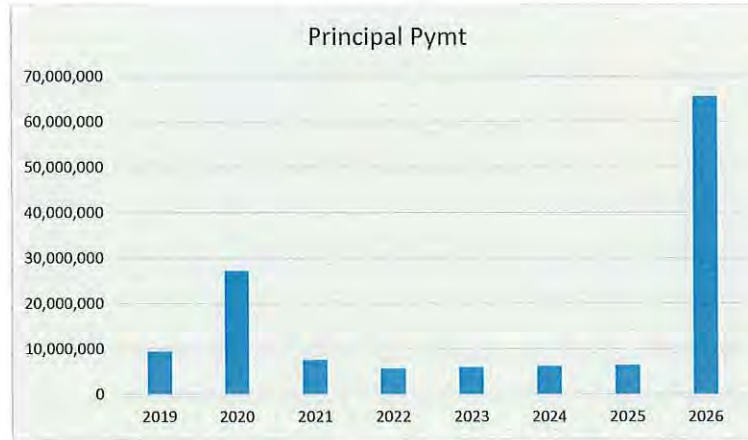


Payment October 1	Principal Payment
2019	66,355,000
2020	48,445,000
2021	55,255,000
2022	42,185,000
2023	44,005,000
2024	56,815,000
2025	68,435,000
2026	72,168,000
2027	78,265,000
2028	74,750,000
2029	78,240,000
2030	82,165,000
2031	77,690,000
2032	850,000
2033	850,000
2034	850,000
2035	8,000,000
	855,323,000

Footnote: ARP Participants' percent share of ARP debt payments varies monthly based on their monthly peak demand (less Excluded Resource capacity, if any) during the hour of the ARP system peak. Due to weather and other factors, such allocations can vary significantly from month to month. Additional factors such as varying levels of load growth among the Participants would also impact the allocations over time. Amounts shown are for illustrative purposes only and are based on each Participant's average monthly ARP billing demand during Fiscal Year 2019. It is important to note that this calculation is not the same as the calculation of outstanding ARP debt that each Participant would be required to pay in the event it exercised its right to withdraw from the ARP pursuant to Section 29 of the ARP Contract

ST. LUCIE - Entitlement share by participant

Entitlement Share %	Bonds, Notes and Loans Outstanding as of 9/30/2019 ¹		FY2019 Debt Service Related Budget ^{2,3,4}
	(\$000)	(\$000)	
ALACHUA	0.431%	581	127
CLEWISTON	2.202%	2,969	647
FORT MEADE	0.336%	453	99
FORT PIERCE	15.206%	20,505	4,471
GREEN COVE SPRINGS	1.757%	2,369	517
HOMESTEAD	8.269%	11,151	2,431
JAX BEACH	7.329%	9,883	2,155
KISSIMMEE	9.405%	12,683	2,765
LEESBURG	2.326%	3,137	684
LAKE WORTH	24.870%	33,537	7,312
MOORE HAVEN	0.384%	518	113
NEWBERRY	0.184%	248	54
NEW SMYRNA BEACH	9.884%	13,329	2,906
STARKE	2.215%	2,987	651
ARP	15.202%	20,500	4,470
	100.000%	134,850	29,401



Payment October 1	Principal Pymt
2019	9,515,000
2020	27,320,000
2021	7,695,000
2022	5,765,000
2023	6,020,000
2024	6,290,000
2025	6,540,000
2026	65,705,000
	<u>134,850,000</u>

¹ Makes no assumption about any new debt needs.

² Annual debt-service-related budget amounts may vary by year.

³ Use of monies on hand may reduce total debt service budget amounts collected from rates. As of 9/30/2019, \$42,865,898 (par amt) of investments in the General Reserve, Contingency, and Debt Service Reserves related accounts.

⁴ Final debt service payment is October 1, 2026. Plant licensed by NRC to operate until 2043.

Indicates the partial assignment from the City of Vero Beach

STANTON - Entitlement share by participant

	Entitlement Share %	Bonds, Notes and Loans Outstanding as of 9/30/2019 ¹ (\$000)	FY2019 Debt Service Related Budget ^{2,3,4} (\$000)
ARP	32.521%	12,750	3,078
FORT PIERCE	24.390%	9,562	2,309
HOMESTEAD ^A	12.195%	4,781	1,154
LAKE WORTH	16.260%	6,375	1,539
STARKE	2.439%	956	231
KUA ^A	12.195%	4,781	1,154
	100.000%	8,985	9,466

^A Reflects impact of 50% Entitlement Share assignment from Homestead to KUA

¹ Makes no assumption about any new debt needs.

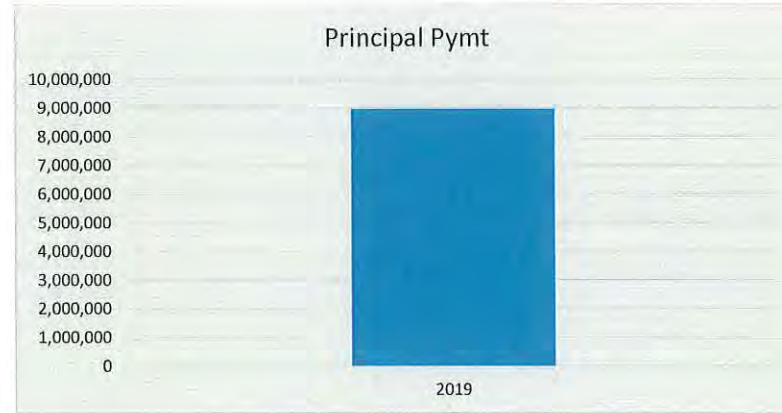
² Annual debt-service-related budget amounts may vary by year.

³ Use of monies on hand may reduce total debt service budget amounts collected from rates. As of 9/30/2019, \$12,043,372 (par amt) of investments in the General Reserve and Contingency accounts.

⁴ Final debt service payment is October 1, 2019.

Indicates amounts paid by ARP due to Participant being in the ARP

Indicates the partial assignment from the City of Vero Beach



Payment October 1	Principal Pymt
2019	8,985,000
	<u>8,985,000</u>

STANTON II - Entitlement share by participant

	Entitlement Share %	Bonds, Notes and Loans Outstanding as of 9/30/2019 ¹	FY2019 Debt Service Related Budget ^{2,3,4}
		(\$000)	(\$000)
ARP	16.489%	20,249	2,481
FORT PIERCE	16.489%	20,249	2,481
HOMESTEAD ^A	8.244%	10,124	1,241
KUA ^A	32.977%	40,496	4,962
ST. CLOUD	14.671%	18,016	2,208
KEY WEST	9.893%	12,149	1,489
STARKE	1.237%	1,519	186
	100.000%	122,801	15,048

^A Reflects impact of 100% and 50% Entitlement Share assignments respectively from Lake Worth and Homestead to KUA.

¹ Makes no assumption about any new debt needs.

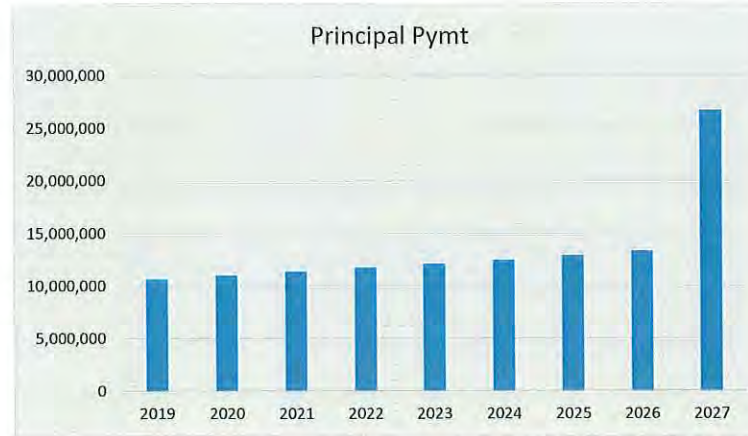
² Annual debt-service-related budget amounts may vary by year.

³ Use of monies on hand may reduce total debt service budget amounts collected from rates. As of 9/30/2019, \$31,445,722 (par amt) of investments in the General Reserve, Contingency and Debt Service Reserve accounts.

⁴ Final debt service payment is October 1, 2027.

⁵ Funds on hand in 2027 will be used to reduce payment amount to typical amount level. See note ³ above.

Indicates amounts paid by ARP due to Participant being in the ARP
 Indicates the partial assignment from the City of Vero Beach



Payment October 1	Principal Pymt
2019	10,747,000
2020	11,082,000
2021	11,432,000
2022	11,785,000
2023	12,155,000
2024	12,543,000
2025	12,953,000
2026	13,374,000
2027	26,730,000 ⁵
Total	122,801,000

TRI-CITY - Entitlement share by participant

	Entitlement Share %	Bonds, Notes and Loans Outstanding as of 9/30/2019 ¹ (\$000)	FY2019 Debt Service Related Budget ^{2,3,4} (\$000)
FORT PIERCE	22.73%	748	764
HOMESTEAD	22.73%	748	764
KEY WEST	54.55%	1,795	1,833
	100.00%	3,290	3,360

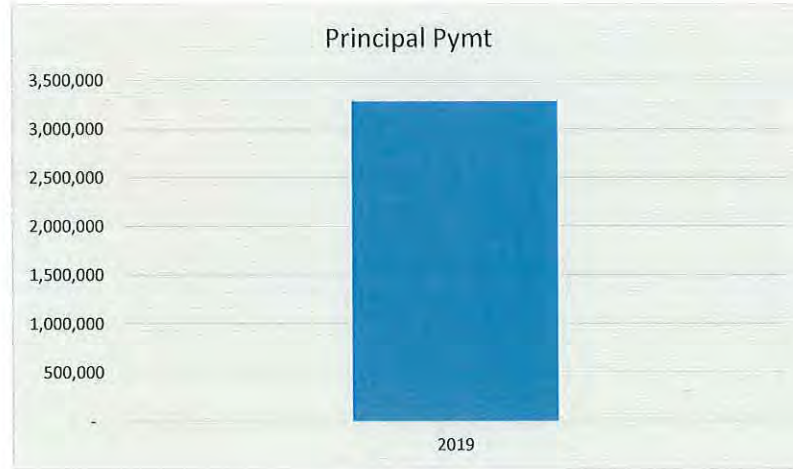
¹ Makes no assumption about any new debt needs.

² Annual debt-service-related budget amounts may vary by year.

³ Use of monies on hand may reduce total debt service budget amounts collected from rates. As of 9/30/2019, \$1,757,547 (par amt) of investments in the General Reserve and Contingency accounts.

⁴ Final debt service payment is October 1, 2019.

Indicates amounts paid by ARP due to Participant being in the ARP



Payment	Principal Pymt
October 1 2019	3,290,000
	<u>3,290,000</u>

**AGENDA ITEM 10 – MEMBER
COMMENTS**

**Board of Directors Meeting
February 13, 2020**

AGENDA ITEM 11 – ADJOURNMENT

**Board of Directors Meeting
February 13, 2020**