



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

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**SEPTEMBER 19, 2024**

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

**Dial-in info: 1-321-299-0575**

**Conference ID Number: 256 238 213 87#**

### **Board of Directors**

Barbara Quiñones, Homestead –Chair  
Lynne Tejada, Key West – Vice Chair  
Robert C. Page, Green Cove Springs – Secretary  
Allen Putnam, Jacksonville Beach – Treasurer  
Rodolfo Valladares, Alachua  
Laura Simpson, Bartow  
Traci Hall, Blountstown  
Christina Simmons, Bushnell  
Robert Presnell, Chattahoochee  
Lynne Mila, Clewiston  
Steve Doyle, Fort Meade  
Javier Cisneros, Fort Pierce  
Dino DeLeo, Gainesville  
Howard McKinnon, Havana  
Raynetta Curry Marshall, Jacksonville  
Brian Horton, Kissimmee

Ed Liberty, Lake Worth Beach  
Mike Beckham, Lakeland  
Brad Chase, Leesburg  
Vacant, Moore Haven  
Steve Langley, Mount Dora  
Mike New, Newberry  
Efren Chavez, New Smyrna Beach  
Janice Mitchell, Ocala  
Ken Zambito, Orlando  
Rob Nixon, Quincy  
Kolby Urban, St. Cloud  
Drew Mullins, Starke  
Tony Guillen, Tallahassee  
James Braddock, Wauchula  
Terry Bovaird, Williston  
Jamie England, 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:** September 12, 2024  
**RE:** **FMPA Board of Directors Meeting– 9:00 a.m., September 19, 2024**  
**PLACE:** Florida Municipal Power Agency  
 8553 Commodity Circle, Orlando, FL 32819  
**DIAL-IN:** **DIAL-IN INFO 321-299-0575, Meeting Number 256 238 213 87#**  
 (If you have trouble connecting via phone or internet, call 407-355-7767)  
**LINK:** [Click here to join the meeting](#)

## 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)**..... 8
- 6. **Sunshine Law Update (Dan O’Hagan)**..... 18
- 7. **Consent Agenda**
  - a. **Approval of the Board of Directors Minutes for the August 22, 2024 Meeting and the Joint Board of Directors and Executive Committee Meeting on August 22, 2024**..... 22
  - b. **Approval of the Projects’ Preliminary Financials as of July 31, 2024**..... 32
  - c. **Approval of the Treasury Reports as of July 31, 2024**..... 34

**8. Action Items**

- a. FMSP Amendments to Phase II and Phase III PPA's \* (Susan Schumann).. 38
- b. Approval of Resolution 2024-B3 - New Pooled Loan Program Credit Provider (Sena Mitchell) ..... 176
- c. Approval of Procurement Modifications for FY 2025 (Danyel Sullivan-Marrero)..... 380
- d. Approval of Moving Stanton II Project Funds (Louis DeSimone) ..... 387
- e. Approval of 2022-2023 OUC Audit Report (Liyuan Worner)..... 393
- f. Approval of Recommendation of FMPA's Officers for Evaluations of the General Manager and CEO and General Counsel and CLO (Chair, Barbara Quiñones) ..... 415
- g. Approval of CY 2025 Meeting Schedule (Jacob Williams)..... 418

**9. Information Items**

- a. 2024 FMPA Member Satisfaction Study Results (Susan Schumann / Chris Biggs - GreatBlue Research)..... 421
- b. Draft FY 25 Goals (Jacob Williams)..... 423
- c. Regulatory Compliance Update \* (Dan O'Hagan/LaKenya VanNorman) ... 427
- d. Annual Disclosure Training for the Board of Directors and Executive Committee \* (JoLinda Herring, Bryant Miller Olive) ..... 445

**10. Member Comments..... 446**

**11. Adjournment..... 447**

**\*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  
September 19, 2024**

**AGENDA ITEM 2 – RECOGNITION OF  
GUESTS**

**Board of Directors Meeting  
September 19, 2024**

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

**Board of Directors Meeting  
September 19, 2024**

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

**Board of Directors Meeting  
September 19, 2024**

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

**Board of Directors Meeting  
September 19, 2024**

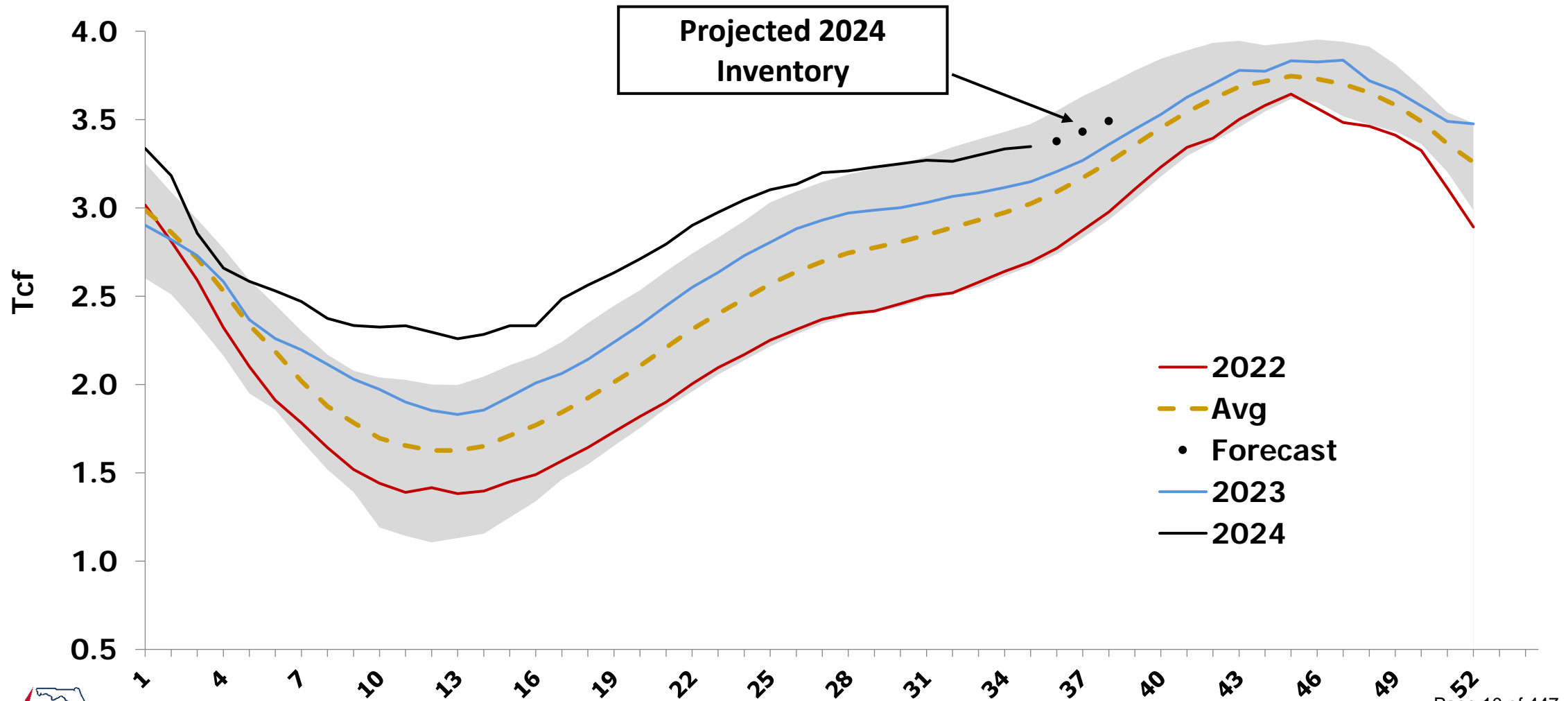


# Fiscal Year 2024 Management Goals – August Data

Goal	Status	Actual	YTD Actual	YTD Target	FY 2024 Target	Comment
<b>1. Safety</b>	Lost-time Accidents		0	0	0	0
	OSHA Recordables		0	0	0	0
<b>2. Compliance</b>	Environmental		0	0	0	0
	Financial					0
	<u>Regulatory</u> Compliance Playbook		100%	100%	93%	100%
<b>3. Low Cost</b> (\$/MWh)	FY24 Rate Objective		62.07	73.25	80.57	78.72
	Fuel		25.94	25.09	29.24	29.97
	Non-Fuel		36.13	48.16	51.34	48.75
<b>4. Strategic LT Cost Reductions</b>						
Pool Expansion Decision or Alternative Structure						Expand services and <u>Alternative being pursued</u> Requested scheduling to reduce costs short-term
Reduce Cost Exposure to Stanton						Long term discussions continue

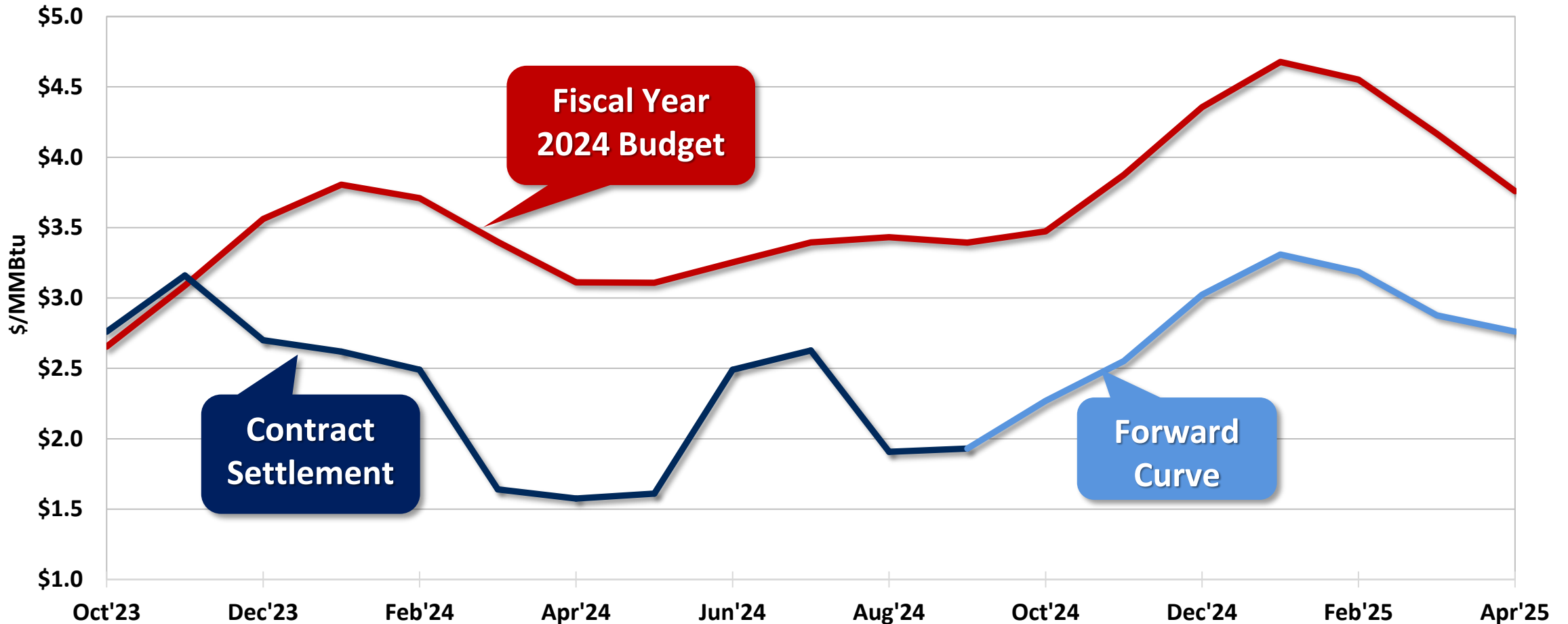
# Gas Storage Injections 223 Bcf Below Last Year

*Two Years of Mild Winters and Healthy Production Lead to Low Prices*



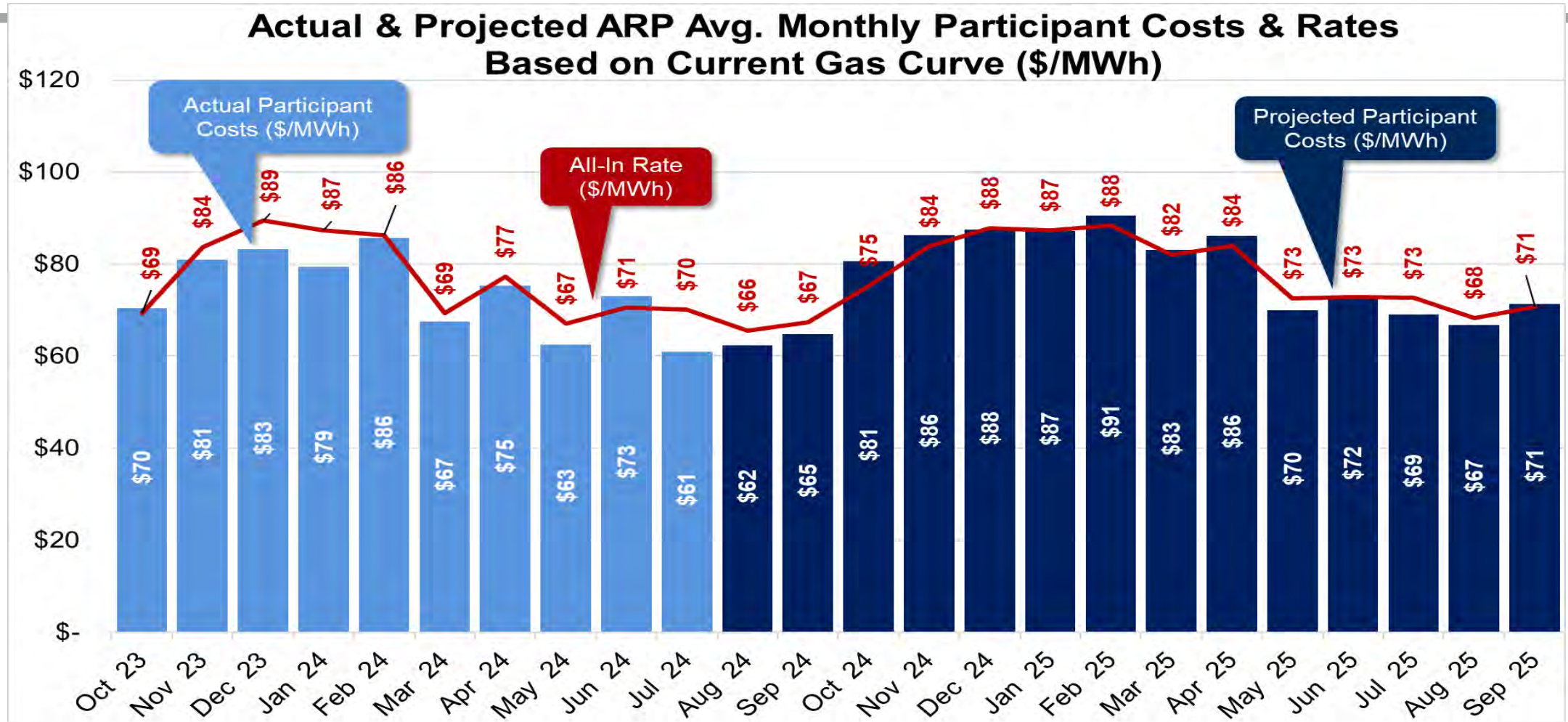
# Gas Prices Continue to Be Soft with Higher Production

## *Forward Natural Gas Curve as of September 12th*



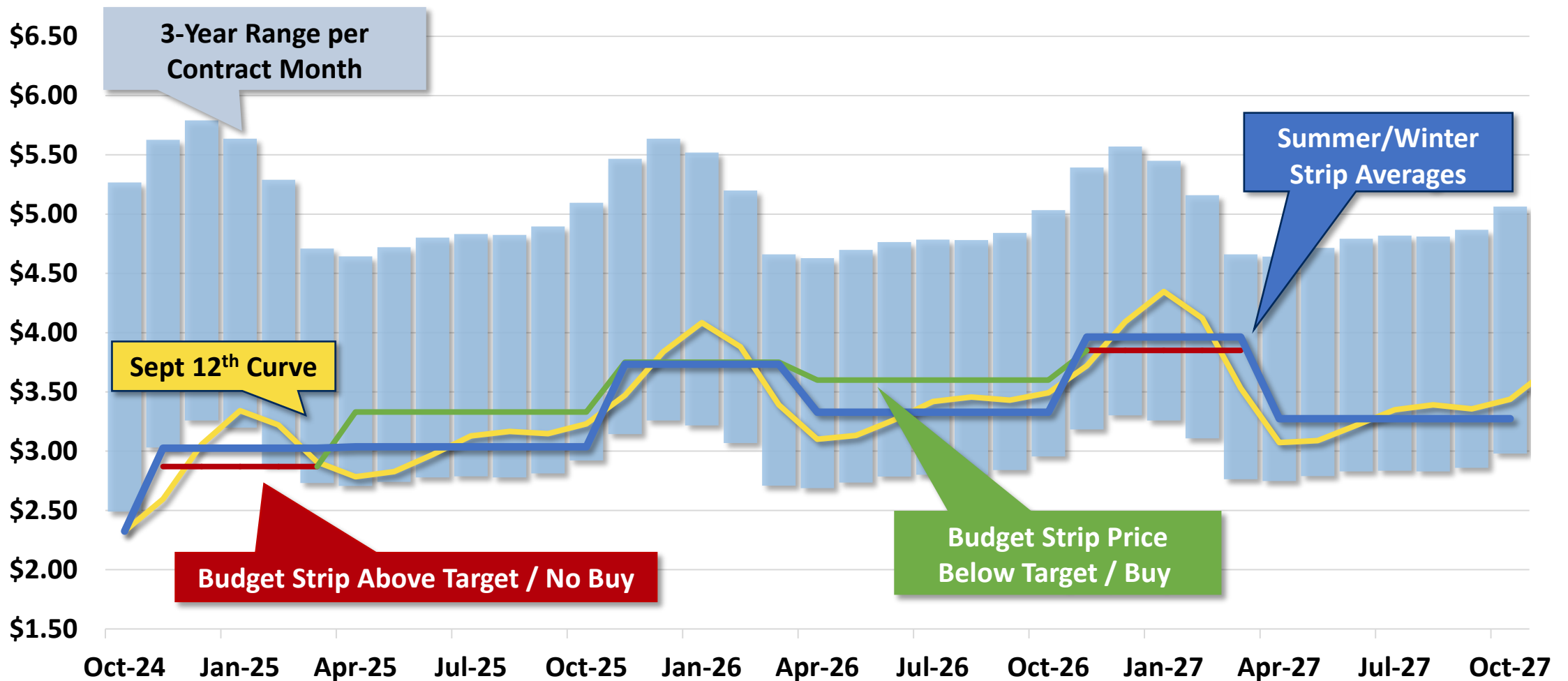
# FY 2024 Costs Projected to Finish < \$72/MWh

*FY 25 Projections Updated to Reflect FY 2025 Budget Data*



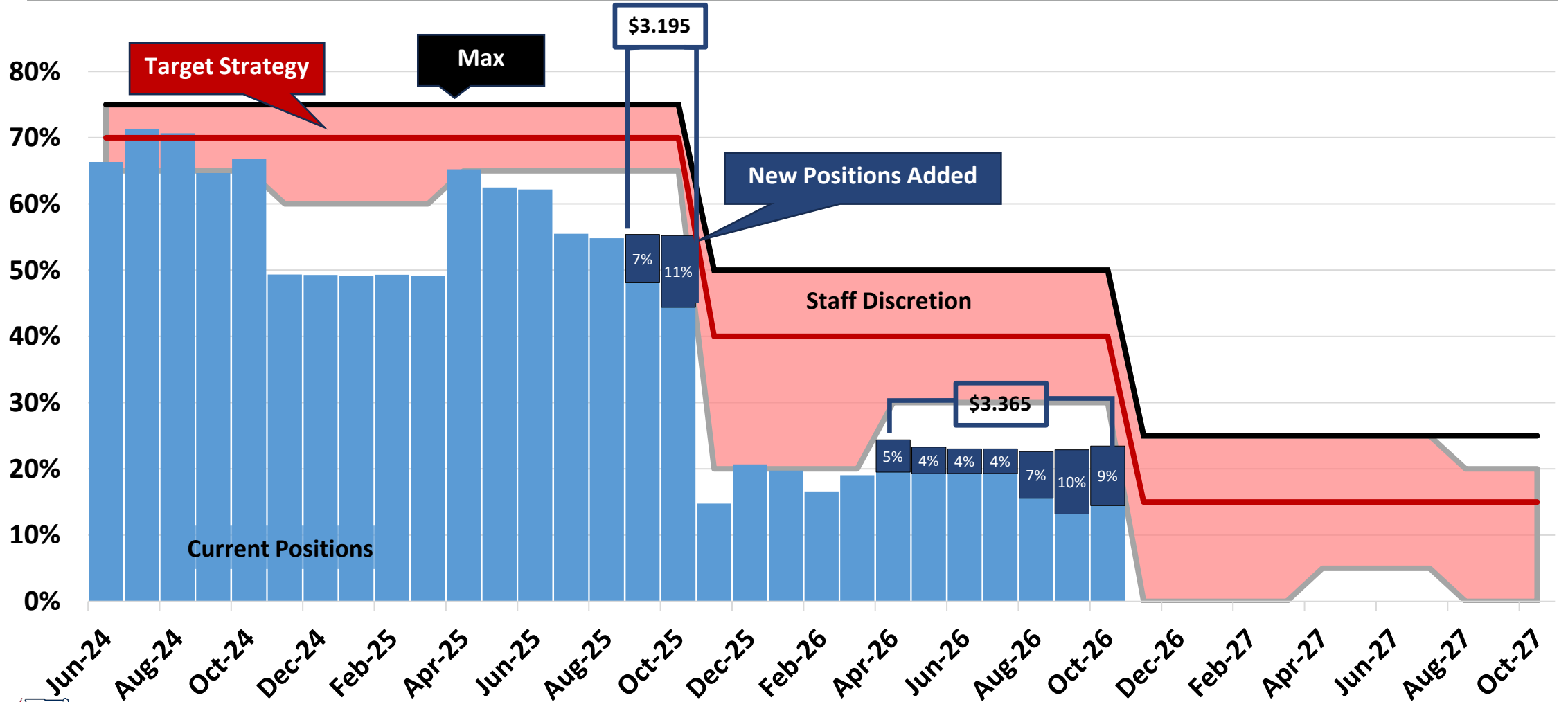
# Over Last 30 Days, Summer '25 & '26 Down ~7%

*Discretionary Buying in Declining Market Good Value for Members*



# Rate Stability Program – Prices in Summer Targets

*Added 3% and 6% More Gas for Summer of 2025 & 2026, Respectively*



Goal	Status	Actual	YTD Actual	YTD Target	FY 2024 Target	Comment
5. Cyber-security	Breaches	0	0	0	0	
	Phishing tests % Acknowledge Phishing	3.3% 59%	3.3% 63%	<7.5% >60%	<7.5% >60%	3 clicks in August. 53 people reported the phish test. We have gone from 77 people to 90 people being tested.
6. Reliability	CC EAF	100%	91%	89%	90%	
	SI black start and trans. backup	4	98%	100%	100%	4 Starts for tie-line support in Aug. YTD 45 attempts, 44 successful
	SI EAF	96%	89%	92%	92%	SI MSD 1 was in forced outage due to ETR. SI MSD 2 was in forced outage due to CEM issue.
7. Member Reliability	Reliability Major	1	12	11	12	Bushnell TripSaver failure investigation and subsequent training Bartow OMS selection discussion Starke Relay Support
	Reliability Minor	2	22	16.5	18	
	Aiding Reporting & Doc.		4	5.5	6	
8. Member Services	Leadership member visits	7	71	68.75	75	
	Community/Stakeholder Presentations/Support	2 6	13 23	18	20	Public Service Commission (9/5) MPUA (Sept. 26) 23 Energy Policy Post with High Impressions

Goal	Status	Actual	YTD Actual	YTD Target	FY 2024 Target	Comment
<b>9. Day 1 Plant Integrations</b>	Operating Vendor Integration Team Members Payroll					Sand Lake integration continues Mulberry closed 8/9 and operational, successful migration, payroll processed successfully
<b>10. Financing</b>	Pre-pay Gas/Solar	0	1	1	2	Completed summer gas pre-pay After Origis delay, working on combination solar/gas prepay with 7.5% min savings or \$15M NPV
	Debt vs R&R Guidelines	100%	100%	100%	100%	Complete
<b>11. People</b>	Day 1 Offers to Everyone Minimum Acceptance Agency-wide Engagement	100% 100% 85%	100% 100%	100% 80%	100% 80% 82%	10 of 10 Sand Lake offers accepted Mul. 17 offers made - 17 accepted Survey results 85% engagement
<b>12. Nuclear</b>	Explore expansion at existing FL sites					Energy Legislation included new nuclear study for FY25 FCG formed nuclear subcommittee Good discussion with FPSC 9/5



**AGENDA ITEM 6 – SUNSHINE LAW  
UPDATE**

**Board of Directors Meeting  
September 19, 2024**



## 6 – Sunshine Law Update

FMIPA Board of Directors

September 19, 2024

■ NEWS

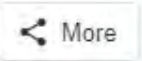
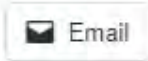
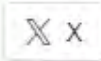
# Jacksonville state attorney seeks \$130K from activist who lost records lawsuit, citing a rarely-used legal provision

*State Attorney Melissa Nelson argued that Curtis Lee's lawsuit was filed for an 'improper purpose,' igniting a debate about the boundaries of citizens' rights to access public information.*



by **Bea Lunardini**

August 30, 2024



# Public Records & Attorney's Fees

## *Requests made for "Improper Purpose"*

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- “If the court determines [the PR request was for] an improper **purpose, the court...**shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action.”
- **“ “[I]mproper purpose” means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose.”**

**AGENDA ITEM 7 – CONSENT  
AGENDA**

- a. Approval of the Minutes for the  
Meeting Held August 22, 2024**

**Board of Directors Meeting  
September 19, 2024**

**MINUTES NOTES**  
**FMPA BOARD OF DIRECTORS MEETING**  
**FLORIDA MUNICIPAL POWER AGENCY**  
**THURSDAY AUGUST 22, 2024**  
**8553 COMMODITY CIRCLE**  
**ORLANDO, FL 32819**  
**9:00 A.M.**

**MEMBERS PRESENT** Michael Poucher, Bartow \*  
Morgan Wilson, Bushnell (virtual)  
Lynne Mila, Clewiston  
Javier Cisneros, Fort Pierce  
Bob Page, Green Cove Springs  
Howard McKinnon, Havana  
Barbara Quinones, Homestead  
Raynetta Curry Marshall, Jacksonville (virtual)  
Allen Putnam, Jacksonville Beach  
Lynne Tejeda, Key West (virtual)  
Jason Terry, Kissimmee  
Ed Liberty, Lake Worth Beach  
Mike Beckham, Lakeland (virtual)  
Brad Chase, Leesburg (virtual)  
Steve Langley, Mount Dora (virtual)  
Efren Chavez, New Smyrna Beach  
Janice Mitchell, Ocala  
Ken Zambito, Orlando  
Kolby Urban, St. Cloud (virtual)  
Drew Mullins, Starke  
Tony Guillen, Tallahassee (virtual)  
Jamie England, Winter Park

\*Joined after roll call.

**OTHERS PRESENT** Daniel Retherford, Fort Pierce  
Billy Branch, Homestead (virtual)  
Ricky Erixton, Jacksonville (virtual)  
Kurtis Wilson, Jacksonville  
Mike Staffopoulos, Jacksonville Beach (virtual)  
Aaron Haderle, Kissimmee (virtual)  
Kevin Crawford, Kissimmee (virtual)  
James Terry, Kissimmee  
Dan Goetz, Kissimmee (virtual)  
Brian King, Lake Worth Beach (virtual)  
Tory Bombard, Lakeland (virtual)  
Jim Williams, Leesburg (virtual)

Tony Guillen, Tallahassee (virtual)  
Lisa Vedder, Winter Park  
Aaron Casto, FMPP  
Craig Dunlap, Dunlap & Associates, Inc. (virtual)  
Claston Sunanon, Winter Park (virtual)  
Mike Mace, PFM  
Austin Pierce, OUC  
Attila Miszti, OUC  
Wallace Whiting, OUC (virtual)  
Joe Naberhaus, OUC (virtual)  
Rob Taylor, (virtual)  
Aaron Casto, FMPP Executive Director

**STAFF  
PRESENT**

Jacob Williams, General Manager and CEO  
Jody Finklea, General Counsel and CLO  
Ken Rutter, Chief Operating Officer  
Dan O'Hagan, Deputy General Counsel and Manager of Regulatory Compliance  
Sue Utley, Executive Asst. /Asst. Secy. to the Board  
Mike McCleary, Member Services Manager  
Sharon Adams, Chief People and Member Services Officer  
Susan Schumann, Public Relations and External Affairs Manager  
David Schumann, Generation Fleet Engineering Director  
Chris Gowder, Vice President IT/OT and System Ops  
LaKenya VanNorman, Senior Regulatory Compliance Specialist  
Rich Popp, Chief Financial Officer  
Lindsay Jack, Senior Administrative & Member Services Assistant  
Wayne Koback, IT Manager  
Jason Wolfe, Financial Planning, Rates and Budget Director  
Ed Nunez, Assistant Treasurer-Debt/Insurance  
Emily Magg, Public Relations Specialist  
Mary Kathryn Patterson, Senior Public Relations Specialist  
Danyel Sullivan-Marrero, Controller  
Jose C. Molina-Bravo, Manager of Member Services Development  
Allan Czerkiewicz, Mulberry Plant Manager  
Tim Jackson, TCEC Plant Manager  
Jason Wolfe, Mulberry Plant Operations and Maintenance Manager  
Krizia Maldonado, Plant Report and Document Administrator  
Jill Ramsaur, Human Resources Assistant

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

Chair, Barbara Quinones, Homestead, called the Board of Directors meeting to order at 9 a.m. on Thursday, August 22, 2024, 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 21 members present representing 34.5 votes out of a possible 48.5 votes. Mike Poucher, Bartow, arrived just after roll call bringing the quorum to 22 members present representing 35.5 votes out of a possible

48.5 votes.

## **ITEM 2 – Recognition of Guests**

Jacob Williams welcomed Attila Miszti OUC, Chief Operating Officer and Ken Zambito OUC, Vice President of Transmission.

Jacob Williams welcomed Mulberry plant staff, Allen Czerkiewicz Plant Manager and Jason Wolfe Assistant Plant Manager

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

None.

## **ITEM 4 – SET AGENDA (by vote)**

**MOTION:** Allen Putnam, Jacksonville Beach, moved approval of the agenda as presented. Javier Cisneros, Fort Pierce, seconded the motion. Motion Carried 35.5-0.

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

Jacob Williams reported on the following items:

1. Goals Score Card
2. Mulberry Plant Integration
3. Joint BOD & EC meeting after this meeting
4. Tim Jackson new plant manager
5. General Fund Transfer Survey

## **ITEM 6 – SUNSHINE LAW UPDATE**

Dan O'Hagan reported on responding to public records requests.

## **ITEM 7 – CONSENT AGENDA**

- a. Approval of Minutes – Meeting Held July 31, 2024
- b. Approval of the Projects' Preliminary Financials as of June 30, 2024
- c. Approval of the Treasury Reports as of June 30, 2024
- d. Approval of Depository Bank Contract Extension\*

**MOTION:** Howard McKinnon, Havana, moved approval of the consent agenda. Allen



Putnam, Jacksonville Beach, seconded the motion. Motion Carried 35.5-0.

**ITEM 8 – ACTION ITEMS**

None

**ITEM 9 – INFORMATION ITEMS**

**a. FMSP Amendments to Phase II and Phase III PPA’s \***

Susan Schumann provided an update on amendments to Phase II and Phase III PPA’s

October 15<sup>th</sup> celebration – Rice Creek Ribbon cutting. Invites to come soon.

**b. Notice of Annual continuing Disclosure Report of the Fiscal Year Ended September 30, 2023 \***

Ed Nunez provided an update on the annual continuing Disclosure Report

**c. Pooled Loan Program New Credit Provider**

Sena Mitchell provided an update on the Pooled Loan Program

**d. Proposed Procurement Modifications FY 2025 \***

Danyel Sullivan-Marrero provided an update on Procurement Modifications

**ITEM 10 – MEMBER COMMENTS**

None

**ITEM 11 – ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:54 a.m.

\_\_\_\_\_  
Barbara Quiñones  
Chairperson, Board of Directors

\_\_\_\_\_  
Sue Utley  
Assistant Secretary

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

Seal

BQ/su

**CLERKS DULY NOTIFIED .....August 15, 2024**  
**AGENDA PACKAGES POSTED.....August 15, 2024**

**MINUTES**  
**FMPA JOINT BOARD OF DIRECTORS AND EXECUTIVE COMMITTEE MEETING**  
**FLORIDA MUNICIPAL POWER AGENCY**  
**THURSDAY AUGUST 22, 2024**  
**8553 COMMODITY CIRCLE**  
**ORLANDO, FL 32819**  
**9:00 A.M.**

**BOD MEMBERS**

**PRESENT** Mike Poucher, Bartow  
Lynne Mila, Clewiston  
Javier Cisneros, Fort Pierce  
Bob Page, Green Cove Springs  
Howard McKinnon, Havana  
Barbara Quinones, Homestead  
Raynetta Curry Marshall, Jacksonville (virtual)  
Allen Putnam, Jacksonville Beach  
Lynne Tejeda, Key West (virtual)  
Brian Horton, Kissimmee  
Ed Liberty, Lake Worth Beach  
Brad Chase, Leesburg (virtual)  
Steve Langley, Mount Dora (virtual)  
Joe Bunch, New Smyrna Beach  
Janice Mitchell, Ocala  
Ken Zambito, Orlando  
Kolby Urban, St. Cloud (virtual)  
Drew Mullins, Starke  
Tony Guillen, Tallahassee (virtual)  
Jamie England, Winter Park

**EC MEMBERS**

**PRESENT:** Lynne Mila, Clewiston  
Javier Cisneros, Fort Pierce  
Bob Page, Green Cove Springs  
Howard McKinnon, Havana  
Allen Putnam, Jacksonville Beach  
Lynne Tejeda, Key West (virtual)  
Brian Horton, Kissimmee  
Brad Chase, Leesburg (virtual)  
Janice Mitchell, Ocala  
Drew Mullins, Starke

**OTHERS** Billy Shiskin, Alachua  
**PRESENT** Michael Poucher, Bartow  
Morgan Wilson, Bushnell

Daniel Retherford, Fort Pierce  
Billy Branch, Homestead  
Kurtis Wilson, Jacksonville  
Mike Staffopoulos, Jacksonville Beach  
Aaron Haderle, Kissimmee  
James Terry, Kissimmee  
Dan Goetz, Kissimmee  
Brian King, Lake Worth Beach  
Tory Bombard, Lakeland  
Mike Beckham, Lakeland  
Jim Williams, Leesburg  
Efren Chavez, New Smyrna Beach  
Doug Peebles, Ocala  
Marie Brooks, Ocala  
Claston Sunanon, Winter Park  
Robert Pollack, OUC  
Angelisa Pinkston Young, OUC  
Attila Miszti, OUC  
Austin Pierce, OUC  
Damian O'Reilly, OUC  
Howard Fraser, OUC  
Joe Naberhaus, OUC  
Trent Lewis, OUC  
Troy Rivera, OUC  
Wade Gillingham, OUC  
Wallace Whiting IV, OUC  
Mike Mace, PFM  
Craig Dunlap, Dunlap and Associates  
Rob Taylor, GDS Associates  
Aaron Casto, FMPP

**STAFF  
PRESENT**

Jacob Williams, General Manager and CEO  
Jody Finklea, General Counsel and CLO  
Ken Rutter, Chief Operating Officer  
Dan O'Hagan, Deputy General Counsel and Manager of Regulatory Compliance  
Sue Utley, Executive Asst. /Asst. Secy. to the Board  
Mike McCleary, Member Services Manager  
Sharon Adams, Chief People and Member Services Officer  
Susan Schumann, Public Relations and External Affairs Manager  
David Schumann, Generation Fleet Engineering Director  
Chris Gowder, Vice President IT/OT and System Ops  
LaKenya VanNorman, Senior Regulatory Compliance Specialist  
Rich Popp, Chief Financial Officer  
Lindsay Jack, Senior Administrative & Member Services Assistant  
Wayne Koback, IT Manager  
Jason Wolfe, Financial Planning, Rates and Budget Director  
Danyel Sullivan-Marrero, Controller

Mary Kathryn Patterson, Senior Public Relations Specialist  
Emily Magg, Public Relations Specialist  
Jose C. Molina-Bravo, Manager of Member Services Development

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

Chair, Barbara Quinones, Homestead, called the Joint Board of Directors and Executive Committee meeting to order at 10 a.m. on Thursday, August 22, 2024, in the Frederick M. Bryant Board Room at Florida Municipal Power Agency, 8553 Commodity Circle, Orlando, Florida. The Board of Directors roll was taken, and a quorum was declared with 20 members present representing 32.5 votes out of a possible 48.5 votes. The Executive Committee roll was taken, and a quorum was declared with 10 members present.

### **ITEM 2 – SET AGENDA**

**MOTION:** Allen Putnam, Jacksonville Beach, moved approval of the agenda as presented. Javier Cisneros, Fort Pierce, seconded the motion. Motion Carried.

### **ITEM 3 – RECOGNITION OF GUESTS**

Chair, Barbara Quinones, Homestead, welcomed Craig Dunlap and Aaron Casto of Florida Municipal Power Pool.

### **ITEM 4 – PUBLIC COMMENTS**

None

### **ITEM 5 – COMMENTS FROM THE CHAIRS**

Barbara Quinones, Homestead,

### **ITEM 6 – INFORMATION ITEMS**

- a. Update on Stanton Ownership Discussions & FMPP Expansion of Services and Options

Jacob Williams provided an update on Stanton Ownership & FMPP Expansion of Services Options.

Discussion ensued among Board of Directors and Executive Committee with input and information from staff and others present.

### **ITEM 7 – MEMBER COMMENTS**

Javier Cisneros, Fort Pierce, commented on last year's annual conference video being great but this year's was even better.

**ITEM 8 – ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:47 a.m.

\_\_\_\_\_  
Barbara Quiñones  
Chairperson, Board of Directors

\_\_\_\_\_  
Sue Utley  
Assistant Secretary

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

Seal

BQ/su



**AGENDA ITEM 7 – CONSENT  
AGENDA**

- b. Approval of the Projects’  
Preliminary Financials as of July  
31, 2024**

**Board of Directors Meeting  
September 19, 2024**



**Rich Popp**  
Chief Financial Officer

## AGENDA PACKAGE MEMORANDUM

**TO:** FMPA Board of Directors  
**FROM:** Rich Popp  
**DATE:** September 12, 2024  
**SUBJECT:** 7b – Approval of Projects’ Financials as of July 31, 2024

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**Discussion:** The summary financial statements and detailed financial statements, which include GASB #62 transactions, of the Projects for the period ended July 31, 2024 are posted on the Document Portal section of FMPA’s website.

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**Recommended:** Move approval of the Projects’ Financial Reports for the month ended July 31, 2024.

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RP/GF



**AGENDA ITEM 7 – CONSENT  
AGENDA**

- c. Approval of the Treasury Reports  
as of July 31, 2024**

**Board of Directors Meeting  
September 19, 2024**



**AGENDA PACKAGE MEMORANDUM**

TO: FMPA Board of Directors  
 FROM: Melissa Cain  
 DATE: September 12, 2024  
 ITEM: BOD 7(c) – Approval of Treasury Reports as of July 31, 2024

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

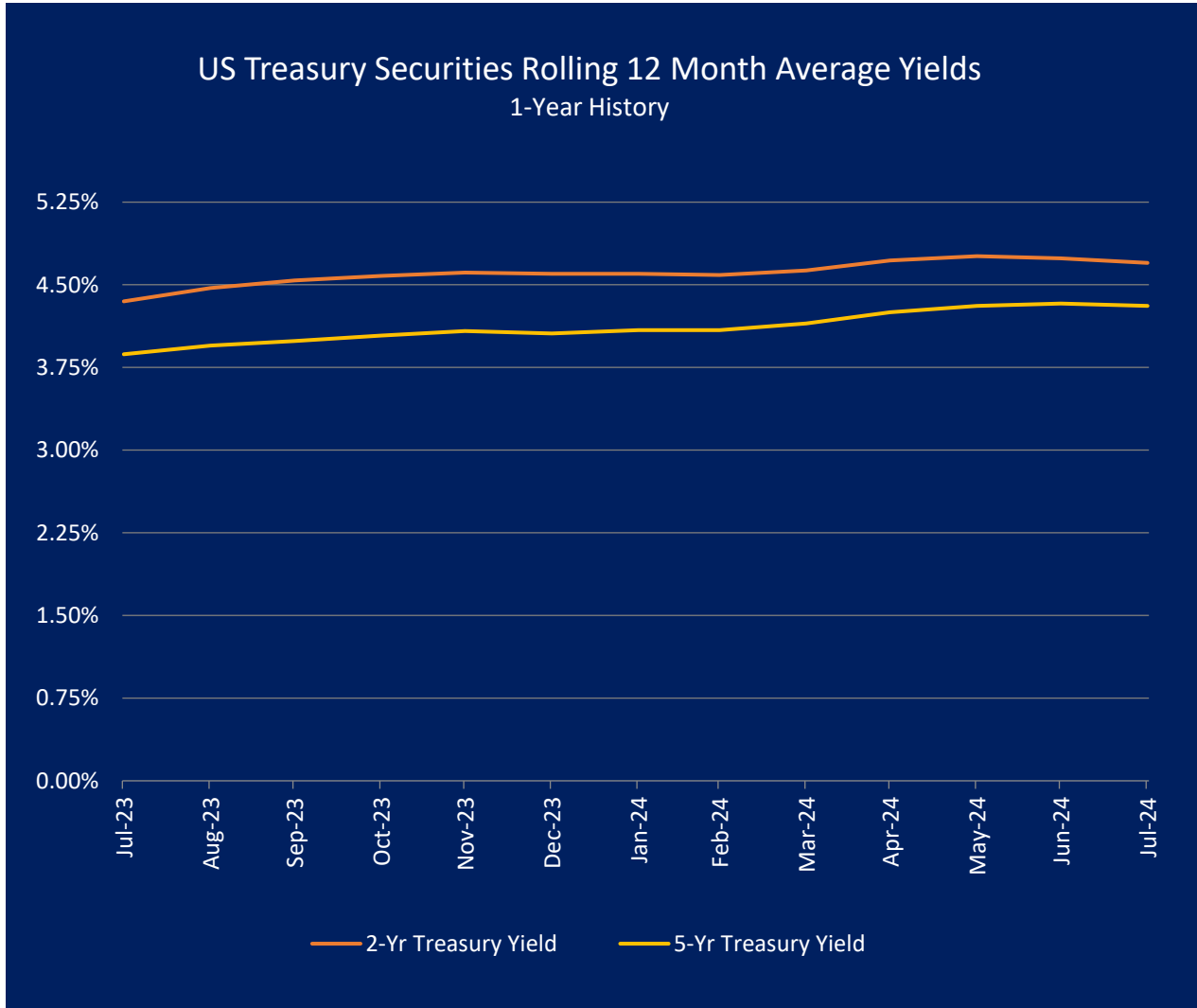
The Treasury Department reports for July are posted in the member portal section of FMPA’s website.

**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 July 31, 2024.

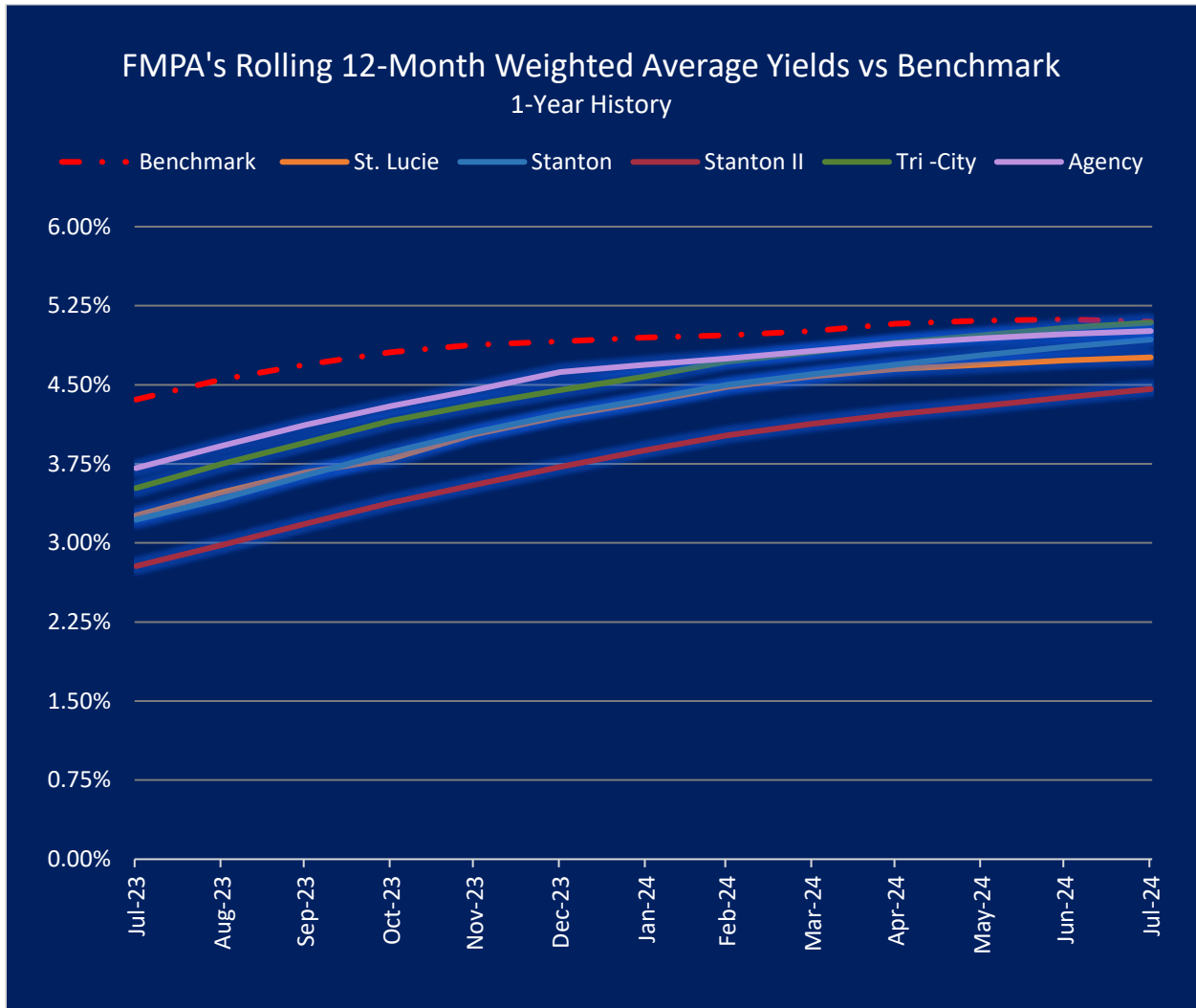
	<b>Total debt Outstanding</b>	<b>Fixed Rate</b>	<b>Variable Rate</b>	<b>Synthetically Fixed</b>
Agency	1,000,000.00	100%	0%	0%
St Lucie	50,600,000.00	100%	0%	0%
Stanton	0.00	0%	0%	0%
Stanton II	61,638,500.11	100%	0%	0%
Tri City	0.00	0%	0%	0%

**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 the rolling 12-month average US Treasury yields for the past year. The orange line is the 2-year Treasury which had a rolling 12-month average yield on July 31, 2024, of 4.70%. The yellow line is the 5-year Treasury rolling 12-month average yield which was 4.31%.



The rolling 12-month weighted average yields on investments earned as of July 31, 2024, in the Projects, along with their benchmark (Average of Florida Prime Fund and 2-year treasury), are as follows:



Recommended  
Motion

Move approval of the Treasury Reports for July 31, 2024.

**AGENDA ITEM 8 – ACTION ITEMS**

- a. FMSP Amendments to Phase II  
and Phase III PPA's**

**Board of Directors Meeting  
September 19, 2024**



# **8a – FMSP Amendments to Phase II and Phase III PPA's**

Board of Directors

September 19, 2024

# Rice Creek Preparing for Commercial Operation

## *Ribbon-Cutting Ceremony scheduled for October 15*

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- Facility began producing test energy late August
- Date of Commercial Operation TBD
- Please RSVP to invitation sent on September 9

# Whistling Duck Amendment Requested by Origis

*Reconfiguration of Phase III facilities allows optimal allocation of shares*

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- Whistling Duck Amendments requested due to regulation, inflation, interconnection and market concerns:
  - Extension of Commercial Operation Date
  - Increase to contract price
- Eight of twelve Whistling Duck participants (~41.6MW) will exit project due to increase
- Reconfiguration of Whistling Duck and Phase III PPA's to optimize participation. Assumes:
  - Reallocation of member participation to reduce from five to four total facilities
  - Whistling Duck, Leyland, Hampton, and New River PPA's will require amendments.
  - Penholoway will require mutual termination agreement.
  - Optimization of member allocations between FPL and Duke interconnected facilities.
    - Energy Exchange Agreements between ARP, Homestead and Mount Dora will be required.
  - ARP reduces Phase III allocation (from 70.85 MW to ~31 MW)
  - All affected facilities will have equal pricing in \$/MWh



# Current Allocations for All Five Facilities

*Red numbers indicate 8 participants planning to exit Whistling Duck*

*Blue indicates Leesburg's plan to exit Leyland and Phase III Individual Share*

Participant	Whistling Duck (DEF)	Leyland (DEF)	Penholoway (DEF)	Hampton (FPL)	New River (FPL)	Total
ARP		49.3	21.55			70.85
Fort Pierce	7.5					7.5
Havana	0.125					0.125
Homestead	2.5			10		12.5
Jacksonville Beach	7.5					7.5
JEA				64.9	74.9	139.8
Key West	12.5	12.6				25.1
Kissimmee	10					10
Lake Worth Beach	13.275		33.35			46.625
Leesburg		10				10
Mount Dora	1					1
New Smyrna Beach	5					5
Newberry	0.5					0.5
Ocala	10	3				13
Winter Park	5		20			25
Total	74.9	74.9	74.9	74.9	74.9	374.5

# Revised Participant Allocations by Facility

*Weighted toward Whistling Duck for earlier solar delivery*

Participant	Whistling Duck (DEF)	Leyland (DEF)	Penholoway (terminate)	Hampton (FPL)	New River (FPL)	Total
ARP		31.175				31.175
JEA				74.9	74.9	149.8
Homestead	9	3.5				12.5
Key West	27	9.5				36.5
Lake Worth Beach	20.900	20.725				41.625
Ocala		3				3
Winter Park	18	7				25
Total	74.9	74.9		74.9	74.9	299.6

# Five PPA's Will Be Impacted by This Action

*Required to reconfigure and reduce from five to four total facilities*

---

- Whistling Duck Amendments
  - Amend project pricing
  - Extend Commercial Operation Date
  - Increase Daily Damages
  - Update Participants and Shares
- Leyland and Hampton Amendments
  - Update Participants and Shares, minor corrections, and update to attached Power Sales Contract
  - Leyland credit downgrade event revised to make consistent with Whistling Duck language
- New River Amendment
  - Minor corrections and update to attached Power Sales Contract
- Penholoway Mutual Termination and Release Agreements

# Other Agreements / Enabling Documents

## *Participation Agreements, Power Sales Contracts, Energy Exchange*

---

No substantive changes to these documents; only revisions to enable PPA Amendments:

- ARP Individual participants will approve revised Participation Agreements, including revised Schedule B-1, or Mutual Termination & Release
- Solar II and III Project participants will approve revised Power Sales Contracts
- Energy Exchange Agreements between ARP, Homestead and Mount Dora will be required to avoid transmission wheeling

# Target September BOD and EC Approval and Execution

## *Local approvals received in August / September*

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- Phase II and III Committees approve PPA Amendments at July 22 meeting
- All Phase II and III participants have received local governing board approvals for PPA Amendments and enabling documents
  - Includes Power Sales Contracts, Participation Agreements (ARP Individual participants), and Exchange Agreements (Mount Dora and Homestead)
  - Target date for local approvals is **September 18, 2024**
  - FMPA Staff available for support
- Board and EC to approve Amendments to all affected PPA's and enabling documents **at September 19 meetings**

# Recommended Motions

## *For Approval at September Board Meeting*

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### **Board of Directors:**

- Move for approval of:
  - Amendment Number 2 to Whistling Duck Solar PPA
  - Amendment Number 1 to Hampton Solar PPA
  - Amendment Number 1 to New River Solar PPA
  - New Leyland Solar PPA
  - Mutual Termination & Release of Penholoway Solar PPA
  - Amendment Number 2 to Solar II Project Power Sales Contract
  - Amendment Number 1 to Solar III Project Power Sales Contract

Such approval to be conditioned upon receipt of all required local governing board approvals. Authorize execution of all documents necessary to effect the same.

# Recommended Motions

## *For Approval at September Executive Committee Meeting*

---

### **Executive Committee:**

- Move for approval of:
  - Amendment Number 2 to Whistling Duck Solar PPA
  - Amendment Number 1 to Leyland Solar PPA
  - Mutual Termination & Release of Penholoway Solar PPA
  - First Amended and Restated Solar II Participation Agreements, including amendment to ARP Contract Rate Schedule B-1:
    - Fort Pierce, Havana, Jacksonville Beach, Key West, KUA, Newberry, Ocala
  - First Amended and Restated Solar III Participation Agreements, including amendment to ARP Contract Rate Schedule B-1:
    - Key West, Leesburg, Ocala
  - Mutual Termination & Release of Leesburg Solar III Participation Agreement
  - Energy Exchange Agreement with the City of Homestead
  - Energy Exchange Agreement with the City of Mount Dora

Such approvals to be conditioned upon receipt of all required local governing board approvals. Authorize execution of all documents necessary to effect the same

**Amendment Number Two to the  
Solar Power Purchase Agreement  
between Florida Municipal Power Agency, as Buyer,  
and FL Solar 8, LLC, as Seller, dated as of December 12, 2019.**

This Amendment Number Two to the Solar Power Purchase Agreement between Florida Municipal Power Agency (Solar II Project), as Buyer, and FL Solar 8, LLC, as Seller, dated as of December 12, 2019 (“Amendment Number Two”), is entered into as of this \_\_\_ day of \_\_\_\_\_, 2024 (the “Second Amendment Effective Date”), by and between the Florida Municipal Power Agency, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“Buyer”) and FL Solar 8, LLC, a Delaware limited liability company (“Seller”). Buyer and Seller are each individually referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the Parties entered into that certain Solar Power Purchase Agreement for the Whistling Duck solar project, dated as of December 12, 2019, as amended by Amendment Number One to the Solar Power Purchase Agreement, dated as of March 2, 2023 (the “PPA”); and

**WHEREAS**, the Parties desire to further amend the PPA as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants in the PPA as amended and herein contained, the Parties hereby mutually agree as follows:

1. Amendments.
  - a. Section 1.1 of the PPA is amended by deleting the definition of “Buyer’s Share” in its entirety and replacing it with the following definition:

**“Buyer’s Share”** means 63.952%.
  - b. Section 1.1 of the PPA is amended by deleting the definition of “Commercial Operation Date” in its entirety and replacing it with the following definition:

**“Commercial Operation Date”** means the earlier of (a) the date on which Commercial Operation has occurred with respect to the full Expected Project Capacity and Seller has provided written notice of the Commercial Operation Date to Buyer; and (b) 180 days after the Target Commercial Operation Date (after giving effect to Permitted Extensions).
  - c. Section 1.1 of the PPA is amended by deleting the definition of “Continuation Option” in its entirety.



- d. Section 1.1 of the PPA is amended by deleting the definition of “Daily Delay Damages” in its entirety and replacing it with the following definition:

**“Daily Delay Damages”** means an amount equal to the number of MWs of Capacity Shortfall multiplied by (a) [REDACTED] per day for each of the first ninety (90) days such damages are due, and (b) [REDACTED] per day for each day thereafter that such damages are due.

- e. Section 1.1 of the PPA is amended by deleting the definition of “Default Commercial Operation Date” in its entirety and replacing it with the following definition:

**“Default Commercial Operation Date”** means one hundred eighty (180) days after the Target Commercial Operation Date, as the Target Commercial Operation date may be extended pursuant to Section 4.2(b).

- f. Section 1.1 of the PPA is amended by deleting the definition of “ITC Extension” in its entirety.

- g. Section 1.1 of the PPA is amended by deleting the definition of “Option Price” in its entirety.

- h. Section 1.1 of the PPA is amended by deleting the definition of “Target Commercial Operation Date” in its entirety and replacing it with the following definition:

**“Target Commercial Operation Date”** means December 31, 2025.

- i. Section 1.1 of the PPA is amended by deleting the definition of “Termination Option” in its entirety.

- j. The PPA is amended by adding a new Section 2.2 immediately following Section 2.1, as follows:

## **2.2 Renewal Term Pricing**

The Contract Price during any Renewal Term shall be determined according to the Renewal Term Option Pricing Table in Exhibit A, Section I.B, which Table shall be applied as follows:

(a) The “Contract Price” pricing in such Table shall apply to the corresponding Contract Year during any five (5) year Renewal Term that is mutually agreed to in writing by Buyer and Seller.

(b) The “Option 1” pricing in such Table shall apply to the corresponding Contract Year during any five (5) year Renewal Term that has been elected by Buyer at Buyer’s sole discretion; provided, however, that Option 1 pricing shall only apply to the extent that: (a) Seller has not mutually agreed to extend the Agreement under the “Contract Price” pricing; and (b) Buyer elects and commits to two (2), five (5) year Renewal Terms by providing Notice of extension for both such Renewal Terms no less than 365 days prior to the end of the Initial Term in accordance with Section 2.1. To the extent necessary, pursuant to Section 19.2 of the Agreement, the Parties waive any contrary interpretation that the “Option 1” pricing applies if Buyer commits to less than 10 years of Renewal Terms prior to 365 days prior to the end of the Initial Term.

(c) The “Option 2” pricing shall apply to the corresponding Contract Year during any five (5) year Renewal Term that has been elected by Buyer at Buyer’s sole discretion; provided, however, that Option 2 pricing shall only apply to the extent that: (a) Seller has not mutually agreed to extend the Agreement under the “Contract Price” pricing; and (b) Buyer elects one (1), five (5) year Renewal Term, or subsequent five (5) year Renewal Term after the first Renewal Term, if applicable, by providing Notice(s) of renewal in accordance with Section 2.1.

- k. Section 4.2(b)(i) of the PPA is amended by deleting “three hundred sixty (360) days” and replacing it with “one hundred eighty (180) days”.
- l. Section 4.2(b)(iii) of the PPA is amended by deleting “three hundred sixty (360) days” and replacing it with “one hundred eighty (180) days”.
- m. Section 4.3(a) of the PPA is deleted in its entirety and replaced with the following in lieu thereof:

(a) If the Project does not achieve Commercial Operation on or before December 31, 2025, then:

(i) If there are no Permitted Extensions pursuant to Section 4.2(b), or if there is an Interconnection Delay or Permitting Delay pursuant to Section 4.2(b)(i) and 4.2(ii), respectively, then Buyer shall be entitled to draw upon the Seller’s Performance Assurance for liquidated damages equal to Daily Delay Damages for each day or portion of a day that the Project does not achieve the Commercial Operation Date after December, 2025, until the earlier of (x) the date that is one hundred and eighty (180) days after such date, and (y) the Commercial Operation Date; or

(ii) If there is a Force Majeure Extension pursuant to Section 4.2(b)(iii), then Buyer shall be entitled to draw upon the Seller’s Performance Assurance for

liquidated damages equal to Daily Delay Damages for each day or portion of a day that the Project does not achieve the Commercial Operation Date after the Target Commercial Operation Date as it may be extended by such Force Majeure Extension until the earlier of (i) the date that is one hundred and eighty (180) days after such extended Target Commercial Operation Date, and (ii) the Commercial Operation Date (in the case of either Section 4.3(a)(i) or (ii), the “**Project Cure Period**”).

- n. Section 4.4 of the PPA is deleted in its entirety and replaced with the following in lieu thereof:

**4.4 Project Capacity, Default Commercial Operation Date, and Capacity Shortfall**

(a) Seller shall provide Notice to Buyer no later than thirty (30) days prior to the Default Commercial Operation Date if it anticipates a Capacity Shortfall. Seller shall then provide Notice to Buyer no later than ten (10) Business Days after the Commercial Operation Date of the actual Capacity Shortfall, if any.

(b) Seller shall pay Buyer, as liquidated damages and not as a penalty, an amount (the “**Capacity Shortfall Damages**”) equal to (i) (1) the Capacity Shortfall as of the Commercial Operation Date, in MW, multiplied by (2) [REDACTED], minus (ii) all Daily Delay Damages previously paid by Seller to Buyer for such amount of Capacity Shortfall. Subject to Seller’s payment of both the Capacity Shortfall Damages and all applicable Daily Delay Damages pursuant to Section 4.3, the Seller’s Performance Assurance will be reduced to reflect the Installed Capacity and all of Seller’s Performance Assurance posted in excess of such Installed Capacity shall be promptly returned to Seller. If the Capacity Shortfall as of the Commercial Operation Date is equal to the Expected Project Capacity, then, Buyer may terminate this Agreement upon written Notice to Seller; provided, however, that Seller’s total liability for such a termination shall be limited to any applicable Daily Delay Damages or Capacity Shortfall Damages, or both, payable to Buyer pursuant to this Agreement that are incurred prior to such Notice.

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

- o. Exhibit A of the PPA is hereby revised, restated, and superseded in its entirety with the Exhibit A attached to this Amendment Number 2.

- p. Exhibit K of the PPA is hereby revised, restated, and superseded in its entirety with the Exhibit K attached to this Amendment Number 2.
- q. Exhibit M of the PPA is hereby revised, restated, and superseded in its entirety with the Exhibit M attached to this Amendment Number 2.
2. Definitions. Capitalized terms used in this Amendment Number Two that are not otherwise defined herein shall have the meaning set forth in the PPA.
3. Representations Regarding this Amendment Number Two. By its execution of this Amendment Number Two, each Party represents and warrants that it is authorized to enter into this Amendment Number Two, that this Amendment Number Two does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, which conflict could reasonably be expected to have a material adverse effect on the ability of such Party to perform its obligations hereunder, and that this Amendment Number Two represents its valid and binding obligation, enforceable against it in accordance with its terms.
4. Governing Law; Disputes. This Amendment Number Two shall be governed by Section 19.7 (Governing Law) of the PPA. The Parties agree to comply with Article 17 (Dispute Resolution) of the PPA with respect to any dispute relating to this Amendment Number Two.
5. Conforming References. Upon the Second Amendment Effective Date, each reference in the PPA to “this Agreement,” “hereunder,” “hereto,” “herein,” or words of like import, shall mean and be a reference to the PPA as amended by this Amendment Number Two.
6. No Other Amendments; Ratification of Remaining Terms and Conditions. Except to the extent modified in this Amendment Number Two, all other terms and conditions of the PPA remain unchanged and in full force and effect.
7. Counterparts. This Amendment Number Two may be executed in one or more counterparts, each of which, when executed, shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment Number Two by facsimile or other electronic means (e.g., email or PDF) will be effective as delivery of an original counterpart to this Amendment Number Two.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have hereunder executed this Amendment Number Two as of the Second Amendment Effective Date.

**FL SOLAR 8, LLC**

**FLORIDA MUNICIPAL POWER AGENCY**

\_\_\_\_\_

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A (FL Solar 8 – Whistling Duck 1)**

**CONTRACT PRICE & OPTION PRICE**

**I. CONTRACT PRICE**

**A. Initial Term**

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

**B. Renewal Term Option Pricing**

Contract Year	Contract Price (\$/MWh) <small>(Buyer and Seller Agreement Required)</small>	Option 1 (\$/MWh) <small>(Buyer's discretion)</small>	Option 2 (\$/MWh) <small>(Buyer's discretion)</small>
21	[REDACTED]	[REDACTED]	[REDACTED]
22	[REDACTED]	[REDACTED]	[REDACTED]
23	[REDACTED]	[REDACTED]	[REDACTED]
24	[REDACTED]	[REDACTED]	[REDACTED]
25	[REDACTED]	[REDACTED]	[REDACTED]
26	[REDACTED]	[REDACTED]	[REDACTED]
27	[REDACTED]	[REDACTED]	[REDACTED]
28	[REDACTED]	[REDACTED]	[REDACTED]
29	[REDACTED]	[REDACTED]	[REDACTED]
30	[REDACTED]	[REDACTED]	[REDACTED]

## EXHIBIT K

### PARTICIPANT LIST

<b>FMPA Solar II Project Participants</b>	<b>Share of Whistling Duck Solar</b>
Homestead Public Services	12.016%
City of Lake Worth Beach Utilities	27.904%
Winter Park Electric Utility	24.032%
<b>Total</b>	<b>63.952%</b>

**For reference only:**

<b>FMPA All-Requirements Power Supply Project Participants</b>	<b>Share of Whistling Duck Solar</b>
Keys Energy Services	36.048%
<b>Total</b>	<b>36.048%</b>

**EXHIBIT M**



**Amendment Number Two to the  
Power Sales Contract  
between Florida Municipal Power Agency  
and the [MEMBER NAME]**

This Amendment Number Two to the Power Sales Contract between Florida Municipal Power Agency and [MEMBER NAME], dated as of December 12, 2019, as amended, (“Amendment Number Two”), is entered into as of this \_\_\_ day of \_\_\_\_\_, 2024 (the “Second Amendment Effective Date”), by and between the Florida Municipal Power Agency, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“FMPA”) and [MEMBER NAME] a public agency of the State of Florida and a member of FMPA (“Project Participant”). FMPA and Project Participant are each individually referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the Parties entered into that certain Power Sales Contract between Florida Municipal Power Agency and [MEMBER NAME] dated as of December 12, 2019, as amended by Amendment Number One to the Solar Power Purchase Agreement, which was memorialized in the form of a letter agreement between FMPA and Project Participant dated as of March 2, 2023, (the “Power Sales Contract”); pursuant to which FMPA has agreed to sell and deliver and Project Participant has agreed to purchase and receive Solar Product;

**WHEREAS**, FMPA and Project Participant have agreed to certain amendments to the Solar PPAs, which necessitate corresponding amendments to this Power Sales Contract;

**WHEREAS**, the Parties desire to further amend the Power Sales Contract as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants in the Power Sales Contract as amended and herein contained, the Parties hereby mutually agree as follows:

1. Amendments.

- a. Section 1 of the Power Sales Contract is amended by deleting the definition of “Energy Share” in its entirety and replacing it with the following definition:

“Energy Share shall mean FMPA's 26.775 MW share under the Rice Creek Solar PPA and FMPA’s 47.9 MW share under the Whistling Duck Solar PPA in the Solar Product produced by or associated with the Solar Facility.”

- b. Attachment A of the Power Sales Contract is hereby revised, restated, and superseded in its entirety with the Attachment A attached to this Amendment Number Two.

- c. Schedule 1 of the Power Sales Contract is hereby revised, restated, and superseded in its entirety with the Schedule 1 attached to this Amendment Number Two.
2. Definitions. Capitalized terms used in this Amendment Number Two that are not otherwise defined herein shall have the meaning set forth in the Power Sales Contract.
3. Representations Regarding this Amendment Number Two. By its execution of this Amendment Number Two, each Party represents and warrants that it is authorized to enter into this Amendment Number Two, that this Amendment Number Two does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, which conflict could reasonably be expected to have a material adverse effect on the ability of such Party to perform its obligations hereunder, and that this Amendment Number Two represents its valid and binding obligation, enforceable against it in accordance with its terms.
4. Conforming References. Upon the Second Amendment Effective Date, each reference in the Power Sales Contract to “this Agreement,” “hereunder,” “hereto,” “herein,” or words of like import, shall mean and be a reference to the Power Sales Contract as amended by this Amendment Number Two.
5. No Other Amendments; Ratification of Remaining Terms and Conditions. Except to the extent modified in this Amendment Number Two, all other terms and conditions of the Power Sales Contract remain unchanged and in full force and effect.
6. Counterparts. This Amendment Number Two may be executed in one or more counterparts, each of which, when executed, shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment Number Two by facsimile or other electronic means (e.g., email or PDF) will be effective as delivery of an original counterpart to this Amendment Number Two.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties hereto have hereunder executed this Amendment Number Two as of the Second Amendment Effective Date.

**FLORIDA MUNICIPAL POWER AGENCY**

(SEAL)

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

Attest:

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

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

**[MEMBER NAME]**

(SEAL)

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

Title:

Attest:

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

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

Approved as to form and legal sufficiency:

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

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

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

<u>Name of Project Participant</u>	<u>Rice Creek Solar Entitlement Share (MW)</u>	<u>Rice Creek Solar Entitlement Share (%)</u>	<u>Whistling Duck Solar Entitlement Share (MW)</u>	<u>Whistling Duck Solar Entitlement Share (%)</u>
Homestead Public Services	2.500	9.337%	9.000	18.789%
City of Lake Worth Beach	13.275	49.580%	20.900	43.633%
City of Mount Dora	1.000	3.735%	0.000	0.000%
New Smyrna Beach Utilities Commission	5.000	18.674%	0.000	0.000%
Winter Park Electric Utility	5.000	18.674%	18.000	37.578%
<b>Total</b>	<b>26.775</b>	<b>100%</b>	<b>47.900</b>	<b>100%</b>

Notice Information of Project Participants

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

# **SOLAR POWER PURCHASE AGREEMENT**

**between**

**Florida Municipal Power Agency  
(Solar III Project)**

**as Buyer**

**and**

**FL SB 9, LLC**

**as Seller**

**dated as of**

\_\_\_\_\_, 2024

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**SOLAR POWER PURCHASE AGREEMENT  
(Solar III Project)**

This SOLAR POWER PURCHASE AGREEMENT (this “**Agreement**”) is made this \_\_\_ day of June, 2023, (the “**Effective Date**”), by and between **the Florida Municipal Power Agency**, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“**Buyer**” or “**FMPA**”) and FL SB 9, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are each individually referred to herein as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

WHEREAS, Seller intends to develop a photovoltaic solar energy generation facility of approximately 74.9 MW aggregate nameplate capacity on a site located in Levy County, Florida, as further described in Exhibit B (the “**Project**”); and

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

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

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.**

“**AC**” means alternating current.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Buyer’s Share”** means ██████%.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***“Daily Delay Damages”*** [REDACTED]

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

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

***“Deemed Delivered Energy”*** means the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be determined using relevant Project availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period.

***“Default Commercial Operation Date”*** means [REDACTED].

***“Delivered Energy”*** means Buyer's Share of all Energy produced from the Project and delivered or made available at the Delivery Point, which shall be net of all Station Service and electrical losses associated with the transmission of the Energy to the Delivery Point,

including, if applicable, any transmission or transformation losses between the Metering System and the Delivery Point.

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

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

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

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

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

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

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

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

**“Environmental Attribute”** means any and all presently existing or future benefits, emissions reductions, environmental air quality credits, emissions reduction credits, greenhouse gas emissions, Renewable Energy Credits, offsets and allowances, green tag or other transferable indicia attributable to the Project during the Term, howsoever entitled or named, resulting from the generation of renewable energy or the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of presently existing or future legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or

mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency, or any successor state or federal agency given jurisdiction over a program involving transferability of Environmental Attributes, and any renewable energy certificate reporting rights to such Environmental Attributes. Notwithstanding any other provision hereof, Environmental Attributes do not include: (a) any Tax Attributes, (b) state, federal or private grants related to the Project, (c) Energy, or (d) Capacity Attributes.

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

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

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

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

“**Fair Market Value**” means the amount that would be paid in an arm’s length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the Project and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation.

“**FMPA Solar III Project**” means the joint-action solar project created by the FMPA Board of Directors pursuant to FMPA Resolution 2023-B2, dated May 18, 2023.

“**FMPA Solar III Project Participant Covenants**” means the covenants by each FMPA Solar III Project Participant in the applicable FMPA Solar III Project Power Sales Contract: (a) that the payments which the FMPA Solar III Project Participant is required to make under the applicable FMPA Solar III Project Power Sales Contract constitute an obligation payable as an operating expense of the FMPA Solar III Project Participant's electric utility system solely from the revenues and other available funds of the electric utility system; (b) that upon the failure of any other FMPA Solar III Project Participant(s) to make payments owed to FMPA under the applicable FMPA Solar III Project Power Sales Contract, to pay to Buyer such non-defaulting FMPA Solar III Project Participant’s pro rata share of the amounts owed by the defaulting FMPA Solar III Project Participant(s), and (c) to establish, levy and collect rents, rates and other charges for the products and services provided by its electric utility system, which rents, rates, and other charges shall be at least sufficient to meet the operation and maintenance expenses of such electric utility system, including all sums owed to Buyer pursuant to the FMPA Solar III Project Power Sales Contract.



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

**“FMPA Solar III Project Participant Entitlement Share”** means, as to each FMPA Solar III Project Participant, the participant’s individual undivided pro rata entitlement share of the Expected Project Capacity or Installed Capacity, as applicable.

**“FMPA Solar III Project Power Sales Contract”** means a Power Sales Contract between a FMPA Solar III Project Participant and Buyer or the sale of FMPA Solar III Project Participant Entitlement Share by Buyer to such FMPA Solar III Project Participant, substantially in the form of Exhibit N.

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

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

- (a) Subject to the foregoing, events that could qualify as a Force Majeure Event include, but are not limited to the following:
  - (i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
  - (ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

- (iii) except as set forth in subpart (b)(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;
- (v) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine;
- (vi) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials;
- (vii) air crash, shipwreck, train wrecks or other failures or delays of transportation;
- (viii) vandalism beyond that which could be reasonably prevented by Seller;
- (ix) the discovery of Native American burial grounds not evidenced in Seller's Phase I environmental assessment of the Site;
- (x) the discovery of endangered species, as defined by Law; and
- (xi) breakdown or failure of equipment as a result of a serial manufacturer defect or flaw.

(b) A Force Majeure Event shall not be based on:

- (i) Buyer's inability economically to use or resell the Product purchased hereunder;
- (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;
- (iii) Seller's inability to obtain Governmental Approvals or other approvals of any type for the construction, operation, or maintenance of the Project, except to the extent caused by a Force Majeure Event;
- (iv) Seller's inability to obtain [REDACTED], except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event;
- (v) Seller's failure to [REDACTED] pursuant to this Agreement; or
- (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller or Seller's Affiliates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Letter(s) of Credit”** means one or more irrevocable, transferable standby letters of credit, substantially in the form of Exhibit F, issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, with a “stable outlook” by either S&P or Moody’s and having assets of at [REDACTED], in a form acceptable to the Party in whose favor the letter of credit is issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Planned Outage”** means the removal of the all or a portion of the Project from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during the Project’s operations, and (c) causes the generation level of the Project to be reduced by at least ten

percent (10%) of the Installed Capacity. To the extent there are multiple Project Offtakers, any reduction in generation will be allocated to Buyer pro rata based on Buyer's Share.

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

**"Product"** has the meaning set forth in Section 3.1.

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

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

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

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

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

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

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

**"Purchase Option Price"** means the applicable price set forth in the Purchase Option Price Table in Exhibit A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Target Commercial Operation Date”** means the date that is the latter of (a) 365 days after the Transmission Service Deadline and (b) December 31, 2025.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

## **1.2 Interpretation.**

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

(a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter;

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

## **ARTICLE 2**

### **TERM**

#### **2.1 Term.**

The “**Initial Term**” of this Agreement shall commence on the date hereof and continue until the latter of (a) the date the Agreement is terminated in accordance with its terms, or (b) the date that is 20 Contract Years following the Commercial Operation Date. Buyer shall have the option to

request an extension of the term of this Agreement twice (each, a “**Renewal Term**”) by providing Seller written request for extension no less than 425 days prior to the end of the Initial Term or the first Renewal Term, as applicable. Upon such request, Buyer and Seller shall commence good faith negotiations for the Contract Price for any such Renewal Term(s). Seller shall provide Buyer with written proposed Contract Price for such Renewal Term(s) no less than 395 days prior to the end of the Initial Term or the first Renewal Term, as applicable. Seller may extend the term of this Agreement by providing Seller written notice of extension no less than 365 days prior to the end of the Initial Term or the first Renewal Term, as applicable. If Buyer does not provide such written notice of extension, then Seller proposed Contract Price shall be deemed rejected and this Agreement shall terminate. Notwithstanding the foregoing, Seller shall provide Buyer a right of first refusal prior to selling the Product to a third party with substantially similar terms and conditions of purchase and sale available to such third party. Seller shall provide Buyer with at least sixty (60) days advance notice of such right of first refusal, which Buyer shall accept or reject in writing within such sixty (60) days. If Buyer accepts, then this Agreement shall continue, as it may be amended to incorporate such new terms and conditions. If Buyer does not provide such written notice exercising its right of first refusal, then it shall be deemed rejected by Buyer. Each Renewal Term shall commence at HE 0100 on the date immediately following the last day of the Initial Term or first Renewal Term, as applicable, and extend for a period of 5 years, unless sooner terminated in accordance with the terms hereof.

### **ARTICLE 3 OBLIGATIONS AND DELIVERIES**

#### **3.1     *Product.***

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

#### **3.2     *Purchase and Sale.***

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

#### **3.3     *Contract Price.***

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

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

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

(d) In addition to the amounts otherwise payable by Buyer in accordance with this Section 3.3, Buyer shall pay all applicable sales, use excise, ad valorem, transfer and other similar taxes associated with the sale of Product by Seller to Buyer (“**Transfer Taxes**”), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of Product (regardless of whether such Transfer Taxes are imposed on Buyer or Seller), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes.

### **3.4 Project Capacity.**

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

### **3.5 Performance Excuses.**

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

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

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

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

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

(a) Buyer shall be entitled to all Environmental Attributes resulting from the generation of Energy that is actually purchased by Buyer pursuant to this Agreement. Buyer shall not be entitled to any Environmental Attributes resulting from the generation of Energy that Buyer, for any reason, does not accept and purchase under this Agreement. Upon no less than twenty (20)

Business Days' advance notice, Buyer may request Seller provide Buyer or Buyer's designee evidence of the transfer of the RECs on a quarterly basis during the Delivery Term in an Environmental Attributes Attestation and Bill of Sale substantially in the form attached as Exhibit I or, as applicable, an attestation that is the then-currently required attestation of the Applicable REC Program.

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

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

### **3.7 Station Service.**

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

### **3.8 Transmission.**

(a) Seller shall be responsible for obtaining interconnection service for the Project so that Seller can deliver the Product to the Delivery Point in accordance with applicable Transmission Provider interconnection requirements. Seller shall be responsible for all costs to design, equip, construct and maintain the interconnection facilities necessary to deliver Energy from the Project to the Delivery Point. Seller shall be responsible for receiving Network Resource Interconnection Service (or its equivalent) from the Transmission Provider in accordance with the Transmission Provider's Large Generator Interconnection Procedures ("LGIP") including funding of any Network Upgrades, as defined in therein. In the event that Seller is not repaid all Seller-funded amounts for such Network Upgrades within five (5) years after the Commercial Operation Date, Seller may, subject to Buyer's consent, such consent not to be unreasonably withheld, assign to

Buyer its rights under the LGIP and Interconnection Agreement to repayment of such unpaid amounts. For the avoidance of doubt, Buyer's consent may be withheld if, without otherwise limiting its right to reasonably withhold consent, Buyer is not reasonably satisfied with the terms and conditions of the Interconnection Agreement or other relevant agreement between Buyer and the Transmission Provider with regard to the Network Upgrade refunding or transmission credit procedures. If Buyer consents to such assignment, then Buyer shall pay to Seller each month an amount equal to the amount Buyer receives from Transmission Provider as a transmission credit or other form of reimbursement for such Network Upgrades during the preceding month until such time as Seller has been fully reimbursed for its Network Upgrade finding. Notwithstanding anything in this Section 3.8(a), Buyer shall not be obligated to pay Seller any amount related to the Network Upgrades for which Buyer has not received a related transmission credit or other form of reimbursement from the Transmission Provider.

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

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

### **3.9 Scheduling.**

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

### **3.10 Sales for Resale.**

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

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

Seller and Buyer will endeavor to develop written operating procedures (“**Operating Procedures**”) not less than sixty (60) days before the Initial Energy Delivery Date, which Operating Procedures shall only be effective if made by mutual written agreement of Seller and Buyer. The Parties agree that the Operating Procedures that they will endeavor to establish will cover the protocol under which the Parties will perform certain obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (1) the method of day-to-day communications; (2) key contacts for Seller and Buyer; and (3) reporting of scheduled maintenance, maintenance outages, Buyer Curtailment Orders, Force Majeure Events, and Forced Outages of the Project.

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

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

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

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

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

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

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

(c) Seller agrees to abide by all applicable (i) NERC reliability requirements, including all such reliability requirements for generator owners and generator operators, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Owner and the Transmission Provider.

### **3.14 Buyer Curtailment.**

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

### **3.15 Outage Notification.**

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

(b) In addition to Planned Outages, Seller shall use Commercially Reasonable Efforts to



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

(c) The Parties may agree to modify the procedures for coordinating outage notices from time to time and will codify such changes in the Operating Procedures. If the Operating Procedures conflict with this Section 3.15, then the Operating Procedures will control.

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

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

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

### **3.17 Forecasting.**

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

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

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

(d) No later than 5:00 a.m. of each day, Seller shall provide Buyer a non-binding forecast of hourly Energy deliveries under this Agreement for the remainder of such day and the following seven (7) days in a form reasonably acceptable to Buyer. Each such Notice shall clearly identify, for each hour, Seller's forecast of all deliveries of Energy pursuant to this Agreement. In the event that Seller foresees that actual deliveries under this Agreement for any hour will be materially different than a forecast previously provided for such day, Seller shall, as soon as reasonably possible, provide Notice to Buyer of such change and an updated forecast.

### **3.18 Weather Station.**

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

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

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

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

(iii) any unusual conditions found during inspections;

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

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

(c) Buyer shall have real-time access to the required meteorological data at a frequency not to exceed every fifteen (15) minutes. Seller shall provide Buyer a report within thirty (30) days after the end of each month that provides the foregoing information for such month as well as any

other additional information that Buyer reasonably requests regarding conditions at the Site and the operation of the Project that is collected and maintained by Seller in the ordinary course of Project operations.

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

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

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

Costs applicable to the Compliance Cost Cap are only those costs applicable under the definition of “Compliance Costs” and are new costs associated with a Change of Law occurring after the Effective Date. The Parties agree that the Compliance Costs Seller shall be required to bear during the Delivery Term [REDACTED]

[REDACTED] (collectively, the “**Compliance Cost Cap**”). In the event and to the extent that the Compliance Costs incurred by Seller exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing the obligations of this Agreement that would otherwise cause it to incur Compliance Costs in excess of the Compliance Cost Cap. Within sixty (60) Days after the Change of Law that Seller anticipates will cause it to incur Compliance Costs in excess of the Compliance Cost Cap, Seller shall provide to Buyer Notice with an estimate of the expected annual Compliance Costs caused by such Change of Law. Within thirty (30) Days of the delivery of such Notice with the estimate, Buyer shall provide Seller Notice of (i) Buyer’s request for Seller to incur the Compliance Costs in excess of the Compliance Cost Cap, (ii) Buyer’s initiation of dispute resolution under ARTICLE 17, or (iii) Buyer’s waiver of Seller’s performance of such obligations.

### **3.20 Production Guarantee.**

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

### **3.21 Purchase Option.**

(a) At the end of the tenth (10<sup>th</sup>), fifteenth (15<sup>th</sup>) and twentieth (20<sup>th</sup>) Contract Years, Buyer may elect to purchase the Project from Seller for a purchase price equal to the greater of (i) Fair Market Value or (ii) the Purchase Option Price that corresponds to the applicable Contract Year, as specified in Exhibit A.

(b) If Buyer intends to exercise the purchase option, Buyer shall notify Seller of its intent at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year and the Parties shall endeavor to complete the purchase and transfer by the end of the applicable Contract Year. Seller will provide in a timely manner, information regarding the Project which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of the Project.

(c) If Buyer has notified Seller of its intent to purchase the Project in accordance with Section 3.21(b), then the Parties shall determine Fair Market Value within forty-five (45) days of Buyer's notice. Within fifteen (15) days of Buyer's notice, Seller shall give written notice to Buyer of its determination of Fair Market Value, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation. If Buyer reasonably objects to Seller's determination of Fair Market Value, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the Project. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Project, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

(d) Any purchase pursuant to this Section 3.21 shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the Project; provided, however, that Seller shall assign to Buyer all manufacturer warranties that are in effect as of the purchase date. Without limiting the foregoing, the purchase shall occur pursuant to a form of purchase and sale agreement with customary representations, warranties and covenants and in form reasonably acceptable to the Parties.

(e) Any purchase pursuant to this Section 3.21 shall be for the entire Project – either as an undivided ownership interest by Buyer, or in conjunction with the purchase by the FMPA All-Requirements Power Supply Project (“**ARP**”) of the remaining ownership interest of the Project not purchased by Buyer, provided that any joint purchase by Buyer and the FMPA ARP shall be a simultaneous purchase of 100% ownership interest in the Project, with each such purchase by Buyer and the FMPA ARP being expressly conditioned upon successful purchase of the remaining ownership share by FMPA ARP and Buyer, respectively.

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

### **4.1 *Project Development.***

Seller, at no cost to Buyer shall:

(a) Design and construct the Project.

(b) Establish and maintain interconnection rights for the Project that permit the full Expected Project Capacity to interconnect to the Transmission System in compliance with the Transmission Provider's transmission tariff and the Interconnection Agreement.

(c) Acquire all material Governmental Approvals for the construction, operation, and maintenance of the Project.

(d) Complete any environmental impact studies necessary for the construction, operation, and maintenance of the Project.

(e) At Buyer's reasonable request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project.

(f) Within thirty (30) days after each calendar quarter following the Effective Date until the Commercial Operation Date, provide to Buyer a construction progress report substantially in the form attached in Exhibit L advising Buyer of the current status of the Project, the status of obtaining required Governmental Approvals, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Seller shall provide Notice to Buyer no later than thirty (30) days prior to the Default Commercial Operation Date if it anticipates a Capacity Shortfall. Seller shall then provide Notice to Buyer no later than ten (10) Business Days after the Default Commercial Operation Date of the actual Capacity Shortfall, if any. Buyer shall have twenty (20) days after receipt of such notice to either: (i) elect to waive the obligation of Seller to complete the Capacity Shortfall, and neither Party shall have any further obligations with respect to the development, sale, delivery, receipt, or purchase of the Capacity Shortfall (the “**Termination Option**”); or (ii) elect to purchase any amount of Capacity Shortfall that achieves Commercial Operation in accordance with the terms of this Agreement after the Default Commercial Operation Date at the Contract Price (the “**Continuation Option**”). For avoidance of doubt, the Agreement shall remain in full force and effect at the Contract Price with respect to any Project capacity that achieved Commercial Operation as of the Default Commercial Operation Date.

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

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

## **ARTICLE 5 METERING AND MEASUREMENT**

### **5.1 Metering System.**

The Parties shall ensure the Metering System is designed, located, constructed, installed, owned, operated and maintained in accordance with the Interconnection Agreement and Prudent Operating Practices in order to measure and record the amount of Energy delivered from the Project to the Delivery Point. The meters shall be of a mutually acceptable accuracy range and type. Seller shall be responsible for the cost of all metering that will be installed, owned, operated and maintained by the Meter Owner for the purpose of determining the amount of Energy delivered to the Delivery Point. Except in the event of a System Emergency or any order of a Governmental Authority, no one other than the Meter Owner shall make adjustments to the Metering System without the written consent of Meter Owner, which consent shall not be unreasonably withheld, conditioned or delayed. If Buyer is the Meter Owner, then Seller, may, at its own cost, install additional meters or other such facilities, equipment or devices on Seller's side of the Delivery Point as Seller deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Buyer will be entitled to rely upon its own Metering System.

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

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

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

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

## **ARTICLE 6 EARLY TERMINATION**



## 6.1 *Early Termination.*

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

(i) By Seller within thirty (30) days after receipt of the final facilities study report from the Transmission Owner, if the estimated cost of Transmission Owner's Interconnection Facilities (as identified by the Transmission Owner) exceeds [REDACTED] and Buyer has not agreed in writing to reimburse Seller for any overages;

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

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

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

## ARTICLE 7 EVENTS OF DEFAULT

### 7.1 *Events of Default.*

An “**Event of Default**” shall mean,

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

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

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

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

(iv) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) Days after Notice thereof; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) Day cure period, such Party shall have such additional time (not exceeding an additional ninety (90) Days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy;

(v) such Party becomes Bankrupt;

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

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

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

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

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

(ii) Seller Abandons the Project.

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

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

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

- (b) collect in connection with such Early Termination Date a Termination Payment;
- (c) accelerate all amounts owing between the Parties and end the Delivery Term effective as of the Early Termination Date;
- (d) withhold any payments due to the Defaulting Party under this Agreement;
- (e) suspend performance; and
- (f) exercise its rights pursuant to Section 9.3 to draw upon and retain Performance Assurance.

### **7.3 Termination Payment.**

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

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

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

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

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

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

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

**7.7 *Mitigation.***

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

**ARTICLE 8  
PAYMENT**

**8.1 *Billing and Payment.***

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

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

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the

invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.2 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

## **ARTICLE 9 INSURANCE, CREDIT AND COLLATERAL REQUIREMENTS**

### **9.1 Insurance.**

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

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

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

### 9.3 *Performance Assurance.*

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

(b) Buyer's Performance Assurance. If Buyer is not a Creditworthy Entity as of the Effective Date or at any time after the Effective Date is subject to a Downgrade Event, then, within sixty (60) days after the Effective Date or Downgrade Event, as applicable, and for such periods as Buyer is not a Creditworthy Entity, Buyer shall provide Seller with Performance Assurance in the amount [REDACTED], as applicable.

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

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

(d) A PA Beneficiary shall prudently invest any cash held as Performance Assurance in a manner that is the same or substantially similar to the manner in which such Party invests its own cash and shall pay interest equivalent to the interest earned on such cash held. Any interest earned will be returned annually prior to January 31<sup>st</sup> following each calendar year.

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

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

(g) Any Letter of Credit provided pursuant to this Agreement must provide, among other things, that the PA Beneficiary is entitled to draw the full amount of such Letter of Credit if: (i) the Letter of Credit has not been renewed or replaced within thirty (30) days prior to the expiration

date of the Letter of Credit; or (ii) the issuer of the Letter of Credit fails to maintain a credit rating of at least A- from S&P and a rating of at least A3 from Moody's and the Party required to provide the Letter of Credit has failed, within ten (10) Business Days after receipt of Notice thereof by the PA Beneficiary to replace such Letter of Credit with another Letter of Credit, in a form reasonably acceptable to the issuer of the Letter of Credit and PA Beneficiary. Costs of a Letter of Credit shall be borne by the PA Provider.

## **ARTICLE 10 REPRESENTATIONS, WARRANTIES AND COVENANTS**

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

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

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

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

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

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

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

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

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

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

Each Party covenants that throughout the Term:

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

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

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

### **10.3 *Seller Covenants.***

Seller covenants as follows:

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

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

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

Buyer covenants as follows:

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

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

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

(d) Buyer covenants that from the date hereof through the expiration or termination of this Agreement, Buyer shall (i) establish and maintain FMPA Solar III Project Participant payment obligations pursuant to the FMPA Solar III Project Power Sales Contracts at amounts sufficient to meet FMPA's costs and liabilities lawfully owed under this Agreement; (ii) deliver



written Notice to Seller of (A) any defaults occurring under any FMPA Solar III Project Power Sales Contract that are not cured by the applicable cure period and (B) any changes to the list of FMPA Solar III Project Participants set forth in Exhibit K; and (iii) not agree to any amendment, modification or alteration of any FMPA Solar III Project Power Sales Contract that would materially adversely affect the FMPA Solar III Project Participant Covenants without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

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

## **ARTICLE 11 TITLE, RISK OF LOSS, INDEMNITIES**

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

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

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

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

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

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

## **ARTICLE 12 GOVERNMENTAL CHARGES**

### **12.1 Cooperation.**

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

### **12.2 Governmental Charges.**

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

**ARTICLE 13**  
**CONFIDENTIAL INFORMATION**

**13.1 Confidential Information.**

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

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

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

(ii) Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Project and for the purposes of this Agreement who shall be bound by the terms of this Section 13.1;

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 14 ASSIGNMENT**

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

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

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

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

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

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

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

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

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

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

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

## 14.2 *Collateral Assignment.*

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

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

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

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

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

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

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

(iv) Upon the receipt of a written request from Seller or any Project Investor, Buyer shall use Commercially Reasonable Efforts to execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of the Project or any part thereof and will enter into reasonable agreements with such Project Investor, which agreements will grant certain rights to the Project Investors as more fully developed and described in such documents, including (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of Project Investor, which consent is not to be unreasonably withheld or delayed, (b) Project Investors shall be given notice of, and the opportunity to cure as provided in Section 14.2(d)(ii), any

breach or default of this Agreement by Seller, (c) that if the Project Investor forecloses, take a deed in lieu of foreclosure or otherwise exercise its remedies pursuant to any security documents, then (i) Buyer shall, at Project Investor's request, continue to perform all of its obligations hereunder, and Project Investor or its nominee may perform in the place of Seller, and may assign this Agreement to another Person in place of Seller, provided that such other Person is a Qualified Transferee, (ii) Project Investor shall have no liability under this Agreement except during the period of such Project Investor's ownership or operation of the Project and (iii) that Buyer shall accept performance in accordance with this Agreement by Project Investor or its nominee, and (d) that Buyer shall make the same representations and warranties to Project Investor as Buyer made to Seller pursuant to this Agreement. The Parties agree that an agreement substantially in the form of Exhibit J shall be reasonable.

### **14.3 *Buyer Limited Assignment Right.***

Buyer may from time to time, but on no less than fifteen (15) Business Days' prior notice, assign to a third party the right to receive at the Delivery Point all or a portion of the Energy that would otherwise be delivered to Buyer hereunder. As a condition to such assignment, Seller and Buyer (and Seller's financing parties) shall first agree on the terms and conditions of a written assignment and consent agreement based on the form attached hereto as Exhibit M, such agreement not to be unreasonably delayed or withheld unless Seller (in consultation with its financing parties) reasonably determines such assignment would adversely affect Seller's economics, security, or rights under the Agreement or it would adversely affect Seller's ability to obtain or retain financing or Tax Attributes. For the avoidance of doubt, Buyer will remain responsible for all its obligations under this Agreement related to such assigned Energy, including (a) the obligation to pay for such Energy within three (3) Business Days after FMPA's receipt of Notice of nonpayment from Seller, to the extent the assignee thereof does not make such payment when due and (b) any damages associated with such assignee's failure to take any such Energy.

## **ARTICLE 15 FORCE MAJEURE**

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

To the extent either Party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure Event to the other Party as detailed below, then, the Party impacted by the Force Majeure Event shall be excused from the performance of its obligations to the extent impacted. As soon as practicable after commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event (or such longer period as reasonably required given the nature of the Force Majeure Event), the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim and the anticipated impact on the non-performing Party's ability to perform its obligations and the non-performing Party's anticipated plan to resume full performance of the obligations impacted by the Force Majeure Event. Seller shall not substitute Product from any other source for Buyer's Share of the output of the Project during an outage resulting from a

Force Majeure Event. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Buyer shall not be required to make any payments for any Product that Seller fails to schedule, deliver or provide as a result of a Force Majeure Event during the term of such Force Majeure Event.

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

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

## **ARTICLE 16 LIMITATIONS ON LIABILITY**

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

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

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

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN



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

### **16.3 Buyer Liability.**

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

(b) Each FMPA Solar III Project Participant has commitments under the FMPA Solar III Project Power Sales Contracts with regard to the payment obligations to the FMPA Solar III Project for all costs related to this Agreement in the event of a default by one or more other FMPA Solar III Project Participants, as more fully described in the Power Sales Contracts.

## **ARTICLE 17 DISPUTE RESOLUTION**

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

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement (a "**Dispute**") is the dispute resolution procedure set forth in this Article 12. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the Dispute by means of the dispute resolution procedure set forth in this ARTICLE 17.

## **17.2 Management Negotiations**

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

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

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

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

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

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

## **ARTICLE 18 NOTICES**

### **18.1 Notices.**

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

If to Seller:

FL SB 9, LLC  
Attn: Management Team  
800 Brickell Avenue, Suite 1000  
Miami, FL 33131  
Email: [OrigisManagement@origisenergy.com](mailto:OrigisManagement@origisenergy.com)

With a copy to:

FL SB 9, LLC  
Attn: General Counsel  
800 Brickell Avenue, Suite 1000  
Miami, FL 33131  
Email: [alfredo.gracian@origisenergy.com](mailto:alfredo.gracian@origisenergy.com)

If to Buyer: Florida Municipal Power Agency

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

With a required copy to:

Florida Municipal Power Agency  
Office of the General Counsel  
2061-2 Delta Way (32303)

Post Office Box 3209  
Tallahassee, Florida 32315-3209  
T. 850-297-2011  
F. 850-297-2014  
Email: jody.finklea@fmpa.com  
dan.ohagan@fmpa.com

## **ARTICLE 19 MISCELLANEOUS**

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

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

### **19.2 *Audits.***

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

### **19.3 *Amendments.***

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

### **19.4 *Waivers.***

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other

matter. Any waiver by any Party of its rights with respect to a breach or default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent breach or default or other matter.

### **19.5 Severability.**

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

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

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

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

### **19.7 Governing Law.**

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

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

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE

ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

**19.9 Attorneys' Fees.**

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

**19.10 No Third-Party Beneficiaries.**

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

**19.11 No Agency.**

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

**19.12 Cooperation.**

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

**19.13 Further Assurances.**

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

**19.14 Captions; Construction.**

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

**19.15 *Entire Agreement.***

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

**19.16 *Forward Contract.***

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

**19.17 *Service Contract.***

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

**19.18 *Counterparts.***

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

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

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

**FL SB 9, LLC**

**Florida Municipal Power Agency**

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

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

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

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

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

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



**EXHIBIT A**

**CONTRACT PRICE & PURCHASE OPTION PRICE**

**I. CONTRACT PRICE**

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

**II. PURCHASE OPTION PRICE TABLE**

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

## **EXHIBIT B**

### **DESCRIPTION OF PROJECT**

Seller intends to build, own and operate a single axis tracking photovoltaic solar energy generation facility on a site located in Levy County, Florida, which may be referred to at times in this Agreement as the “Leyland” solar facility. As presently planned, the Expected Project Capacity will be 74.9 MW, and will consist of:

- 74.9 MWac solar PV plant with single-axis tracker, (1) 53/70/88MVA 69/34.5/13.8 kV, three-winding transformer (Ynynd)
- (24) PE HEM FS350M inverters, each with an integrated pad mount transformer 3465 kVA, 34.5/0.63-kV Dy
- 1x17 MVAR capacitor bank at the 34.5kV bus of the substation to which the Project interconnects

**Point(s) of Interconnection:** The Project will interconnect with the transmission facilities of Duke Energy Florida at a point to be determined in the interconnection study process.

**Real Property Description which shall be subject to adjustment to reflect the final survey and any modifications made in accordance with Prudent Operating Practices:** Located in the County of Levy, Florida (to be updated by Seller in accordance with the Interconnection Agreement).

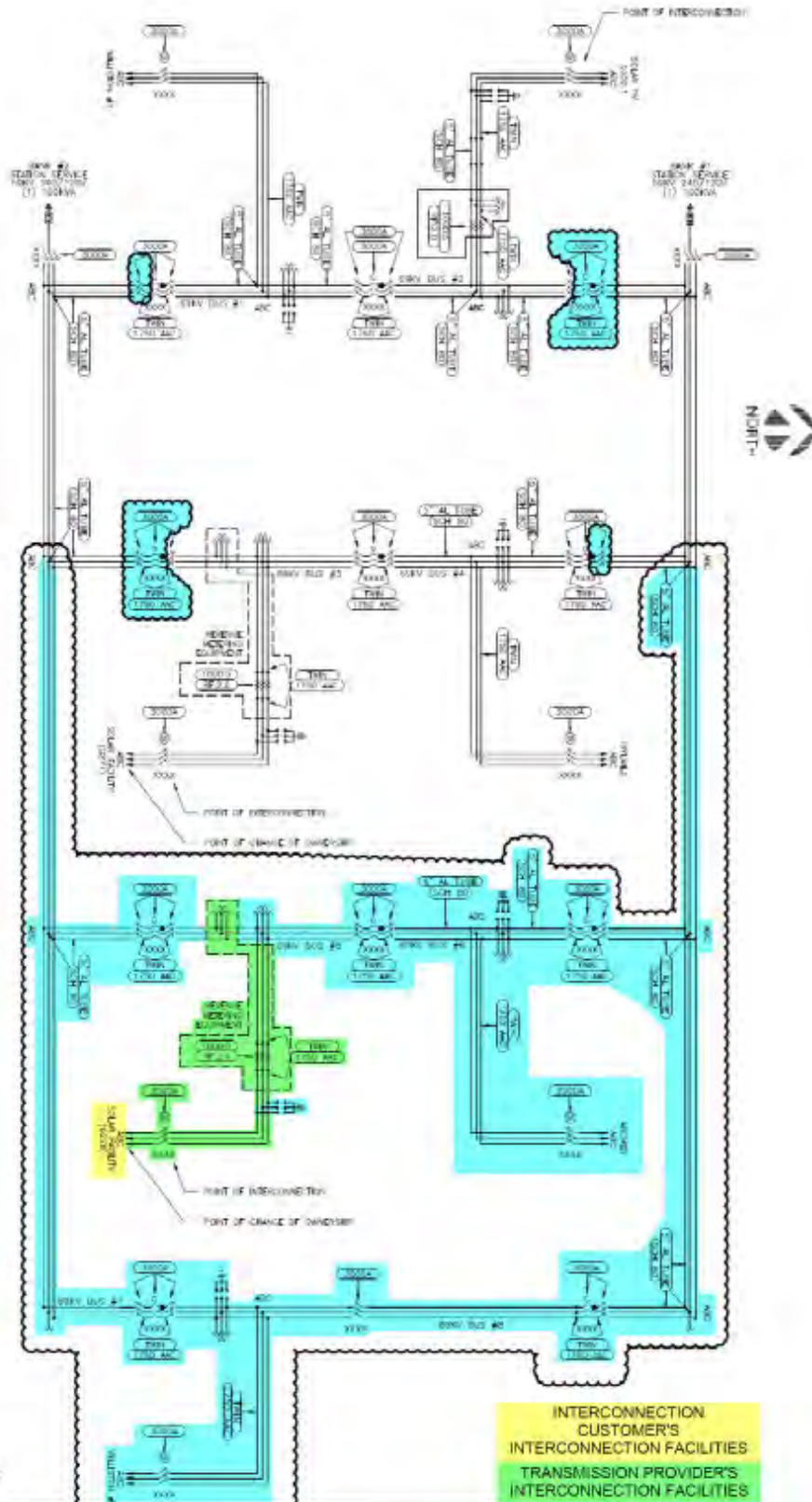
Nothing in this Agreement or Exhibit B is intended to either (i) limit the right of Seller to make any changes to the Project it determines to undertake, or (ii) grant any rights to Buyer regarding the description, nature or components of the Project.

## **EXHIBIT C**

### **DESCRIPTION OF DELIVERY POINT**

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

The Delivery Point will be the Point of Interconnection (POI) as defined in the Interconnection Agreement, which is expected to be at the proposed Duke Energy Florida's Q202.1 Switching Station.



- REVISIONS LIST:
1. NORTH GROUP OVERLAP TO BE DETERMINED.
  2. THRESHOLD TO BE DETERMINED.

**PRELIMINARY**

- NOTE:
1. POINT OF CHANGE OF OWNERSHIP IS BY THE FIRST CUSTOMER FENCE OUTSIDE OF THE SUBSTATION FENCE (NOT SHOWN IN THIS DRAWING). FINAL LINE POSITION AND OWNERSHIP TO BE DETERMINED BY DETAIL DESIGN TEAM.

**INTERCONNECTION CUSTOMER'S INTERCONNECTION FACILITIES**  
**TRANSMISSION PROVIDER'S INTERCONNECTION FACILITIES**

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INTERCONNECTION  
 CUSTOMER'S  
 INTERCONNECTION FACILITIES  
 TRANSMISSION PROVIDER'S  
 INTERCONNECTION FACILITIES  
 TRANSMISSION PROVIDER'S  
 NETWORK UPGRADES

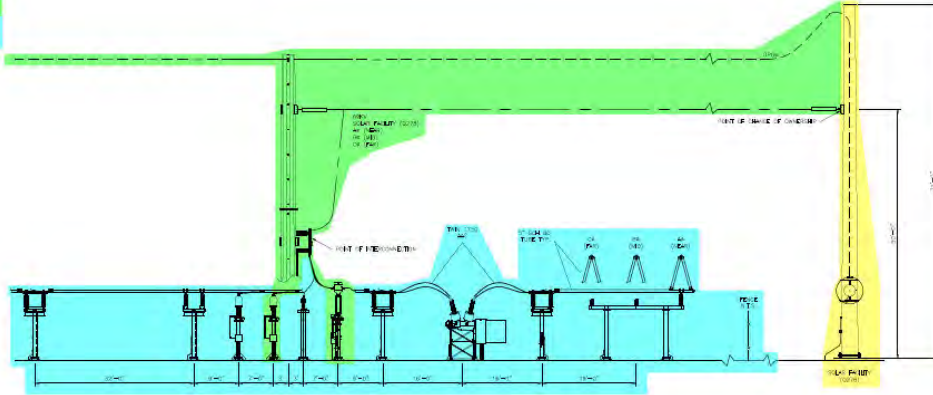


FIGURE 10-1

**EXHIBIT D**

**PRODUCTION GUARANTEE**

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

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

“Annual Energy Output Guarantee” means, for any Contract Year, (i) Buyer’s Share of the amount set forth in the following Table A for the first Contract Year, degrading at a rate of [REDACTED] for each subsequent Contract Year, less (ii) any Excused Energy.

<b>Table A</b>	
<b>Contract Year</b>	<b>Annual Energy Output (MWh)</b>
1	[REDACTED]

“Damages Rate” means an amount equal to [REDACTED] per MWh of Production Shortfall.

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

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

**II. Guarantee and Damages.**

a. Production Guarantee Damages. If there is a Production Shortfall in any two rolling consecutive Contract Years, then Seller shall owe Buyer liquidated damages in an amount equal

to (i) the Production Shortfall that occurred in the later of the two relevant Contract Years, multiplied by (ii) the Damages Rate (the “**Production Guarantee Damages**”).

b. Annual Report. No later than 45 days after each Contract Year, Seller shall deliver to Buyer: (i) a calculation showing Seller’s computation of the Actual Energy Output for the previous two Contract Years and the Production Guarantee Damages, if any, owed to Buyer, and (ii) payment in full of any Production Guarantee Damages owed to Buyer. Production Guarantee Damages shall be Buyer’s sole remedy for the failure of Seller to satisfy the production guarantee set forth in this Exhibit D.

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

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

**A. RECITALS**

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

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

**AGREEMENT**

Guarantee.

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

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

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

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



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

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

Except as expressly set forth in this paragraph, Guarantor shall be entitled to assert any and all rights, setoffs, counterclaims and other defenses that Obligor may have to payment or performance of any of the Obligations and also shall be entitled to assert any and all rights, setoffs, counterclaims and other defenses that the Guarantor may have against the Guaranteed Party, other than (a) defenses arising from the insolvency, reorganization or bankruptcy of Obligor, (b) defenses expressly waived in this Agreement by Guarantor, (c) defenses arising by reason of (i) Guarantor's direct or indirect ownership interests in Obligor or (ii) legal requirements applicable to Obligor that prevent the payment by Obligor of its payment obligations that constitute Obligations, and (d) defenses previously asserted by Obligor against such claims to the extent such defenses have been resolved in favor of Guaranteed Party by a court of last resort.

Term. This Guarantee shall continue in full force and effect until the earlier to occur of (a) the substitution of an alternative form of Security by Obligor, (b) the satisfaction of all Obligations of Obligor under the Agreement, or (c) the payment by Guarantor, without reservation of rights, of an aggregate amount equal to the Maximum Guaranteed Amount, together with any other amounts required to be paid by Guarantor pursuant to this agreement. Guarantor further agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time payment,

or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise.

Subrogation. Until all Obligations are indefeasibly paid in full, unless otherwise provided herein, Guarantor waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guarantee and any collateral held therefor, and Guarantor subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations. Any amount paid to Guarantor on account of any purported subrogation rights prior to the termination of this Guaranty shall be held in trust for the benefit of Guaranteed Party and shall immediately thereafter be paid to Guaranteed Party.

Expenses. Whether or not legal action is instituted, Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed Party in enforcing its rights under this Guarantee. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment.

Assignment. Guarantor shall not be permitted to assign its rights or delegate its obligations under this Guarantee in whole or part without written consent of Guaranteed Party. Guaranteed Party shall not be permitted to assign its rights hereunder except in connection with a permitted assignment of its rights and obligations under the Agreement.

Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guarantee at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same. All remedies of Guaranteed Party under this Guarantee shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and Guaranteed Party.

Entire Agreement. This Guarantee and the Agreement are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guarantee of the Obligations of Obligor by Guarantor. All prior or contemporaneous agreements or undertakings made, which are not set forth in this Guarantee, are superseded.

Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and shall be deemed received (a) if given personally, when received; (b) if mailed by certified mail (postage prepaid and return receipt requested), five (5) days after deposit in the U.S. mails; (c) if given by facsimile, when transmitted with confirmed transmission; or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party shall specify in a notice delivered to the other in accordance with this Section):

If to Guarantor:

Attn: \_\_\_\_\_

If to Guaranteed Party:

Attn: \_\_\_\_\_

Counterparts. This Guarantee may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

Governing Law; Jurisdiction. This Guarantee shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to principles of conflicts of law. Guarantor and Guaranteed Party submit to the jurisdiction and venue of the Superior Court of the District of Columbia or of any federal district court located in the District of Columbia over any disputes relating to this Guarantee.

Further Assurances. Guarantor shall cause to be promptly and duly taken, executed, acknowledged and delivered such further documents and instruments as Guaranteed Party may from time to time reasonably request in order to carry out the intent and purposes of this Guarantee.

Limitation on Liability. Except as specifically provided in this Guarantee, Guaranteed Party shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the Agreement.

Effectiveness. This Guarantee shall be effective as of the date set forth in the first paragraph hereof upon its execution by both Guarantor and Guaranteed Party.

IN WITNESS WHEREOF, Guarantor and Guaranteed Party have executed and delivered this Guarantee.

**[Guarantor]**

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

—  
Name:

Title:

Acknowledged and agreed

**[Guaranteed Party]**

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

Name:

Title:

**EXHIBIT F**  
**FORM OF IRREVOCABLE LETTER OF CREDIT**

Irrevocable Standby Letter of Credit No.

Date of Issuance:

Beneficiary:

[Buyer Name]

Applicant/Account Party:

Amount: USD Amount ([Amount] and 00/100)

Initial expiration date at our counter (unless evergreen):

Final expiration date at our counter:

Ladies and Gentlemen:

We, [Bank Name]

(“Issuer”), do hereby issue this Irrevocable Transferable Standby Letter of Credit No. {\_\_\_\_\_} by order of, for the account of, and on behalf of [\_\_\_\_\_] (“Account Party”) and in favor of [Buyer Name] (“Beneficiary”). The term “Beneficiary” includes any successor by operation of law of the named beneficiary including without limitation any liquidator, receiver or conservator.

This Letter of Credit is issued, presentable and payable at the office of the Issuing Bank located at [Bank Address] and we hereby engage with YOU that drafts and documents drawn under and in compliance with the terms of this Letter of Credit will be honored on presentation pursuant to the terms of this Letter of Credit.

This Letter of Credit is available for payment in one or more drafts drawn on [Bank Name] and may be drawn hereunder up to an aggregate amount not exceeding [\$Amount] when accompanied by a drawing certificate (i) signed by an officer of the Beneficiary; (ii) dated the date of presentation; and (iii) the following statement:

“The undersigned hereby certifies to [Bank Name] (“Issuer”), with reference to its Irrevocable Transferable Standby Letter of Credit No.[\_\_\_\_], dated \_\_\_\_\_, issued on behalf of [\_\_\_\_\_] (“Account Party”) and in favor of the [Buyer Name], (“Beneficiary”) that:

[said Account Party has failed to perform in accordance with the terms and provisions of the Solar Power Purchase Agreement dated [ ] to which Account Party and Beneficiary are parties, as such agreement may be amended and supplemented from time to time, and any replacements or substitutions thereof, (collectively, the “Agreement”).]

--or--

[(i) Beneficiary has received notice from the Issuing Bank pursuant to the terms of the Letter of Credit that Issuing Bank elects not to extend the Letter of Credit for an additional one-year period, and (ii) the Letter of Credit will expire in fewer than thirty (30) days from the date hereof. As such, as of the date hereof Beneficiary is entitled to draw under the Letter of Credit.]

The Beneficiary hereby draws upon the Letter of Credit in an amount equal to \$[insert amount in figures] (United States Dollars [insert amount in words] ).”

If presentation of any drawing certificate is made on a Business Day and such presentation is made on or before 10:00 a.m. Eastern Time, Issuer shall satisfy such drawing request on the second Business Day. If the drawing certificate is received after 10:00 a.m. Eastern Time, Issuer will satisfy such drawing request on the third Business Day.

It is a condition of the letter of credit that it will be automatically extended without amendment for additional one-year periods until [ ] (the “Final Expiration Date”), unless at least one hundred twenty (120) days prior to any expiration date we send you written notice at the above address by registered mail or overnight courier service that we elect not to consider this Letter of Credit extended for any such period.

This Letter of Credit is transferable in its entirety, but not in part, and may be successively transferred upon our receipt of instruction in the form attached hereto as Exhibit A, accompanied this original Letter of Credit and any amendments hereto. Transfer charges are for the account of the applicant. This Letter of Credit may not be transferred to any person with which U.S. persons are prohibited from doing business under U.S. foreign assets control regulations or other applicable U.S. laws and regulations. Payments under the Letter of Credit shall be in accordance with the following terms and conditions:

All commissions and charges will be borne by the Account Party.

This Letter of Credit shall be governed by the International Standby Practices Publication No. 590 of the International Chamber of Commerce, (the “ISP”), except to the extent that terms hereof are inconsistent with the provisions of the ISP, in which case the terms of the Letter of Credit shall govern. This Letter of Credit shall be governed by the internal laws of the State of Florida to the extent that the terms of the ISP are not applicable; provided that, in the event of any conflict between the ISP and such Florida laws, the ISP shall control.

This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary and the Issuer.

The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless the Beneficiary shall have signed a written waiver.

No such waiver, unless expressly so stated therein, shall be effective as to any transaction that occurs subsequent to the date of the waiver, nor as to any continuance of a breach after the waiver.

Partial drawings and multiple drawings are permitted.

A failure to make any drawing at any time shall not impair or reduce the availability of this Letter of Credit in any subsequent period or our obligation to honor your subsequent demands for payment made in accordance with the terms of this Letter of Credit.

Original Letter of Credit and all amendments need to be presented for a drawing. If it's a partial drawing, we will endorse the drawing amount on the back of the Original Letter of Credit and return the same to beneficiary.

EXHIBIT A UNDER STANDBY LETTER OF CREDIT NO.

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

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

[Bank Name and Address]

Re: Standby Letter of Credit No.

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE \_\_\_\_\_

ADDRESS OF TRANSFEREE \_\_\_\_\_

CITY, STATE/COUNTRY ZIP \_\_\_\_\_

(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments of the Letter of Credit, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments of the Letter of Credit are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such letter of credit and all amendment(s), if any, are returned herewith, and we ask you to endorse the within transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

Very truly yours, [BENEFICIARY NAME]

\_\_\_\_\_  
Authorized Signature



The signature(s) of \_\_\_\_\_ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program.

\_\_\_\_\_  
\_\_\_\_\_  
(Signature of Authenticating Bank)

(Name of Bank)

\_\_\_\_\_  
\_\_\_\_\_  
(Printed Name/Title) (Date)

\_\_\_\_\_  
\_\_\_\_\_

(1) FOR BANK USE ONLY
Confirmation of Authenticating Bank's signature performed by:
Date: _____ Time: _____ a.m./p.m.
Add Info.: _____

**EXHIBIT G**  
**INSURANCE REQUIREMENTS**

**General Liability Insurance.** Seller must obtain the following insurance coverage, which can be exceeded by Seller and may be met through any combination of primary insurance and following form excess or umbrella insurance so long as the combined limits meet requirements of this Agreement:

Commercial general liability insurance in an “occurrence” form with bodily injury and property damage combined liability limits of not less [REDACTED] per occurrence; provided, however: (i) Seller may use any combination of primary or excess policies to satisfy the overall limit requirements; and (ii) if Seller uses a “claims-made” policy, it must maintain continuous coverage in effect for at least two (2) years beyond termination of this Agreement, through continuous renewal of the original policy or by purchasing extended discovery period or retroactive insurance dated back to the Effective Date of this Agreement.

Specific coverage for broad form contractual liability and a separation of insured provision.

**Additional Insurance.** In addition to the requirements above, Seller must acquire and maintain throughout the Term, the following additional types of insurance:

**Workers’ Compensation.** Workers’ compensation insurance in accordance with statutory requirements including employer’s liability insurance with limits not less than [REDACTED] per occurrence and endorsement providing insurance for obligations under the U.S. Longshoremen’s and Harbor Worker’s Compensation Act and the Jones Act, where applicable.

**Auto Liability.** Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage limits of at least [REDACTED]

**All Risk Property.** All Risk Property insurance covering the Facility against physical loss or damage, with a minimum limit sufficient to cover replacement of the Facility, including sublimits for physical loss or damage caused by flood, wind, or earthquake, which shall be insured up to [REDACTED]

**EXHIBIT H**  
**FORM OF SURETY BOND**

**BOND NUMBER** \_\_\_\_\_

**POWER PURCHASE AGREEMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS**, That we \_\_\_\_\_  
(hereinafter called "Principal"), and [\_\_\_\_\_] authorized to do business in the State of \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called "Surety") are held and firmly bound unto \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called "Obligee") as Obligee, for such monetary amount as incurred by the Obligee, not to exceed the penal sum of \_\_\_\_\_  
\_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS, good and lawful money of the United States of America, the payment of which, well and truly to be made, we do bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS** the above bounded Principal has entered into a certain written agreement with the above named Obligee, effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the

\_\_\_\_\_  
(hereinafter called "Agreement") which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copies at length were attached herein.

The obligation of this Bond shall be null and void unless: (1) the above Agreement is in writing, and has been fully executed by both the Principal and the Obligee; (2) the Principal is actually in Default under the above Agreement (hereinafter called "Default"), and is declared by the Obligee thereafter to be in Default; and (3) the Obligee has provided written notice of the Default to the Surety as promptly as possible, and in any event, within fifteen (15) days after such Default.

The Surety, at the sole election and discretion of the Surety, may take any of the following actions:

1. Determine the amount for which the Surety may be liable to the Obligee, and as soon as practicable thereafter, tender payment thereof to the Obligee; or
2. Pay the full amount of the above penal sum in complete discharge and exoneration of this Bond, and of all liabilities of the Surety relating hereto.

**PROVIDED HOWEVER**, that this Bond is executed by the Surety and accepted by the Obligee subject to the following expressed conditions:

1. This bond may be cancelled by providing sixty days (60) written notice of cancellation given by certified mail to the Obligee and to the Principal at the addresses stated below. Such cancellation shall in no way limit the liability of the Surety for subsequent defaults of the Principal's obligation incurred prior to such termination. In the event of cancellation, the Principal is responsible for providing alternate security to the Obligee thirty (30) days prior to the termination date, otherwise to be considered in Default under the Agreement and the Obligee shall be entitled to submit a Demand and receive payment under this Bond.
2. A reorganization under Chapter 11 of the US Bankruptcy Code by the Principal shall not constitute an event of Default recoverable under this Bond if they continue to perform their obligations under the Agreement.
3. In the event the Principal fails to make any payments due to the Obligee which would constitute the basis of a Default, within Ten (10) business days of Surety's receipt of a Demand for payment under this Bond (hereinafter called "Demand"), Surety shall pay to the Obligee the amount of such Demand. The Surety shall cause to be paid all payments then past due, and in so doing cure any Default under the Agreement. The Obligee may present one or more Demands at any time in its sole discretion, provided however, Surety shall not be obligated to pay an aggregate amount in excess of the penal sum of the Bond less any amounts previously paid by the surety.

4. Surety's liability under this Bond issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.
5. No claim, action, suit or proceeding, except as herein set forth, shall be had or maintained against the Surety on this Bond unless same be brought or instituted and process served upon the Surety within six (6) months following the effective cancellation date of this Bond.
6. Any notice given or required under this Agreement will be made to the following representatives of the Parties:
  - a. To: {Principal}
  - b. To: {Obligee}
  - c. To: {Surety}

In the event of conflict or inconsistency between the provisions of this Bond and the provisions of the above Agreement, the provisions of this Bond shall control. The Obligee's acceptance of this Bond and reliance upon it as security constitutes its acknowledgement and agreement as to the explicit terms stated herein under which it is offered and issued by the Surety.

Sealed with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**WITNESS:**

**PRINCIPAL:**

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Signature) (SEAL)

\_\_\_\_\_  
(Name & Title)

**WITNESS:**

**SURETY:**

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Signature) (SEAL)

\_\_\_\_\_  
(Name, as Attorney-in-Fact)

**EXHIBIT I**

**ENVIRONMENTAL ATTRIBUTES ATTESTATION AND BILL OF SALE**

**I. Seller Information**

Name of Seller: \_\_\_\_\_

Address of Seller: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

**II. Declaration**

I, [NAME AND TITLE] , declare that the Environmental Attributes listed below were sold in accordance with that [AGREEMENT] dated as of [DATE] (“Agreement”) exclusively from: \_\_\_\_\_ (“Seller”) to [\_\_\_\_\_] (“Buyer”).

# MWhs Environmental Attributes Transferred	Period of Generation (mm/yy)

I further declare that:

- 1) all the Environmental Attributes were generated by Seller;
- 2) to the best of my knowledge, the Environmental Attributes were not sold, marketed or otherwise claimed by a third party;
- 3) Seller transferred the Environmental Attributes only once, to Buyer;
- 4) the Environmental Attributes were not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by Seller, nor, to the best of my knowledge, by any other entity;
- 5) all of the Environmental Attributes transferred to Buyer (as listed above) were generated at the [\_\_\_\_\_] facility, a [\_\_\_\_]-powered generation facility located in [County, State]; and
- 6) Environmental Attributes transferred to Buyer include RECs which shall be registered and eligible under the Applicable REC Program specified in the Agreement.

As an authorized agent of Seller, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

## **EXHIBIT J**

### **FORM OF LENDER CONSENT**

In the event Seller collaterally assigns its rights hereunder to the Lender as security, any related Lender Consent will contain provisions substantially as follows:

Buyer will not terminate the Agreement other than as provided therein, without the prior written consent of the Lender.

In connection with the exercise of its rights under the Financing Documents, the Lender shall have the right, but not the obligation, to do any act required to be performed by Seller under the Agreement, and Buyer shall accept any such performance by the Lender to the same extent as if such performance was rendered by Seller itself.

Lender shall not assume, sell or otherwise dispose of the Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Lender or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Agreement (a) executes and delivers to Buyer a written assumption of all of Seller's rights and obligations under the Agreement in form and substance reasonably satisfactory to Buyer, which include the obligation to cure any and all defaults of Seller under the Agreement which are capable of being cured and which are not personal to Seller; (b) satisfies and complies with all requirements of the Agreement; (c) if applicable, delivers to Buyer a replacement for any Credit Support that is required to be delivered and maintained by Seller under the Agreement; and (d) is a Permitted Transferee (as defined below). Lender further acknowledges that the assignment of the Agreement to Lender is for security purposes only and that Lender has no rights under the Agreement to enforce the provisions of the Agreement unless and until an event of default has occurred and is continuing under the Financing Documents (a "Financing Default") or under this Agreement, in which case Lender shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Agreement to the same extent and in the same manner as if Lender were an original party to the Agreement.

"Permitted Transferee" means any person or entity who (i) meets the Required Credit Rating set forth in the Agreement, (ii) has, or is the subsidiary of an entity that has, a record of owning and/or operating, for a period of at least three (3) years, solar photovoltaic generating facilities with an aggregate nameplate capacity of no less than 200 MW, and (iii) is not a Prohibited Person or Entity. Lender may from time to time, following the occurrence of a Financing Default, notify Buyer in writing of the identity of a proposed transferee of the Agreement, which proposed transferee may include Lender, in connection with the enforcement of Lender's rights, which notice shall include evidence reasonably acceptable to Buyer that the proposed transferee satisfies the criteria set forth above. Upon receipt of such notice, Buyer shall, within thirty (30) Days of its receipt of such written notice, confirm to Lender whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if Buyer fails to so respond within such thirty (30) Day period such proposed transferee shall be deemed to be a "Permitted Transferee".

If Buyer becomes entitled to terminate the Agreement due to an uncured Event of Default by Seller, Buyer shall not terminate the Agreement unless it has first given notice of such uncured Event of Default to the Lender and has given the Lender an Additional Cure Period to cure such Event of Default. For the purposes of this Agreement, "Additional Cure Period" means (i) with respect to a monetary default, ten (10) Business Days in addition to the cure period (if any) provided to Seller in the Agreement, and (ii) with respect to a non-monetary default, thirty (30) Days in addition to the cure period (if any) provided to Seller in the Agreement. However, if the Lender requires possession of the Project in order to cure the Event of Default and commences foreclosure proceedings against Seller within thirty (30) Days of receiving notice of an Event of Default from Buyer or Seller, whichever is received first, Lender shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) Days; provided, however, that Lender shall provide a written notice to Buyer that it intends to commence foreclosure proceedings with respect to Seller within ten (10) Business Days of receiving a notice of such Event of Default from Buyer or Seller, whichever is received first.

Neither the Lender nor any other participant in the Project Debt shall be obligated to perform or be liable for any obligation of Seller under the Agreement until and unless any of them assumes the Agreement.

Any party taking possession of the Project through the exercise of the Lender's rights and remedies shall remain subject to the terms of the Agreement and shall assume all of Seller's obligations under the Agreement, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Lender or its successor assumes the Agreement in accordance with this paragraph, Buyer shall continue the Agreement with the Lender or its successor, as the case may be, substituted wholly in the place of Seller.

Within sixty (60) Days of any termination of the Agreement in connection with any bankruptcy or insolvency Event of Default of Seller, upon the request of Lender, the Lender (or its successor) and Buyer shall enter into a new power purchase agreement on the same terms and conditions as the Agreement and for the period that would have been remaining under the Agreement but for such termination.

Buyer agrees to execute an estoppel certificate substantially in the form of Attachment A.

**[ATTACHMENT A TO EXHIBIT J]**

**[Buyer shall have the right to qualify and/or revise any representation, warranty and other statement that such representation, warranty or other statement is a true statement as of the date of this certificate.]**

**[Date]**

Reference is made to that certain Power Purchase Agreement dated as of [\_\_\_\_\_] (the “PPA”), by and between [\_\_\_\_\_] a [\_\_\_\_\_] organized and existing under the laws of [\_\_\_\_\_] (“Buyer”); and [\_\_\_\_\_] LLC, a [\_\_\_\_\_] (“Seller”). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. Buyer is a [\_\_\_\_\_] duly organized, validly existing and in good standing (if applicable) under the laws of the State of [\_\_\_\_\_]. The execution and delivery by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any further internal approval or consent of Buyer and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.

The copy of the PPA, as amended, attached as Exhibit [\_\_\_\_], constitutes a true and complete copy of the PPA.

To Buyer’s knowledge, as of the date hereof, the PPA is in full force and effect and the PPA has not been assigned or amended by Buyer. All representations and warranties of Buyer under the PPA were true and correct (as may be qualified by the terms of the Agreement) when made, and, to Buyer’s knowledge, remain true and correct in all material respects as of the date hereof, except for those that, by their nature or terms, apply only as of the date originally made[, except: \_\_\_\_\_].

As of the date hereof, (A) no default or event of default with respect to Buyer nor, to the Buyer’s knowledge, Seller, has occurred under the PPA, and (B) to Buyer’s knowledge, there are no material defaults (including breach(es) of the PPA existing as of the date hereof that are not yet defaults under the PPA because applicable cure periods have not yet expired) or circumstances which with the passage of time and/or giving of notice would constitute a default.

To Buyer’s knowledge, there is no event, act, circumstance or condition constituting an event of force majeure under the PPA.

To Buyer’s knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the PPA. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA. As of the date hereof, there is no pending or, to Buyer’s knowledge, threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which purports to materially affect the legality, validity or enforceability of the PPA. There exist no pending or to the Buyer’s



knowledge, threatened disputes or legal proceedings under the PPA or otherwise between Buyer and Seller.

All payments due, if any, under the PPA by Buyer have been paid in full through the period ending on the date hereof.

*[Signature page follows]*

IN WITNESS WHEREOF, Buyer has caused this Certificate to be duly executed by its officer thereunto duly authorized as of the date first set forth above.

---

By:

Title:

Name:

## EXHIBIT K

### PARTICIPANT LIST

<b>FMPA Solar III Project Participants</b>	<b>Share of Leyland Solar</b>
Homestead Public Services	4.673%
Jacksonville Electric Authority (JEA)	0.000%
City of Lake Worth Beach Utilities	27.670%
Winter Park Electric Utility	9.346%
<b>Total</b>	<b>41.689%</b>

**EXHIBIT L**

**FORM OF PROGRESS REPORT**

**Project:**  
**Recipient:**

**PROJECT PROGRESS REPORT**

Pursuant to Section 4.1(f) of the Agreement, after the Effective Date and before the Commercial Operation Date, Seller will provide Buyer with quarterly progress reports advising Buyer of the current status of the Project, the status of obtaining required Governmental Approvals, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date.

**I. Overview**

<b>Milestone</b>	<b>Expected Completion</b>	<b>Status</b>	<b>Notes</b>
Interconnect Screening Study		Pending	
Start of Permitting		Pending	
Completion of Site Studies		Pending	
Interconnection Application		Pending	
System Impact Study		Pending	
Local Permitting Complete		Pending	
Facilities Study		Pending	
Interconnection Agreement		Pending	
Construction NTP		Pending	
Start of Major Equipment Delivery to Site		Pending	
85% Capacity Available		Pending	
Back Feed Available		Pending	
COD		Pending	

## **II. Status Updates**

- **Interconnection Agreement**
  - Status update
    -
  - Discussion of any foreseeable disruptions or delays
    -
- **Permits, Licenses, Easements and Approvals to Construct**
  - Status update
    -
  - Discussion of any foreseeable disruptions or delays
    -
- **Construction Notice To Proceed**
  - Status update
    -
  - Discussion of any foreseeable disruptions or delays
    -
- **Major Equipment Delivered to Site**
  - Status update
    -
  - Discussion of any foreseeable disruptions or delays
    -
- **Commercial Operation Date**
  - Status update
    -
  - Discussion of any foreseeable disruptions or delays
    -

*Report Completed: [Date, Sender Initials]*

## EXHIBIT M

### FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ by and among [Origis Energy, LLC] , a limited liability company (“Seller”), Florida Municipal Power Agency, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“Buyer”), and \_\_\_\_\_, a [ ] (“Prepay Partner”), and relates to that certain Solar Power Purchase Agreement, dated as of \_\_\_\_\_ (the “PPA”) between Buyer and Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, Seller, Buyer and Prepay Partner (the “Parties” hereto; each is a “Party”) agree as follows:

#### **1. Limited Assignment and Delegation.**

a) Buyer hereby assigns, transfers and conveys to Prepay Partner all right, title and interest in and to the rights of Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “Assigned Products”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “Assigned Product Rights”). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of Buyer under the PPA are expressly reserved for Buyer.

b) Buyer hereby delegates to Prepay Partner the obligation to pay for all Assigned Products that are actually delivered to Prepay Partner pursuant to the Assigned Product Rights during the Assignment Period (the “Delivered Product Payment Obligation” and together with the Assigned Product Rights, collectively the “Assigned Rights and Obligations”). All other obligations of Buyer under the PPA are expressly retained by Buyer. To the extent Prepay Partner fails to pay for any Assigned Products by the due date for payment set forth in the PPA, Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from Seller.

c) Prepay Partner hereby accepts and Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

d) All scheduling of Assigned Products and other communications related to the PPA shall take place between Buyer and Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass from Seller to Prepay Partner upon delivery by Seller of Assigned Product in accordance with the PPA; (ii) Buyer is hereby authorized by Prepay Partner to and shall act as Prepay Partner’s agent with regard to scheduling Assigned Product; (iii) Buyer will provide copies to Prepay Partner of any Notice (as defined in the PPA) of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable

grace period, could result in an Event of Default contemporaneously upon delivery thereof to Seller and promptly after receipt thereof from Seller; (iv) Seller will provide copies to Prepay Partner of annual forecasts of Delivered Energy and monthly forecasts provided pursuant to Section 3.17 of the PPA; (v) Seller will provide copies to Prepay Partner of all invoices and supporting data provided to Buyer pursuant to Section 8.1 of the PPA, provided that any payment adjustments or subsequent reconciliations occurring after the date that is ten (10) days prior to the payment due date for a monthly invoice, including pursuant to Section 8.2 of the PPA, will be resolved solely between Buyer and Seller and therefore Seller will not be obligated to deliver copies of any communications relating thereto to Prepay Partner; and (vi) Buyer and Seller, as applicable, will provide copies to Prepay Partner of any other information reasonably requested by Prepay Partner relating to Assigned Products.

e) Seller acknowledges that (i) Prepay Partner intends to immediately transfer title to any Assigned Products received from Seller through one or more intermediaries such that all Assigned Products will be re-delivered to Buyer, and (ii) Prepay Partner has the right to purchase receivables due from Buyer for any such Assigned Products. To the extent Prepay Partner purchases any such receivables due from Buyer, Prepay Partner may transfer such receivables to Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

## **2. Assignment Early Termination.**

a. The Assignment Period may be terminated early upon the occurrence of any of the following:

1. delivery of a written notice of termination by either Prepay Partner or Buyer to each of the other Parties hereto;

2. delivery of a written notice of termination by Seller to each of Prepay Partner and Buyer following Prepay Partner's failure to pay when due any amounts owed to Seller in respect of any Delivered Product Payment Obligation and such failure continues for ten (10) Business Days following receipt by Prepay Partner of written notice thereof;

3. delivery of a written notice by Seller if Prepay Partner becomes Bankrupt (as defined in the PPA); or

b. The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from Prepay Partner to Buyer upon the early termination of the Assignment Period, provided that (i) Prepay Partner shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Prepay Partner prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period

c. The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from Prepay Partner to Buyer upon the expiration of or early termination of the PPA, provided that (i) Prepay Partner shall remain responsible for all payment obligations with respect to any Assigned Product delivered to Prepay Partner prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

### **3. *Representations and Warranties.***

The Seller and the Buyer represent and warrant to Prepay Partner that (a) the PPA is in full force and effect; (b) no event or notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

### **4. *Notices.***

Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section 18.1 of the PPA and to the addresses of each of Seller and Buyer specified in the PPA. Buyer agrees to notify Prepay Partner of any updates to such notice information, including any updates provided by Seller to Buyer. Notices to Prepay Partner shall be provided to the following address, as such address may be updated by Prepay Partner from time to time by notice to the other

Parties:

Prepay Partner:

### **5. *Miscellaneous.***

Sections 10.1-10.4 (Representations, Warranties and Covenants), 13.1 (Confidential Information), 19.1 (Effectiveness of Agreement, Survival) 19.3 (Amendments), 19.4 (Waivers), 19.5 (Severability), 19.6 (Standard of Review), 19.11 (No Agency), 19.14 (Captions, Construction), and 19.18 (Counterparts) of the PPA are incorporated by reference into this Agreement, mutatis mutandis, as if fully set forth herein.

### **6. *U.S. Resolution Stay Provisions.***

The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol (“ISDA U.S. Stay Protocol”), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and for the purposes of such incorporation, (i) Prepay Partner shall be deemed to be a Regulated Entity, (ii) each of Buyer and Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

### **7. *Governing Law, Jurisdiction.***

a. Governing Law.



THIS ASSIGNMENT AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS ASSIGNMENT AGREEMENT WILL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT REFERENCE TO ANY CONFLICTS OF LAWS PROVISIONS THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION'S LAWS.

b. Waiver of Right to Trial by Jury.

EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS NOVATION AGREEMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF EITHER OF THE OTHER PARTIES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND EACH OF THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS ASSIGNMENT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7(B).

## **Appendix 1**

### **Assigned Rights and Obligations**

PPA: “PPA” means that certain Solar Power Purchase Agreement, dated as of \_\_\_\_\_, by and between Buyer and Seller, as amended from time to time.

“Assignment Period” means the period beginning on [ ] and extending until [ ], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

Assigned Product: “Assigned Products” include the Product, as defined in the PPA.

Further Information: Seller shall continue to transfer the Environmental Attributes Attestation and Bill of Sale associated with all Renewable Energy Credits corresponding to all Delivered Energy under the PPA pursuant to Section 3.6 of the PPA, provided that the transferee of such Environmental Attributes Attestation and Bill of Sale may be changed from time to time in accordance with the written instructions of both Prepay Partner and [ ] upon twenty (20) Business Days’ notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. All Assigned Product delivered by Seller to Prepay Partner shall be a sale made at wholesale, with Prepay Partner reselling all such Assigned Product.

**Appendix 2**

**Assigned Prepay Quantity**

[NOTE: To be set forth in a monthly volume schedule.]

**EXHIBIT N**

**FORM OF FMPA SOLAR III PROJECT POWER SALES CONTRACT**

**Amendment Number One to the  
Solar Power Purchase Agreement  
between Florida Municipal Power Agency, as Buyer,  
and FL SB 5, LLC, as Seller, dated as of August 15, 2023.**

This Amendment Number One to the Solar Power Purchase Agreement between Florida Municipal Power Agency (Solar III Project), as Buyer, and FL SB 5, LLC, as Seller, dated as of August 15, 2023 (“Amendment Number One”), is entered into as of this \_\_\_ day of \_\_\_\_\_, 2024 (the “Amendment Effective Date”), by and between the Florida Municipal Power Agency, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“Buyer”) and FL SB 5, LLC, a Delaware limited liability company (“Seller”). Buyer and Seller are each individually referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the Parties entered into that certain Solar Power Purchase Agreement for the Hampton solar project, dated as of August 15, 2023 (the “PPA”); and

**WHEREAS**, the Parties desire to further amend the PPA as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants in the PPA as amended and herein contained, the Parties hereby mutually agree as follows:

1. Amendments.

- a. Section 1.1 of the PPA is amended by deleting the definition of “Default Commercial Operation Date” in its entirety and replacing it with the following definition:

***“Default Commercial Operation Date”*** means [REDACTED].

- b. Section 3.21 (e) of the PPA is amended by deleting “– either as an undivided ownership interest buy Buyer, or in conjunction with the purchase by the FMPA Solar III Project of the remaining ownership interest of the Project not purchase by Buyer, provided that any joint purchase by Buyer and the FMPA ARP shall be a simultaneous purchase of 100% ownership interest in the Project, with each such purchase by Buyer and the FMPA Solar III Project being expressly conditioned upon successful purchase of the remaining ownership share by FMPA Solar III Project and Buyer, respectively.”
- c. Exhibit K of the PPA is hereby revised, restated, and superseded in its entirety with the Exhibit K attached to this Amendment Number One.

- d. Exhibit N of the PPA is hereby revised, restated, and superseded in its entirety with the Exhibit N attached to this Amendment Number One.
2. Definitions. Capitalized terms used in this Amendment Number One that are not otherwise defined herein shall have the meaning set forth in the PPA.
  3. Representations Regarding this Amendment Number One. By its execution of this Amendment Number One, each Party represents and warrants that it is authorized to enter into this Amendment Number One, that this Amendment Number One does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, which conflict could reasonably be expected to have a material adverse effect on the ability of such Party to perform its obligations hereunder, and that this Amendment Number One represents its valid and binding obligation, enforceable against it in accordance with its terms.
  4. Governing Law; Disputes. This Amendment Number One shall be governed by Section 19.7 (Governing Law) of the PPA. The Parties agree to comply with Article 17 (Dispute Resolution) of the PPA with respect to any dispute relating to this Amendment Number One.
  5. Conforming References. Upon the Amendment Effective Date, each reference in the PPA to “this Agreement,” “hereunder,” “hereto,” “herein,” or words of like import, shall mean and be a reference to the PPA as amended by this Amendment Number One.
  6. No Other Amendments; Ratification of Remaining Terms and Conditions. Except to the extent modified in this Amendment Number One, all other terms and conditions of the PPA remain unchanged and in full force and effect.
  7. Counterparts. This Amendment Number One may be executed in one or more counterparts, each of which, when executed, shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment Number One by facsimile or other electronic means (e.g., email or PDF) will be effective as delivery of an original counterpart to this Amendment Number One.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have hereunder executed this Amendment Number One as of the Amendment Effective Date.

**FL SB 5, LLC**

**FLORIDA MUNICIPAL POWER AGENCY**

\_\_\_\_\_

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT K

### PARTICIPANT LIST

<b>FMPA Solar III Project Participants</b>	<b>Share of Hampton Solar</b>
Homestead Public Services	0.000%
Jacksonville Electric Authority (JEA)	100.000%
City of Lake Worth Beach Utilities	0.000%
Winter Park Electric Utility	0.000%
<b>Total</b>	<b>100.000%</b>



**EXHIBIT N**

**Amendment Number One to the  
Solar Power Purchase Agreement  
between Florida Municipal Power Agency, as Buyer,  
and FL SB A, LLC, as Seller, dated as of August 15, 2023.**

This Amendment Number One to the Solar Power Purchase Agreement between Florida Municipal Power Agency (Solar III Project), as Buyer, and FL SB A, LLC, as Seller, dated as of August 15, 2023 (“Amendment Number One”), is entered into as of this \_\_\_ day of \_\_\_\_\_, 2024 (the “Amendment Effective Date”), by and between the Florida Municipal Power Agency, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“Buyer”) and FL SB A, LLC, a Delaware limited liability company (“Seller”). Buyer and Seller are each individually referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the Parties entered into that certain Solar Power Purchase Agreement for the New River solar project, dated as of August 15, 2023 (the “PPA”); and

**WHEREAS**, the Parties desire to further amend the PPA as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants in the PPA as amended and herein contained, the Parties hereby mutually agree as follows:

1. Amendments.
  - a. Section 3.21 (e) of the PPA is amended by deleting “– either as an undivided ownership interest buy Buyer, or in conjunction with the purchase by the FMPA Solar III Project of the remaining ownership interest of the Project not purchase by Buyer, provided that any joint purchase by Buyer and the FMPA ARP shall be a simultaneous purchase of 100% ownership interest in the Project, with each such purchase by Buyer and the FMPA Solar III Project being expressly conditioned upon successful purchase of the remaining ownership share by FMPA Solar III Project and Buyer, respectively.”
  - b. Exhibit N of the PPA is hereby revised, restated, and superseded in its entirety with the Exhibit N attached to this Amendment Number One.
2. Definitions. Capitalized terms used in this Amendment Number One that are not otherwise defined herein shall have the meaning set forth in the PPA.
3. Representations Regarding this Amendment Number One. By its execution of this Amendment Number One, each Party represents and warrants that it is authorized to enter

into this Amendment Number One, that this Amendment Number One does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, which conflict could reasonably be expected to have a material adverse effect on the ability of such Party to perform its obligations hereunder, and that this Amendment Number One represents its valid and binding obligation, enforceable against it in accordance with its terms.

4. Governing Law; Disputes. This Amendment Number One shall be governed by Section 19.7 (Governing Law) of the PPA. The Parties agree to comply with Article 17 (Dispute Resolution) of the PPA with respect to any dispute relating to this Amendment Number One.
5. Conforming References. Upon the Amendment Effective Date, each reference in the PPA to “this Agreement,” “hereunder,” “hereto,” “herein,” or words of like import, shall mean and be a reference to the PPA as amended by this Amendment Number One.
6. No Other Amendments; Ratification of Remaining Terms and Conditions. Except to the extent modified in this Amendment Number One, all other terms and conditions of the PPA remain unchanged and in full force and effect.
7. Counterparts. This Amendment Number One may be executed in one or more counterparts, each of which, when executed, shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment Number One by facsimile or other electronic means (e.g., email or PDF) will be effective as delivery of an original counterpart to this Amendment Number One.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have hereunder executed this Amendment Number One as of the Amendment Effective Date.

**FL SB A, LLC**

**FLORIDA MUNICIPAL POWER AGENCY**

\_\_\_\_\_

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT N**

**NON-PUBLIC DOCUMENT – CONTAINS INFORMATION EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO FLORIDA PUBLIC RECORDS LAW**

**MUTUAL TERMINATION & RELEASE**

**THIS MUTUAL TERMINATION AND RELEASE** (this “**Termination**”) is entered into as of \_\_\_\_\_, 2024, by and between Penholoway Solar, LLC, a Delaware limited liability company (“**Seller**”) and the Florida Municipal Power Agency (Solar III Project), a separate governmental legal entity created and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“**Buyer**”). Seller and Buyer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

A. WHEREAS, Seller and Buyer are parties to that certain Solar Power Purchase Agreement, effective as of August 15, 2023 (as it may be amended and/or modified from time to time, the “**PPA**”); and

B. WHEREAS, the Parties now desire to terminate the PPA and release each other of all further obligations thereunder.

NOW, THEREFORE, in consideration of the foregoing and the promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Defined Terms and Phrases. The capitalized terms and phrases used in this Termination but not defined herein shall have the meaning stated in the PPA.

2. Termination of PPA. Each party hereby (a) terminates the PPA, and (b) states and confirms that, except as otherwise expressly provided in this Termination, each of the parties’ rights or obligations under the PPA are hereby terminated, in each case as of the date of this Termination.

3. Mutual Release. Each Party specifically releases, waives, and forever discharges the other Party, and its successors in interest, past, present and future assigns, officers, directors, current and former employees, agents, subsidiaries, affiliates, attorneys, insurers and underwriters, from any and all claims, demands, judgments, actions, liabilities, liens, indebtedness, and causes of actions, of every kind and character, whether asserted or unasserted, whether known or unknown, suspected or unsuspected, in law or in equity, for or by reason of any matter, cause or thing whatsoever pursuant to the PPA or any disputes thereunder as of the date of this Termination, excepting only the obligations created by and the representations, warranties and covenants made in this Termination.

4. Performance Assurance. Consistent with Section 9.3(f) of the PPA, each Party shall promptly take all actions necessary to return any and all Performance Assurance provided pursuant to the PPA, including, to the extent required, directing any issuer or custodian of such Performance Assurance to release it to the other Party.

**NON-PUBLIC DOCUMENT – CONTAINS INFORMATION EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO FLORIDA PUBLIC RECORDS LAW**

5. Parties to bear their own fees and costs. Each of the Parties agrees to bear its own attorneys' fees and costs for all matters related to the termination of the PPA and to the negotiation, drafting and execution of this Termination.

6. Non-Disparagement. The Parties expressly agree that they shall not make any written or oral statements about the other Party that are of a critical, disparaging, or defamatory nature relating to the PPA or this Termination. This Section does not, in any way, restrict or impede either Party from making any truthful, non-confidential statement related to the PPA or this Termination as (a) required by law, legal process or required or requested by any court, arbitrator, mediator or administrative, regulatory, or legislative body (including any committee thereof) with jurisdiction over the Party or (b) necessary to comply with any of the Party's obligations under a valid, pre-existing contract, for the purpose of obtaining or renewing insurance, or as part of due diligence for a contemplated sale of or investment in any business impacted by the Termination.

7. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Termination. Each Party agrees that this Termination shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Termination.

8. Headings. All section headings herein are included herein for convenience of reference only and shall not constitute a part of this Termination for any other purpose.

9. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Termination.

10. Entire Agreement. This Termination represents the entire understanding and agreement of the parties with respect to the subject matter hereof and may only be amended or modified in a writing signed by both parties and evidencing their mutual agreement thereto.

11. Governing Law; Disputes. This Termination and the rights and duties of the Parties arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the state of Florida, without regard to principles of conflicts of law, and, as applicable, by the Federal laws of the United States of America. Any legal proceeding of any nature brought by either Party against the other to enforce any right or obligation under this Termination, or arising out of any other matter pertaining to this Termination, shall be brought in the state and federal courts in Leon County, Florida. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, PUBLICITY, REPUTATIONAL, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES IN CONNECTION WITH THIS TERMINATION, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY

**NON-PUBLIC DOCUMENT – CONTAINS INFORMATION EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO FLORIDA PUBLIC RECORDS LAW**

IN RESPECT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS TERMINATION, 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 TERMINATION.

12. Counterparts. This Termination may be executed by facsimile or PDF (electronic copy) and in multiple counterparts, all of which taken together shall have the same force and effect as one and the same original instrument.

13. Representations, warranties, and covenants. By its execution of this Termination, each Party represents and warrants that it is authorized to enter into this Termination, that this Termination does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, which conflict could reasonably be expected to have a material adverse effect on the ability of such Party to perform its obligations hereunder, and that this Termination represents its valid and binding obligation, enforceable against it in accordance with its terms.

*[Signature page follows]*



**NON-PUBLIC DOCUMENT – CONTAINS INFORMATION EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO FLORIDA PUBLIC RECORDS LAW**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Termination to be executed by their respective authorized representatives as of the date first written above.

**PENHOLOWAY SOLAR , LLC**

**FLORIDA MUNICIPAL POWER  
AGENCY**

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

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

Name: Alfredo Gracian-Silva

Name: Jacob A. Williams

Title: Secretary

Title: General Manager and CEO

**Amendment Number One to the  
Power Sales Contract  
between Florida Municipal Power Agency  
and [MEMBER NAME]**

This Amendment Number One to the Power Sales Contract between Florida Municipal Power Agency and [MEMBER NAME] dated as of August 15, 2023 (“Amendment Number One”), is entered into as of this \_\_\_ day of \_\_\_\_\_, 2024 (the “First Amendment Effective Date”), by and between the Florida Municipal Power Agency, a separate governmental legal entity creating and existing pursuant to Section 163.01, Florida Statutes, and exercising powers under that provision or Part II, Chapter 361, Florida Statutes or both (“FMPA”) and [MEMBER NAME] a public agency of the State of Florida and a member of FMPA (“Project Participant”). FMPA and Project Participant are each individually referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the Parties entered into that certain Power Sales Contract between Florida Municipal Power Agency and [MEMBER NAME] dated as of August 15, 2023 (the “Power Sales Contract”); pursuant to which FMPA has agreed to sell and deliver and Project Participant has agreed to purchase and receive Solar Product;

**WHEREAS**, FMPA and Project Participant have agreed to certain amendments to the Solar PPAs, which necessitate corresponding amendments to this Power Sales Contract;

**WHEREAS**, the Parties desire to further amend the Power Sales Contract as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants in the Power Sales Contract as amended and herein contained, the Parties hereby mutually agree as follows:

1. Amendments.
  - a. Section 1 of the Power Sales Contract is amended by deleting the definition of “Energy Share” in its entirety and replacing it with the following definition:

“Energy Share shall mean FMPA's 181.025 MW share under the Solar PPA in the Solar Product produced by or associated with the Solar Facility.”
  - b. Attachment A of the Power Sales Contract is hereby revised, restated, and superseded in its entirety with the Attachment A attached to this Amendment Number One.

- c. Schedule 1 of the Power Sales Contract is hereby revised, restated, and superseded in its entirety with the Schedule 1 attached to this Amendment Number One.
2. Definitions. Capitalized terms used in this Amendment Number One that are not otherwise defined herein shall have the meaning set forth in the Power Sales Contract.
3. Representations Regarding this Amendment Number One. By its execution of this Amendment Number One, each Party represents and warrants that it is authorized to enter into this Amendment Number One, that this Amendment Number One does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, which conflict could reasonably be expected to have a material adverse effect on the ability of such Party to perform its obligations hereunder, and that this Amendment Number One represents its valid and binding obligation, enforceable against it in accordance with its terms.
4. Conforming References. Upon the First Amendment Effective Date, each reference in the Power Sales Contract to “this Agreement,” “hereunder,” “hereto,” “herein,” or words of like import, shall mean and be a reference to the Power Sales Contract as amended by this Amendment Number One.
5. No Other Amendments; Ratification of Remaining Terms and Conditions. Except to the extent modified in this Amendment Number One, all other terms and conditions of the Power Sales Contract remain unchanged and in full force and effect.
6. Counterparts. This Amendment Number One may be executed in one or more counterparts, each of which, when executed, shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment Number One by facsimile or other electronic means (e.g., email or PDF) will be effective as delivery of an original counterpart to this Amendment Number One.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties hereto have hereunder executed this Amendment Number One as of the First Amendment Effective Date.

**FLORIDA MUNICIPAL POWER AGENCY**

(SEAL)

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

Attest:

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

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

**[MEMBER NAME]**

(SEAL)

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

Title:

Attest:

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

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

Approved as to form and legal sufficiency:

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

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

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

- **Hampton Solar Facility (74.9 MW)**
  - JEA – 100%
  
- **New River Solar Facility (74.9 MW)**
  - JEA – 100%
  
- **Leyland Solar Facility (74.9 MW)**
  - Homestead Public Services - 4.673%
  - City of Lake Worth Beach – 27.670%
  - City of Winter Park – 9.346%

Notice Information of Project Participants

<p><b><u>Homestead Public Services</u></b>  George Gretsas, City Manager  The City of Homestead  100 Civic Court  Homestead, FL 33033</p>	<p><b><u>City of Lake Worth Beach</u></b>  City of Lake Worth Beach  Electric Utilities Director  1900 2<sup>nd</sup> Avenue North  Lake Worth, FL 33461  Tel: (561) 586-1670</p> <p>With a copy to:  City of Lake Worth  Attn: City Attorney  7 N. Dixie Highway  Lake Worth, FL 33460</p>
<p><b><u>JEA</u></b>  Ricky Erixton  21 W Church St.  Jacksonville, FL 32202  T: (904) 665-7110  Email: <a href="mailto:erixrd@jea.com">erixrd@jea.com</a></p>	<p><b><u>Winter Park Electric Utility</u></b>  City of Winter Park  Randy Knight, City Manager  401 South Park Avenue  Winter Park, FL 32789-4386</p>

**AGENDA ITEM 8 – ACTION ITEMS**

- b. Approval of Resolution 2024-B3 - New Pooled Loan Program Credit Provider**

**Board of Directors Meeting September 19, 2024**



# **8b – Approval of Resolution 2024-B3 – New Pooled Loan Program Credit Provider**

Board of Directors

September 19, 2024



# Pooled Loan Program

## *Potential Partnership with Truist to Support Program*

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- Engaged in discussions with Truist since February 2024 on potential partnership.
- Truist has been the only bank to express interest in supporting the Pooled Loan Program.
- Truist's detailed review of our program and loan documents has led to several changes that modify document language and terms.
  - Proposed modifications mostly align with current trends for bank loans today.

# Proposed Modifications (as previously presented)

## *Key Changes with Truist as Credit Provider*

	First Horizon	Truist modifications**
Minimum Loan Amount	\$1 million	\$2 million
Rate Lock	Varies, ~ 7 days prior to closing	30, 60, 90-day options available
Term	10 years max	20 years max
Capacity	\$25 million commitment	\$50 million uncommitted line <i>*lender can terminate unused commitment – provide 5 business days notice.</i>
Loan Approval	All	Minimum standard guidelines <i>*intention for all loans to be approved if meet guidelines.</i>
Prepayment Optionality	Year 1 – 103% Year 2 – 102% Year 3 – 101% No prepayment penalty after year 3	<ul style="list-style-type: none"> <li>• Subject to bank’s standard make whole language</li> <li>• Up to 10% of par without being subject to make whole</li> </ul>

# Proposed Modifications (as of September 2024)

## Key Changes with Truist as Credit Provider

	First Horizon	Truist modifications**
Legal Entity Representation	One entity for all loan types	<ul style="list-style-type: none"> <li>• Truist Commercial Equity, Inc. for Tax-exempt loans</li> <li>• Truist Bank for Taxable loans</li> </ul> <p><i>*All loan decisions made by same credit group</i></p>
Trustee for New Loans	TD Bank, N.A.	<p>Truist Corporate Trust</p> <p><i>*Potential efficiencies in making loan payments</i></p>
Advance Fees	<ul style="list-style-type: none"> <li>• Bank Fee - \$5,000</li> <li>• Bank Legal Fee - \$7,000</li> </ul>	<ul style="list-style-type: none"> <li>• Bank Fee - none</li> <li>• Bank Legal Fee – varies depending on size and structure</li> </ul> <p><i>*Does not include Trustee &amp; Legal Fees</i></p>
Grace & Notice Periods	In general, timeframes reduced from 90/60/30 to 60/30/10	
Consent Right**	Added Lender consent rights for any Supplemental Resolution that amends an Event of Default	

# Recommended Motion

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- Move approval of Resolution 2024-B3.

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE FLORIDA MUNICIPAL POWER AGENCY (“FMPA” OR THE “AGENCY”): (I) MAKING CERTAIN FINDINGS RELATING TO THE SALE OF SERIES D OBLIGATIONS AUTHORIZED BY THE SUPPLEMENTAL SERIES D RESOLUTION; (II) APPROVING AND ADOPTING THE SERIES D SUPPLEMENTAL INITIAL POOLED LOAN PROJECT OBLIGATION RESOLUTION WHICH AUTHORIZES THE ISSUANCE OF FLORIDA MUNICIPAL POWER AGENCY INITIAL POOLED LOAN PROJECT OBLIGATIONS, SERIES D (THE “SERIES D OBLIGATIONS”) AND DELEGATES TO AUTHORIZED SIGNATORIES CERTAIN MATTERS RELATING TO THE ISSUANCE OF SUCH SERIES D OBLIGATIONS INCLUDING (1) WHETHER AND WHEN TO ISSUE SUCH SERIES D OBLIGATIONS, (2) DETERMINATION OF THE PRINCIPAL AMOUNT OF THE SERIES D OBLIGATIONS, (3) DETERMINATION OF THE MATURITY DATE AND PRINCIPAL AMOUNT OF EACH MATURITY OF THE SERIES D OBLIGATIONS, (4) DETERMINATION OF THE AMOUNT AND DUE DATE FOR EACH SINKING FUND INSTALLMENT, IF ANY, FOR THE SERIES D OBLIGATIONS, (5) DETERMINATION OF THE REDEMPTION PRICE OR REDEMPTION PRICES, IF ANY, AND THE REDEMPTION TERMS, IF ANY, FOR THE SERIES D OBLIGATIONS, AND (6) DETERMINATION OF WHETHER THE SALE OF THE SERIES D OBLIGATIONS SHALL BE SOLD DIRECTLY TO TRUIST BANK OR TRUIST COMMERCIAL EQUITY, INC. ON A NEGOTIATED BASIS PURSUANT TO THE TERMS OF A DIRECT PURCHASE AGREEMENT AND DETERMINATION OF THE PURCHASE PRICE FOR THE SERIES D OBLIGATIONS PURSUANT TO A DIRECT PURCHASE AGREEMENT WITH TRUIST BANK AND TRUIST COMMERCIAL EQUITY, INC. (THE “LENDER”); (III) AUTHORIZING THE AUTHORIZED OFFICERS TO EXECUTE LOAN AGREEMENTS WITH THE LENDER IN SUBSTANTIALLY THE FORM OF THE FORM OF LOAN AGREEMENT APPEARING IN EXHIBIT A HERETO (THE “LENDER LOAN AGREEMENTS”) (IV) AUTHORIZING THE AUTHORIZED OFFICERS TO EXECUTE PARTICIPANT LOAN AGREEMENTS WITH A PROJECT PARTICIPANT AND THE LENDER IN SUBSTANTIALLY THE FORM OF THE FORM OF PARTICIPANT LOAN AGREEMENT APPEARING IN EXHIBIT A TO THE LENDER LOAN AGREEMENT (THE “PROJECT PARTICIPANT LOAN AGREEMENTS”); (V) DESIGNATING AUTHORIZED OFFICERS AND AUTHORIZED SIGNATORIES AND PROVIDING LIMITATIONS ON THE AUTHORITY OF THE AUTHORIZED OFFICERS; (VI) DEFINING**

**CERTAIN TERMS; (VII) AUTHORIZING FURTHER ACTIONS; (VIII) PROVIDING FOR SEVERABILITY; AND (IX) PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on April 18, 2019 the Board of Directors of FMPA adopted the Initial Pooled Loan Project 2019 Obligation Resolution (the “Obligation Resolution”) to provide for the issuance of bonds, notes or other evidences of indebtedness to provide the funds required by FMPA to make Loans to the Project Participants under the Initial Pooled Loan Project; and

**WHEREAS**, on April 18, 2019 the Board of Directors of FMPA adopted the Series A Supplemental Initial Pooled Loan Project Obligation Resolution and the Series B Supplemental Initial Pooled Loan Project Obligation Resolution and authorized the issuance of Series A Obligations and Series B Obligations; and

**WHEREAS**, on September 15, 2022 the Board of Directors of FMPA adopted the Series C Supplemental Initial Pooled Loan Project Obligation Resolution and authorized the issuance of Series C Obligations; and

**WHEREAS**, the Board of Directors of FMPA desires to adopt the Series D Supplemental Initial Pooled Loan Project Obligation Resolution and to authorize the issuance of Series D Obligations; and

**WHEREAS**, the Board of Directors of FMPA desires to delegate to certain officers of FMPA, as agent for the Initial Pooled Loan Project, the authority (i) to negotiate the terms and conditions of (i) a Loan Agreement to be entered into with Truist Bank and Truist Commercial Equity, Inc. (individually and collectively, the “Lender”) and FMPA, as agent for the Initial Pooled Loan Project in substantially the form attached hereto in Exhibit A (the “Lender Loan Agreement”), and (ii) a Participant Loan Agreement in the form attached in Exhibit A to the Lender Loan Agreement (the “Participant Loan Agreement”) to be entered into with the Lender and FMPA, as agent for the Initial Pooled Loan Project and a project participant/borrower in substantially the form attached hereto; and

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FLORIDA MUNICIPAL POWER AGENCY (“FMPA”):

**SECTION 1. FINDINGS RELATING TO SALE OF SERIES D OBLIGATIONS AUTHORIZED BY THE SUPPLEMENTAL SERIES D RESOLUTION.** It is hereby found, determined, and declared as follows:

1.01. FMPA is authorized by the terms of Section 163.01, Florida Statutes, as amended, Chapter 166, Part II, Florida Statutes, as amended, Chapter 361, Part II, Florida Statutes, as amended, (collectively, the “Act”) and the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended and supplemented, to issue its bonds, notes or other evidences of indebtedness to make Loans to Project Participants to finance or refinance Costs of the Project Participant's Projects and to exercise all other powers which have been or may be granted to FMPA under the laws of the State of Florida which may be necessary and proper to further the purposes of FMPA.

1.02. It is necessary and desirable and in the best interests of FMPA, the Project Participants and their customers that FMPA take or cause to be taken all steps necessary for the making of Loans from the Initial Pooled Loan Project to the Project Participants to finance or refinance the Cost of the Project Participant's Project with terms and conditions that would be beneficial and likely to achieve the benefits sought by FMPA, as agent for the Initial Pooled Loan Project, and by FMPA on behalf of the Project Participants.

1.03 Pursuant to Section 218.385, Florida Statutes, as amended, it is hereby found, determined and declared in respect of any negotiated sale of the Series D Obligations authorized by the Series D Supplemental Resolution, as follows: Due to the characteristics of the Series D Obligations, prevailing and anticipated market conditions and the need for flexibility in timing for the issuance of the Series D Obligations, it is necessary and in the best interests of FMPA to sell the Series D Obligations at a negotiated sale to the Lender, upon satisfaction of the terms and conditions set forth in the Series D Supplemental Resolution (including the applicable Obligation Series Certificate).

**SECTION 2. APPROVAL AND ADOPTION OF THE SERIES D SUPPLEMENTAL INITIAL POOLED LOAN PROJECT OBLIGATION RESOLUTION.** The terms of the Series D Supplemental Initial Pooled Loan Project Obligation Resolution (the "Supplemental Series D Resolution"), in the form attached hereto as Exhibit B, which delegates to Authorized Signatories, defined therein, certain matters relating to the issuance of Initial Pooled Loan Project Obligations, Series D (the "Series D Obligations") including, without limitation, the principal amount thereof, determination of the maturity date and principal amount of each maturity of the Series D Obligations, determination of the amount and due date of each Sinking Fund Installment, if any, for the Series D Obligations, determination of the redemption price or redemption prices, if any, and the redemption terms, if any, for the Series D Obligations, and determination of whether the sale of the Series D Obligations shall be sold directly to the Lender on a negotiated basis pursuant to the terms of a Direct Purchase Agreement and determination of the purchase price for the Series D Obligations, are hereby approved and said Supplemental Series D Resolution is hereby adopted and the Authorized Officers designated herein are hereby authorized and directed to execute and file the same with the Trustee for the Series D Obligations. In connection with such delegation, the Authorized Signatories are further authorized to execute and deliver an Obligation Series Certificate.

**SECTION 3. AUTHORIZATION OF EXECUTION OF LOAN AGREEMENTS.** The Authorized Officers (defined below) are hereby authorized to execute Loan Agreements to be entered into between FMPA, as agent for the Initial Pooled Loan Project and the Lender in substantially the form attached in Exhibit A hereto and with such changes therein as the Lender approves and as the Authorized Officers may approve as necessary or desirable, such execution and delivery by the Authorized Officers to be conclusive evidence of the approval of the terms and conditions thereof by the Authorized Officers. The Authorized Signatories (defined below) are hereby authorized to execute and deliver to the other party or parties thereto any agreement, any related promissory note or bond, and any separate and related fee letter or fee agreement; such execution and delivery by the Authorized Signatories to be conclusive evidence of the approval of the terms and conditions thereof by the Authorized Signatories.

**SECTION 4. AUTHORIZATION OF EXECUTION OF PROJECT PARTICIPANT LOAN AGREEMENTS.** The Authorized Officers (defined below) are hereby authorized to execute Participant Loan Agreements to be entered into between FMPA, as agent for the Initial Pooled Loan Project, the Project Participants and the Lender in substantially the form attached in Exhibit A to the Lender Loan Agreement attached in Exhibit A hereto and with such changes therein as the Lender approves and as the Authorized Officers may approve as necessary or desirable prior to distribution thereof to the Project Participants, such approval to be evidenced conclusively by the distribution of the Project Participant Loan Agreement, as modified, to the Project Participants.

**SECTION 5. DESIGNATION OF AUTHORIZED OFFICERS AND AUTHORIZED SIGNATORIES; LIMITATIONS ON AUTHORITY.**

5.01. As the term is used in this Resolution, “**Authorized Officer**” means the Chair of the Board of Directors, the Vice Chair of the Board of Directors, the General Manager and CEO of FMPA, the Chief Financial Officer of FMPA, the Secretary of FMPA, the Treasurer of FMPA, and any Assistant Secretary of FMPA, and each of which are hereby designated as (i) Authorized Officers for the purposes of executing and delivering the Supplemental Series D Resolution, and taking any other actions authorized by this Resolution and in connection with the issuance of Series D Obligations and (ii) as Authorized Officers as defined in Section 1.02 of the Obligation Resolution.

5.02. As the term is used in this Resolution, “**Authorized Signatories**” means the (i) Chair or the Vice Chair of the Board of Directors of FMPA and (ii) the General Manager and CEO of FMPA or the Chief Financial Officer of FMPA, and any documents signed by Authorized Signatories will be approved for form and legality by the FMPA General Counsel and Chief Legal Officer.

5.03. There is hereby delegated to the Authorized Officers, subject to the other limitations contained in this Resolution, the following powers:

(A) to determine the date of delivery of such documents authorized by this Resolution (the “Closing”) and the satisfaction, or not, of conditions precedent and other matters necessary to be accomplished or completed prior to the delivery of documents authorized by this Resolution; and

(B) to determine such other matters specified in or permitted by this Resolution, including preparation of any documentation therefore, and to agree to delivery and execution of additional documentation, after consultation with legal counsel for FMPA, to accomplish the intent and purposes of this Resolution and the transactions contemplated thereby;

*provided, however, that* the Authorized Officers may not approve any changes or modifications to or additions to or deletions from any document or instrument to which constitute a material adverse change without the prior approval of the Board of Directors. For purposes of the foregoing, “material adverse change” means any material adverse change in the terms and conditions which imposes on FMPA, as agent for the Initial Pooled Loan Project, or the Project Participants, an additional, material risk of financial loss, indemnity obligation, covenant, warranty, or restriction of its legal rights in a manner that is not already contemplated in the form of document or instrument attached as an exhibit hereto.



5.04 Any action taken by the Authorized Officers under this Resolution shall be subject to the approval as to form and legality of the General Counsel and Chief Legal Officer of FMPA.

**SECTION 6. DEFINITION OF CERTAIN TERMS.** Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Obligation Resolution, which is attached hereto as Exhibit C.

**SECTION 7. FURTHER ACTIONS.** Each Authorized Officer designated hereunder is hereby authorized and empowered to take all further actions as may be necessary or desirable in carrying out the terms and provisions of this Resolution and each of the documents referred to herein and the Authorized Signatories are hereby authorized and empowered to execute and deliver, in the name of and on behalf of FMPA such other documents, certificates or papers, not specifically referred to in this Resolution, as are required or contemplated by the provisions of the Obligation Resolution, Supplemental Series D Resolution, Project Participant Loan Agreement, and Lender Loan Agreement, and take all such further action as may be necessary or desirable in carrying out the terms and provisions of the Obligation Resolution, Supplemental Series D Resolution, Project Participant Loan Agreement, and Lender Loan Agreement.

**SECTION 8. SEVERABILITY.** If one or more provisions of this Resolution should be determined by a court of competent jurisdiction to be contrary to law, such provisions shall be deemed to be severable from the remaining provisions hereof, and shall in no way affect the validity or enforceability of such remaining provisions.

**SECTION 9. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

*[Remainder of page intentionally left blank]*

This Resolution 2024-B3 is hereby approved and adopted by the Board of Directors of the Florida Municipal Power Agency on September 19, 2024.

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Chair, Board of Directors

I hereby certify that on September 19, 2024 the above Resolution 2024-B3 was approved and adopted by the Board of Directors of the Florida Municipal Power Agency, and that this is a true and complete copy of Resolution 2024-B3.

ATTEST:

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Secretary or Assistant Secretary

[SEAL]

Exhibit A

**FORM OF LENDER LOAN AGREEMENT AND  
PARTICIPANT LOAN AGREEMENT**

[attached hereto]

Exhibit B

**SERIES D SUPPLEMENTAL INITIAL POOLED LOAN PROJECT  
OBLIGATION RESOLUTION**

[attached hereto]

Exhibit C

**INITIAL POOLED LOAN PROJECT 2019 OBLIGATION RESOLUTION**

[attached hereto]

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**LOAN AGREEMENT**  
(Initial Pooled Loan Project Credit Facility)

dated as of [\_\_\_\_\_], 2024

by and between

**FLORIDA MUNICIPAL POWER AGENCY,**  
as Agent for the Initial Pooled Loan Project

and

**TRUIST BANK**

and

**TRUIST COMMERCIAL EQUITY, INC.,**

as applicable, as the Lender

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Exhibit D	Form of Certificate of Lender
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**LOAN AGREEMENT**  
(Initial Pooled Loan Project Credit Facility)

This **LOAN AGREEMENT** (this “Agreement”), is dated as of [\_\_\_\_], 2024, and is by and between **FLORIDA MUNICIPAL POWER AGENCY**, a governmental legal entity organized under the laws of the State of Florida, as agent for the Initial Pooled Loan Project (“FMPA”), and Truist Bank, a North Carolina banking association (“Truist Bank”) and Truist Commercial Equity, Inc., a Delaware corporation (“Truist Commercial Equity”), (in each case, as applicable, together with its successors and permitted assigns, the “Lender”).

**WHEREAS**, the Board of Directors of FMPA has established the Initial Pooled Loan Project (the “Initial Pooled Loan Project”) as a vehicle for the financing and refinancing of eligible utility-related projects by its members through the making of loans (“Loans”) by FMPA to members of FMPA, FMPA itself, and FMPA, as agent for any of its other projects (collectively, “Pooled Loan Participants”); and

**WHEREAS**, in order to provide funds for the making of Loans by FMPA to the Pooled Loan Participants on a tax-exempt and taxable basis, the Lender (Truist Bank in the case of taxable Loans and Truist Commercial Equity in the case of tax-exempt Loans) is willing to extend to FMPA a line of credit in the aggregate maximum principal amount of \$50,000,000 (the “Initial Pooled Loan Project Credit Facility”), pursuant and subject to the terms and conditions of this Agreement, to be evidenced by one or more of (i) that certain Initial Pooled Loan Project Note, Series 2024 (Tax-Exempt) substantially in the form attached hereto as Exhibit B, and/or (ii) that certain Initial Pooled Loan Project Note, Series 2024 (Taxable), substantially in the form attached hereto as Exhibit C, the aggregate face amount of (i) and (ii) not to exceed \$50 million in aggregate and each Note to be dated as of the date of the applicable Advance hereunder with a separate Note provided for each Advance, and each Note to be made by FMPA in favor of the Lender (as amended, restated, supplemented or otherwise modified from time to time, collectively, the “Note”); and

**WHEREAS**, this Agreement will be a “Credit Facility” under the Pooled Loan Resolution (as defined herein) and the Lender will be a “Credit Facility Provider” under such Resolution, with all the rights and remedies therein provided;

**NOW, THEREFORE**, in consideration of the premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**ARTICLE 1**

**DEFINITIONS AND ACCOUNTING TERMS**

1.1 **Defined Terms.** Capitalized terms used herein and not defined shall have the meanings given to such terms in the Pooled Loan Resolution. The following capitalized terms are used in this Agreement with the respective meanings set forth in this Section 1.1:

“Act” means the Constitution and laws of the State of Florida, including particularly Section 163.01, Florida Statutes, as amended, Part II, Chapter 166, Florida Statutes, as amended, Part II, Chapter 361, Florida Statutes, as amended, and the Interlocal Agreement Creating the

Florida Municipal Power Agency, as amended and supplemented, and other applicable provisions of law.

“Advances” means, collectively, the Taxable Advances and the Tax-Exempt Advances made by the Lender pursuant to this Agreement.

“Agreement” means this Loan Agreement, as amended, restated, supplemented, or otherwise modified and in effect from time to time.

“Authorized Officer” means, with respect to FMPA, the Chairman, the Vice Chairman, the General Manager and CEO, the Chief Financial Officer or any other person or persons designated by the Board of FMPA by resolution to act on behalf of FMPA under the Pooled Loan Resolution; the designation of such other person or persons shall be evidenced by a written certificate containing the specimen signature of such person or persons signed on behalf of FMPA by its Chairman or its Vice Chairman and delivered to the Lender.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Expiration Date and the date of termination of the Commitment.

“Borrowing Request” means that term as defined in Section 2.3.

“Business Day” means a banking business day of the Lender; provided that, when used in connection with SOFR, the term “Business Day” means any U.S. Government Securities Business Day.

“CME Term SOFR Administrator” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Commitment” means \$50,000,000 as such amount may be reduced from time to time pursuant to Section 2.1 and Section 2.7.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means an event or condition the occurrence or existence of which, with the lapse of time or the giving of any notice, or both, would constitute an Event of Default.

“Default Rate” is defined in Section 3.3.

“Defaulting Pooled Loan Participant” means a Pooled Loan Participant with respect to which a Participant Loan Agreement Event of Default has occurred and is continuing.

“Determination of Taxability” means, for and with respect to any Tax-Exempt Advance, the occurrence, after the date hereof of a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on all or a portion on any Tax-Exempt Advance is or was includable in the gross income of the Lender for Federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless FMPA has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity at FMPA's own expense to contest the same, either directly or in the name of the Lender, and until the conclusion of any appellate review, if sought. For all purposes of this definition, the effective date of any Determination of Taxability with respect to any Tax-Exempt Advance will be the Taxable Date.

“Dollar” and the sign “\$” means lawful money of the United States of America.

“Drawdown Date” means the Business Day on which any Advance is to be made.

“Effective Date” is defined in Section 5.1.

“Event of Default” is defined in Section 8.1.

“Event of Taxability” means, with respect to any Tax-Exempt Advances outstanding hereunder, the interest payable with respect to such principal is not excluded from the gross income of the Lender for federal income tax purposes as a result of the action or inaction of FMPA or a Pooled Loan Participant.

“Expiration Date” means, with the respect to the Commitment, [\_\_\_\_\_] or such earlier or later date on which the Commitment has been terminated or extended, as the same may be reduced or extended as provided herein. The Stated Maturity Date of an Advance that is made to fund a Loan to a Pooled Loan Participant may be later than the Expiration Date.

“FMPA” means Florida Municipal Power Agency, a governmental legal entity organized under the laws of the State of Florida, as Agent for the Initial Pooled Loan Project.

“GAAP” means generally accepted accounting principles promulgated or adopted by the Governmental Accounting Standards Board and in use by FMPA.

“Governmental Authority” means any federal, state, provincial, municipal, foreign or other governmental department, agency, commission, board, bureau, court, tribunal, instrumentality, political subdivision, or other entity or officer exercising lawful jurisdiction under applicable Laws and exercising executive, legislative, judicial, regulatory or administrative functions for or pertaining to any government or court, in each case whether associated with the United States, a state, district or territory thereof, or a foreign entity or government.

“Initial Pooled Loan Project” means that term as defined in the recitals.

“Initial Pooled Loan Project Credit Facility” means that term as defined in the recitals.

“Interest Accrual Period” means initially, the period from and including the date of the first Advance to but not including the next succeeding Interest Payment Date and then from and including each Interest Payment Date to but not including the next succeeding Interest Payment

Date. Calculations of interest will be done in accordance with Section 3.4 and any Interest Accrual Period that would otherwise extend past the Stated Maturity Date of an Advance shall end on the Stated Maturity Date of such Advance.

“Interest Payment Date” means the first Business Day of each April and October after any Advance is made or such other dates set forth for an Advance in the applicable Participant Loan Agreement.

“Laws” means collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” means Truist Bank or Truist Commercial Equity, Inc., as applicable, and its successors and permitted assigns.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, whether based on common law, statute, or contract, (b) the interest of a vendor or a lessor under any conditional sale agreement, or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Documents” means the Pooled Loan Resolution, this Agreement, the Note, and all other now existing or hereafter arising instruments, loan agreements and documents governing, evidencing, guarantying, or securing this Initial Pooled Loan Project Credit Facility, but specifically excluding any agreements between FMPA and a Pooled Loan Participant or any other municipal entity with which FMPA may contract, including but not limited to the Participant Loan Agreements.

“Material Adverse Effect” means a material impairment of: (a) the legality, validity or enforceability of this Agreement or any of the other Loan Documents or Participant Loan Agreements, (b) the ability of FMPA to perform or comply with the provisions hereof or of any other Loan Document or applicable Participant Loan Agreements, (c) the ability of the Lender to enforce any of the rights and remedies of the Lender hereunder or under any other Loan Document, or (d) the validity, enforceability or priority of the liens provided hereunder and in each applicable Participant Loan Agreements on the Applicable Trust Estate, including the funds, moneys and securities contained therein.

“Note” means that term as defined in the recitals.

“NYFRB” means the Federal Reserve Bank of New York.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of FMPA arising under any Loan Document, directly or indirectly, absolute or contingent, due or to become due, now existing or hereafter arising, including, but not limited to any late fees

or expenses calculated in accordance with Section 4.1(b), (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether absolute or contingent, due or to become due, now existing or hereafter arising, (c) all reasonable costs and expenses incurred by FMPA in connection with the administration and operation of the Initial Pooled Loan Project, including but not limited to: (i) amounts payable by FMPA to third parties in connection with the issuance of the Initial Pooled Loan Project Credit Facility; (ii) all direct labor and overhead charges of FMPA incurred in connection with the Initial Pooled Loan Project; and (iv) fees and costs of counsel and Bond Counsel to FMPA, and (d) all costs and expenses payable pursuant to Section 9.6.

“Obligations to the Lender” means all Obligations set forth in subparagraphs (a) and (b) in the definition of Obligations set forth above, including, without limitation, any obligation of FMPA hereunder and under the Note.

“Participant Loan Agreement” means an Initial Pooled Loan Project Loan Agreement, in the form attached hereto as Exhibit A, between FMPA, as Agent for the Initial Pooled Loan Project, and a Pooled Loan Participant (and joined in by the Lender), for the loan of money by FMPA to such Project Participant in accordance with the Act and the Pooled Loan Resolution and for which funding is made available pursuant to this Agreement.

“Participant Loan Agreement Event of Default” is an “Event of Default” as defined in a Participant Loan Agreement.

“Participating Bank” means that term as defined in Section 9.5(a).

“Payment Office” means [INSERT NAME AND ADDRESS FOR LENDER].

“Person” means any natural person, sole proprietorship, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, organization, joint venture, institution, Governmental Authority, or other entity of any nature whatsoever.

“Pooled Loan Participant” means a borrower under a Participant Loan Agreement.

“Pooled Loan Resolution” means the Initial Pooled Loan Project 2019 Obligation Resolution adopted April 18, 2019 together with all applicable Supplemental Resolutions (as defined therein) adopted by the board of directors of FMPA pursuant thereto relating to the Initial Pooled Loan Project Credit Facility.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“Stated Maturity Date” means the maturity date for an Advance.

“Taxable Advance” means any Advance bearing interest at the Taxable Rate at Origination.

“Taxable Date” means the date on which interest on any Tax-Exempt Advances is first includable in gross income of any holder thereof (including the Lender) as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

“Taxable Period” is defined in Section 3.2.

“Taxable Rate at Origination” means, (a) for a Taxable Advance bearing interest at a variable interest rate, a rate to be determined by the Lender in consultation with FMPA based on market conditions at the time of the applicable Borrowing Request and (b) for a Taxable Advance bearing interest at a fixed interest rate, a taxable rate per annum equal to the rate determined by the Lender in consultation with FMPA based on market conditions at the time of the applicable Borrowing Request, and such rate shall be the Taxable Rate at Origination for such Taxable Advance as long as the Taxable Advance is made within sixty (60) days after the rate has been determined or such shorter period as required by the Lender’s policies to hold rates.

“Taxable Rate Upon Event of Taxability” means, the interest rate per annum that shall provide the Lender with the same after tax yield that the Lender would have otherwise received had the Event of Taxability not occurred, taking into account the increased taxable income of the Lender with a written statement explaining the calculation of the Taxable Rate Upon Event of Taxability, which statement shall, in the absence of manifest error, be conclusive and binding on the Pooled Loan Participant.

“Tax-Exempt Advance” means any Advance bearing interest at the Tax-Exempt Rate.

“Tax-Exempt Rate” means, (a) for a Tax-Exempt Advance bearing interest at a variable interest rate, a tax-exempt rate per annum equal to a rate to be determined by the Lender in consultation with FMPA based on market conditions at the time of the applicable Borrowing Request and (b) for a Tax-Exempt Advance bearing interest at a fixed interest rate, a tax-exempt rate per annum equal to the rate determined by the Lender in consultation with FMPA based on market conditions at the time of the applicable Borrowing Request, and such rate shall be the Tax-Exempt Rate for such Tax-Exempt Advance as long as the Tax-Exempt Advance is made within sixty (60) days after the rate has been determined or such shorter period as required by the Lender’s policies to hold rates.

“Unused Commitment” means, at any time, (a) the Commitment at such time minus (b) the aggregate principal amount of all Advances outstanding at such time (without giving effect to any requested Advance).

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

1.2 **Terms Generally.** The definitions in Section 1.1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All references herein to Articles, Sections and Exhibits shall be deemed references to Articles and Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, (a) any reference in this Agreement to any

Loan Document or Participant Loan Agreement shall mean such document as amended, restated, supplemented or otherwise modified from time to time (subject to the restrictions on such amendments, restatements, supplements or modifications set forth herein), and (b) all terms of an accounting or financial nature shall be construed, and all computations or classifications of assets and liabilities and of income and expenses shall be made or determined, in accordance with GAAP. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever FMPA’s knowledge is implicated in this Agreement or the phrase “to FMPA’s knowledge” or a similar phrase is used in this Agreement, FMPA’s knowledge or such phrase(s) shall be interpreted to mean the actual knowledge of FMPA’s officers, directors, or executive staff executing such certificate or making such representation, after reasonable inquiry. As to knowledge of matters outside of FMPA’s organization, any such representations by FMPA may be based on reasonable reliance on representations provided to FMPA, where appropriate, and shall not imply independent investigation of such matters. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns.

1.3 **Computation of Time Periods.** In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word “from” shall mean “from and including” and the words “to” and “until” each mean “to but excluding.”

1.4 **Conflicting Terms.** In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail.

## ARTICLE 2

### **COMMITMENT AMOUNT AND TERMS**

2.1 **Commitment Amount; Advances.** (a) Subject to the terms and conditions set forth herein, the Lender in its sole discretion may make Advances to FMPA from time to time during the Availability Period in an aggregate principal amount that will not result in the aggregate principal amount of the Lender’s Advances exceeding the Commitment. The sum of the aggregate principal amount of Tax-Exempt Advances and Taxable Advances made at any time shall not exceed the available Commitment in effect at such time. As provided in Section 2.3 hereof, FMPA, at the request of a Project Participant, may elect that any such Advance be either a Tax-Exempt Advance or a Taxable Advance. The outstanding principal balance of the Advances will bear interest at the interest rates and be payable in the amounts and on the dates as provided herein and/or in the Note.

(b) FMPA acknowledges that the Initial Pooled Loan Project Credit Facility is an uncommitted credit facility, discretionary in nature and FMPA agrees that nothing in this Agreement or the other Loan Documents shall be construed or interpreted in a way that would alter or modify the discretionary nature of the Initial Pooled Loan Project Credit Facility. Accordingly, (i) notwithstanding the occurrence of the Effective Date hereunder, the Lender shall have no obligation to make any Advances to FMPA hereunder and the Lender in its sole and absolute discretion may deny a request from FMPA for an Advance, (ii) the Lender may, upon five (5) Business Days’ prior written notice to FMPA, terminate



the Commitment for all amounts not Advanced and reduce the Unused Commitment to zero (0) in its sole discretion.

(c) The Lender acknowledges that provided in Exhibit [ ] to this Agreement are the Lender's current guidelines in determining whether to provide an Advance to FMPA after receiving a Borrowing Request. While the Lender is under no obligation to make an Advance to FMPA after receiving a Borrowing Request, it is the Lender's expectation that a Borrowing Request that satisfies the Lender's then current guidelines as set forth in in Exhibit [ ] to this Agreement will be honored by the Lender. The Lender agrees to provide updates to FMPA, as applicable, to its guidelines in Exhibit [ ] promptly following any change in its guidelines, and such updated guidelines will replace the guidelines in Exhibit [ ]; provided, however, the failure to provide updated guidelines shall not affect the guidelines utilized by the Lender in making its credit determination.

## 2.2 **Advances.**

(a) No Advance will be made if it would cause the aggregate outstanding principal balance of Tax-Exempt Advances and Taxable Advances made hereunder to exceed the Commitment. The Lender and FMPA will keep records setting forth the aggregate principal amount all Advances made hereunder, the interest accruing thereon, the amount of the remaining Commitment available to be drawn upon and all payments of interest and repayments of principal to the Lender hereunder. Absent manifest error the Bank's records shall be conclusive.

(b) Each Advance of funds made by the Lender to FMPA will be used by FMPA solely for the making of Loans to Pooled Loan Participants in accordance with the Participant Loan Agreements. FMPA shall not make any Loan to a Pooled Loan Participant if such Loan would cause the aggregate principal amount loaned by FMPA to Pooled Loan Participants from funds Advanced hereunder to exceed the Commitment or such greater amount as the Lender, in its sole discretion, may have consented to in accordance with the provisions hereof.

(c) Each Advance shall be in a minimum aggregate principal amount of \$2,000,000.

2.3 **Procedure for Advances.** (a) Each request for an Advance shall be made and shall be given by written notice from FMPA delivered to the Lender (a "Borrowing Request") at least thirty (30) days prior to FMPA's proposed Drawdown Date but not less than thirty (30) days from the date that the Participant has accepted the rate pursuant to Section 2.3(c) below. Each such Borrowing Request shall specify (i) the proposed Drawdown Date, (ii) the aggregate principal amount of such Advance, (iii) whether such Advance is a Tax-Exempt Advance or a Taxable Advance, (iv) the Participant Loan Agreement(s) with respect to which such Advance is to be made, (v) the most recent three years of audited financial statements for the Pooled Loan Participant (and information regarding the top taxpayers and employers for Participant, if not included in the audited financial statements), and (vi) the current adopted budget for the Participant. FMPA may revoke such notice by delivery of a written notice delivered to the Lender within two Business Days of the proposed Drawdown Date without any penalty. Notwithstanding the above, there shall be no more than one (1) Advance under each Participant Loan Agreement, and there is no limit on the number of Participant Loan Agreements for each Pooled Loan Participant.

(b) Requests for a Tax-Exempt Advance shall be made to Truist Commercial Equity and requests for a Taxable Advance shall be made to Truist Bank. Each of Truist Commercial Equity and Truist Bank agree that such entities will utilize the same guidelines to analyze a Borrowing Request, in accordance with Section 2.1(c) hereof and as provided in Exhibit [ ] to this Agreement.

(c) The Lender agrees to provide notice to FMPA of an indicative Taxable Rate at Origination or Tax-Exempt Rate, as applicable, to an Advance no later than seven (7) Business Days (or such other period as the Lender shall notify FMPA that additional time is required) after receiving a Borrowing Request and the documents required to be delivered to the Lender in connection therewith. The Pooled Loan Participant for whom FMPA has made the Borrowing Request shall have three (3) Business Days after receipt of the notice of the Taxable Rate at Origination or Tax-Exempt Rate, as applicable, to direct FMPA in writing to revoke such Borrowing Request and the Lender will refund the Advance Fee to FMPA.

#### 2.4 **Sources of Payment and Security.**

(a) Advances. The sole source of payment and security for the repayment of each Advance, including principal and interest due to the Lender hereunder, will be the Applicable Trust Estate including all Applicable Revenues, all income and receipts earned on the Applicable Funds and Applicable Accounts held by the Trustee under the Pooled Loan Resolution and the Applicable Supplemental Resolution, including any proceeds of Advances and earnings from FMPA's temporary investments of amounts on deposit in the Applicable Funds and Accounts under the Pooled Loan Resolution; *provided however*, that the amount payable by such Pooled Loan Participant shall be limited to the amounts payable under the applicable Participant Loan Agreement(s). The Lender acknowledges that the obligations of the Pooled Loan Participants will be limited obligations payable solely from the sources provided in the Participant Loan Agreements.

(b) Obligations to the Lender other than Advances. All Obligations to the Lender other than amounts payable to the Lender under this Agreement (including amounts payable under Section 4.1 and Section 9.6 of this Agreement) shall constitute Project Expenses (as defined in the Pooled Loan Resolution) payable from amounts received by the Trustee from the Pooled Loan Participants pursuant to Section 5.04 of the Participant Loan Agreements that are in substantially the form of Exhibit A to the Pooled Loan Resolution (or the equivalent section of any other Participant Loan Agreement) and deposited in the Project Expense Fund.

(c) Limited Obligations. Except as expressly set forth herein, FMPA is not obligated to repay the Initial Pooled Loan Project Credit Facility or any other amount owed hereunder from the general funds of FMPA or the funds of any project of FMPA other than from the Applicable Trust Estate. The faith and credit of FMPA are not pledged, either expressly or by implication, to the payment of the amounts owing under this Agreement and the Note. FMPA has no taxing power and has no claim on any revenues or receipts of the State of Florida or any agency or political subdivision thereof or any Project Participant except as may be expressly provided in a Project Participant's Loan Agreement. There is no provision for appropriations for the benefit of FMPA by the State of Florida or any other political entity having taxing powers.

#### 2.5 **Method of Payment; Payment Date Adjustments; Application of Payments.**

(a) Method of Payment.

(i) FMPA shall make each payment due with respect to the Obligations to the Lender at the Payment Office, or such other place as the Lender may, from time to time, specify in writing.

(ii) Each payment due to the Lender hereunder will be payable at the Payment Office by 4:00 p.m. Eastern Time on the date when due in Dollars by wire transfer in immediately available funds, without setoff, defense or counterclaim and free and clear of, and without any deduction or withholding for any taxes or other payments.

(b) Payment Date Adjustments. Whenever any payment hereunder is due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and the amount of any interest due shall be calculated as of such succeeding Business Day.

(c) Application of Payments. All payments by or on behalf of FMPA with respect to the Obligations to Lender shall be applied first to accrued interest, then to the payment of all fees, expenses and other amounts due to the Lender (excluding principal and interest) and the balance on account of outstanding principal.

2.6 Prepayments & Scheduled Payments.

(a) Optional Prepayment and Prepayment Premium. FMPA may, at any time and from time to time, prepay the principal and interest on any Advance outstanding hereunder, in whole or in part as set forth in the Participant Loan Agreement. In order to make a prepayment FMPA shall (i) give three (3) Business Days prior written notice to the Lender specifying the principal amount to be prepaid and the date of the prepayment and the Advance to which such prepayment relates, and (ii) pay such principal amount, together with all accrued interest on the principal amount being prepaid, and any related fees and expenses associated with such Advance (including, as applicable, any prepayment premium), all as of the date of the prepayment. Concurrently with making any such prepayment, FMPA shall give telephonic or written notice to the Lender of the amount being prepaid and the Participant Loan Agreement(s) to which such amount is attributable. Partial prepayments of the outstanding principal amount of an Advance shall be applied to the outstanding principal amount of such Advance in such order as shall be determined in the sole discretion of the Lender.

(b) Scheduled Payments. If FMPA receives any payment for all or a portion of an Advance under a Participant Loan Agreement, FMPA shall cause the Pooled Loan Participant pursuant to the applicable Participant Loan Agreement to pay to FMPA all accrued interest on the principal amount being paid and any related fees and expenses associated with such payment, all as of the date of the payment, and FMPA shall, on the Business Day on which such payment is received, pay a principal amount of the Advance(s), applicable accrued interest thereon, and related fees and expenses attributable to such Participant Loan Agreement equal to the amount of the payment from such Pooled Loan Participant. Each such payment shall be applied to the Advance(s) attributable to such Participant Loan Agreement(s).

2.7 Termination or Reduction of the Commitment. FMPA shall have the right at any time, upon at least three (3) Business Days' prior written notice to the Lender, to reduce the Unused Commitment or terminate the Unused Commitment in its entirety; provided, however, that

FMPA may not reduce the Unused Commitment to a level that is less than the amounts subject to a Borrowing Request (but not yet funded) pursuant to Section 2.3. Lender shall in its sole discretion have the right to terminate the Unused Commitment to zero (0) at any time in accordance with Section 2.1 hereof.

2.8 **Initial Pooled Loan Project Collateral.** Advances made by the Lender hereunder shall be evidenced by Notes. The Notes shall constitute “Obligations” (as defined in the Pooled Loan Resolution) for all purposes of the Pooled Loan Resolution. The Notes shall be secured by a pledge of and lien on, and shall be payable from, the Applicable Trust Estate as provided by, and subject to the terms of, the Pooled Loan Resolution. All other amounts payable to the Lender under this Agreement (including amounts payable under Section 4.1 and Section 9.6 of this Agreement) shall constitute Project Expenses (as defined in the Pooled Loan Resolution) payable from amounts received by the Trustee from the Pooled Loan Participants pursuant to Section 5.04 of the Participant Loan Agreement that are in substantially the form of Exhibit A to the Pooled Loan Resolution (or the equivalent section of any other Participant Loan Agreement) and deposited in the Project Expense Fund.

### ARTICLE 3

#### **INTEREST RATES AND PAYMENT PROVISIONS**

3.1 **Interest Rate Prior to an Event of Default.** Subject to the provisions of Sections 3.2 and 3.3 hereof, the outstanding principal balance of any Tax-Exempt Advances made hereunder shall bear interest at a rate per annum equal to the Tax-Exempt Rate and the outstanding principal balance of any Taxable Advances made hereunder shall bear interest at a rate per annum equal to the Taxable Rate at Origination.

3.2 **Rate of Interest on Tax-Exempt Advances after an Event of Taxability.** Notwithstanding Section 3.1, but subject to Section 3.3, at all times after a Taxable Date occurs FMPA agrees to pay on the next Interest Payment Date (or if after the Expiration Date, within 30 days after demand by the Lender) an amount equal to (1) the difference between (A) the amount of interest that would have been paid to the Lender on the portion of the Tax-Exempt Advances during the period for which interest on such Tax-Exempt Advances is includable in the gross income of the Lender as if such Tax-Exempt Advances had borne interest at the Taxable Rate Upon Event of Taxability beginning on the Taxable Date (the “Taxable Period”), and (B) the amount of interest actually paid to the Lender during the Taxable Period, and (2) any other interest, penalties or charges owed by the Lender as a result of interest on the Tax-Exempt Advances becoming includable in the gross income of the Lender, together with any and all reasonable attorneys’ fees, court costs, or other out-of-pocket costs incurred by the Lender in connection therewith. This adjustment shall survive payment of the Obligations to the Lender hereunder until such time as the federal statute of limitations under which the interest on the Initial Pooled Loan Project Credit Facility or any Tax-Exempt Advance could be declared taxable under the Code shall have expired. After a Taxable Date occurs the interest rate on the portion of the Tax-Exempt Advances shall accrue interest at the Taxable Rate Upon Event of Taxability.

3.3 **Interest Rate After an Event of Default; Default Rate.** Notwithstanding Section 3.1 or 3.2, after notice by the Lender to FMPA of the occurrence and during the continuance of an Event of Default or after the Expiration Date, including after judgment has been

rendered on any Obligation to the Lender under this Agreement, all interest, fees, or costs due hereunder will, at the option of the Lender, bear interest at a rate equal to the then applicable Tax-Exempt Rate, Taxable Rate at Origination or Taxable Rate Upon Event of Taxability plus, in each case, 5% (the “Default Rate”) which Default Rate cannot exceed the maximum lawful interest rate in the State of Florida.

3.4 **Computation of Interest and Fees.** All computations of interest and fees, if any, for fixed interest rate Advances shall be made on the basis of a 360-day year comprised of twelve 30-day months. All computations of interest and fees, if any, for variable interest rate Advances shall be made on the basis of a 365-day year based on actual number of days elapsed. Notwithstanding the foregoing, installments of principal which are not paid when due under this Agreement shall continue to bear interest at the Default Rate until paid.

3.5 **Payment of Interest.** Interest on the outstanding principal balance of the Initial Pooled Loan Project Credit Facility shall be payable in arrears on each Interest Payment Date. On each Interest Payment Date FMPA will pay the Lender interest accrued during the immediately preceding Interest Accrual Period.

3.6 **[RESERVED].**

## ARTICLE 4

### **FEES AND EXPENSES**

4.1 **Fees.**

(a) **Unused Commitment Fee.** There will be no fee charged by the Lender for the Unused Commitment.

(b) **Late Fees.** To the extent permitted by law, FMPA agrees that if the amount of any required principal and/or interest on such Advance is not paid in full within 10 Business Days after the same is due and payable, without in any way affecting the Lender’s right to declare an Event of Default to have occurred, FMPA shall pay to the Lender a late charge equal to one percent (1%) of the portion of the required payment not so paid (“Late Fees”) and such Late Fees shall be immediately due and payable without demand or notice of any kind.

(c) **Advance Fees.** FMPA agrees to pay the following:

(i) on the Drawdown Date for each new Advance, reimbursement of all reasonable out-of-pocket expenses incurred by the Lender in connection with such Advance, including attorneys’ fees and expenses in an amount determined by the Lender and agreed upon by FMPA in connection with each Advance (the “Approval Fees”).

## ARTICLE 5

### **CONDITIONS PRECEDENT**

5.1 **Effective Date.** The obligation of the Lender to make Advances hereunder shall not become effective until the Lender shall have received all of the following (the “Effective

Date”), each certificate and opinion to be dated as of the Effective Date, in form and substance satisfactory to the Lender, and in sufficient signed copies (except for the Note, which original shall be provided to the Lender) to provide one to the Lender and one to counsel for the Lender:

- (a) A duly executed counterpart of this Agreement.
- (b) A certified copy of the resolution of FMPA authorizing the execution, delivery and performance by FMPA of this Agreement, the Note, the Participant Loan Agreements and other matters contemplated hereby and certified copies of all documents evidencing other necessary action with respect to this Agreement.
- (c) A copy of the Pooled Loan Resolution (without inclusion of resolutions supplemental but not amendatory thereof), and copies of all supplemental resolutions amendatory thereof that have been adopted by FMPA as of such time, all certified by an Authorized Officer as being in full force and effect.
- (d) A signed copy of a certificate of an Authorized Officer under the Pooled Loan Resolution that shall certify (i) the names of the officers of FMPA authorized to sign this Agreement, the Participant Loan Agreements and the Note, together with the true signatures of such officers, and (ii) compliance with paragraphs (b), (c) and (d) of Section 6.1.
- (e) Signed copies of opinions of Nixon Peabody, Bond Counsel to FMPA, and of the General Counsel and Chief Legal Officer of FMPA, which shall be addressed to the Lender and shall be in form and substance satisfactory to the Lender concerning such matters as the Lender may reasonably request.
- (f) All fees as set forth in Section 4.1 of this Agreement and, to the extent invoiced, expenses required to be paid by the Borrower hereunder.
- (g) Such further documentation, certifications or opinions as the Lender may reasonably request in connection with matters arising under this Agreement.

5.2 **Conditions Precedent to each Advance.** The obligation of the Lender to make any Advance (including the initial Advance) is subject to the conditions precedent that the Lender shall have first received, in addition to any other items required hereby, each of the following, in form and substance satisfactory to the Lender and its counsel:

- (a) The applicable Participant Loan Agreement(s), executed by FMPA and the applicable Project Participant(s);
- (b) Evidence of the due authorization and execution of the applicable Participant Loan Agreement(s) by FMPA and the applicable Pooled Loan Participant(s);
- (c) A duly executed Note;

- (d) A certificate of an Authorized Officer certifying that FMPA's requirements under the Loan Documents and the Participant Loan Agreement(s) have been met;
- (e) The documentation required by Section 6.04 of the Pooled Loan Resolution;
- (f) A certificate that, to FMPA's knowledge, no Default has occurred and is continuing and that no Event of Default has occurred and is continuing or, in either case, would result from the funding of such Advance;
- (g) Receipt by Lender of a Borrowing Request as required by Section 2.3 hereof, specifying whether such Advance will be a Tax-Exempt Advance or a Taxable Advance;
- (h) A certificate of the Lender in substantially the form of Exhibit D attached hereto;
- (i) Signed copies of opinions of Nixon Peabody, Bond Counsel to FMPA, and of the General Counsel and Chief Legal Officer of FMPA, which shall be addressed to the Lender and shall be in form and substance satisfactory to the Lender concerning such matters as the Lender may reasonably request;
- (j) In the case of any Tax-Exempt Advance, receipt by the Lender and FMPA of (i) a tax certificate relating to such Advance in form and substance satisfactory to Bond Counsel and (ii) an opinion of Bond Counsel to the effect that interest on such Tax-Exempt Advance is excludable from gross income for federal income tax purposes under existing laws, regulations, rulings and judicial decisions; and
- (k) such other assurances, certificates, documents, consents or opinions as the Lender may reasonably require.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES**

In order to induce the Lender to enter into this Agreement and to make Advances hereunder, FMPA makes the following representations and warranties to the Lender, which shall be deemed made as of the date of this Agreement and as of the date of each Advance (except with respect to Section 6.3 and to the extent such representation or warranty relates to a specified date, in which case such representation or warranty shall be true and correct as of such date), and shall survive the execution and delivery hereof and each performance hereunder.

6.1 **Formation, Good Standing, and Due Qualification.** (a) FMPA is a "public agency" as defined in Section 163.01(3)(b), Florida Statutes, as amended, and a "separate legal entity" for purposes of Section 163.01(7)(c), Florida Statutes, as amended, duly created and validly existing pursuant to the constitution and statutes of the State of Florida.

(b) FMPA has full legal right and authority required as of the date hereof to own and operate its properties, to carry on its activities, to enter into this Agreement, to execute and deliver

the Note, to apply amounts borrowed hereunder for the making of Loans to Pooled Loan Participants and to carry out and consummate all transactions contemplated by this Agreement.

(c) The proceedings of FMPA's governing body adopting the Pooled Loan Resolution and approving this Agreement, the Note and the Participant Loan Agreements and authorizing their execution and delivery on behalf of FMPA have been duly and lawfully adopted at a meeting or meetings duly called and held at which quorums were present and acting throughout and such meeting or meetings were duly called pursuant to necessary public notice and held in accordance with all applicable law including Section 286.011, Florida Statutes, as amended.

(d) This Agreement and the Note have been duly authorized, executed and delivered by one or more Authorized Officers of FMPA, as appropriate; and, assuming that the Lender has all the requisite power and authority to execute and deliver, and has duly authorized, executed and delivered this Agreement, this Agreement and the Note constitute the legal, valid and binding obligations of FMPA enforceable in accordance with their respective terms.

6.2 **Legally Enforceable Agreement.** This Agreement is, and each of the other Loan Documents, when executed and delivered, and each of the Participant Loan Agreements, when executed and delivered, will be, legal, valid, and binding obligations of FMPA, enforceable in accordance with their respective terms, except as the enforceability thereof may be subject to judicial discretion, the valid exercise of the sovereign police powers of the State of Florida and of the constitutional powers of the United States of America, and valid bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally. As of the date hereof, FMPA does not have any actual knowledge of any proposed legislation, action or proceeding that is reasonably expected to invalidate this Agreement, the Loan Documents, or the Participant Loan Agreements. FMPA has full power and authority to enter into and consummate all transactions contemplated by the Agreement and, when executed and delivered, the other Loan Documents and, when executed and delivered, the Participant Loan Agreements, and to perform all of its obligations hereunder and, when executed and delivered, the other Loan Documents and, when executed and delivered, the Participant Loan Agreements and has complied with all provisions of the Act.

6.3 **Financial Information.** All financial and other information that has been or will be supplied to the Lender is sufficiently complete to give the Lender accurate knowledge of FMPA's financial condition, including all material contingent liabilities. Since the date of the most recent financial statements provided to the Lender, there has been no material adverse change in the business condition (financial or otherwise), operations, properties or prospects of FMPA, except as may have been disclosed in writing by FMPA to the Lender.

6.4 **Litigation.** There is no action, suit or proceeding pending or, to FMPA's knowledge, threatened against FMPA before any court or Governmental Authority wherein an unfavorable decision, ruling or finding would in any way materially and adversely affect the validity or enforceability of any Loan Document or any Participant Loan Agreement for which notice for an Advance has been given, or the transactions contemplated hereby or thereby or which is reasonably expected to result in a Material Adverse Effect or in any way contesting the proceedings with respect to the authorization of this Agreement or the titles of officers of FMPA to their respective offices.



6.5 **Other Agreements, No Default.** FMPA is not in default in any manner under any agreement to which it is a party or by which it or any of its properties or assets are or may be bound, and FMPA is not in violation of any Law, where any such default or violation could reasonably be expected to result in a Material Adverse Effect. The transactions contemplated hereby or in the other Loan Documents do not conflict with the terms of any statute, order, rule, regulation, judgment, decree, agreement, instrument, or, commitment to which FMPA is a party or by which FMPA is bound.

6.6 **Defaults, Events of Default and Material Adverse Effect.** No Default or Event of Default has occurred and is continuing, nor has there occurred any event or circumstance that has resulted or could reasonably be expected to result in a Material Adverse Effect or that would materially adversely affect the business, operations, properties or financial condition of FMPA.

## ARTICLE 7

### **COVENANTS**

FMPA covenants and agrees that so long as this Agreement shall remain in effect and until the Commitment shall have been terminated and all of the Obligations to the Lender shall have been paid and performed in full, unless the Lender shall have otherwise consented in writing:

7.1 **Participant Loan Agreements.** FMPA will perform all of its obligations under the Participant Loan Agreements, and, subject to applicable Law and the terms of Participant Loan Agreements and the Pooled Loan Resolution, undertake any and all such actions and proceedings from time to time as shall be necessary (or may be reasonably requested by the Lender) to protect and safeguard the payment of the Obligations to the Lender, including without limitation (a) such action which shall be necessary to enforce the obligations of the Pooled Loan Participants under the Participant Loan Agreements, (b) such action which shall be necessary to defend, preserve and protect the Lien on and security interest in the moneys, securities and funds pledged under the Pooled Loan Resolution and all rights of the Lender hereunder against all claims and demands of all Persons. In the event FMPA or the Trustee under the Pooled Loan Resolution does not take such action, the Lender may do so, at the sole cost of the Defaulting Pooled Loan Participant(s), in the name of FMPA, and require the Defaulting Pooled Loan Participants to pay, upon demand, the Lender's costs, charges and expenses, including, without limitation attorneys' fees in connection therewith.

7.2 **Accounting and Reports.** FMPA will maintain a standard system of accounting in accordance with GAAP consistently applied and furnish or cause to be furnished to the Lender:

(a) Within 270 days after the end of each fiscal year of FMPA, a copy of the audited financial statements of FMPA as of the end of such fiscal year and statements of operations and changes in financial position for the fiscal year then ended, each setting forth in comparative form the figures for the previous fiscal year, all in reasonable detail prepared in accordance with GAAP consistently applied, accompanied by an opinion of FMPA's independent accountants (who shall be of nationally recognized standing) which opinion shall have been prepared in accordance with generally accepted auditing standards.

(b) Evidence of compliance with Section 7.5 of this Agreement, as of June 30 of each year, to be submitted to the Lender as of July 31 of each year.

(c) With reasonable promptness, such other data regarding the financial position or business of FMPA or a Pooled Loan Participant as the Lender may reasonably request from time to time.

7.3 **Access to Records.** At any reasonable time and from time to time upon reasonable notice, FMPA will permit the Lender or any agent or representative of the Lender to visit and inspect any of the properties of FMPA, to examine the books of account of FMPA (and to make copies thereof and extracts therefrom) relating to the Initial Pooled Loan Project, as such relates solely to the Participant Loan Agreements, and to discuss the affairs, finances and accounts of FMPA with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request.

7.4 **Reserved.**

7.5 **Billings to the Pooled Loan Participants.** In accordance with the terms of the Pooled Loan Resolution, FMPA shall fix and revise interest rates and other fees charged on Loans to the Pooled Loan Participants which will require each Pooled Loan Participant to pay to FMPA sufficient funds to enable FMPA to pay, when due, all of its Obligations to the Lender hereunder, including all principal and interest on any Advance, and bill monthly each of the Pooled Loan Participants in accordance with the terms of the Participant Loan Agreement(s) and promptly deposit amounts received into the Revenue Fund or the appropriate account or sub-account therein.

7.6 **Covenants under the Pooled Loan Resolution.** FMPA will comply with the covenants contained in Article VIII of the Pooled Loan Resolution.

7.7 **Maintenance of Existence.** FMPA will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and its rights, power, permits, privileges and franchises except where the failure to do so, individually or in the aggregate, would not result in a Material Adverse Effect.

7.8 **Material Adverse Effect.** Subject to Section 2.4 hereof and provided FMPA has actual knowledge of circumstances giving rise to a Material Adverse Effect, FMPA will take reasonable lawful action within its power to prevent any such Material Adverse Effect.

7.9 **Notices to the Lender.** FMPA will promptly advise the Lender and the Trustee in writing of any circumstance within FMPA's knowledge which is reasonably expected to result in a Material Adverse Effect and shall notify the Lender of any event which has resulted in a Material Adverse Effect.

7.10 **Further Assurances.** At any and all times, to the extent permitted by law, FMPA shall pass, make, do, execute, acknowledge and deliver any and all further resolutions, acts, deeds, conveyances, assignments, recordings, filings, transfers, documents, agreements, instruments and assurances, and take all further action that may be required under applicable law, or that the Lender may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and the Participant Loan Agreements.

**ARTICLE 8**  
**EVENTS OF DEFAULT**

**8.1 Events of Default.**

(a) It is the intent of this Agreement that FMPA utilize the Initial Pooled Loan Project Credit Facility to make loans to the Pooled Loan Participants in accordance with the Initial Pooled Loan Project. The obligations of the Pooled Loan Participants under the Participant Loan Agreements are several, and not joint, and recourse thereunder is limited as provided therein. In the event of a Participant Loan Agreement Event of Default, FMPA shall notify the Lender in writing within three Business Days and FMPA (or the Trustee under the Pooled Loan Resolution) shall pursue its remedies under the applicable Participant Loan Agreement.

(b) The following events shall be an “Event of Default”:

i. FMPA shall fail to pay (A) the principal or interest on any Advance made hereunder within seven (7) days after payment is due, or (B) any other amount payable hereunder within fifteen (15) days after payment is due.

ii. Any representation or warranty made by FMPA regarding the borrowings hereunder, or any representation, warranty statement or information contained in any certificate furnished pursuant hereto, shall prove to have been incorrect, false or misleading in any material respect when so made or furnished and upon which the Lender has relied to its detriment.

iii. If any Participant Loan Agreement is at any time determined not to be a valid and binding agreement of FMPA as the result of a final, non-appealable judgment of a court of competent jurisdiction or by any governmental authority having jurisdiction, or the validity or enforceability thereof shall be contested by FMPA.

iv. If FMPA fails in the performance or observance of any obligation, covenant or provision of this Agreement or the Pooled Loan Resolution, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to FMPA by the Lender, unless the Lender shall agree in writing to an extension of such time prior to its expiration; *provided, however*, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Lender may not unreasonably withhold its consent to an extension of such time from the delivery of the written notice referred to above for an additional 60-day period if corrective action is instituted by FMPA within the applicable period and diligently pursued until the Event of Default is corrected.

v. FMPA institutes or consents to the institution of any proceeding as a debtor under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of FMPA and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to FMPA or to all or any material part of its property is instituted

without the consent of FMPA and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding.

vi. FMPA creates, assumes, incurs or allows any security interest or Lien (including judicial Liens) on any property given as security under the Pooled Loan Resolution except for security interests or Liens in favor of the Lender and such security interest or Lien is not removed or released within thirty (30) days; *provided, however*, that if the removal or release of such security interest or Lien can be accomplished but cannot be accomplished within the applicable period the Lender may not unreasonably withhold its consent to an extension of such time if corrective action is instituted by FMPA within the applicable period and diligently pursued until the Event of Default is corrected, but in no case shall such additional time exceed 30 days (for an aggregate of 60 days from the occurrence of such event).

vii. There shall have occurred a Material Adverse Effect which shall continue for a period of thirty (30) days.

(c) Upon the occurrence of an Event of Default that relates to a Participant Loan Agreement Event of Default under any Participant Loan Agreement with a Pooled Loan Participant, the Lender shall have no obligation to make additional Advances or extend additional credit under this Agreement to such Pooled Loan Participant.

(d) Upon the occurrence of any Event of Default after written notice of such Event of Default by the Lender to FMPA, the Lender may, by notice to FMPA, declare the principal and interest hereunder to be, and the same shall thereupon become, immediately due and payable, without further presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by FMPA, and the Default Rate shall apply to any amounts then outstanding; *provided however*, that where an Event of Default occurs: (A) pursuant to Section 8.1(b)(i) and such Event of Default is the result of the failure of a Pooled Loan Participant to make payments to FMPA in accordance with a Participant Loan Agreement; or (B) pursuant 8.1(b)(iii), then the acceleration of principal and interest and the Default Rate shall apply solely to the Advance used by FMPA to make the Loan provided to the Pooled Loan Participant whose failure to pay FMPA or whose Participant Loan Agreement has been declared invalid caused the Event of Default. In addition, upon the occurrence of any Event of Default, with the exceptions of: (X) an Event of Default pursuant to Section 8.1(b)(i), which results from the failure of a Pooled Loan Participant to make payments to FMPA under a Participant Loan Agreement; and (Y) an Event of Default pursuant to Section 8.1(b)(iii), the Lender may, with or without declaring the principal and interest due and payable as set forth in this Section 8.1(c), take any action at law or in equity to enforce performance and observance of any obligation, agreement or covenant of FMPA with regard to the Obligations to the Lender and the Lender may enforce its Lien and/or the security interest granted under the Pooled Loan Resolution through the exercise of the remedies provided by any applicable Law. If an Event of Default occurs under Section 8.1(b)(v), with respect to FMPA, then the entire amount of debt outstanding under this Agreement shall automatically and immediately become due and payable.

(e) The occurrence of an Event of Default under this Agreement shall constitute an event of default under or within the meaning of any other Loan Documents, and vice versa, and shall entitle the Lender to initiate and pursue, in the Lender's sole discretion exercised on one or

more occasions, and any and all rights and remedies available to the Lender hereunder and/or under any of the other Loan Documents (and under any Participant Loan Agreement which has caused the Event of Default), without notice to FMPA, any requirement for which is hereby expressly waived by FMPA, anything contained herein or in any Loan Document to the contrary notwithstanding.

## ARTICLE 9

### **GENERAL PROVISIONS**

9.1 **Modification or Amendment.** Neither this Agreement nor the Note may be modified, supplemented or amended except in accordance with the provisions of this Section 9.1. The Lender and FMPA may from time to time, (a) enter into written amendments, supplements or modifications hereto and to the Note for the purpose of adding any provisions to this Agreement or the Note or changing in any manner the rights of the Lender or FMPA hereunder or thereunder or (b) waive any of the requirements of this Agreement or the Note or any Default or Event of Default and its consequences. Any such waiver and any such amendment, supplement or modification shall be binding upon FMPA and the Lender. In the case of any waiver, FMPA and the Lender shall be restored to their former positions and rights hereunder and under the Note, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. FMPA shall not adopt a Supplemental Resolution, other than pursuant to Section 11.01 of the Pooled Loan Resolution, without the prior written consent of the Lender, and the prior written consent of the Lender shall be required for any Supplemental Resolution that amends an Event of Default under the Pooled Loan Resolution.

9.2 **Notices.** All notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, by telecopy or by email, to the addresses set forth below, or to such other addresses as the Lender and FMPA may specify from time to time in writing. Notices and other communications shall be effective upon receipt.

If to Lender, to it at:

[TO BE PROVIDED]

If to FMPA, to it at:

Florida Municipal Power Agency  
8553 Commodity Circle  
Orlando, Florida 32819-9002  
Attention: Chief Financial Officer  
Telephone: (407) 355-7767  
Facsimile: (407) 355-5796  
Email: Rich.Popp@fmpa.com

With a copy to:

Florida Municipal Power Agency  
Office of General Counsel

2061 Delta Way  
Tallahassee, Florida 32303  
Attention: General Counsel and Chief Legal Officer  
Telephone: (850) 297-2011  
Facsimile: (850) 297-2014  
Email: [jody.finklea@fmpa.com](mailto:jody.finklea@fmpa.com)

9.3 **No Waiver; Remedies.** No failure on the part of the Lender to exercise, and no delay in exercising, any right, power, or remedy under any of the Loan Documents shall operate as a waiver of such right, power, or remedy, nor shall any single or partial exercise of any right, power, or remedy under any of the Loan Documents, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The rights, powers and remedies provided in the Loan Documents are cumulative and not exclusive of any rights, powers or remedies that the Lender would otherwise have, whether under the Loan Documents, at law, in equity, or otherwise.

9.4 **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that FMPA may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any other attempted assignment or transfer by FMPA without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, and any Participating Bank to the extent provided in Section 9.5(a) any legal or equitable right, remedy or claim under or by reason of this Agreement.

9.5 **Transfer of Lender's Interests.**

(a) **Participating Banks.** FMPA hereby agrees that the Lender, in its sole discretion, shall have the unrestricted right at any time and from time to time, and without the consent of or notice to FMPA, to grant participating interests in its obligation to lend hereunder and/or all or any part of the Obligations to the Lender to one or more banks or other financial institutions (each, a "Participating Bank"). In the event of any such grant by the Lender of a participating interest to a Participating Bank, the Lender shall remain responsible for the performance of all of its obligations hereunder and FMPA shall continue to deal solely and directly with the Lender in connection herewith. The Lender may furnish any information concerning FMPA in its possession from time to time to Participating Banks and prospective Participating Banks, *provided, however*, that the Lender shall require any such Participating Banks and prospective Participating Banks to agree in writing to maintain the confidentiality of such information, except as required by applicable laws or Governmental Authorities.

(b) **Pledge to Federal Reserve Banks.** The Lender and each Participating Bank shall have the unrestricted right at any time and from time to time, and without the consent of or notice to FMPA, to pledge or assign all or any portion of its rights under this Agreement or any other Loan Document to any of the Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341, *provided, however*, that no such pledge or assignment or enforcement thereof shall release the Lender or such Participating Bank from its obligations hereunder or thereunder.

9.6 **Expenses; Indemnification.**

(a) **Costs and Expenses.** FMPA shall pay (i) all reasonable out-of-pocket expenses incurred by the Lender (including the reasonable fees, charges and disbursements of counsel for the Lender), in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof agreed to by FMPA, (ii) all reasonable out-of-pocket expenses incurred by the Lender in connection herewith and (iii) all reasonable out-of-pocket expenses incurred by the Lender (including the reasonable fees, charges and disbursements of any counsel for the Lender) in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 9.6, and including all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect thereof.

(b) **Indemnification.** To the extent permitted by the Act or any other applicable Law, FMPA shall indemnify the Lender and each director, officer, employee and agent of the Lender (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by FMPA arising out of, in connection with, or as a result of: (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement, the Participant Loan Agreements and the other Loan Documents, (ii) any Advance, or the use or proposed use of the proceeds therefrom, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by FMPA, *provided, however*, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses have resulted or arise from the negligence or willful misconduct of such Indemnitee.

(c) **Nature of FMPA’s Obligation.** The obligations of FMPA pursuant to this Section 9.6 shall be payable solely from unused proceeds of the Advances and the amounts payable to FMPA by the Project Participants pursuant to the applicable Participant Loan Agreement(s).

9.7 **Governing Law.** All terms, obligations and provisions of this Agreement and of the Note are to be determined and governed by the law of Florida.

9.8 **Venue and Jurisdiction.** FMPA and the Lender agree that any action or suit arising out of or relating to this Agreement shall be filed in federal court or state court located in the State of Florida. The provisions of this Section 9.8 are material inducements to the Lender’s acceptance of this Agreement.

9.9 **Entire Agreement, Severability of Provisions.**

(a) This Agreement is intended by the parties as the final, complete and exclusive statement of the transactions evidenced by this Agreement. All prior or contemporaneous promises, agreements and understandings, whether oral or written, are deemed to be superseded

by this Agreement, and neither party is relying on any promise, agreement or understanding not set forth in this Agreement. This Agreement may not be amended or modified except by a written instrument describing such amendment or modification executed by FMPA and the Lender.

(b) If any one or more terms or provisions contained in this Agreement or the application thereof to any circumstance shall be held invalid, illegal or unenforceable, pursuant to a final, non-appealable order or final, non-appealable judgment of a competent court of law, such terms or provisions shall be ineffective only to the extent of such invalidity, illegality or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions hereof or the application of such term or provision to circumstances other than those as to which it is held invalid, illegal or unenforceable. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

9.10 **Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.11 **Counterparts.** This Agreement may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement.

9.12 **Reserved.**

9.13 **Limitation of Interest and Other Charges.** If, at any time, the rate of interest, together with all amounts which constitute interest and which are reserved, charged or taken by the Lender as compensation for fees, services or expenses incidental to the making, negotiating or collection of the loan evidenced hereby, shall be deemed by any competent court of law, governmental agency or tribunal to exceed the maximum rate of interest permitted to be charged by the Lender to FMPA under applicable law, then, during such time as such rate of interest would be deemed excessive, that portion of each sum paid attributable to that portion of such interest rate that exceeds the maximum rate of interest so permitted shall be deemed a voluntary prepayment of principal. As used herein, the term “applicable law” shall mean the law in effect as of the date hereof; *provided, however*, that in the event there is a change in the law which results in a higher permissible rate of interest, then this Agreement shall be governed by such new law as of its effective date.

9.14 **Term of Agreement.** The term of this Agreement shall be from the date hereof until the Expiration Date; *provided, however*, that notwithstanding the foregoing or anything the contrary contained herein, this Agreement shall not terminate until the payment in full of the Obligations to the Lender.

9.15 **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS



CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.16 **Extension of Agreement.** FMPA may request that the Lender extend this Agreement for an additional period or periods by giving written notice of such request at least ninety (90) days prior to the Expiration Date. The Lender may, in its sole and absolute discretion, decide to accept or reject any such proposed extension, it being understood and agreed that the failure by the parties hereto to execute documentation as to such extension satisfactory to both of them prior to the Expiration Date shall be deemed to be a decision by both such parties not to extend this Agreement, in which case this Agreement shall terminate in accordance with its terms. The failure of the Lender to notify FMPA of its decision on or before the later of sixty (60) days of receiving the request to extend or thirty days prior to the Expiration Date shall be deemed to be a rejection of such request to extend as of the later of such dates, and the Lender shall not incur any liability. Notwithstanding the foregoing, FMPA and the Lender may extend the term of this Agreement without following the terms of this Section 9.16, if both FMPA and the Lender desire to do so.

*[Remainder of page intentionally blank; signature page is the next page]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**FLORIDA MUNICIPAL POWER AGENCY,**  
as Agent for the Initial Pooled Loan Project

(SEAL)

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

Approved as to Form and Legality:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[\_\_\_\_\_] ,  
as Lender

By: \_\_\_\_\_  
Name: [\_\_\_\_\_]   
Title: [\_\_\_\_\_]

**EXHIBIT A**

**[FORM OF PARTICIPANT LOAN AGREEMENT<sup>1</sup>]**

**FLORIDA MUNICIPAL POWER AGENCY  
INITIAL POOLED LOAN PROJECT**

**LOAN AGREEMENT**

**AMONG**

**FLORIDA MUNICIPAL POWER AGENCY,  
AS AGENT FOR THE  
INITIAL POOLED LOAN PROJECT**

**AND**

**[NAME OF BORROWER]**

**AND**

**[TRUIST BANK OR TRUIST COMMERCIAL EQUITY, INC., as applicable]**

**DATED \_\_\_\_\_, 20\_\_**

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<sup>1</sup> This form of loan agreement contemplates that (i) FMPA will enter into an agreement with the Lender and that FMPA will loan the proceeds from moneys received by FMPA from the Lender to the Project Participant, (ii) FMPA will administer the Pooled Loan Program, and (iii) FMPA will deliver bonds or notes to the Lender in a direct purchase transaction to evidence the repayment obligation of FMPA under the agreement with the Lender which payments will be made solely from the Loan Repayments made under this loan agreement with the Lender.

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## LOAN AGREEMENT

This **LOAN AGREEMENT**, dated as of the commencement date set forth on Exhibit A attached hereto and made a part hereof (the “Loan Agreement”) and entered into by and among **FLORIDA MUNICIPAL POWER AGENCY**, a legal entity organized under the laws of the State of Florida, as agent for the Initial Pooled Loan Project (“FMPA”), and the member of FMPA named in Exhibit A (the “Project Participant”) and [**TRUIST BANK OR TRUIST COMMERCIAL EQUITY, INC., as applicable**, a \_\_\_\_\_, (together with its permitted successors and assigns, the “Credit Facility Issuer”)].

### WITNESSETH:

**WHEREAS**, pursuant to the Constitution and laws of the State of Florida, including particularly Section 163.01, Florida Statutes, as amended, Chapter 166, Part II, Florida Statutes, as amended, Chapter 361, Part II, Florida Statutes, as amended, and the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended and supplemented, and other applicable provisions of law (collectively, the “Act”), and in accordance with the Initial Pooled Loan Project 2019 Obligation Resolution adopted April 18, 2019, as the same may be further amended and supplemented from time to time in accordance with the provisions thereof, including as supplemented by the Series D Supplemental Initial Pooled Loan Project Obligation Resolution adopted [\_\_\_\_\_] (the “Resolution”), FMPA has determined to loan to the Project Participant the amount necessary to enable the Project Participant to finance and refinance all or a portion of the Costs of the Participant’s Project described in Exhibit A and the Project Participant has determined to borrow such amount from FMPA, subject to the terms and conditions of and for the purposes set forth in this Loan Agreement; and

**WHEREAS**, the Project Participant is authorized and has taken all action necessary to enter into this Loan Agreement for the purposes set forth herein; and

**WHEREAS**, FMPA has no taxing power and the bonds, notes, and any other obligations issued from time to time under the Resolution and all obligations to be undertaken by FMPA pursuant to the Resolution are special obligations of FMPA payable solely from Revenues; and FMPA shall be required to pay and perform its obligations under the Resolution only to the extent that there are Revenues sufficient to provide therefor;

**NOW, THEREFORE**, for and in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

**SECTION 1.01** Definitions. Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Resolution, as applied to the Loan Agreement. The following terms have the meanings indicated below for all purposes of this Loan Agreement unless the context clearly requires otherwise.

“Administrative Expenditures” means any expenditures of FMPA reasonably or necessarily incurred by FMPA in connection with the administration of the Initial Pooled Loan Project including, without limitation, those incurred by reason of its issuance of the particular Series of the Obligations in order to finance or refinance the Applicable Project Fund applicable to Series of Obligations from which the amounts loaned to the Project Participant hereunder are taken, including (without limitation) fees and expenses of auditing; the fees and expenses of the Trustee and the Registrar and Paying Agent allocable to such Series of Obligations; legal, financing, and administrative expenses; and any expenses incurred by FMPA or the Trustee to compel full and punctual performance of all the provisions of the Loan Agreements and the Credit Facility in accordance with the terms thereof.

“Authorized Officer” means, in the case of the Project Participant, any person or persons authorized pursuant to a resolution of the governing body of the Project Participant to perform any act or execute any document relating to the Loan or this Loan Agreement.

“Commencement Date” means the date of commencement of the term of this Loan Agreement, which shall be the commencement date set forth in Exhibit A, which is attached hereto and made a part hereof.

“Cost,” with respect to a Project Participant, shall mean the Project Participant’s costs, expenses, and liabilities paid or incurred or to be paid or incurred by the Project Participant, including any costs relating to any project designed or intended to decrease the costs of Project Participant’s Eligible Utility System or to increase the capacity or reliability of Project Participant’s Eligible Utility System including, without limitation, costs incurred in connection with the planning, engineering, designing, acquiring, leasing, constructing, installing, financing, operating, maintaining, retiring, decommissioning, and disposing of (A) any part of Project Participant’s Eligible Utility System; (B) any part of an electric, water, wastewater, waste or refuse disposal, telecommunications, resource recovery or gas facility or other Eligible Utility System facility in which a Project Participant has a joint ownership interest; or (C) any project entered into by FMPA permitted by law and the obtaining of all governmental approvals, certificates, permits, and licenses with respect thereto, including, but not limited to, any good faith or other similar payment or deposits required in connection with the purchase thereof, the cost of acquisition by or for the Project Participant of real and personal property related thereto, and costs of the Project Participant incidental to such construction or acquisition, the costs of acquisition of fuel or fuel inventory or facilities for the production or transportation of fuel and working capital and reserves therefore and working capital and reserves for reload fuel and for additional fuel inventories, all costs related to the payment or repayment of purchased power or other utility services, all costs relating to injury and damage claims relating to any item described in clause (A), (B) or (C) above, the cost of any indemnity or surety bonds and premiums on any insurance required to be obtained or which a Project Participant finds it desirable to obtain, self-insurance, including the funding of a pool for insurance purposes; preliminary investigation and development costs; engineering fees and expenses; contractors’ fees and expenses; the costs of labor, materials, equipment, and utility services and supplies; legal and financial advisory fees and expenses; interest and financing costs, including, without limitation, bank commitment and letter of credit fees and bond insurance and indemnity premiums, fees, and expenses of the trustees, registrars, paying agents, administration and general overhead expense; and costs of keeping accounts and making reports required by the Resolution or the Project Participant’s bond resolution prior to or in connection with the



completion of construction of any item described in clauses (A), (B), or (C) above; amounts, if any, required by the Resolution or resolutions of the Project Participant relating to any item described in clauses (A), (B), or (C) above to be paid into various funds and accounts thereunder for any of the respective purposes thereof, including capitalized interest for any Loan and working capital of the Project Participant's Eligible Utility System; costs of paying or prepaying interest, principal, premium on any obligation issued to finance the Project Participant's Eligible Utility System or joint ownership interest described in clause (B) above; or cost of purchasing either on the open market or in response to a request for tenders or otherwise any of such obligations, payments or prepayments of any amounts owed to FMPA in connection with any project of FMPA, or any project entered into by FMPA permitted by law and reserves therefor to enable the Project Participant to implement and carry out such portion of the Initial Pooled Loan Project relating to such Project Participant. It is intended that this definition be broadly construed to encompass all costs, expenses, and liabilities of the Project Participant related to (A) the Project Participant's Eligible Utility System, (B) any part of an Eligible Utility System in which a Project Participant has a joint ownership interest, or (C) any project entered into by FMPA permitted by law which on the date hereof or in the future shall be permitted to be funded with the proceeds of bonds pursuant to the provisions of the Act or any other applicable laws of the State of Florida.

"Eligible Utility System" means the Project Participants electric, water, wastewater, waste or refuse disposal, telecommunications, resource recovery, or gas system or any other utility system of Project Participant.

"Event of Default" means any occurrence or event specified in Section 5.01 hereof.

"Loan" means the loan made by FMPA to the Project Participant to finance or refinance the Costs of the Participant's Project pursuant to this Loan Agreement.

"Loans" means this Loan and other Loans made to other Project Participants under Loan Agreements from the Applicable Project Fund and financed with the proceeds of a particular Series of Obligations issued by FMPA.

"Loan Agreement" means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified, or amended from time to time in accordance with the terms hereof and of the Resolution.

"Loan Agreements" means this Loan Agreement and any other loan agreements entered into among FMPA, the Credit Facility Issuer, and one or more of the Project Participants pursuant to which such Project Participants will borrow money from the Applicable Project Fund financed with the proceeds of a particular Series of Obligations issued by FMPA.

"Loan Project" means the Initial Pooled Loan Project encompassing FMPA's program of making loans pursuant to the Act and the Resolution.

"Loan Rate Determination Date" means the dates specified in the definition of "Loan Rate Determination Date" set forth in Section 6.02 of the Resolution.

"Loan Repayments" means the payments payable by the Project Participant pursuant to Section 3.02 of this Loan Agreement, including payments payable under the Promissory Note.

“Loan Term” means the term of this Loan Agreement determined as provided in Sections 3.01 and 3.02 of this Loan Agreement and reflected on Exhibit B, which is attached hereto and made a part of this Loan Agreement, as the same may be amended or modified as provided herein.

“Promissory Note” means the Promissory Note executed and delivered by the Project Participant to FMPA to evidence the Loan, in substantially the form of Exhibit C, which is attached hereto and made a part hereof.

“Obligations” means a Series of Obligations as defined in the Resolution authenticated and delivered in order to finance or refinance the particular account in the Applicable Project Fund from which the amounts loaned to the Project Participant pursuant to this Loan Agreement are provided.

“Participant’s Project” means the project of the Project Participant related to its Eligible Utility System described in Exhibit A, which is attached hereto and made a part hereof, which constitutes a project for which FMPA is permitted to make loans to the Project Participant pursuant to the Act, all or a portion of the Cost of which is financed or refinanced by FMPA through the making of the Loan under this Loan Agreement.

“Project Expenses” means the expenses of the Initial Pooled Loan Project applicable to a particular Series of Obligations, including (without limitation) all such amounts payable pursuant to or in connection with the Credit Facility Agreement, if any, applicable to such Series of Obligations, the Annual Administrative Fee applicable to such Series of Obligations, the Administrative Expenditures and such other fees and expenses necessary or incidental to the Initial Pooled Loan Project applicable to such Series of Obligations as shall be approved by FMPA, including any amounts at any time constituting a rebate due or anticipated by FMPA to be due under the Code, as shall be approved by FMPA.

“Project Participant” means the member of FMPA that is described in the first paragraph of the Loan Agreement and its successors and assigns or FMPA, in any capacity other than as agent for the Initial Pooled Loan Project (which capacity shall be specified in the Loan Agreement entered into by FMPA in such capacity).

“Project Participants” means the members of FMPA or FMPA, in any capacity other than as agent for the Initial Pooled Loan Project (which capacity shall be specified in the Loan Agreement executed by FMPA in such capacity), that have entered into Loan Agreements with FMPA as agent for the Initial Pooled Loan Project pursuant to which such members of FMPA, or FMPA in such other capacity, will borrow money from the Applicable Project Fund financed or refinanced through the issuance of a particular Series of Obligations.

“Promissory Note” means the Promissory Note executed and delivered by the Project Participant to FMPA to evidence the Loan, in substantially the form of Exhibit C, which is attached hereto and made a part hereof.

“Resolution” means the Initial Pooled Loan Project 2019 Obligation Resolution as adopted by the Board of Directors of FMPA on April 18, 2019, and all further amendments and supplements thereto adopted in accordance with the provisions thereof applicable to the Obligations.

“Taxable Loan” means a Loan that is funded with proceeds of a particular Series of Obligations issued by FMPA the interest on which is *not* intended to be excluded from gross income for federal income taxes or which could be issued by FMPA in the future.

“Tax-Exempt Loan” means a Loan that is funded with proceeds of a particular Series of Obligations issued by FMPA the interest on which is intended to be excluded from gross income for federal income taxes or which could be issued by FMPA in the future as that status is governed by Section 103(a) of the Code or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction.

“Trustee” means the Trustee for the Series of Obligations issued to fund the Loan made hereunder and appointed pursuant to the Resolution and its successors as Trustee under the Resolution as provided in Section 9.01 of the Resolution.

“Utility System” means the Eligible Utility System of the Project Participant described in Exhibit A for which the Project Participant is making the borrowing under this Loan Agreement and from the revenues or other receipts of which the Project Participant will repay the Loan. In the case of a borrowing by FMPA, “Utility System” shall mean the capacity in and/or project for which FMPA is borrowing and the revenues or receipts related thereto.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF PROJECT PARTICIPANT

**SECTION 2.01**     Representations of Project Participant. The Project Participant represents for the benefit of FMPA, the Trustee, the Holders, and the Credit Facility Issuer as follows:

(a)     Organization and Authority.

(i)     The Project Participant is “a public agency” as defined in Section 163.01(3)(b), Florida Statutes, as amended, and “an electric utility” as defined in Section 163.01(3)(f), Florida Statutes, as amended, or a municipality for purposes of Section 163.01(7)(d), Florida Statutes, as amended, duly created and validly existing pursuant to the constitution and statutes of the State of Florida.

(ii)    The Project Participant has full legal right and authority and all necessary licenses and permits required as of the date hereof to own and operate its properties, to carry on its activities, to enter into this Loan Agreement, to execute and deliver the Promissory Note, to undertake and complete the Participant’s Project related to its Utility System, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(iii)   The proceedings of the Project Participant’s governing body approving this Loan Agreement and the Promissory Note and authorizing their execution and delivery on behalf of the Project Participant and authorizing the Project Participant to undertake and complete the Participant’s Project have been duly and lawfully adopted at a meeting or meetings duly called and held at which quorums were present and acting throughout and such meeting or meetings were

duly called pursuant to necessary public notice and held in accordance with all applicable laws, including Section 286.011, Florida Statutes, as amended.

(iv) This Loan Agreement and the Promissory Note have been duly authorized, executed, and delivered by an Authorized Officer of the Project Participant and, assuming that each of FMPA and the Credit Facility Issuer has all the requisite power and authority to execute and deliver, and has duly authorized, executed, and delivered this Loan Agreement, this Loan Agreement and the Promissory Note constitute the legal, valid and binding obligations of the Project Participant enforceable in accordance with their respective terms.

(b) Full Disclosure. There is no fact that the Project Participant has not disclosed to the Credit Facility Issuer and FMPA in writing on the Project Participant's application for the Loan or otherwise that materially adversely affects or (so far as the Project Participant can now foresee) that will materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Project Participant or its Utility System or the ability of the Project Participant to make all Loan Repayments and otherwise perform its obligations under this Loan Agreement and the Promissory Note, and the information contained in Exhibit A, which is attached hereto and made a part hereof, is true and accurate in all respects.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Project Participant threatened, against or affecting the Project Participant in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Project Participant or its Utility System, or the ability of the Project Participant to make all Loan Repayments and otherwise perform its obligations under this Loan Agreement and the Promissory Note, or in any way contesting the proceedings of the Project Participant with respect to the authorization or issuance of this Loan Agreement or the titles of officers of the Project Participant to their respective offices, that have not been disclosed in writing to the Credit Facility Issuer and FMPA in the Project Participant's application for the Loan or otherwise.

(d) Compliance with Existing Laws and Agreements. The execution and delivery of this Loan Agreement and the Promissory Note by the Project Participant, the performance by the Project Participant of its obligations hereunder and thereunder and the consummation of the transactions provided for in this Loan Agreement and the Promissory Note and compliance by the Project Participant with the provisions of this Loan Agreement and the Promissory Note and the undertaking and completion of the Participant's Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any property or assets of the Project Participant pursuant to any existing bond ordinance, trust agreement, indenture, mortgage, deed of trust, loan agreement, or other instrument (other than the subordinated lien on the revenues of the Utility System created under this Loan Agreement and the Promissory Note) to which the Project Participant is a party or by which the Project Participant, its Utility System or any of its property is or may be bound nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Project Participant was established or any laws, ordinances, governmental rules, regulations or court orders to which the Project Participant, its Utility System or its property or operations is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Loan Agreement and the Promissory Note or receipt or application of all or any portion of the amount of the Loan, would constitute an Event of Default hereunder. The Project Participant is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, its Utility System or its property or operations may be bound, which violation would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Project Participant or its Utility System or the ability of the Project Participant to make all Loan Repayments or otherwise perform its obligations under this Loan Agreement and the Promissory Note.

(f) Governmental Consent. The Project Participant has obtained all permits and approvals required to date by any governmental body or officer for the making and performance by the Project Participant of its obligations under this Loan Agreement and the Promissory Note or for the undertaking or completion of the Participant's Project and the financing and refinancing thereof, and the Project Participant has complied with any applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making and performance by the Project Participant of its obligations under this Loan Agreement and the Promissory Note or with the undertaking or completion of the Participant's Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority that has not been obtained is required on the part of the Project Participant as a condition to the execution and delivery of this Loan Agreement and the Promissory Note, the undertaking or completion of the Participant's Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law. The Project Participant:

(i) is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Project Participant to conduct its activities or the condition (financial or otherwise) of the Project Participant or its Utility System; and

(ii) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Project Participant to conduct its activities or undertake or complete the Participant's Project or the condition (financial or otherwise) of the Project Participant or its Utility System.

(h) Use of Proceeds from Taxable and Tax-Exempt Loans. (A) The Project Participant will apply the proceeds of the Taxable Loan received from FMPA as described in Exhibit A, which is attached hereto and made a part hereof, (i) to finance all or a portion of the Cost of the Participant's Project; (ii) to reimburse the Project Participant for all or a portion of the Cost of the Participant's Project, or (iii) to retire indebtedness of the Project Participant incurred to finance the Cost of the Participant's Project. All of such costs constitute Costs for which FMPA is authorized to make Loans to the Project Participant pursuant to the Act and the Resolution. Before each and every disbursement of the proceeds of the Loan to the Project Participant, the Project Participant shall submit to FMPA a certificate meeting the requirements of Section 5.04(2) of the Resolution.

(B) The Project Participant will apply the proceeds of the Tax-Exempt Loan received from FMPA as described in Exhibit A, (i) to finance all or a portion of the Cost of the Participant's Project; (ii) to reimburse the Project Participant for all or a portion of the Cost of the Participant's Project, which Cost was paid or incurred in anticipation of reimbursement by FMPA or any other issuer (including the Project Participant) of indebtedness the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code; or (iii) to retire indebtedness of the Project Participant incurred to finance the Cost of the Participant's Project, which Cost was paid or incurred in anticipation of reimbursement by FMPA or any other issuer (including the Project Participant) of indebtedness the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code. All of such costs constitute Costs for which FMPA is authorized to make Loans to the Project Participant pursuant to the Act and the Resolution. Before each and every disbursement of the proceeds of the Loan to the Project Participant, the Project Participant shall submit to FMPA a certificate meeting the requirements of Section 5.04(2) of the Resolution.

**SECTION 2.02**      Particular Covenants of Project Participant.

(a) The Project Participant agrees (i) to maintain its Utility System in good repair and operating condition; (ii) to cooperate with FMPA and the Credit Facility Issuer in the performance of the respective obligations of such Project Participant and FMPA under this Loan Agreement; (iii) to establish, levy and collect rents, rates, and other charges for the products and services provided by its Utility System, which rents, rates, and other charges shall be at least sufficient (A) to meet the operation and maintenance expenses of such Utility System; (B) to comply with all covenants pertaining thereto contained in, and all other provisions of, any bond ordinance, resolution, trust indenture, or other security agreement relating to any bonds or other evidences of indebtedness issued or to be issued by the Project Participant, to pay the debt service requirements on any bonds, notes or other evidences of indebtedness, whether now outstanding or incurred in the future, secured by such revenues or other receipts and issued to finance improvements to the Utility System and to make any other payments required by the laws of the State of Florida; (C) to generate funds sufficient to fulfill the terms of all other contracts and agreements made by the Project Participant, including, without limitation, this Loan Agreement; and (D) to pay all other amounts payable from or constituting a lien or charge on the revenues or other receipts of its Utility System; and (iv) to deliver to FMPA, the Credit Facility Issuer and any designee of such parties any report or certificate required to comply or to evidence compliance with the Credit Facility Agreement.

(b) The Project Participant further covenants and agrees that it will treat its integrated utility system as the Utility System for all purposes of this Loan Agreement. The Project Participant's Utility System shall be deemed to be a part of an integrated utility system for purposes of the Initial Pooled Loan Project if the revenues or other receipts of the Utility System (i) are commingled with the revenues or other receipts of one or more other utility systems owned by the Project Participant, or (ii) are utilized to pay operating expenses of the Project Participant's Utility System and one or more other utility systems owned by the Project Participant, or (iii) are pledged to secure bonds issued to finance one or more other utility systems owned by the Project Participant.

(c) The Project Participant shall not be required to make payments under this Loan Agreement except from the revenues or other receipts of its Utility System and from other funds of such Utility System legally available therefor. In no event shall the Project Participant be required to make payments under this Loan Agreement from ad valorem tax revenues.

(d) The Project Participant shall not sell, lease, abandon, or otherwise dispose of all or substantially all of its Utility System except on 90 days' prior written notice to FMPA and, in any event, shall not so sell, lease, abandon, or otherwise dispose of the same unless the following conditions are met:

(i) Written consent of the Credit Facility Issuer, (ii) the Project Participant shall assign this Loan Agreement in accordance with Section 4.02 herein and its rights and interests hereunder to the purchaser or lessee of the Utility System and such purchaser or lessee shall assume all obligations of the Project Participant under this Loan Agreement; and (iii) FMPA shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment, or other disposition will not adversely affect FMPA's ability to meet its obligations under the Resolution, and will not adversely affect the value of this Loan Agreement as security for the payment of the particular Series of Obligations issued by FMPA to fund the Loan made hereunder and the interest thereon or, if applicable, affect the eligibility of interest on such Series of Obligations then outstanding or which could be issued in the future for exclusion from gross income for federal income tax purposes.

(e) Solely with respect to a Tax-Exempt Loan, the Project Participant covenants and agrees that it shall not take any action or omit to take any action which would result in the loss of the exclusion from gross income for Federal income tax purposes of the interest on any Obligation or Obligations of the Series issued by FMPA to fund the Loan made hereunder the interest on which is intended to be excluded from gross income for federal income taxes or which could be issued by FMPA in the future as that status is governed by Section 103(a) of the Code or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction.

(f) The Project Participant covenants and agrees that it shall, in accordance with prudent utility practice, (1) at all times operate the properties of its Utility System and the business in connection therewith in an efficient manner; (2) maintain its Utility System in good repair, working order, and condition; and (3) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterment, and improvement with respect to its Utility System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Project Participant to expend any funds which are derived from sources other than the operation of its Utility System or other receipts of such Utility System and provided further that nothing herein shall be construed as preventing the Project Participant from doing so.

(g) The Project Participant shall keep accurate records and accounts for its Utility System, separate and distinct from its other records and accounts. Such records and accounts shall be audited annually by an independent certified public accountant, which may be part of the annual audit of the accounts of the Project Participant. Such records and accounts shall be made available for inspection by FMPA and the Credit Facility Issuer at any reasonable time, and a copy of such annual audit, including all written comments and recommendations of such accountants, shall be

furnished to FMPA and the Credit Facility Issuer as soon as available. If such Utility System audit is part of a municipal audit, then the Project Participant shall furnish the entire municipal audit to FMPA and the Credit Facility Issuer.

(h) The Project Participant shall permit FMPA and the Credit Facility Issuer and any party designated by any of such parties to examine, visit, and inspect, at any and all reasonable times, the property, if any, constituting the Participant's Project and the Project Participant's other Utility System facilities, and to inspect and make copies of any accounts, books, and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments, and any other matters relating thereto and to its financial standing, and shall supply such reports and information as FMPA, the Trustee or the Credit Facility Issuer may reasonably require in connection therewith.

(i) The Project Participant shall maintain or cause to be maintained, in force, insurance with responsible insurers with policies or self-insurance providing against risk or direct physical loss, damage, or destruction of their Utility System, at least to the extent that similar insurance is usually carried by utilities constructing and operating Utility System facilities of the nature of the Utility System facilities of the Project Participant's Utility System, including liability all to the extent available at reasonable cost but in no case less than will satisfy all applicable regulatory requirements.

(j) The Project Participant certifies that the Cost of the Participant's Project is a reasonable and accurate estimation thereof and, upon direction of the Credit Facility Issuer or FMPA, will supply the same with a certificate stating that such Cost of the Participant's Project is a reasonable and accurate estimation thereof.

(k) Concurrently with the execution and delivery of this Loan Agreement, the Project Participant will cause to be delivered to FMPA, the Credit Facility Issuer, and the Trustee each of the items required by Section 6.04 of the Resolution.

(l) The Project Participant shall promptly notify FMPA, Credit Facility Issuer, and any party designated by such parties of any material adverse change in the Project Participant's Utility System.

(m) The Project Participant further agrees to comply with the additional covenants, if any, included on Exhibit E, which is attached hereto and made a part hereof.

**SECTION 2.03**      [RESERVED].

**ARTICLE III**

**LOAN TO PROJECT PARTICIPANT; AMOUNTS PAYABLE; GENERAL AGREEMENTS**

**SECTION 3.01**      The Loan; Loan Term. FMPA hereby agrees to loan to the Project Participant, and the Project Participant agrees to borrow from FMPA, the Loan in the principal



amount of the commitment set forth on Exhibit A. The proceeds of the Loan shall be deposited in the funds and accounts as set forth on Exhibit A. FMPA shall cause the Trustee to disburse proceeds of the Loan deposited in the Applicable Project Fund to the Project Participant or its designee or to FMPA for payment to the Project Participant or its designee upon receipt of certificates meeting the requirements of Section 5.04(2) of the Resolution; provided, however, FMPA shall be under no obligation to disburse or cause to be disbursed all or any portion of the Loan to the Project Participant if an Event of Default has occurred and is continuing under the Resolution, the Credit Facility Agreement, or this Loan Agreement. Although FMPA intends to disburse the full amount of the proceeds of the Loan in the Applicable Project Fund to the Project Participant to pay the Cost of the Participant's Project, due to unforeseen circumstances, including, but not limited to, investment losses or application of amounts in the Applicable Project Fund to make Loan Repayments, there may not be a sufficient amount on deposit in the Applicable Project Fund on any date to disburse the full amount of the proceeds of the Loan in the Applicable Project Fund to the Project Participant; in such event, the Project Participant agrees that the obligation of the Project Participant to repay the Loan shall not be affected thereby, and neither FMPA, nor the Trustee nor the Credit Facility Issuer shall have any obligation to disburse any additional amounts to the Project Participant. The proceeds of the Loan shall be used strictly in accordance with Section 2.01(h) hereof.

This Loan Agreement is a special obligation of the Project Participant payable solely from the revenues or other receipts of the Utility System specified in Exhibit A hereto.

This Loan Agreement will terminate upon payment in full of all amounts payable hereunder.

**SECTION 3.02** Amounts Payable. (a) The Project Participant shall repay the Loan in installments payable to the Trustee as follows:

(i) the principal of the Loan shall be repaid in accordance with the schedule set forth on Exhibit B attached hereto as the same may be amended or modified as provided herein; and

(ii) the interest on the Loan shall be received by the Trustee on the twenty-fifth day (or the next preceding Business Day if such date is not a Business Day) of each month preceding the month for which interest on the Loan is due and payable commencing on the twenty-fifth day of the month immediately preceding the first month upon which interest is due and payable on the Loan (or as otherwise provided in Exhibit A hereto) and on the date that is seven days prior to the maturity date (or the next preceding Business Day if such date is not a Business Day) of the Loan (if the maturity date does not occur in the month of April or October) in the amount calculated in the manner prescribed by paragraph (b) of this Section; provided, however, that upon the occurrence of an Event of Default or the transfer of this Loan Agreement to the Credit Facility Issuer the interest rate payable on the Loan shall thereafter for the period specified in the Credit Facility Agreement be determined as provided in the Credit Facility Agreement, but in no event in excess of the maximum rate permitted by Florida Law.

On or prior to the date on which FMPA enters into an agreement to issue a Series of Obligations the proceeds of which will provide amounts to be advanced to the Project

Participant under this Loan Agreement, the Project Participant shall execute the Promissory Note to evidence such obligation in substantially the form of the Promissory Note attached hereto as Exhibit C and deliver the original Promissory Note to the Trustee. The obligations of the Project Participant under the Promissory Note shall be deemed to be amounts payable under this Section 3.02. Each payment made to the Trustee pursuant to the Promissory Note shall be deemed to be a credit against the corresponding obligation of the Project Participant under this Section 3.02 and any such payment made to the Trustee shall fulfill the Project Participant's obligation to pay such amount hereunder and under the Promissory Note. Except as otherwise provided in the Credit Facility Agreement, each payment made pursuant to this Section 3.02 shall be applied first to interest then due and payable on the Loan and then to the principal of the Loan.

(b) Except as otherwise provided in the Resolution and subject to Sections 5.01 and 5.03 of this Loan Agreement, the interest rate applicable to the Loan and the effective date of such rate (which shall be the first day of a month) shall be determined by FMPA on each Loan Rate Determination Date which date shall not be more than 15 days prior to the effective date or, in the case of a Variable Rate Obligation, such number of days specified in Exhibit A hereto (which rate shall apply until the effective date specified on the next succeeding Loan Rate Determination Date). FMPA shall notify the Project Participant of the rate determined on the Loan Rate Determination Date at least 10 days prior to the effective date of a new interest rate determined or, in the case of a Variable Rate Obligation, such number of days specified in Exhibit A hereto. Notwithstanding the foregoing, if at any time FMPA determines that the interest payable on the Loan will not provide sufficient funds, together with other funds available therefor under the Resolution (i) to pay the interest to become due on the particular Series of Obligations allocable to the Loan as provided in the Resolution and (ii) to pay the Project Expenses, FMPA may increase the interest rate on the Loan in an amount so that, together with amounts to be generated from identical increases in the interest rate on all other Loans, shall be sufficient to cure such deficiency; FMPA shall give the Project Participant notice of such increased interest rate on the Loan and the period for which such interest rate shall be effective at least ten days prior to the date such increased interest rate shall become effective.

(c) In addition to the payments of principal and interest on the Loan required by paragraph (a) of this Section, the Project Participant shall pay a late charge for any payment of principal of or interest on the Loan that is received by the Trustee later than the day following its due date, in an amount equal to 1% of such payment or such lesser amount as is necessary so that such late charges together with the interest rate payable on the Loan is not in excess of the maximum rate permitted by law; provided, however, that the interest rate payable on the Loan including such late charge shall not be in excess of the maximum rate permitted by law.

**SECTION 3.03** Unconditional Obligations. The obligations of the Project Participant to make the Loan Repayments and all other payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed, or otherwise modified in any manner or to any extent whatsoever, while any Obligations of the Series issued to fund the Loan made hereunder remain outstanding or any Loan Repayments remain unpaid, regardless of any contingency, act of God, event, or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or

damage to Participant's Project or its Utility System, commercial frustration of purpose, any change in the laws of the United States of America or of the State of Florida or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of FMPA, the Trustee, or the Credit Facility Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with Participant's Project, this Loan Agreement or the Resolution or any rights of set off, recoupment, abatement, or counterclaim that the Project Participant might otherwise have against FMPA, the Trustee, the Credit Facility Issuer, or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. Furthermore, the Project Participant is not obligated to make any payments required to be made by any other Project Participant under a separate Loan Agreement or the Resolution.

The obligations of the Project Participant to make the Loan Repayments and all other payments required hereunder are junior and subordinated in all respects to certain payments and obligations incurred as specified in Utility System Resolution (as defined in Exhibit E) as to source and security for payment from revenues, receipts, or other available moneys of the Project Participant's Utility System.

The Project Participant acknowledges that payment of Series of Obligations issued to fund the Loan made hereunder (including, if so provided in the Credit Facility Agreement, payment from funds drawn by the Trustee under the Credit Facility) does not constitute payment of the amounts due under this Loan Agreement and the Promissory Note and that if this Loan Agreement and the Promissory Note are assigned to the Credit Facility Issuer, the Credit Facility Issuer will be fully subrogated to the rights of FMPA and the Trustee under this Loan Agreement and the Promissory Note. Notwithstanding the foregoing, (i) this Loan Agreement will not be assigned to the Credit Facility Issuer if the Credit Facility Issuer has been fully paid by FMPA under the Series of Obligations issued to fund the Loan made hereunder, (ii) if this Loan Agreement has been assigned to the Credit Facility Issuer, the Credit Facility Issuer will not be subrogated to the rights of FMPA and the Trustee under this Loan Agreement and the Promissory Note for any amounts paid to the Credit Facility Issuer by FMPA under the Series of Obligations issued to fund the Loan made hereunder, but will be subrogated, subject to the terms of this paragraph, for all other payments and rights and remedies of FMPA and the Trustee, (iii) any payments made directly by the Pooled Loan Participant to the Credit Facility Issuer pursuant to this Loan Agreement and the Promissory Note will be deducted from any amounts owed by FMPA to the Credit Facility Issuer under the Credit Facility Agreement, and (iv) FMPA and the Credit Facility Issuer agree that in no event will the Credit Facility Issuer be paid both under this Loan Agreement and under the Credit Facility Agreement for amounts related to the obligations of the Pooled Loan Participant under this Loan Agreement that are, in the absence of the assignment of this Loan Agreement to the Credit Facility Issuer, to be paid by the Pooled Loan Participant to FMPA for payment by FMPA to the Credit Facility Issuer under the Credit Facility Agreement.

**SECTION 3.04**      Loan Agreement to Survive Resolution and Series of Obligations.

The Project Participant acknowledges that its obligations hereunder shall survive the discharge of the Resolution and payment of the principal of and interest on the Series of Obligations issued to fund the Loan made hereunder.

**SECTION 3.05**      Disclaimer of Warranties. Neither FMPA nor the Credit Facility Issuer nor the Trustee nor any of their respective agents makes any warranty or representation, either express or implied as to the value, design, condition, merchantability, or fitness for particular purpose or fitness for use of Participant's Project or any portion thereof or any other warranty or representation with respect thereto. In no event shall FMPA, the Credit Facility Issuer, or the Trustee or their respective agents be liable for any incidental, indirect, special, or consequential damages in connection with or arising out of this Loan Agreement or the Participant's Project or the existence, furnishing, functioning, or use of the Participant's Project or any item or products or services provided for in this Loan Agreement.

**SECTION 3.06**      Option to Prepay Loan Repayments. The Project Participant may prepay the Loan Repayments, in whole or in part on any Business Day, and upon payment by the Project Participant to the Trustee of the principal amount of the Loan Repayments to be prepaid, plus the interest to accrue on such amount to the date of prepayment in accordance with the terms and provisions for such prepayments set forth on Exhibit A attached hereto as the same may be amended or modified as provided herein. Except as otherwise provided in the Credit Facility Agreement, prepayments shall be applied first to accrued interest on the portion of the Loan to be prepaid and then to principal payments (including premium, if any) on the Loan in such order as determined by the Lender in its sole discretion. Any such full or partial prepayment may be made without compliance with the notice requirements set forth in Exhibit A attached hereto on any Business Day upon the occurrence of any event requiring or permitting the transfer of this Loan Agreement to the Credit Facility Issuer pursuant to the Resolution.

## ARTICLE IV

### ASSIGNMENT

**SECTION 4.01**      Assignment and Transfer. (a) The Project Participant expressly acknowledges that all right, subject to Section 5.07 herein, title and interest of FMPA in, to and under this Loan Agreement and the Promissory Note may be assigned to the Trustee as security for the Series of Obligations issued to fund the Loan made hereunder and amounts due under the Credit Facility Agreement as provided in the Resolution, and on and after the date of such assignment that if any Event of Default shall occur, the Trustee, subject to the provisions of the Credit Facility Agreement, or, at such time, if any, as this Loan Agreement is required to be transferred to the Credit Facility Issuer pursuant to the Resolution and the Credit Facility Agreement, the Credit Facility Issuer shall be entitled to act hereunder in the place and stead of FMPA and the Trustee. The Project Participant hereby approves the Resolution and consents to such assignment. This Loan Agreement and the Promissory Note including, without limitation, the right to receive payments required to be made by the Project Participant hereunder and to compel or otherwise enforce performance by the Project Participant of its other obligations hereunder, may be further transferred, assigned, and reassigned in whole or in part to one or more assignees or subassignees by the Trustee at any time subsequent to their execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Project Participant.

(b) The Project Participant acknowledges that following the occurrence of an Event of Default, the Resolution, or the Credit Facility Agreement may require that this Loan Agreement and the Promissory Note be transferred to the Credit Facility Issuer in the manner and to the extent

provided therein and/or the amounts payable as interest hereunder may be increased and the time at which principal payments are due may be modified to the extent required in the Credit Facility Agreement. The Project Participant hereby consents to such transfer and/or increase and/or modification.

(c) The Project Participant further acknowledges that if the Obligations of a particular Series or the portion thereof applicable to the Loan are subject to purchase from moneys drawn under the Credit Facility and any other monies available to the Trustee upon the occurrence of certain events as may be provided for and set forth in the Credit Facility Agreement for such particular Series of Obligations and that upon the occurrence of any of such events, the Credit Facility Agreement requires that, if demanded by the Credit Facility Issuer, this Loan Agreement and the Promissory Note be transferred to the Credit Facility Issuer in the manner and to the extent provided therein. The Project Participant hereby consents to such transfer.

(d) Upon receipt of notice of any transfer of this Loan Agreement and the Promissory Note as set forth in paragraphs (b) and (c) of this Section, the Project Participant shall make all payments required hereunder and under the Promissory Note directly to the Credit Facility Issuer or its designee regardless of any defense or right of set-off that the Project Participant may have against FMPA or the Trustee.

(e) The Project Participant hereby approves and consents to any further assignment or transfer of this Loan Agreement and the Promissory Note that FMPA deems to be necessary in connection with any refunding of Series of Obligations issued to fund the Loan made hereunder under the Resolution or otherwise in connection with the Initial Pooled Loan Project or any successor pooled loan program of FMPA.

**SECTION 4.02** Assignment by Project Participant. Neither this Loan Agreement nor the Promissory Note may be assigned by the Project Participant for any reason without the prior written consent of FMPA, the Trustee, and the Credit Facility Issuer.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 5.01** Events of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an “Event of Default”:

(a) failure by the Project Participant to pay any Loan Repayment required to be paid hereunder when due, which failure shall continue until the last Business Day of the month in which such Loan Repayment was due;

(b) failure by the Project Participant to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of 30 days from the earlier of (i) after written notice, specifying such failure and requesting that it be remedied, is given to the Project Participant by the Credit Facility Issuer (or the Trustee at the direction of the Credit Facility Issuer) or the Trustee if no Credit Facility is then in effect, unless the Credit Facility Issuer (or the Trustee at the direction of the Credit Facility Issuer) or the Trustee

if no Credit Facility is then in effect, or (ii) when the Project Participant was required to give notice to the Lender pursuant to Section 5.02 hereof, shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Credit Facility Issuer or the Trustee, as appropriate, may not unreasonably withhold their consent to an extension of such time up to 90 days from the delivery of the written notice or when the Project Participant was required to give notice to the Lender pursuant to Section 5.02 hereof referred to above if corrective action is instituted by the Project Participant within the applicable period and diligently pursued until the Event of Default is corrected;

(c) any representation made by or on behalf of the Project Participant contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect on the date on which such representation is made; and

(d) a petition is filed by or against the Project Participant under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Project Participant such petition shall be dismissed within 30 days after such filing and such dismissal shall be final and not subject to appeal; or the Project Participant shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator, or trustee) of the Project Participant or any of its property shall be appointed by court order or take possession of the Project Participant or its property if such order remains in effect or such possession continues for more than 30 days.

(e) The Project Participant shall (1) be in default in the payment of any principal of or interest on any obligation for borrowed money or for the deferred purchase price of any property or asset (unless the failure to make payment of such deferred purchase price is contingent upon a contest or negotiation being diligently pursued for up to thirty (30) days) or on any obligation guaranteed by the Project Participant or in respect of which it is otherwise contingently liable beyond any period of grace stated with respect thereto in any such obligation or in any agreement under which any such obligation is created, or (2) shall default in the performance of any agreement under which any such obligation is created and such default results in such obligation becoming due and payable prior to its normal maturity, or, (3) a default under any agreement under which any such obligation is created due to bankruptcy, insolvency or similar proceedings with respect to the Project Participant and such default continues beyond any period to cure for such Project Participant. Notwithstanding the foregoing, the obligations, agreements, property or assets referred to in this Section 5.01(e) are limited to obligations, agreements, property or assets secured with the same revenues as are securing the obligations of the Project Participant under this Loan Agreement.

(f) An "Event of Default" relating to the Project Participant or to FMPA shall have occurred and be continuing under the Credit Facility Agreement.

**SECTION 5.02** Notice of Default. The Project Participant shall give the Trustee, the Credit Facility Issuer, and FMPA prompt telephonic notice followed by written confirmation of the occurrence of any event referred to in Section 5.01 hereof and of the occurrence of any other

event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Project Participant becomes aware of the existence thereof.

**SECTION 5.03** Remedies on Default. Whenever an Event of Default referred to in Section 5.01 hereof shall have happened and be continuing, the Credit Facility Issuer or FMPA shall have the right to direct the Trustee, to take any action permitted or required pursuant to the Resolution and to take one or more of the following remedial steps:

(a) declare all Loan Repayments and all other amounts due hereunder (including, without limitation, payments under the Promissory Note), to be immediately due and payable, and upon notice to the Project Participant the same shall become immediately due and payable by the Project Participant without further notice or demand; and

(b) take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any obligation, agreement, or covenant of the Project Participant hereunder.

In addition, if an Event of Default shall have occurred and be continuing, the Credit Facility Issuer may, without declaring all Loan Repayments to be immediately due and payable, in the manner and for the period specified in the Credit Facility Agreement, direct FMPA to increase the rate of interest applicable to the Loan to the Default Rate specified in the Credit Facility Agreement provided, however, the interest rate shall not be in excess of the maximum rate permitted by law, and the Trustee shall apply the additional amounts collected as interest as a result of such increase as provided in the Credit Facility Agreement.

Further, if an Event of Default referred to in Section 5.01(d) hereof shall have occurred, the Trustee shall declare all Loan Repayments and all other amounts due hereunder (including, without limitation, payments under the Promissory Note) to be immediately due and payable, and upon notice to the Project Participant the same shall become due and payable without further notice or demand.

**SECTION 5.04** Attorney's Fees and Other Expenses. The Project Participant shall on demand pay to FMPA, the Credit Facility Issuer, or the Trustee the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred by any of them in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance of any other obligations of the Project Participant upon an Event of Default. In addition, the Project Participant shall pay the reasonable expenses (including any fees required by a Credit Facility Issuer under the Credit Facility Agreement) of FMPA and the Trustee incurred in connection with the Loan (including fees of counsel to the Credit Facility Issuer) in excess of any amount of such expenses that shall be included in the Project Expenses.

**SECTION 5.05** Application of Moneys. Any moneys collected by FMPA or the Trustee pursuant to Section 5.03 hereof, shall be applied (a) first, to pay any attorney fees or other fees and expenses of the Trustee owed hereunder, (b) second, to pay any attorney fees or other fees and expenses owed by the Project Participant pursuant to Section 5.04 hereof, (c) third, to pay

interest due on the Loan, (d) fourth, to pay principal due on the Loan, and (e) fifth, to pay any other amounts due hereunder as such amounts become due and payable.

**SECTION 5.06** No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to FMPA, the Credit Facility Issuer, or the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy, or power accruing upon any Event of Default shall impair any such right, remedy, or power or shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle FMPA, the Credit Facility Issuer, or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

**SECTION 5.07** Retention of FMPA's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of the Resolution, or anything else to the contrary contained herein, FMPA shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation), bringing an action against the Project Participant at law or in equity, as FMPA may, in its discretion, deem necessary to enforce the obligations of the Project Participant to FMPA pursuant to Section 5.04 hereof.

## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.01** Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the project Participant at the address specified on Exhibit A attached hereto and made a part hereof and to FMPA, the Trustee, and the Credit Facility Issuer at the following addresses:

(a) FMPA: Florida Municipal Power Agency  
(Initial Pooled Loan Project)  
8553 Commodity Circle  
Orlando, Florida 32819-9002  
Attention: Chief Financial Officer  
Telephone: (407) 355-7767  
Facsimile: (407) 355-5796  
Email: [Rich.Popp@fmpa.com](mailto:Rich.Popp@fmpa.com)

With a copy to:  
Florida Municipal Power Agency  
Office of General Counsel  
2061-2 Delta Way  
Tallahassee, Florida 32303  
Attention: General Counsel and Chief Legal Officer  
Telephone: (850) 297-2011  
Facsimile: (850) 297-2014



Email: [jody.finklea@fmpa.com](mailto:jody.finklea@fmpa.com)

(b) Trustee: [To be determined]

(c) Credit Facility Issuer: [To be determined]

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent, by notice in writing given to the others.

**SECTION 6.02** Binding Effect. This Loan Agreement shall inure to the benefit of the parties and shall be binding upon FMPA, the Project Participant, and the Credit Facility Issuer and their respective successors and assigns.

**SECTION 6.03** Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any other provision hereof.

**SECTION 6.04** Amendments, Changes, and Modifications. This Loan Agreement may not be amended without the prior written consent of the parties hereto.

**SECTION 6.05** Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 6.06** Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Florida. FMPA and the Project Participant agree that certain material events and occurrences relating to the Loan bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of the Loan shall be governed by the internal laws of Florida which are applicable to agreements which are negotiated, executed, delivered and performed solely in Florida. In the event of any legal proceeding arising out of or related to the Loan, FMPA and the Project Participant consent to the jurisdiction and venue of courts located in the state of Florida.

**SECTION 6.07** Consents and Approvals. Whenever the written consent or approval of FMPA shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by FMPA unless otherwise provided by law or by rules, regulations, or resolutions of FMPA or unless expressly delegated to the Trustee and except as otherwise provided in Section 6.10 hereof.

**SECTION 6.08** Captions. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit, or describe the scope or intent of any provisions or sections of this Loan Agreement.

**SECTION 6.09** Benefit of Loan Agreement; Compliance with Resolution. This Loan Agreement is executed, among other reasons, to induce the Credit Facility Issuer to loan

funds through the issuance of a Series of Obligations that will fund the Loan made hereunder and the issuance of the Credit Facility by the Credit Facility Issuer. Accordingly, all covenants, representations, and agreements of the Project Participant herein contained are hereby declared to be for the benefit of and are enforceable by the Holders, FMPA, and the Credit Facility Issuer. The Project Participant covenants and agrees to comply with, and to enable FMPA to comply with, all covenants and requirements contained in the Resolution.

**SECTION 6.10** Rights of Credit Facility Issuer. At such time as all rights, power, and privileges (collectively, the “Rights”) under this Loan Agreement shall vest with the Credit Facility Issuer pursuant to the Resolution upon the termination of the assignment to the Trustee and transfer of this Loan Agreement to the Credit Facility Issuer, the Credit Facility Issuer shall be entitled to act hereunder in the place and stead of FMPA and the Trustee, and upon receipt of notice of the vesting of such Rights in the Credit Facility Issuer, the Project Participant shall make all payments required under this Loan Agreement and the Promissory Note directly to the Credit Facility Issuer, without any defense, set off, counterclaiming deduction, interruption, or deferment whatsoever, whether arising out of this Loan Agreement, the Initial Pooled Loan Project, the Participant’s Project, or otherwise, and notwithstanding any rights that the Project Participant may have against FMPA, the Trustee, or any other person or entity. Thereafter, (a) the Credit Facility Issuer shall have all rights to receive notices and give consents and approvals hereunder, (b) the Credit Facility Issuer may exercise or not exercise any of the remedies set forth herein or otherwise provided at law with respect to any failure of the Project Participant to fulfill any of its obligations hereunder, and (c) all references to “FMPA” and the “Trustee” herein shall be deemed to be references to the “Credit Facility Issuer.”

Upon the vesting of the rights under this Loan Agreement in the Credit Facility Issuer, this Loan Agreement, including (without limitation) the right to receive payments under this Loan Agreement and the Promissory Note and to enforce performance by the Project Participant of its other obligations hereunder, may be further transferred, assigned, and reassigned in whole or in part to one or more assignees or subassignees of the Credit Facility Issuer, without the necessity of obtaining the consent of, but after giving written notice to, the Project Participant.

**SECTION 6.11** Further Assurances. The Project Participant shall, at the request of the Credit Facility Issuer or FMPA, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning, and confirming the rights, security interests, and agreements granted or intended to be granted by this Loan Agreement and the Promissory Note.

**SECTION 6.12** No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereunder (including in connection with any amendment, waiver or other modification hereof or of any other documents related hereto), FMPA and the Project Participant each acknowledge and agree, that: (a) (i) it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (ii) it is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and any other loan documents, (iii) the Lender is not acting as a municipal advisor or financial advisor to the FMPA or the Project Participant and (iv) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act to FMPA or the Project

Participant with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender has provided other services or is currently providing other services to FMPA or the Project Participant on other matters); (b) the Lender is and has been acting solely as a principal in an arm's length commercial lending transaction and has not been, is not, and will not be acting as an advisor, agent or fiduciary, for FMPA or the Project Participant, or any other person; (c) notwithstanding anything herein to the contrary, it is the intention of FMPA, the Project Participant and the Lender that the loan documents represent a commercial loan transaction not involving the issuance and sale of a municipal security, and that any bond, note or other debt instrument that may be delivered to the Lender is delivered solely to evidence the repayment obligations of FMPA and the Project Participant under the loan documents; and (d) the Lender may be engaged in a broad range of transactions that involve interests that differ from those of FMPA or the Project Participant, and the Lender has no obligation to disclose any of such interests to FMPA or the Project Participant. If FMPA or the Project Participant would like a municipal advisor in this transaction that has legal fiduciary duties to FMPA or the Project Participant, FMPA or the Project Participant is free to engage a municipal advisor to serve in that capacity. The transactions contemplated herein and the Promissory Note are delivered, pursuant to and in reliance upon the bank exemption and/or the institutional buyer exemption provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 et seq, to the extent that such rules apply to the transactions contemplated hereunder.

**SECTION 6.13 Permission to Use Information.** FMPA and the Project Participant each agree and consent that the Lender shall be permitted to use information related to the loan transaction in connection with marketing, press releases or other transactional announcements or updates provided to investors or trade publications, including, but not limited to, the placement of logo or other identifying name on marketing materials or of "tombstone" advertisements in publications of its choice at its own expense.

**SECTION 6.14 Patriot Act Notice.** The Lender hereby notifies FMPA and the Project Participant that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 signed into law October 26, 2001) (the "Patriot Act"), the Lender may be required to obtain, verify and record information that identifies FMPA or the Project Participant, which information includes the name and address of FMPA and the Project Participant and other information that will allow the Lender to identify FMPA and the Project Participant in accordance with the Patriot Act.

**SECTION 6.15 Waiver of Jury Trial.** FMPA, the Project Participant and the Lender hereby knowingly, voluntarily, intentionally, and irrevocably waive, to the fullest extent permitted by applicable law, the right either of them may have to a trial by jury in respect to any litigation, whether in contract or tort, at law or in equity, based hereon or arising out of, under or in connection with the Loan and any other document or instrument contemplated to be executed in conjunction with the Loan, 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 Lender entering into or accepting the Loan. Further, FMPA and the Project Participant each hereby certifies that no representative or agent of the Lender, nor the Lender's counsel, has represented, expressly or otherwise, that the Lender would not, in the event of such litigation, seek to enforce this waiver of right to jury trial provision.



**IN WITNESS WHEREOF**, the Parties have caused this Loan Agreement to be executed by their proper officers, respectively, being thereunto duly authorized and their corporate seals, if applicable, to be hereto affixed as of the day and year first above written.

**FLORIDA MUNICIPAL POWER AGENCY**, as  
Agent for the Initial Pooled Loan Project

(SEAL)

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

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

ATTEST:

Approved as to Form and Legality:

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

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

ATTEST:

**[NAME OF PARTICIPANT]**

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

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

Name:

Name:

Title:

Title:

(Participant Seal)

**[NAME OF LENDER]**

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

Name:

Title:

[Signature Page to Loan Agreement]

**EXHIBIT A TO LOAN AGREEMENT**

**DESCRIPTION OF THE LOAN**

- (1) Commencement Date: , 20\_\_
- (2) Name and Address of Project Participant:
- (3) Utility System for which Loan is being incurred:
- (4) Principal Amount of Loan Commitment: \$
- (5) Estimated Completion Date: , 20
- (6) Series of Obligations of FMPA from which Loan is being financed: Series [\_\_\_\_\_] Notes (a subseries of Series D Obligations).

Single advance on Commencement Date or advances made from time to time:

If from time to time, date of expected final advance under Loan Agreement: , 20\_\_

- (7) (a) Loan Term: \_\_ Years
- (b) Prepayment Provisions:
- (8) (a) Description of the Participant's Project:
- (b) Taxable Loan or Tax-Exempt Loan:
- (9) Amount of the Loan to be deposited into the Applicable Project Fund: \$
- (10) Breakdown of Participant's Project Costs: \$
- A. Portion of Participant's Project Costs to be directly financed:

<u>Description</u>	<u>Allocated Amount of Loan</u>
Costs of Participant's Project	
Costs of Issuance [Debt Service	
Reserve Fund Requirement]	
[Capitalized Interest]	
[Project Expenses]	

- B. Portion of Participant's Project Costs for which Project Participant will be reimbursed, which the Project Participant hereby certifies were paid or incurred in anticipation of being reimbursed from FMPA or any other issuer of tax-exempt debt:

**Description**

**Allocated Amount of Loan**

(11) Security for repayment of loan: \_\_\_\_\_

**EXHIBIT B TO LOAN AGREEMENT**

**PRINCIPAL REPAYMENT SCHEDULE**

<b><u>Payment Number</u></b>	<b><u>Payment Date</u></b>	<b><u>Principal Outstanding</u></b>	<b><u>Principal Amount Due</u></b>	<b><u>Principal Amount Remaining</u></b>
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## EXHIBIT C TO LOAN AGREEMENT

### FORM OF PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_, the (“Project Participant”), hereby promises to pay to the order of Florida Municipal Power Agency, as agent for the Initial Pooled Loan Project (“FMPA”), the principal amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) at the times and in the amounts determined as provided in the Loan Agreement, dated as of \_\_\_\_\_ by and among FMPA, \_\_\_\_\_ (the “Credit Facility Issuer”), and the Project Participant (the “Loan Agreement”), together with interest thereon in the amount calculated as provided in the Loan Agreement, payable on the dates and in the amounts and as provided in the Loan Agreement.

This Promissory Note is a special obligation of the Project Participant and neither the faith and credit nor the taxing power of the Project Participant is pledged to the payment of the Promissory Note.

This Promissory Note is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the “Loan”) and to evidence the obligations of the Project Participant set forth in Section 3.02(a) thereof. This Promissory Note has been assigned to \_\_\_\_\_, as trustee (the “Trustee”) under the Initial Pooled Loan Project 2019 Obligation Resolution adopted by FMPA on April 18, 2019, and as further amended and supplemented in accordance with the terms thereof (the “Resolution”) and payments hereunder shall, except as otherwise provided in the Loan Agreement, be made directly to the Trustee for the account of FMPA pursuant to such assignment. Such assignment has been made as security for the payment of the Series of Obligations (as defined in the Resolution) issued by FMPA to finance or refinance the Applicable Project Fund (as defined in the Resolution) from which the Loan is being made, and the obligations to the Credit Facility Issuer (as defined in the Resolution) and as otherwise described in the Loan Agreement. This Promissory Note is subject to further assignment or endorsement in accordance with the terms of the Resolution. All of the terms, conditions, and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Promissory Note.

Unless otherwise provided in the Loan Agreement, disbursements of the Loan proceeds shall be made by the Trustee at the direction of FMPA to the Project Participant, its designee, or FMPA under the Loan Agreement from time to time upon the terms and conditions set forth in the Loan Agreement, which disbursements shall be noted by the Trustee on the Disbursements and Payments Grid annexed hereto and all payments of principal on this Promissory Note shall be made to the Trustee and be noted by the Trustee on the Disbursements and Payments Grid annexed hereto; provided, however, that any failure by the Trustee to make any such notation shall not affect in any respect the Project Participant’s obligations hereunder.

This Promissory Note is entitled to the benefits and is subject to the conditions of the Loan Agreement. The obligations of the Project Participant to make the payments required hereunder shall be absolute and unconditional without any defense or right of set off, counterclaim, or recoupment by reason of any default by FMPA under the Loan Agreement or under any other

agreement between the Project Participant and FMPA or out of any indebtedness or liability at any time owing to the Project Participant by FMPA or for any other reason.

This Promissory Note shall be paid without presentment. Upon the final maturity of this Promissory Note the holder shall mark this Promissory Note cancelled and promptly return to FMPA or the Trustee.

This Promissory Note is subject to optional prepayment under the terms and conditions, and in the amounts, provided in Section 3.06 of the Loan Agreement.

If an "Event of Default" occurs under Section 5.01 of the Loan Agreement, the principal of and interest on this Promissory Note may be declared due and payable in the manner and to the extent provided in Article V of the Loan Agreement.

This Promissory Note is junior and subordinate in all respects to certain payments and obligations incurred as specified in Resolution \_\_\_\_\_ of the Project Participant, adopted on \_\_\_\_\_, 20\_\_\_\_, as to lien on and source and security for payment from such pledged revenues.

[This Promissory Note is a parity obligation payable on a parity in all respects to certain payments and obligations incurred as specified in each of the Loan Agreements between the Florida Municipal Power Agency, as agent for the Initial Pooled Loan Project, \_\_\_\_\_, as Credit Facility Issuer, and the Project Participant, dated \_\_\_\_\_, 20\_\_\_\_, and dated \_\_\_\_\_, 20\_\_\_\_, as to lien on and source of security for payment from such pledged revenues.]

IN WITNESS WHEREOF, the Project Participant has caused this Promissory Note to be duly executed, sealed, and delivered, as of this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

**[NAME OF PROJECT PARTICIPANT]**

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNMENT**

Florida Municipal Power Agency hereby assigns the foregoing Promissory Note to \_\_\_\_\_, as Trustee under the Initial Pooled Loan Project 2019 Obligation Resolution adopted on April 18, 2019, all as of the date of this Promissory Note as security for the particular Series of the Obligations issued or to be issued to finance or refinance the Applicable Project Fund.

**FLORIDA MUNICIPAL POWER AGENCY**, as  
Agent for the Initial Pooled Loan Project

(SEAL)

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

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

ATTEST:

Approved as to Form and Legality:

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

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

**APPENDIX A  
TO THE PROMISSORY NOTE**

**DISBURSEMENT AND PAYMENT GRID**

Original Principal Amount: \_\_\_\_\_

Original Deposit to Proceeds Account \_\_\_\_\_

Date of Disbursement or Payment	Disbursement from Applicable Project Fund	Principal Amount Repaid	Principal Amount Outstanding	Trustee Signature
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**EXHIBIT D TO LOAN AGREEMENT**

**FORM OF OPINION OF COUNSEL TO PROJECT PARTICIPANT**

[TO BE PUT ON LETTERHEAD OF COUNSEL TO PROJECT PARTICIPANT]

[DATED THE DATE OF THE FIRST DRAWING UNDER THE LOAN AGREEMENT]

Florida Municipal Power Agency  
(Initial Pooled Loan Project)  
8553 Commodity Circle  
Orlando, Florida 32819

[Trustee]  
[Address]  
[Address]

[Credit Facility Issuer]  
[Address]  
[Address]

Ladies and Gentlemen:

I am an attorney admitted to practice in the State of Florida and I have acted as counsel to \_\_\_\_\_ (the "Project Participant"), a member of Florida Municipal Power Agency ("FMPA"), which has entered into a Loan Agreement (as hereinafter defined) with FMPA, and have acted as such in connection with the authorization, execution, and delivery by the Project Participant of its Loan Agreement.

In so acting I have examined the Constitution and laws of the State of Florida and [add local ordinance, charter, and/or bylaws as appropriate] of the Project Participant. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

(a) FMPA's Initial Pooled Loan Project 2019 Obligation Resolution, adopted by the Board of Directors of FMPA on April 18, 2019, which amends and restates in its entirety FMPA's Initial Pooled Loan Project Revenue Bond Resolution, adopted by the Board of Directors of FMPA on April 18, 1986, as amended and restated (as so amended and restated, the "Resolution");

(b) the Loan Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Loan Agreement"), by and among FMPA, the Project Participant, and \_\_\_\_\_ (the "Credit Facility Issuer");

(c) proceedings of the governing body of the Project Participant relating to authorization of the Loan Agreement and the Participant's Project (each as defined in the Loan Agreement);

(d) the Promissory Note from the Project Participant to FMPA, dated \_\_\_\_\_, 20\_\_ (the "Note") (the Loan Agreement and the Note are referred to herein collectively as the "Loan Documents"); and

(e) all outstanding instruments relating to bonds, notes, or other indebtedness of or relating to the Project Participant's Utility System (as defined in the Loan Agreement).

I have also examined and relied upon originals or copies, certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates, and other instruments, and made such investigation of law, as in my judgement have deemed necessary or appropriate to enable me to render the opinions expressed below.

I am of the opinion that:

(a) The Project Participant is "a public agency as defined in Section 163.01(3)(b), Florida Statutes, as amended, and an electric utility as defined in Section 163.01(3)(f), Florida Statutes, as amended," or "a municipality for purposes of Section 163.01(7) (d), Florida Statutes, as amended" duly created and validly existing pursuant to the constitution and statutes of the State of Florida, with the legal right to carry on the business of its Utility System as currently being conducted and as proposed to be conducted.

(b) The Project Participant has full legal right and authority to enter into the Loan Documents and to carry out its obligations thereunder and to undertake and complete the Participant's Project.

(c) The proceedings of the Project Participant's governing body approving the Loan Documents and the Participant's Project and authorizing the execution and delivery of the Loan Documents on behalf of the Project Participant have been duly and lawfully adopted at a meeting or meetings duly called and held at which quorums were present and acting throughout and such meeting or meetings were called pursuant to necessary public notice and held in accordance with all applicable law including Section 286.011, Florida Statutes.

(d) The Loan Documents have been duly authorized, executed, and delivered by the Authorized Officers of the Project Participant; and, assuming in the case of the Loan Agreement, that each of FMPA and the Credit Facility Issuer has all the requisite power and authority to execute and deliver, and has duly authorized, executed, and delivered, the Loan Agreement constitute the legal, valid, and binding obligation of the Project Participant enforceable in accordance with their respective terms subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally. No opinion is rendered as to the availability of any particular remedy.

(e) The execution and delivery of the Loan Documents by the Project Participant, the performance by the Project Participant of its obligations thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Participant's Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule, or regulation of any court of administrative agency having jurisdiction over the Project Participant or its property or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, trust agreement, indenture, mortgage, deed of trust, or other agreement to which the Project Participant is a party or by which it, its Utility System (as defined in the Loan Agreement), or its property is bound.

(f) All approvals, consents, or authorizations of, or registrations or filings with, any governmental or public agency, authority, or person required to date on the part of the Project Participant in connection with the execution, delivery, and performance of the Loan Documents and the undertaking and completion of the Participant's Project have been obtained or made.

(g) To my knowledge, after due inquiry, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization, or existence of the Project Participant of the validity, legality of enforceability of the Loan Documents, or the undertaking or completion of the Participant's Project.

I hereby authorize \_\_\_\_\_, acting as General Counsel and Chief Legal Officer of FMPA, and \_\_\_\_\_, acting as Bond Counsel to FMPA, to rely on this opinion as if we had addressed this opinion to them in addition to you.

Very truly yours,

**EXHIBIT E TO LOAN AGREEMENT**

**ADDITIONAL COVENANTS**

Each defined term used herein and not otherwise defined herein shall have the meaning set forth in the Loan Agreement to which this Exhibit E is attached (determined without regard to the first sentence of Section 1.01 of the Loan Agreement) or, if not defined therein, in the Utility System Resolution.

[To be customized for each Project Participant]

(1) For a Tax-Exempt Loan, the following covenant shall be applicable:

(a) The Project Participant will not use any of the proceeds of the Loan in a manner which would constitute either (1) private business use within the meaning of Section 141(b) of the Code or (2) a loan to a person other than a governmental unit within the meaning of Section 141(c) of the Code.

(b) Further, the Project Participant (or any related person, as defined in Section 144(a)(3) of the Code) shall not, pursuant to an arrangement, formal or informal, purchase Obligations of the Series issued to fund the Loan made hereunder in an amount related to the amount of the Loan.

(2) Additional Covenants of a Project Participant  
[to be determined at time Loan is made]

(3) Additional Definitions:

["Utility System Resolution" means, with respect to the Project Participant, Resolution(s) No. \_\_\_\_\_, as amended and supplemented as of the date hereof and as in effect as of such date (whether or not (i) such resolution or resolutions are terminated after the date hereof and (ii) any debt is outstanding after the date hereof thereunder.)]



**Exhibit B**

**[FORM OF TAX-EXEMPT NOTE]**

**FLORIDA MUNICIPAL POWER AGENCY**

**INITIAL POOLED LOAN PROJECT NOTE, SERIES [\_\_\_\_\_]**

**(TAX-EXEMPT)**

Dated: \_\_\_\_\_, \_\_\_\_\_

For value received, the Florida Municipal Power Agency, as Agent for the Initial Pooled Loan Project referred to herein (“FMPA”) promises to pay to the order of [\_\_\_\_\_] (the “Lender”), the aggregate unpaid principal amount of all Tax-Exempt Advances made by the Lender from time to time pursuant to the Loan Agreement, dated as of [\_\_\_\_\_] (together with any amendments or supplements thereto, the “Agreement”), by and between FMPA and the Lender, on the dates and in the amounts provided for in the Agreement.

This Note is a direct and special obligation of the Initial Pooled Loan Project (as defined in the Initial Pooled Loan Project 2019 Obligation Resolution adopted April 18, 2019, as amended and supplemented (the “Pooled Loan Resolution”)), payable solely from and secured by the Applicable Trust Estate including all Applicable Revenues, all income and receipts earned on the Applicable Funds and Applicable Accounts held by the Trustee under the Pooled Loan Resolution and the Applicable Supplemental Resolution, including any proceeds of Advances and earnings from FMPA’s temporary investments of amounts on deposit in the Applicable Funds and Accounts under the Pooled Loan Resolution; *provided, however*, that the amounts payable by FMPA with respect to a particular Advance shall be limited to the amounts received by FMPA from a Pooled Loan Participant under the applicable Participant Loan Agreement. The Lender acknowledges that the obligations of each of the Pooled Loan Participants will be limited obligations payable solely from the sources provided in the applicable Participant Loan Agreements.

There is pledged and assigned for the payment of the principal of, and interest on, this Note, in accordance with its terms and the provisions of the Pooled Loan Resolution for the benefit of the Holders (as defined in the Pooled Loan Resolution) of this Note, the Applicable Trust Estate (as defined in the Pooled Loan Resolution), including the funds, moneys and securities contained therein. The funds, moneys and securities pledged and assigned for the benefit of the Holders (as defined in the Pooled Loan Resolution) of this Note shall immediately be subject to the lien and charge of the Pooled Loan Resolution without any physical delivery thereof or further act, and the lien and charge of the Pooled Loan Resolution shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise, against the Florida Municipal Power Agency, irrespective of whether such parties have notice thereof.

The principal of, and interest on, this Note is payable solely out of the Applicable Trust Estate and other funds pledged thereto under the Pooled Loan Resolution, and neither the State of Florida nor any political subdivision thereof nor any city or other entity which is a member of FMPA, other than FMPA, as agent for the Initial Pooled Loan Project, is obligated to pay the principal of and premium, if any, and interest on this Note and neither the faith and credit nor the taxing power of the

State of Florida or any political subdivision thereof or any such city or other entity is pledged to the payment of the principal of or interest on this Note.

FMPA promises to pay interest on the unpaid principal amount of all Tax-Exempt Advances on the dates and at the rates provided for in the Agreement. All payments of principal and interest shall be made to the Lender in lawful money of the United States of America in immediately available funds. All capitalized terms used herein and not otherwise defined herein or specified to be as defined in the Pooled Loan Resolution shall have the meanings specified in the Agreement.

This Note is subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

The Lender agrees, by acceptance of this Note, that before disposing of this Note it will make a notation on the schedule attached hereto of all Tax-Exempt Advances evidenced hereby and all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid; *provided, however*, that the failure to make any such notation shall not limit or otherwise affect the obligation of FMPA hereunder with respect to payments of principal of and interest on this Note. Presentment on this Note shall not be required for payment.

*[remainder of page intentionally left blank]*

This Note shall be construed in accordance with and governed by the laws of the State of Florida.

**FLORIDA MUNICIPAL POWER AGENCY,**  
as Agent for the Initial Pooled Loan Project

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

APPROVED:

By: \_\_\_\_\_  
Name:  
Title:

**Advances  
On  
Florida Municipal Power Agency  
Initial Pooled Loan Project Note, Series [\_\_\_\_]  
(Tax-Exempt)**

Date of Advance	Available Commitment	Interest Rate	Amount of Principal Paid	Date to Which Interest Paid	Notation Made By	Stated Maturity
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**Exhibit C**

**[FORM OF TAXABLE NOTE]**

**FLORIDA MUNICIPAL POWER AGENCY**

**INITIAL POOLED LOAN PROJECT NOTE, SERIES [\_\_\_\_]**

**(FEDERALLY TAXABLE)**

Dated: \_\_\_\_\_, \_\_\_\_\_

For value received, the Florida Municipal Power Agency, as Agent for the Initial Pooled Loan Project referred to herein (“FMPA”) promises to pay to the order of [\_\_\_\_\_] (the “Lender”), the aggregate unpaid principal amount of all Taxable Advances made by the Lender from time to time pursuant to the Loan Agreement, dated as of [\_\_\_\_\_] (together with any amendments or supplements thereto, the “Agreement”), by and between FMPA and the Lender, on the dates and in the amounts provided for in the Agreement.

This Note is a direct and special obligation of the Initial Pooled Loan Project (as defined in the Initial Pooled Loan Project 2019 Obligation Resolution adopted April 18, 2019, as amended and supplemented (the “Pooled Loan Resolution”)), payable solely from and secured by the Applicable Trust Estate including all Applicable Revenues, all income and receipts earned on the Applicable Funds and Applicable Accounts held by the Trustee under the Resolution and the Applicable Supplemental Resolution, including any proceeds of Advances and earnings from FMPA’s temporary investments of amounts on deposit in the Applicable Funds and Accounts under the Pooled Loan Resolution; *provided, however*, that the amounts payable by FMPA with respect to a particular Advance shall be limited to the amounts received by FMPA from a Pooled Loan Participant under the applicable Participant Loan Agreement. The Lender acknowledges that the obligations of each of the Pooled Loan Participants will be limited obligations payable solely from the sources provided in the applicable Participant Loan Agreements.

There is pledged and assigned for the payment of the principal of, and interest on, this Note, in accordance with its terms and the provisions of the Pooled Loan Resolution for the benefit of the Holders (as defined in the Pooled Loan Resolution) of this Note, the Applicable Trust Estate (as defined in the Pooled Loan Resolution), including the funds, moneys and securities contained therein. The funds, moneys and securities pledged and assigned for the benefit of the Holders (as defined in the Pooled Loan Resolution) of this Note shall immediately be subject to the lien and charge of the Pooled Loan Resolution without any physical delivery thereof or further act, and the lien and charge of the Pooled Loan Resolution shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise, against the Florida Municipal Power Agency, irrespective of whether such parties have notice thereof.

The principal of, and interest on, this Note is payable solely out of the Applicable Trust Estate and other funds pledged thereto under the Pooled Loan Resolution, and neither the State of Florida nor any political subdivision thereof nor any city or other entity which is a member of FMPA, other than FMPA, as agent for the Initial Pooled Loan Project, is obligated to pay the principal of and premium, if any, and interest on this Note and neither the faith and credit nor the taxing power of the

State of Florida or any political subdivision thereof or any such city or other entity is pledged to the payment of the principal of or interest on this Note.

FMPA promises to pay interest on the unpaid principal amount of all Taxable Advances on the dates and at the rates provided for in the Agreement. All payments of principal and interest shall be made to the Lender in lawful money of the United States of America in immediately available funds. All capitalized terms used herein and not otherwise defined herein or specified to be as defined in the Pooled Loan Resolution shall have the meanings specified in the Agreement.

This Note is subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

The Lender agrees, by acceptance of this Note, that before disposing of this Note it will make a notation on the schedule attached hereto of all Taxable Advances evidenced hereby and all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid; *provided, however*, that the failure to make any such notation shall not limit or otherwise affect the obligation of FMPA hereunder with respect to payments of principal of and interest on this Note. Presentment on this Note shall not be required for payment.

*[remainder of page intentionally left blank]*

This Note shall be construed in accordance with and governed by the laws of the State of Florida.

**FLORIDA MUNICIPAL POWER AGENCY,**  
as Agent for the Initial Pooled Loan Project

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

APPROVED:

By: \_\_\_\_\_  
Name:  
Title:

**Advances  
On  
Florida Municipal Power Agency  
Initial Pooled Loan Project Note, Series [\_\_\_\_\_] ]  
(Federally Taxable)**

<u>Date of Advance</u>	<u>Available Commitment</u>	<u>Interest Rate</u>	<u>Amount of Principal Paid</u>	<u>Date to Which Interest Paid</u>	<u>Notation Made By</u>	<u>Stated Maturity</u>
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**Exhibit D**

**[FORM OF CERTIFICATE OF THE LENDER]**

\_\_\_\_\_, \_\_\_\_

Florida Municipal Power Agency  
Orlando, FL

Nixon Peabody LLP  
New York, NY

Re: Florida Municipal Power Agency, as agent for the Initial Pooled Loan Project (“**FMPA**”), of its \$ \_\_\_\_\_ aggregate principal amount Initial Pooled Loan Project Notes, Series [\_\_\_\_\_] [(Tax-Exempt)] [Federally Taxable] (the “**Notes**”)

Ladies and Gentlemen:

In connection with its purchase of the above-captioned Notes issued by the Florida Municipal Power Agency (“**FMPA**”) pursuant to the terms of FMPA’s Initial Pooled Loan Project 2019 Obligation Resolution, adopted by FMPA on April 18, 2019, as amended and supplemented (the “**Pooled Loan Resolution**”), [\_\_\_\_\_] (the “**Lender**”), in accordance with the terms and conditions of that certain Loan Agreement, dated [\_\_\_\_\_] , by and between FMPA and the Lender (together with any amendments or supplements thereto, the “**Loan Agreement**”), the Lender hereby certifies as follows:

1. The Lender is purchasing the Notes to hold for its own loan portfolio, and not in the capacity of a bond house, broker or similar person or organization acting in the capacity of underwriter or wholesaler. The Lender has no present intention to resell the Notes or to deposit the Notes in a tender option bond trust or other secondary market securitization vehicle.
2. The Notes are being purchased for the face amount thereof.
3. The Lender is not charging any fees with respect to the Bonds other than its Late Fees, Advance Fees and Approval Fees, as more particularly described in the Loan Agreement.

Terms used herein and not defined shall have meanings given to such terms in the Loan Agreement.

*[Remainder of page left intentionally blank]*

[We understand that Bond Counsel may rely upon this certificate, among other things, in providing an opinion with respect to the exclusion from gross income of interest on the Notes under Section 103 of the Internal Revenue Code of 1986.]

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

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page of the Certificate of the Lender]*

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**FLORIDA MUNICIPAL POWER AGENCY  
INITIAL POOLED LOAN PROJECT**

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**SERIES D  
SUPPLEMENTAL  
INITIAL POOLED LOAN PROJECT  
OBLIGATION RESOLUTION**

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Adopted September 19, 2024

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**SERIES D SUPPLEMENTAL  
INITIAL POOLED LOAN PROJECT OBLIGATION RESOLUTION**

BE IT RESOLVED by Florida Municipal Power Agency (“FMPA”) as follows:

**ARTICLE I.**

**DEFINITIONS AND STATUTORY AUTHORITY**

**SECTION 1.01. Supplemental Resolution.** This Series D Supplemental Initial Pooled Loan Project Obligation Resolution (this “Supplemental Resolution”) is supplemental to the Initial Pooled Loan Project 2019 Obligation Resolution adopted by FMPA on April 18, 2019, which amended and restated in the entirety the Initial Pooled Loan Project 1995 Commercial Paper Note Resolution adopted by FMPA on April 28, 1995, and as supplemented and amended prior to the date hereof (the “PLP Resolution”). The PLP Resolution as supplemented by this Supplemental Resolution is hereinafter referred to as the “Resolution”.

**SECTION 1.02. Definitions.** Except as provided by this Supplemental Resolution, all terms which are defined in Section 101 of the PLP Resolution shall have the same meanings, respectively, in this Supplemental Resolution as such terms are given in said Section 101 of the PLP Resolution, as so amended.

In this Supplemental Resolution:

**Authorized Signatories** means the (i) Chairman or the Vice Chairman of the Board of Directors of FMPA and (ii) the General Manager and CEO of FMPA or the Chief Financial Officer of FMPA, and any documents signed by Authorized Signatories will be approved for form and legality by the FMPA General Counsel and Chief Legal Officer.

**Bond Counsel** means Nixon Peabody LLP or any other attorney at law or a firm of attorneys, designated by FMPA, of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on bonds or obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America selected by FMPA.

**Code** means the Internal Revenue Code of 1986, as amended, and any regulations thereunder.

**Direct Purchase Agreement** has the meaning given to such term in Section 2.08(f) hereof.

**Initial Obligation Series Certificate** means a certificate fixing terms, conditions and other details of the first issue of Series D Obligations issued under this Supplemental Resolution, executed in accordance with the delegation of power to do so under Section 2.08(1) hereof.

**Obligation Series Certificate** means either the Initial Obligation Series Certificate or a Subsequent Obligation Series Certificate.

**Opinion of Bond Counsel** means a written opinion signed by Bond Counsel.

**Series D Obligations** shall mean the Initial Pooled Loan Project Obligations, Series D, authorized by Article II of this Supplemental Resolution.

**State** means the State of Florida.

**Subsequent Obligation Series Certificate** means a certificate fixing certain terms, conditions or other details of any Series D Obligations issued at any time after the initial issuance of any Series D Obligations to fund Loans to Project Participants after the initial issuance of Series D Obligations hereunder, executed in accordance with the delegation to do so under Section 2.08 hereof.

**Supplemental Resolution** means this Supplemental Resolution, supplemental to the PLP Resolution, as from time to time amended or supplemented by Supplemental Resolutions in accordance with the terms of the Resolution and the terms hereof. This Supplemental Resolution shall constitute a “Supplemental Resolution” within the meaning of the Resolution.

**SECTION 1.03. Authority for this Supplemental Resolution.** This Supplemental Resolution is adopted pursuant to the provisions of the Act and in accordance with Article II and Article XI of the PLP Resolution.

## **ARTICLE II.**

### **AUTHORIZATION OF SERIES D OBLIGATIONS; TERMS AND PROVISIONS OF SERIES D OBLIGATIONS**

**SECTION 2.01. Principal Amount, Designation of Series, Purpose, Debt Service Reserve Requirement.**

1. Pursuant to the provisions of the Resolution and in order to finance all or a portion of the Costs of a Participant’s Project, a Series of Obligations which may be issued as one or more Series or subseries at one time or from time to time from the date of this Supplemental Resolution to and including the expiration date of the Applicable Credit Facility in any number of Series or subseries, which for purposes of this Supplemental Resolution shall collectively be referred to herein as the “Series D Obligations”, subject to redesignation as hereinafter provided, entitled to the benefit, protection and security of such provisions are hereby authorized to be issued in an aggregate principal amount not to exceed \$250,000,000 at any one time Outstanding reduced by the aggregate principal amount of (i) Initial Pooled Loan Project Obligations, Series A issued and Outstanding under FMPA’s Series A Supplemental Initial Pooled Loan Project Obligation Resolution adopted by the Board of Directors of FMPA on April 18, 2019, (ii) Initial Pooled Loan Project Obligations, Series B issued and Outstanding under FMPA’s Series B Supplemental Initial Pooled Loan Project Obligation Resolution adopted by the Board of Directors of FMPA on April 18, 2019 and (iii) Initial Pooled Loan Project Obligations, Series C issued and Outstanding under FMPA’s Series C Supplemental Initial Pooled Loan Project Obligation Resolution adopted by the Board of Directors of FMPA on September 15, 2022.

2. The Loan Agreement, in substantially the form attached as Exhibit A to FMPA Board of Directors Resolution 2024-B3, by and between FMPA, as agent for the Initial Pooled Loan Project, Truist Bank and Truist Commercial Equity, Inc. is the Applicable Credit Facility for the Series D Obligations and any related sub-series of the Series D Obligations. The Applicable Credit Facility is an uncommitted credit facility, discretionary in nature and FMPA agrees that nothing in the Resolution or the other loan documents shall be construed or interpreted in a way that would alter or modify the discretionary nature of the Applicable Credit Facility, as specified in Section 2.1 of the Applicable Credit Facility.

3. Series D Obligations shall be designated as, and shall be distinguished from the Obligations of all other Series by the title, “Initial Pooled Loan Project Obligations, Series D” or such other title or titles as are set forth in the related Obligation Series Certificate.

4. The purposes for which the Series D Obligations are issued shall be to provide the amounts necessary to be deposited in the Applicable Project Fund to establish, finance, refinance and operate the Initial Pooled Loan Project and make Loans from the proceeds of the Series D Obligations to Project Participants, including amounts required to provide working capital and to pay all costs and expenses relating to the issuance of the Obligations and to refund (including by redemption, payment at maturity or in connection with exchanges or tenders) Outstanding Obligations.

5. Unless as otherwise provided in an Obligation Series Certificate prepared in connection with the issuance of a Series or subseries of Series D Obligations and required by the Applicable Credit Facility Issuer, the Debt Service Reserve Requirement for the Series D Obligations shall be zero (\$0) and the Holders of Series D Obligations shall have no claim on any monies which may be on deposit in the Debt Service Reserve Account.

## **SECTION 2.02. Dates, Maturities, Principal Amounts and Interest.**

1. The Series D Obligations, except as otherwise provided in the Resolution, shall be dated the date or dates determined in the related Obligation Series Certificate. The Series D Obligations shall mature on the date or dates and in the year or years and principal amount or amounts, and shall bear interest at the rate or rates per annum subject to the Maximum Interest Rate, if any, specified in or in the manner determined in the related Obligation Series Certificate.

2. The Series D Obligations shall bear interest from their date or dates and be payable on such date or dates as may be determined pursuant to the related Obligation Series Certificate. Except as otherwise provided in the related Obligation Series Certificate, interest on the Series D Obligations that bear interest at a fixed rate shall be computed on the basis of twelve 30-day months and a 360-day year and interest on the Series D Obligations that bear interest at a variable rate shall be computed on the basis of a 365-day year based on actual number of days elapsed.

## **SECTION 2.03. Denominations, Numbers and Letters.**

1. Unless otherwise provided in the related Obligation Series Certificate, the Series D Obligations shall be issued in fully registered form, without coupons in the authorized

denomination provided in the related Obligation Series Certificate. The Series D Obligations shall be lettered and numbered as provided in the related Obligation Series Certificate. The Series D Obligations shall be issued in the minimum denominations provided in the related Obligation Series Certificate.

2. [RESERVED]

**SECTION 2.04. Place and Medium of Payment; Paying Agent.** Except as otherwise provided in the related Obligation Series Certificate, principal and Redemption Price of the Series D Obligations shall be payable to the registered owner of each Series D Obligation when due upon presentation of such Series D Obligation at the principal corporate trust office of the Trustee. Except as otherwise provided in the related Obligation Series Certificate, interest on the registered Series D Obligations will be paid by check or draft mailed on the interest payment date by the Paying Agent, to the registered owner at his address as it appears on the registration books or, at the option of any Holder of at least one million dollars (\$1,000,000) in principal amount of the Series D Obligations, by wire transfer in immediately available funds on each interest payment date to such Holder thereof upon written notice from such Holder to the Trustee, at such address as the Trustee may from time to time notify such Holder, containing the wire transfer address (which shall be in the continental United States) to which such Holder wishes to have such wire directed, if such written notice is received not less than twenty (20) days prior to the related interest payment date (such notice may refer to multiple interest payments).

**SECTION 2.05. Sinking Fund Installments.** The Series D Obligations, if any, determined in the related Obligation Series Certificate shall be subject to redemption in part, selected in such manner as the Trustee deems fair and appropriate, on each date in the year or years determined in the Obligation Series Certificate at the principal amount thereof plus accrued interest up to but not including the date of redemption thereof, from mandatory Sinking Fund Installments which are required to be made in amounts sufficient to redeem on each such date the principal amount of such Series D Obligations.

**SECTION 2.06. Redemption Prices and Terms.** The Series D Obligations may also be subject to redemption prior to maturity, at the option of FMPA, upon notice as provided in Article IV of the Resolution, at any time as a whole or in part (and by lot within a maturity if less than all of a maturity is to be redeemed), from maturities designated by FMPA on and after the date and in the years and at the Redemption Prices (expressed as a percentage of principal amount) determined in the related Obligation Series Certificate, plus accrued interest up to but not including the redemption date, and subject to and in accordance with the terms of the Applicable Credit Facility.

**SECTION 2.07. Forms of Series D Obligations and Trustee's Authentication Certificate.** Subject to the provisions of the Resolution, the form of registered Series D Obligations, and the Trustee's certificate of authentication, shall be substantially in the form set forth in as an attachment to each Obligation Series Certificate and shall contain such provisions as may be necessary or required to comply with the provisions of the PLP Resolution, this Supplemental Resolution or any Obligation Series Certificate.



## **SECTION 2.08. Delegation to Authorized Signatories.**

1. There is hereby delegated to the Authorized Signatories, subject to the limitations contained in this Supplemental Resolution, the following powers with respect to the issuance of any Series D Obligations:

(a) to determine whether and when to issue any Series D Obligations, whether to issue the Series D Obligation at one time or from time to time and in one or more subseries, the amount of the Loan to be made to a Project Participant with the proceeds of such Series or subseries of Series D Obligations, and to determine the purposes for which such Series D Obligations are being issued and the amount of the proceeds of the Series D Obligations estimated to be necessary to pay the Costs of Issuance of the Series D Obligations, including any Applicable Project Expenses, to fund the Debt Service Reserve Requirement, if any, and to fund capitalized interest, if any;

(b) to determine the principal amounts of the Series D Obligations to be issued and whether such principal amounts constitute a separate Series or a subseries of Series D Obligations, which principal amounts (and the aggregate of all such Series and subseries) shall not exceed the principal amounts permitted by Section 2.01 of this Supplemental Resolution;

(c) to determine the maturity date and principal amount of each maturity of the Obligations and the amount and due date of each Sinking Fund Installment, if any;

(d) to determine the date or dates which the Series D Obligations shall be dated and the interest rate or rates of the Series D Obligations or the manner of determining such interest rate or rates and the Maximum Interest Rate applicable to the Series D Obligations;

(e) to determine the Redemption Price or Redemption Prices, if any, and the redemption terms, if any, for the Series D Obligations; provided, however, that if the Series D Obligations are to be redeemable at the election of FMPA, the Redemption Price shall be determined in accordance with the prepayment terms provided in the Applicable Credit Facility and the Applicable Loan Agreement;

(f) to determine whether to sell any portion of the Series D Obligations directly to any financial institution or institutions who may be selected by FMPA on a negotiated basis after a request for proposal process pursuant to the terms of an agreement to be negotiated and entered into with such financial institution or institutions (a "Direct Purchase Agreement") and to determine the purchase price for the Series D Obligations to be paid by such financial institution or institutions which may include such discount or payment to such financial institution or institutions as shall be determined in the Obligation Series Certificate; provided, however, that such discount or payment shall not exceed \$10.00 for each one thousand dollars (\$1,000) principal amount of the Series D Obligations sold to such institution or institutions;

(g) notwithstanding any provisions to the contrary contained in this Supplemental Resolution, to include in the related Obligation Series Certificate such terms and provisions as may be appropriate or necessary to provide for uncertificated securities in lieu of Series D Obligations issuable in fully registered form;

(h) to determine whether to issue all or any portion of the Series D Obligations as Tax-Exempt Obligation or as Taxable Obligations, Variable Interest Rate Obligations, Commercial Paper Notes or as any other form of Obligations permitted by the Resolution and any matters related thereto, including (i) the terms and provisions of any such Obligations, (ii) the selection of remarketing agents, tender agents, auction agents, dealers, bidding agents, issuing and paying agents or any other agents or parties to ancillary arrangements and the terms of any such arrangements, and (iii) the methods for determining the accrual of debt service on such Obligations;

(i) to determine the advisability, as compared to an unenhanced transaction, of obtaining one or more Credit Facilities, to select a provider or providers thereof and to determine and accept the terms and provisions and price thereof, to determine such other matters related thereto as in the opinion of the Authorized Signatories executing the related Obligation Series Certificate shall be considered necessary or appropriate and to effect such determinations by making any changes in or additions to this Supplemental Resolution required by Credit Facility Issuers, if any, or relating to the mechanisms for the repayment of amounts advanced thereunder or payment of fees, premiums, expenses or any other amounts, notices, the provision of information, and such other matters of a technical, mechanical, procedural or descriptive nature necessary or appropriate to obtain or implement a Credit Facility with respect to the Series D Obligations, and to make any changes in connection therewith;

(j) to make such changes in or from the form of this Supplemental Resolution as may be necessary or desirable in connection with obtaining a rating with respect to the Series D Obligations or in order to cure any ambiguities, inconsistencies or other defects; and

(k) to determine such other matters specified in or permitted by (i) Sections 2.02, 2.03 and 2.04 of the Resolution or (ii) this Supplemental Resolution, or to determine matters relating to the payment or defeasance of Obligation Anticipation Notes, including preparation of any documentation therefor.

2. There is hereby delegated to the Authorized Signatories, subject to the limitations contained in this Supplemental Resolution, the following powers with respect to any conversion of any Series D Obligations from one interest rate to another:

(a) to determine and accept the terms and provisions and price thereof of any Credit Facility or liquidity facility and such other matters related thereto as in the opinion of the Authorized Signatories executing the Subsequent Obligation Series Certificate shall be considered necessary or appropriate and to effect such determinations by making any changes in or additions to this Supplemental Resolution relating to the mechanism

for notices, the provision of information, and such other matters of a technical, mechanical, procedural or descriptive nature necessary or appropriate to implement such Credit Facility or liquidity facility with respect to the Series D Obligations;

(b) to make (i) any changes in the terms and provisions of this Supplemental Resolution relating to the terms, dates, or other mechanical provisions relating to the setting of interest rates or changes in interest periods, to the making of demands for payment under a Credit Facility or liquidity facility or application of the proceeds thereof, or to the tender, purchase, redemption, payment or remarketing of Series D Obligations, other than Series D Obligations bearing interest at a fixed rate, necessary or appropriate in the opinion of the Authorized Signatories executing such Subsequent Obligation Series Certificate to facilitate the operation of such provisions or (ii) any other changes in the terms and provisions of this Supplemental Resolution necessary or appropriate in the opinion of the Authorized Signatories executing such Subsequent Obligation Series Certificate to satisfy the requirements of the Credit Facility Issuer or provider of a liquidity facility which such Authorized Officer consider necessary to market the Series D Obligations at a favorable interest rates; and

(c) to appoint or consent to the appointment of any required remarketing agents, auction agents, tender agents, issuing and paying agents or broker-dealers and to enter into or to otherwise acknowledge or agree to any required remarketing agreements, auction agent agreements tender agency agreements, or broker-dealer agreements.

3. The (i) the Authorized Signatories shall execute one or more Obligation Series Certificates evidencing the determinations made pursuant to this Supplemental Resolution and any such Obligation Series Certificate shall be conclusive evidence of the determinations of the Authorized Signatories as stated therein. More than one Obligation Series Certificate may be delivered to the extent more than one Series or subseries of Series D Obligations are delivered from time to time, and each such Obligation Series Certificate shall be delivered to the Trustee prior to or contemporaneous with the authentication and delivery of the respective Series or subseries of Series D Obligations by the Trustee or other documentation or the conversion of any Series D Obligations to another interest rate. Determinations set forth in any Obligation Series Certificate shall have the same effect as if set forth in this Supplemental Resolution.

4. In addition to the authority delegated hereunder to be exercised by the execution and delivery of an Obligation Series Certificate, (i) the Chairman or the Vice Chairman and (ii) the General Manager and CEO or the Chief Financial Officer of FMPA may exercise any authority delegated under this Supplemental Resolution from time to time following issuance of any Series D Obligations, as appropriate for any purposes, including, in order to change interest rate modes, obtain a substitute or additional Credit Facility or liquidity facility or to appoint new or additional agents or other parties deemed appropriate to a particular form or mode of Obligations or manner of sale.

5. In the event that the Authorized Signatories exercise any of the authority delegated to them pursuant to this Section 2.08 and execute an Obligation Series Certificate

evidencing such exercise, a report describing the exercise of such delegated authority shall be delivered at the next regularly scheduled meetings of the Board of Directors of FMPA.

6. When reference is made in this Supplemental Resolution to the authorization of any Authorized Officer to do any act, such act may be accomplished by any of such officers individually.

**SECTION 2.09. Direct Purchase Agreement; Sale of Series D Obligations.**

1. The Authorized Signatories are hereby authorized to sell and award all or any portion of the Series D Obligations to Truist Bank or Truist Commercial Equity, Inc., as applicable (the “Lender”), and to negotiate the terms and conditions of such sale and any related fee arrangements relating thereto pursuant to a Direct Purchase Agreement and to determine the form or forms of the Direct Purchase Agreement used to evidence such arrangements, in accordance with the terms and conditions set forth in the term sheet(s) provided by such Lender to FMPA, with such revisions or changes to such terms and conditions as may be approved by the Authorized Signatories executing such Direct Purchase Agreement; said execution being conclusive evidence of such approval. The Authorized Signatories are hereby further authorized to execute and deliver to the other party or parties thereto any agreement, any related promissory note or bond, and any separate and related fee letter or fee agreement that complies with the parameters established in the Direct Purchase Agreement; such execution and delivery by the Authorized Signatories to be conclusive evidence of the approval of the terms and conditions thereof by such Authorized Signatories.

2. In connection with the Direct Purchase Agreement, the Authorized Signatories are hereby authorized to deliver to the Lender such materials and information concerning FMPA and the Initial Pooled Loan Project as are reasonably requested by the Lender.

3. Each Authorized Signatory is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts necessary or proper for carrying out the Direct Purchase Agreement, and the issuance, sale and delivery of the Series D Obligations and for implementing the terms of the Series D Obligations and the transactions contemplated hereby or thereby.

4. The Lender shall be a “Credit Facility Issuer” for purposes of the PLP Resolution.

5. The conditions precedent for the Closing of a Loan under the PLP Resolution, including the requirements in Section 6.03 and Section 6.04 of the PLP Resolution, are required to be satisfied prior to the Closing of a Loan.

**SECTION 2.10. Appointment of Trustee, Paying Agent and Registrar for the Series D Obligations.** Each of the Trustee, Paying Agent and Registrar for the Series D Obligations shall be appointed in the Initial Obligation Series Certificate and such appointments are to be effective immediately upon the filing of this Supplemental Resolution with the Trustee.

**SECTION 2.11. Dealings in Series D Obligations with FMPA.** The Trustee, the Paying Agent or the Registrar, each in its individual capacity, may in good faith buy, sell, own,

hold and deal in any of the Series D Obligations issued hereunder, and may join in any action which any Holder of the Series D Obligations may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, the Paying Agent or the Registrar, each in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with FMPA, and may act as depository, trustee, or agent for any committee or body of Holders of any Series D Obligations secured hereby or other obligations of FMPA as freely as if it did not act in any capacity hereunder.

### **ARTICLE III.**

#### **CREATION OF FUNDS, ACCOUNTS AND SUBACCOUNTS; APPLICATION OF PROCEEDS OF SERIES D OBLIGATIONS**

##### **SECTION 3.01. Creation of Funds, Accounts and Subaccounts.**

1. The Series D Project Fund, to be held by the Trustee, is hereby established in which there is established the following accounts:

(a) Series D Proceeds Account in the Series D Project Fund, to be held by the Trustee; and

(b) Series D Investment Earnings Account, to be held by the Trustee.

2. The Series D Revenue Fund, to be held by the Trustee, is hereby established in which there is established the following accounts:

(a) Series D Revenue Interest Account in the Series D Revenue Fund, to be held by the Trustee;

(b) Series D Revenue Principal Account in the Series D Revenue Fund, to be held by the Trustee; and

(c) Series D Project Expense Account in the Series D Revenue Fund, to be held by the Trustee.

3. The Series D Debt Service Fund, to be held by the Trustee, is hereby established in which there is established the following accounts:

(a) Series D Interest Account in the Series D Debt Service Fund, to be held by the Trustee;

(b) Series D Principal Account in the Series D Debt Service Fund, to be held by the Trustee.

**SECTION 3.02. Disposition of Series D Obligations Proceeds.** Any proceeds of the sale of the Series D Obligations, other than accrued interest, if any, shall be deposited, simultaneously with the issuance and delivery of the Series D Obligations, at one time or from time to time in one or more Series or subseries, in the Funds and Accounts in accordance with the provisions of the Obligation Series Certificate executed and delivered at the time of the delivery of Series D Obligations.

## **ARTICLE IV.**

### **MISCELLANEOUS**

**SECTION 4.01. Defeasance.** In the event FMPA shall seek, prior to the maturity or redemption date thereof, to pay or cause to be paid, within the meaning and with the effect expressed in the Resolution, all or less than all Outstanding Series D Obligations issued as Tax-Exempt Obligation and the provisions of Section 4.02 hereof shall then be of any force or effect, then, notwithstanding the provisions of Section 12.01 of the Resolution, such Series D Obligations which FMPA then seeks to pay or cause to be paid shall not be deemed to have been paid within the meaning and with the effect expressed in Section 12.01 of the Resolution unless (i) FMPA has confirmed in writing that the Holders of such Series D Obligations which FMPA then seeks to pay or cause to be paid will continue, after such action, to have the benefit of a covenant to the effect of the covenant of FMPA contained in Section 4.02 hereof or (ii) there shall have been delivered to the Trustee an Opinion of Bond Counsel to the effect that non-compliance thereafter with the applicable provisions of the Code will not affect the then current treatment of interest on the Series D Obligations issued as Tax-Exempt Obligations in determining gross income for Federal income tax purposes.

### **SECTION 4.02. Tax Covenants.**

1. FMPA covenants that, in order to maintain the exclusion from gross income for Federal income tax purposes of the interest on any Series of subseries of the Series D Obligations issued as Tax-Exempt Obligations (as determined by FMPA in an Obligation Series Certificate), FMPA will satisfy, or take such actions as are necessary to cause to be satisfied, each provision of the Code necessary to maintain such exclusion. In furtherance of this covenant, FMPA agrees to comply with such written instructions as may be provided by Bond Counsel. In furtherance of the covenant contained in the preceding sentence, FMPA agrees to continually comply with the provisions of any "Tax Certificate as to Arbitrage and the Provisions of Sections 141-150 of the Internal Revenue Code of 1986" to be executed by FMPA in connection with the execution and delivery of any such Series D Obligations, as amended from time to time.

2. FMPA covenants that no part of the proceeds of the Series D Obligations issued as Tax-Exempt Obligations shall be used, directly or indirectly, to acquire any “investment property,” as defined in section 148 of the Code, which would cause the Obligations to become “arbitrage bonds” within the meaning of section 148 of the Code or under applicable Treasury regulations promulgated thereunder. In order to assure compliance with the rebate requirement of section 148 of the Code, FMPA further covenants that it will pay or cause to be paid to the United States Treasury Department the amounts necessary to satisfy the requirements of section 148(f) of the Code, and that it will establish such accounting procedures as are necessary to adequately determine, account for and pay over any such amount or amounts required to be paid to the United States in a manner consistent with the requirements of section 148 of the Code, such covenant to survive the defeasance of the Series D Obligations.

3. Notwithstanding any other provision of the Resolution to the contrary, upon FMPA’s failure to observe, or refusal to comply with the covenants contained in Section 4.02 hereof, neither the Holders of the Obligation of any Series or subseries (other than the Series D Obligations or the Trustee acting on their behalf) nor the Trustee acting on their behalf shall be entitled to exercise any right or remedy provided to the Holders or the Trustee under the Resolution based upon FMPA’s failure to observe, or refusal to comply with, the covenants contained in Section 4.02 hereof.

4. The provisions of the foregoing covenants set forth in this Section, shall not apply to any Series D Obligations, including any subseries thereof, which FMPA determines pursuant to the applicable Obligation Series Certificate to issue as Taxable Obligations.

[Remainder of page intentionally left blank]

**SECTION 4.03. Effective Date.** This Series D Supplemental Initial Pooled Loan Project Obligation Resolution shall take effect immediately after its adoption by the Board of Directors of FMPA and the filing of a copy thereof certified by the Secretary or Assistant Secretary of said Board with the Trustee.

**FLORIDA MUNICIPAL POWER AGENCY**

By: \_\_\_\_\_  
Chairman of the Board of Directors

ATTEST:

By: \_\_\_\_\_  
Secretary or Assistant Secretary



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**FLORIDA MUNICIPAL POWER AGENCY**

**INITIAL POOLED LOAN PROJECT  
2019 OBLIGATION RESOLUTION**

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Adopted: April 18, 2019

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## INITIAL POOLED LOAN PROJECT 2019 OBLIGATION RESOLUTION

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Adopted April 18, 2019

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**WHEREAS**, Florida Municipal Power Agency (hereinafter referred to as “FMPA”) has heretofore been duly organized as a legal entity under the laws of the State of Florida and is authorized and empowered, among other things, (i) to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend, or otherwise participate jointly in one or more electric projects; (ii) to issue its bonds, notes, or other evidences of indebtedness to pay all or part of the costs of acquiring such electric projects; and (iii) to exercise all other powers which may be necessary and proper to further the purposes of FMPA which have been or may be granted to FMPA under the laws of the State of Florida; and

**WHEREAS**, the issuance of bonds, notes, or obligations by such entity to fund a loan program to make loans to municipalities or counties or a combination of municipalities and counties with one another for capital projects to be identified subsequent to the issuance of such bonds, notes, or obligations to fund such loan programs is deemed to be a paramount public purpose; and

**WHEREAS**, on April 18, 1986, the Board of Directors of FMPA and the Executive Committee of the Board of Directors of FMPA adopted a joint resolution establishing the Initial Pooled Loan Project (the “Initial Pooled Loan Project”) as a vehicle for the financing and refinancing of eligible utility-related projects by its members through the making loans (“Loans”) by FMPA to members of FMPA, FMPA itself, and FMPA, as agent for any of its other projects (collectively, “Project Participants”); and

**WHEREAS**, in 2009, FMPA made a determination, based on the then current needs of the Project Participants, current market conditions, and the increased costs of maintaining the credit and liquidity support for the commercial paper notes the proceeds of which provided the funds for the making of the Loans, to suspend the making of Loans under the Initial Pooled Loan Project; and

**WHEREAS**, as a result of expressions of interest from the members of FMPA, the Board of Directors of FMPA desires to resume the making of Loans under the Initial Pooled Loan Project and in October of 2018 issued a request for proposals for pricing indications for a direct pay letter of credit to support the issuance of commercial paper notes (“Commercial Paper Notes”) and/or a variable or fixed interest rate direct placement bank loan or revolving credit arrangement (“DP Arrangement”) to fund the making of Loans under its Initial Pooled Loan Project; and

**WHEREAS**, FMPA now desires to amend and restate its Initial Pooled Loan Project 1995 Commercial Paper Note Resolution adopted April 28, 1995, which amended and restated in the entirety the Initial Pooled Loan Project Revenue Bond Resolution adopted on April 18, 1986, as Amended and Restated on June 25, 1986, and as further Amended and Restated on April 22, 1988, and as Amended and Supplemented by the First Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted April 22, 1988, and as Amended and Supplemented by the Second Supplemental and Amendatory Initial Pooled Loan Project

Revenue Bond Resolution adopted on June 18, 1988, and as Amended and Supplemented by the Third Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted on September 23, 1988, and as Amended and Supplemented by the Fourth Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted on March 23, 1990, and as Amended and Supplemented by the Fifth Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted on October 24, 1990, to provide for the issuance of bonds, notes, or other evidences of indebtedness to provide the funds required by FMPA to make Loans to the Project Participants; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of FMPA as follows:

## ARTICLE I

### DEFINITIONS

**SECTION 1.01** Definitions. Unless the context shall indicate a contrary meaning or intent, the terms below defined, for all purposes of this Resolution, shall be construed, are used and are intended to have the following meanings:

**“Account”** or **“Accounts”** means each account or all of the accounts established pursuant to Section 5.02, as the case may be.

**“Act”** means the Constitution and laws of the State of Florida, including particularly Section 163.01, as amended, Chapter 166, Part II, as amended, Chapter 361, Part II, as amended, Florida Statutes, and all future acts supplemental thereto or amendatory thereof and the Interlocal Agreement.

**“Administrative Expenditures”** means any expenditures of FMPA reasonably or necessarily incurred by FMPA in connection with the administration of the Initial Pooled Loan Project, including (without limitation) those incurred by reason of its issuance of a Series of Obligations, including (without limitation) the fees and expenses of auditing, fees, and expenses of the Trustee, legal, financial advisory, financing and administrative expenses, and any expenses incurred by FMPA or the Trustee to compel full and punctual performance of all the provisions of the Loan Agreements, the Credit Facility, and the Credit Facility Agreement in accordance with the respective terms thereof, but excluding the Annual Administrative Fee.

**“Annual Administrative Fee”** means the annual fee for the general administrative expenses of FMPA in connection with the Initial Pooled Loan Project as determined by FMPA, in its sole discretion, from time to time.

**“Applicable”** means (i) with reference to any fund or account so designated and established by a Supplemental Resolution authorizing a Series of Obligations and complying with the provisions of this Resolution, the fund or account so designated and established; (ii) with respect to any Supplemental Resolution, the Supplemental Resolution authorizing a Series of Obligations to finance or refinance a particular Loan or making any determination or finding regarding such Obligations and any Supplemental Resolution amendatory thereof or supplemental thereto; (iii) with respect to any Series of Obligations, the Series of Obligations for a particular Loan; (iv) with respect to any Loan Agreement, the Loan Agreement entered among a Project Participant,

the Credit Facility Issuer and FMPA relating to a borrowing from a Series of Obligations; (v) with respect to any Credit Facility, the Credit Facility relating to a Series of Obligations; and (vi) with respect to the Trust Estate or the Revenues, the portion of the Trust Estate or the Revenues relating to a particular Series of Obligations.

**“Authorized Newspaper”** means a financial newspaper customarily published at least once a day for at least five days (other than legal holidays) in each calendar week, printed in English language and of general circulation in the Borough of Manhattan, City and State of New York.

**“Authorized Officer”** means: (i) in the case of FMPA, the Chairman, the Vice Chairman, the General Manager and CEO, the Chief Financial Officer or any other person or persons designated by the Board of FMPA by resolution to act on behalf of FMPA under this Resolution; the designation of such other person or persons shall be evidenced by a written certificate containing the specimen signature of such person or persons signed on behalf of FMPA by its Chairman or its Vice Chairman and delivered to the Trustee and the Credit Facility Issuer; (ii) in the case of a Project Participant, any person or persons authorized pursuant to a resolution of the governing body of the Project Participant to perform any act or execute any document; the designation of such person or persons shall be evidenced in such manner as reasonably required by FMPA and the Trustee; and (iii) in the case of the Trustee, any person or persons authorized to perform any act or execute any document; the designation of such person or persons shall be evidenced by a written certificate containing the specimen signature of such person or persons reasonably acceptable to FMPA.

**“Board”** means the Board of Directors of FMPA, or if said Board shall be abolished or its authority amended, the board, body, commission, or agency succeeding to the principal functions thereof or to whom the power and duties granted or imposed by this Resolution shall be given by law.

**“Bond Counsel”** means a law firm, appointed by FMPA, having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds.

**“Business Day”** means, except as otherwise provided with respect to the Obligations of a Series in the Applicable Supplemental Resolution, any day other than (i) a Saturday, Sunday, or legal holiday or a day on which banking institutions in New York City or the cities in which the designated corporate trust office of the Trustee, the office of the Credit Facility Issuer at which drawings under the Credit Facility may be presented or the Principal Office of FMPA are located, are authorized or required by law or other governmental action to close, or (ii) on a day on which the New York Stock Exchange is closed.

**“Certificate,” “Statement,” “Request,” “Requisition,” and “Order”** mean, respectively, a written certificate, statement, request, requisition, or order signed in the name of FMPA, the Trustee, or a Project Participant by an Authorized Officer of FMPA, the Trustee, or such Project Participant, as appropriate. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion, or representation, and the instruments so combined shall be read and construed as a single instrument.

**“Closing”** means the date on which a Loan Agreement among FMPA, the Credit Facility Issuer and a Project Participant is executed and delivered pursuant to this Resolution.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder or any successor code thereto, and any reference herein to any Section of the Internal Revenue Code of 1986 shall be deemed to include a successor section or sections under such Code or the equivalent section or sections of a successor code.

**“Commercial Paper Notes”** means any Obligation which (a) has a maturity date which is not more than 270 days after the date of issuance thereof, and (b) which is designated by FMPA as a Commercial Paper Note.

**“Cost”**, with respect to a Project Participant, means the Project Participant’s costs, expenses, and liabilities paid or incurred or to be paid or incurred by the Project Participant, including any costs relating to any project designed or intended to decrease the costs of Project Participant’s Eligible Utility System or to increase the capacity or reliability of Project Participant’s Eligible Utility System including, without limitation, costs incurred in connection with the planning, engineering, designing, acquiring, leasing, constructing, installing, financing, operating, maintaining, retiring, decommissioning, and disposing of (A) any part of Project Participant’s Eligible Utility System; (B) any part of an electric, water, wastewater, waste or refuse disposal, telecommunications, resource recovery or gas facility or other Eligible Utility System facility in which a Project Participant has a joint ownership interest; or (C) any project entered into by FMPA permitted by law and the obtaining of all governmental approvals, certificates, permits, and licenses with respect thereto, including, but not limited to, any good faith or other similar payment or deposits required in connection with the purchase thereof, the cost of acquisition by or for the Project Participant of real and personal property related thereto, and costs of the Project Participant incidental to such construction or acquisition, the costs of acquisition of fuel or fuel inventory or facilities for the production or transportation of fuel and working capital and reserves therefore and working capital and reserves for reload fuel and for additional fuel inventories, all costs related to the payment or repayment of purchased power or other utility services, all costs relating to injury and damage claims relating to any item described in clause (A), (B) or (C) above, the cost of any indemnity or surety bonds and premiums on any insurance required to be obtained or which a Project Participant finds it desirable to obtain, self-insurance, including the funding of a pool for insurance purposes; preliminary investigation and development costs; engineering fees and expenses; contractors’ fees and expenses; the costs of labor, materials, equipment, and utility services and supplies; legal and financial advisory fees and expenses; interest and financing costs, including, without limitation, bank commitment and letter of credit fees and bond insurance and indemnity premiums, fees, and expenses of the trustees, registrars, paying agents, administration and general overhead expense; and costs of keeping accounts and making reports required by this Resolution or the Project Participant’s bond resolution prior to or in connection with the completion of construction of any item described in clauses (A), (B), or (C) above; amounts, if any, required by this Resolution or resolutions of the Project Participant relating to any item described in clauses (A), (B), or (C) above to be paid into various funds and accounts thereunder for any of the respective purposes thereof, including capitalized interest for any Loan and working capital of the Project Participant’s Eligible Utility System; costs of paying or prepaying interest, principal, premium on any obligation issued to finance the Project Participant’s Eligible Utility System or joint ownership interest described in clause (B) above; or cost of purchasing either on the open market or in response to a request for tenders or otherwise any of



such obligations, payments or prepayments of any amounts owed to FMPA in connection with any project of FMPA, or any project entered into by FMPA permitted by law and reserves therefor to enable the Project Participant to implement and carry out such portion of the Initial Pooled Loan Project relating to such Project Participant. It is intended that this definition be broadly construed to encompass all costs, expenses, and liabilities of the Project Participant related to (A) the Project Participant's Eligible Utility System, (B) any part of an Eligible Utility System in which a Project Participant has a joint ownership interest, or (C) any project entered into by FMPA permitted by law which on the date hereof or in the future shall be permitted to be funded with the proceeds of bonds pursuant to the provisions of the Act or any other applicable laws of the State of Florida.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to FMPA and related to the authorization, issuance, sale, and delivery of the Obligations of each Series, including (without limitation) costs of preparation and reproduction of documents; filing and recording fees; initial fees and charges of the Trustee; legal fees and charges, fees and disbursements of consultants and professionals (including financial advisory fees and disbursements); fees and charges for preparation, execution, and safekeeping of the Obligations of each Series; fees and expenses relating to the delivery of the Applicable Credit Facility (including, without limitation, the initial fees payable thereunder); and any other cost, charge; or fee in connection with the issuance of such Series of the Obligations.

**“Counsel”** means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, FMPA, the Trustee, Registrar, Paying Agent, the Credit Facility Issuer, or any Project Participant) duly admitted to practice law before the highest court of any state.

**“Credit Facility”** means, with respect to any Series of Obligations, any letter of credit, bond purchase agreement, revolving loan agreement, loan agreement, direct purchase arrangement, line of credit, insurance policy, guaranty, surety bond, or other agreement securing, providing for the purchase of, providing for the funding for, or relating to the Obligations of such Series and designated as such by FMPA in the Applicable Supplemental Resolution. For purposes of the Loan Agreements, Credit Facility means the Applicable Credit Facility issued with respect to a particular Series of Obligations.

**“Credit Facility Agreement”** means the agreement or other constituent document designated by FMPA in a Supplemental Resolution, pursuant to which a Credit Facility is created, evidenced or issued, as any such agreement may be amended, modified, or supplemented from time to time.

**“Credit Facility Issuer”** means the issuer of a Credit Facility for a particular Series of Obligations in effect from time to time as designated by FMPA in a Supplemental Resolution.

**“Debt Service Fund”** means the fund so designated and established by the Applicable Supplemental Resolution for a particular Series of Obligations and complying with the provisions of Article V hereof.

**“Debt Service Reserve Fund”** means the fund so designated and established by the Applicable Supplemental Resolution for a particular Series of Obligations and complying with the provisions of Article V hereof.

**“Debt Service Reserve Requirement”** shall mean, with respect to a particular Loan, the amount, if any, set forth in the Applicable Loan Agreement or, with respect to a particular Series of Obligations, the amount set forth in the Applicable Supplemental Resolution for a particular Series of Obligations. Any amounts on deposit in a Debt Service Reserve Account established in the Applicable Debt Service Reserve Fund for any particular Loan with a Debt Service Reserve Fund Requirement shall secure only the Loan Repayments of such Loan and shall not be available to pay amounts due on any other Loan or debt service on any other Obligations from time to time Outstanding hereunder.

**“Default”** means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default with respect to a particular Series of Obligations.

**“Defaulted Loans”** means any Loans with respect to which an Event of Default has occurred under the related Loan Agreement and as to which the Credit Facility Issuer has directed the Trustee to transfer such Loan Agreement directly to the Credit Facility Issuer.

**“Defeasance Securities”** shall mean, unless otherwise provided with respect to the Obligations of a Series in the Supplemental Resolution authorizing such Obligations, (i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including bonds, debentures, or other evidences of indebtedness issued or guaranteed by any agency or corporation which has been or may hereafter be created pursuant to an Act of Congress as an agency or instrumentality of the United States of America to the extent unconditionally guaranteed by the United States of America; (ii) obligations of any state of the United States of America or any political subdivision thereof or any agency or instrumentality of any state or political subdivision which shall be rated in the highest rating category by a nationally recognized bond rating agency; and (iii) certificates or other instruments that evidence ownership of the right to payments of principal of or interest on obligations of any state of the United States of America or any political subdivision thereof or any agency or instrumentality of any state or political subdivision, provided that such obligations shall be held in trust by a bank or trust company or a national banking association meeting the requirements for a successor Trustee under Article IX of this Resolution, and provided further that the payments of all principal of and interest on such certificates or such obligations shall be fully insured or unconditionally guaranteed by, or otherwise unconditionally payable pursuant to a credit support arrangement provided by, one or more financial institutions or insurance companies or associations which at the date of investment shall have an outstanding, unsecured, uninsured and unguaranteed debt issue rated in the highest rating category by a nationally recognized bond rating agency, or, in the case of an insurer providing municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bonds, such insurance policy shall result in such municipal bonds being rated in the highest rating category by a nationally recognized bond rating agency.

**“DP Arrangement”** has the meaning set forth the recitals hereto.

**“Effective Date”** shall mean the date of issuance and delivery to the Trustee of the Credit Facility.

**“Eligible Utility System”** means the Project Participant’s electric, water, wastewater, waste or refuse disposal, telecommunications, resource recovery, or gas system or any other utility system of the Project Participant.

**“Event of Default”** means, with respect to a particular Series of Obligations, any occurrence or event designated as such in Section 10.01 hereof and any additional occurrences or events designated in the Supplemental Resolution authorizing such Series of Obligations.

**“Fiduciary” or “Fiduciaries”** means the Trustee, the Paying Agent, or any or all of them, as may be appropriate.

**“FMPA”** means the Florida Municipal Power Agency, a governmental legal entity created and existing under the laws of the State of Florida, any successor agency or entity created under the laws of the State of Florida, and to the extent permitted hereunder, any assignees of FMPA.

**“Fund” or “Funds”** means each fund or all of the funds established in Section 5.02, as the case may be.

**“Holder” or “Holders”** means any person, firm, association, or corporation who is listed as the registered holder or holders of any Obligation or Obligations.

**“Indebtedness”** shall mean all indebtedness in respect of borrowed money, whether or not represented by bonds, debentures, notes, or other securities, all guaranties, assumptions, and other contingent obligations in respect of, or to purchase or otherwise acquire, indebtedness of others in respect of borrowed money, and all obligations under leases which should have been or should be recorded as capital leases in accordance with generally accepted accounting principles.

**“Initial Pooled Loan Project”** means the project encompassing a program by FMPA of making Loans pursuant to the Act, this Resolution, and the Loan Agreements.

**“Interest Account”** means account within the Applicable Debt Service Fund so designated and established by the Applicable Supplemental Resolution for a particular Series of Obligations and complying with the provisions of Article V hereof.

**“Interest Account Requirement”** means for a Series of Obligations, as of any particular date of computation, and amount specified in the Applicable Supplemental Resolution and all accrued and unpaid interest on the Obligations as of such date.

**“Interest Payment Date”** means with respect to Obligations, the date or dates specified in the Supplemental Resolution authorizing the issuance of a Series of Obligations.

**“Interlocal Agreement”** means the Interlocal Agreement creating the Florida Municipal Power Agency, as amended and supplemented from time to time in accordance with the terms thereof.

**“Investment Policy”** means the Investment Policy of FMPA as in effect from time to time.

**“Investment Securities”** shall mean and include any securities if and to the extent the same are at the time legal for investment of FMPA’s funds and are permitted by the terms of FMPA’s Investment Policy.

**“Loan”** means a loan by FMPA to a Project Participant to finance or refinance the Cost of a Participant’s Project pursuant to a Loan Agreement. For all purposes of this Resolution and the Loan Agreements, the principal amount of each Loan shall be the principal amount specified in the applicable note issued in accordance with the Applicable Loan Agreement.

**“Loan Agreement”** means a loan agreement that is entered into by FMPA as agent for the Initial Pooled Loan Project, the Credit Facility Issuer and a Project Participant, in substantially the form which is attached hereto as Exhibit A with such changes therein as the Authorized Officer of FMPA who executes such Loan Agreement may approve as necessary and desirable, including, but not limited to, changes intended to reflect the nature of the Project Participant, the Participant’s Project, or the financial structure of a Project Participant’s utility system or the requirements of any Credit Facility Agreement, as such Loan Agreement may be amended, modified, or supplemented from time to time in accordance with the provisions thereof and of this Resolution, together with the promissory note, a form of which is attached to the form of Loan Agreement as Exhibit C thereto, executed and delivered to FMPA by such Project Participant to evidence the Loan made pursuant to such Loan Agreement.

**“Loan Interest Amount”** shall have the meaning given such term in Section 6.02 hereof.

**“Loan Interest Period”** shall have the meaning given such term in Section 6.02 hereof.

**“Loan Interest Rate”** shall have the meaning given such term in Section 6.02 hereof.

**“Loan Rate Determination Date”** shall have the meaning given such term in Section 6.02 hereof.

**“Loan Repayment”** means any payment of the principal of or interest on a Loan payable by a Project Participant pursuant to the provisions of a Loan Agreement.

**“Maximum Interest Rate”** means with respect to any Obligations of a Series, the maximum rate of interest, if any, established for such Obligations pursuant to the Applicable Supplemental Resolution.

**“Obligation Series Certificate”** means a certificate fixing terms, conditions, and other details of the Obligations, executed in accordance with the delegation of power to do so under a Supplemental Resolution.

**“Obligations”** means any bonds, notes, or other form of indebtedness of FMPA authorized by this Resolution and issued pursuant to a Supplemental Resolution.

**“Opinion of Counsel”** shall mean an opinion signed by an attorney or firm of attorneys (who may be counsel to FMPA) selected by FMPA.

**“Outstanding”** when used with reference to Obligations, shall mean as of any date, Obligations theretofore or thereupon being authenticated and delivered under this Resolution except:

- (i) Obligations cancelled by the Trustee at or prior to such date;
- (ii) Obligations (or portions of Obligations) for the payment or redemption of which monies, equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, shall be held in trust under this Resolution and set aside for such payment or redemption (whether at or prior to the maturity or redemption date), provided that if such Obligations (or portions of Obligations) are to be redeemed, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice as provided in Article IV;
- (iii) Obligations in lieu of or in substitution for which other Obligations shall have been authenticated and delivered pursuant to Article III or Section 4.06;
- (iv) Obligations deemed to have been paid as provided in subsections 2 or 3 of Section 12.01; and
- (v) Obligations deemed to have been purchased pursuant to the provisions of any Supplemental Resolution in lieu of which other Obligations have been authenticated and delivered as provided in such Supplemental Resolution.

**“Participant’s Project”** means the project of the Project Participant related to its Eligible Utility System which constitutes a project for which FMPA is permitted to make loans to the Project Participant pursuant to the Act, all or a portion of the Cost of which is financed or refinanced by FMPA through the making of the Loan under this Loan Agreement.

**“Paying Agent”** means any bank or trust company organized under the laws of any state of the United States of America or any national banking association designated as paying agent for the Obligations of any Series, and its successor or successors hereafter appointed in the manner provided in this Resolution.

**“Principal Account”** means the account within the Applicable Debt Service Fund so designated and established by the Applicable Supplemental Resolution for a particular Series of Obligations and complying with the provisions of Article V hereof.

**“Principal Installment”** shall mean, as of any date of calculation and with respect to any Series of Obligations, so long as any Obligations thereof are Outstanding, (i) the principal amount of Obligations of such Series due (or so tendered for payment and not purchased or remarketed prior to the date on which they are required to be purchased or paid) on a certain future date for which no Sinking Fund Installments have been established; or (ii) the unsatisfied balance (determined as provided in Section 5.09 or as otherwise provided in a Supplemental Resolution) of any Sinking Fund Installments due on a certain future date for Obligations of such Series, plus the amount of the sinking fund redemption premiums, if any, which would be applicable upon redemption of such Obligations on such future date in a principal amount equal to said unsatisfied balance of such Sinking Fund Installments; or (iii) if such future dates coincide as to different

Obligations of such Series, the sum of such principal amount of Obligations and of such unsatisfied balance of Sinking Fund Installments due on such future date plus such applicable redemption premiums, if any.

**“Principal Office”** means (i) when used with reference to FMPA, the operations office of FMPA in Orlando, Florida; (ii) when used with reference to the Trustee, the corporate trust office of the Trustee; and (iii) when used with reference to any Credit Facility Issuer, the office of such Credit Facility Issuer at which demands for payment under such Credit Facility must be presented.

**“Proceeds Account”** means the account within the Applicable Project Fund so designated and established by the Applicable Supplemental Resolution for a particular Series of Obligations and complying with the provisions of Article V hereof.

**“Project Expense Account”** means the Account within the Revenue Fund so designated and established herein.

**“Project Expenses”** means the expenses of the Initial Pooled Loan Project, including (without limitation) all such amounts payable pursuant to or in connection with the Credit Facility Agreement, the Annual Administrative Fee, the Administrative Expenditures, and such other fees and expenses necessary or incidental to the Initial Pooled Loan Project, including any amounts at any time constituting a rebate due or anticipated by FMPA to be due under the Code, as shall be approved by FMPA.

**“Project Fund”** means the fund so designated and established by the Applicable Supplemental Resolution for a particular Series of Obligations and complying with the provisions of Article V hereof.

**“Project Participant”** or **“Project Participants”** means (i) one or more members of FMPA that have entered into Loan Agreements with FMPA pursuant to the Initial Pooled Loan Project or (ii) FMPA in any capacity other than as agent for the Initial Pooled Loan Project (which capacity shall be specified in the Loan Agreement executed by FMPA in such capacity) in which FMPA shall have entered into a Loan Agreement on behalf of a project of FMPA other than the Initial Pooled Loan Project for the purpose of borrowing from the Initial Pooled Loan Project.

**“Rating Agency”** means, with respect to the Obligations of any Series, the rating agency or agencies that, at the request of FMPA, shall have assigned a rating to the Obligations of such Series that is then in effect and their successors and assigns.

**“Rating Category”** means one of the general rating categories of a Rating Agency, without regard to any refinement or graduation of such rating category by a numerical modifier or otherwise.

**“Rating Confirmation”** shall mean evidence that no rating then in effect from a Rating Agency then rating any Series of Obligations at the request of FMPA will be withdrawn or reduced solely as the result of an action to be taken hereunder; provided, however, that no action requiring Rating Confirmation shall be undertaken unless at least one rating agency at that time maintains a rating on Obligations at the request of FMPA.

**“Redemption Price”** means, when used with reference to any Obligation or any portion thereof, the principal amount of such Obligations or such portion thereto and any premium thereon payable upon redemption thereof pursuant to the provisions of such Obligation and this Resolution and any Applicable Supplemental Resolution.

**“Refunding Obligations”** mean all Obligations or Commercial Paper Notes, whether issued in one or more Series, authenticated and delivered on original issuance pursuant to Section 2.04, and any Obligations or Commercial Paper Notes thereafter authenticated and delivered in lieu of or in substitution for such Obligations or Commercial Paper Notes pursuant to this Resolution.

**“Registrar”** means the Trustee and any other bank or trust company organized under the laws of any state of the United States of America or national banking association appointed by FMPA to perform the duties of Registrar hereunder.

**“Request”** shall mean a request made, or instructions given, by telephone or electronic transmission by, or in writing from, an Authorized Officer of FMPA pursuant to the terms hereof.

**“Resolution”** means this Initial Pooled Loan Project 2019 Obligation Resolution adopted on April 18, 2019, which amends and restates in the entirety the Initial Pooled Loan Project Revenue Bond Resolution as adopted by the Board of Directors of FMPA on April 18, 1986, as amended and restated on June 25, 1986, and as further amended and restated on April 22, 1988, and as amended and supplemented by the First Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted April 22, 1988, and as amended and supplemented by the Second Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted on June 18, 1988, and as amended and supplemented by the Third Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted on September 23, 1988, and as amended and supplemented by the Fourth Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted on March 23, 1990, and as amended and supplemented by the Fifth Supplemental and Amendatory Initial Pooled Loan Project Revenue Bond Resolution adopted on October 24, 1990, and as further amended and restated by the Initial Pooled Loan Project Commercial Paper Note Resolution adopted on April 28, 1995, and all other amendments and supplements thereto adopted in accordance with the provisions thereof.

**“Revenue Fund”** means the Fund so designated and established in Article V herein.

**“Revenue Interest Account”** means the account within the Applicable Revenue Fund so designated and established by the Applicable Supplemental Resolution for a particular Series of Obligations and complying with the provisions of Article V hereof.

**“Revenue Principal Account”** means the account within the Applicable Revenue Fund so designated and established by the Applicable Supplemental Resolution for a particular Series of Obligations and complying with the provisions of Article V hereof.

**“Revenues”** means, in respect of a particular Series of Obligations, all (i) amounts received by FMPA or the Trustee pursuant to the Applicable Loan Agreements for a particular Series of Obligations, including (without limitation) Applicable Loan Repayments; (ii) proceeds of such Series of Obligations and amounts from time to time on deposit in the Applicable Funds

and Applicable Accounts created by the Applicable Supplemental Resolution in compliance with Article V of this Resolution (other than amounts held in the Project Expense Fund or held as provided in Article XII hereof for the payment of Obligations no longer deemed to be Outstanding hereunder); and (iii) amounts (including, without limitation, investment income) derived from any of the foregoing; provided, however, that Revenues shall not include amounts received by FMPA or the Trustee constituting Project Expenses or any amounts payable to FMPA under Section 5.04 of the any Applicable Loan Agreement in substantially the form of Exhibit A hereto (or the equivalent section of any other Applicable Loan Agreement).

“**Rights**” has the meaning set forth in Section 6.10.

“**Securities Depository**” means the securities depository that may be appointed for the Obligations pursuant to the provisions of a Supplemental Resolution.

“**Series of Obligations**” or “**Obligations of a Series**” or “**Series**” means any series or sub-series of Obligations designated as such by the Applicable Supplemental Resolution and, where the context requires, shall mean portions of such Series of Obligations, Obligation of a Series, or Series subject to different interest rates and interest periods at the same time.

“**Sinking Fund Installment**” shall have the meaning, if any, specified in the Applicable Supplemental Resolution.

“**Supplemental Resolution**” shall mean any resolution supplemental to or amendatory of this Resolution adopted by FMPA in accordance with Article XI hereof, and, in the case of a Supplemental Resolution authorizing the issuance of Obligations or Commercial Paper Notes of a Series, shall include any Obligation Series Certificate delivered in accordance with such Supplemental Resolution.

“**Taxable Obligations**” means any Obligations which are not Tax-Exempt Obligations.

“**Tax-Exempt Obligations**” means any Obligations the interest on which is intended by FMPA to be generally excluded from gross income for federal income tax purposes and which are designated as Tax-Exempt Obligations.

“**Trust Estate**” means, with respect to each Series of Obligations; (i) the proceeds of the Obligations of such Series; (ii) all right, title, and interest of FMPA in, to, and under the Loan Agreements with respect to the Obligations of such Series; (iii) the Applicable Revenues; and (iv) all Applicable Funds and Applicable Accounts (other than the Project Expense Fund), including the Applicable Funds and Accounts established by the Applicable Supplemental Resolution in compliance with this Resolution including the investments, if any, thereof, as the same are pledged and assigned by this Resolution and such pledge and assignment shall be confirmed by the Applicable Supplemental Resolution, subject only to the provisions of this Resolution and the Applicable Supplemental Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in this Resolution and the Applicable Supplemental Resolution.

“**Trustee**” means the trustee appointed pursuant to Section 9.01 hereof and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to this Resolution.



**“Utility System”** means the Eligible Utility System of the Project Participant described in Exhibit A to the Loan Agreement for which the Project Participant is making the borrowing under this Loan Agreement and from the revenues or other receipts of which the Project Participant will repay the Loan. In the case of a borrowing by FMPA, “Utility System” shall mean the capacity in and/or project for which FMPA is borrowing and the revenues or receipts related thereto.

**“Variable Interest Rate”** means a variable interest rate to be borne by a Series of Obligations of any one or more maturities within a Series of Obligations. The method of computing such variable interest rate shall be specified in the Supplemental Resolution authorizing such Series of Obligations. The method of computing such variable interest rate shall be specified in the Supplemental Resolution authorizing such Series of Obligations; provided, however, that such variable interest rate shall be subject to a Maximum Interest Rate. Such Supplemental Resolution shall also specify either (i) the particular period or periods of time for which each value of such variable interest rate shall remain in effect or (ii) the time or times upon which any change in such variable interest rate shall become effective. Obligations will not constitute Variable Rate Obligations solely as a result of provisions for such Obligations that change the interest rate during an Event of Default or if there is a change on the tax treatment of the interest on such Obligations.

**“Variable Rate Obligations”** shall mean Obligations which bear interest at a Variable Interest Rate.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, districts, agencies, and bodies.

**SECTION 1.02** Authority for This Resolution. This Initial Pooled Loan Program 2019 Obligation Resolution is adopted pursuant to the provisions of the Act and when accepted by the Trustee shall constitute a resolution authorizing bonds pursuant to the Act.

**SECTION 1.03** Resolution, the Applicable Supplemental Resolution, and Obligations Constitute a Contract. With respect to each Series of Obligations, in consideration of the purchase and acceptance of any and all of the Obligations of such Series authorized to be issued under this Resolution and the Applicable Supplemental Resolution by those who shall hold the same from time to time and of the issuance of any Credit Facility by the Applicable Credit Facility Issuer: (i) this Resolution and the Applicable Supplemental Resolution shall be deemed to be and shall constitute a contract between FMPA, the Trustee, and the Holders, from time to time, of such Obligations of such Series and the Applicable Credit Facility Issuer; (ii) the pledge made herein and confirmed in the Applicable Supplemental Resolution and the covenants and agreements set forth herein and therein to be performed by or on behalf of FMPA shall be for the equal and ratable benefit, protection, and security of the Holders of any and all of such Obligations of such Series and the Applicable Credit Facility Issuer, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority, or distinction as to lien or otherwise, except as expressly provided in or permitted hereby or by the Applicable Supplemental Resolution; (iii) FMPA, as security for the payment of the principal of Obligations of such Series and the interest thereon and as security for the performance of any other obligation of FMPA under this Resolution and Applicable Supplemental Resolution and as security for all amounts due or to become due to the Applicable Credit Facility Issuer, in accordance with the provisions thereof and hereof, does hereby grant a security interest in and further does grant,

bargain, sell, convey, pledge, assign, and confirm to the Trustee the Applicable Trust Estate and further does assign and convey its security interests in, to, and under the Applicable Loan Agreements; (iv) the pledge made hereby is valid and binding from the time when the pledge is made and the Applicable Trust Estate shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against FMPA irrespective of whether such parties have notice thereof; and (v) the Obligations of a Series and all amounts due or to become due to the Applicable Credit Facility Issuer shall be special obligations of FMPA payable from and secured by a pledge of the Applicable Trust Estate as provided hereby and by the Applicable Supplemental Resolution.

## ARTICLE II

### AUTHORIZATION OF OBLIGATIONS AND COMMERCIAL PAPER NOTES

**SECTION 2.01** Authorization of Obligations and Principal Amount. 1. This Resolution authorizes Obligations and Commercial Paper Notes of FMPA to be designated as “Initial Pooled Loan Project Obligations” or “Initial Pooled Loan Project Commercial Paper Notes,” respectively, which may be issued from time to time in one or more Series. The aggregate principal amount of the Obligations and of the Commercial Paper Notes which may be executed, authenticated, and delivered under this Resolution is not limited except as may hereafter be provided in this Resolution or as may be limited by law. Obligations of a Series may be issued in part from time to time at such times and in such principal amounts or shall be authorized and delivered by an Authorized Officer of FMPA up to a total principal amount Outstanding not in excess of the aggregate principal amount of Obligations of such Series authorized pursuant to the Applicable Supplemental Resolution.

2. The Obligations and Commercial Paper Notes, respectively, may, if and when authorized by FMPA pursuant to one or more Supplemental Resolutions, be issued in one or more Series, and the designation thereof, in addition to the name “Initial Pooled Loan Project Obligations,” or “Initial Pooled Loan Project Commercial Paper Notes,” respectively, shall include such further appropriate particular designation added to or incorporated in such title for the Obligations or Commercial Paper Notes of any particular Series as FMPA may determine. Each Obligation or Commercial Paper Note shall bear upon its face the designation so determined for the Series to which it belongs.

3. Nothing in this Resolution shall be deemed to preclude or prevent the consolidation into a single Series for purposes of issuance and sale of Obligations or Commercial Paper Notes otherwise permitted by this Resolution to be issued at the same time in two or more separate Series, provided that solely for the purpose of satisfying the requirements of Section 2.02, Section 2.03, or Section 2.04, as the case may be, the Obligations or Commercial Paper Notes otherwise permitted by this Resolution to be issued as a separate Series shall be considered separately as if such Obligations or Commercial Paper Notes were to be issued as a separate Series. In the event that separate Series are combined for purposes of issuance and sale, they may be issued under a single Supplemental Resolution notwithstanding any other provision of this Resolution.

**SECTION 2.02** Purposes. The Obligations may be issued for the purposes of providing the amounts necessary to be deposited in the Applicable Project Fund to establish, finance, refinance, and operate the Initial Pooled Loan Project, including amounts required to provide working capital and to pay all costs and expenses relating to the issuance of the Obligations and to refund (including by redemption, payment at maturity, or in connection with exchanges or tenders) Outstanding Obligations.

**SECTION 2.03** General Provisions for Issuance of Obligations. 1. All the Obligations of each Series, or if the Obligations of a Series are to be issued in part from time to time, all the Obligations of the portion of the Series that is then being issued, shall be executed by FMPA for issuance under this Resolution and delivered to the Trustee and thereupon shall be authenticated by the Trustee and by it delivered to FMPA or upon its order, but only upon the receipt by the Trustee of:

(a) With respect to the initial Series of Obligations issued under this Resolution a copy of this Resolution, certified by an Authorized Officer of FMPA;

(b) An Opinion of Counsel of nationally recognized standing in the field of law relating to municipal bonds to the effect that (i) FMPA has the right and power to adopt this Resolution, and this Resolution has been duly and lawfully adopted by FMPA, is in full force and effect and is legal, valid, and binding upon FMPA enforceable in accordance with its terms, and no other authorization for this Resolution is required; (ii) this Resolution creates the valid pledge which it purports to create of the Applicable Revenues, monies, securities, and funds held or set aside under this Resolution, subject to the provisions of this Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in this Resolution; and (iii) the Obligations of such Series are legal, valid, and binding obligations of FMPA as provided in this Resolution and entitled to the benefits of this Resolution and of the Act as amended to the date of such Opinion, and such Obligations have been duly and validly authorized and issued in accordance with law and in accordance with this Resolution; provided, that such Opinion may take exception as to the effect of, or for restrictions or limitations imposed by or resulting from, bankruptcy, insolvency, debt adjustment, moratorium, reorganization, or other similar laws affecting creditors' rights generally and judicial discretion and the valid exercise of the sovereign police powers of the State of Florida and of the constitutional power of the United States of America and may state that no opinion is being rendered as to the availability of any particular remedy;

(c) A written order as to the delivery of such Obligations, signed by an Authorized Officer of FMPA;

(d) A copy of the Supplemental Resolution authorizing such Obligations, certified by an Authorized Officer of FMPA, which shall, among other provisions, specify: (a) the authorized principal amount, designation and Series of such Obligations; (b) the purposes for which such Series of Obligations is being issued, which shall be (i) the purposes specified in Section 2.02, or (ii) the refunding of Obligations as provided in Section 2.04; (c) the date, and the maturity date or dates, of the Obligations of such Series; (d) if such Obligations are interest bearing Obligations, the interest rate or rates or the manner of determining the interest rate or rates on the Obligations of such Series and the

interest payment dates therefor; (e) the minimum denomination of, and the manner of dating, numbering, and lettering, the Obligations of such Series, provided that such Obligations shall be in denominations equal to the minimum denomination or any multiple thereof as authorized by such Supplemental Resolution; (f) the Trustee, the Paying Agent or Paying Agents and the place or places of payment of the principal and Redemption Price, if any, of, and interest on, the Obligations of such Series; (g) the Redemption Price or Prices, if any, and, subject to Article IV, the redemption terms for the Obligations of such Series; (h) the amount and due date of each Sinking Fund Installment, if any, for Obligations of like maturity of such Series, provided that each Sinking Fund Installment due date shall fall upon an interest payment date for such Obligations; (i) if so determined by FMPA, provisions for the sale of the Obligations of such Series; (j) the amount (or the method of determining the amount), if any, to be deposited from the proceeds of such Series of Obligations in the Applicable Interest Account in the Applicable Debt Service Fund and provisions for the application thereof to the payment of all or a portion of the interest on such Series of Obligations or any other Series of Obligations; (k) the amount, if any, to be deposited from the proceeds of such Series of Obligations in the Applicable Debt Service Reserve Account in the Applicable Debt Service Reserve Fund; (l) the amount, if any, to be deposited from the proceeds of such Series of Obligations in the Applicable Project Fund; (m) if any of the Obligations are Variable Rate Obligations or Commercial Paper Notes, any additional items required or permitted to be specified in such Supplemental Resolution pursuant to this Resolution; (n) if any Obligations of such Series are Obligations for which a Debt Service Reserve Requirement is being established, provisions relating to the establishment of a separate subaccount for such Series in the Applicable Debt Service Reserve Account as provided in Article V; (o) the forms of the Obligations or Commercial Paper Notes of such Series and of the Trustee's Certificate of Authentication; provisions necessary to authorize, in compliance with all applicable law, Obligations of such Series to be issued in the form of Obligations issued and held in book-entry-only form on the books of FMPA or any Fiduciary appointed for that purpose by FMPA and, in connection therewith, make such additional changes in this Resolution, not adverse to the rights of the Holders of the Obligations, as are necessary or appropriate to accomplish or recognize such book-entry-only form Obligations and specify and determine the matters and things relative to the issuance of such book-entry-only form Obligations as are appropriate or necessary; (p) to the extent applicable, the provisions relating to (i) any Credit Facility or other similar financial arrangement entered into in connection with the issuance of the Obligations or Commercial Paper Notes of such Series and (ii) the reimbursement obligations payable thereunder; (q) the forms of the Obligations of such Series and of the Trustee's certificate of authentication; (r) the Maximum Interest Rate, if any; and (s) such other matters, not contrary to or inconsistent with this Resolution, as FMPA may deem advisable or necessary in connection with the authorization, issuance, sale, or delivery of such Series of Obligations.

(e) The amount, if any, necessary for deposit in the Applicable Debt Service Reserve Account in the Applicable Debt Service Fund so that such Account shall equal the Debt Service Reserve Requirement calculated immediately after the authentication and delivery of such Series of Obligations, including any amounts necessary to cure any deficiencies in such Account at the time of issuance of such Obligations;

(f) Except in the case of the initial Series of Obligations and Refunding Obligations, a certificate of an Authorized Officer of FMPA stating that FMPA is not in default in the performance of any of the covenants, conditions, agreements, or provisions contained in this Resolution;

(g) An executed copy of the Obligation Series Certificate, if any, relating to such Obligations;

(h) Such further documents, monies, securities, and evidences of deposit of funds with the Trustee as are required by the provisions of Sections 2.03 or 2.04 or any Supplemental Resolution adopted pursuant to Article XI.

2. The proceeds, including accrued interest, of the Obligations of each Series authorized under this Section 2.03 shall be applied simultaneously with the delivery of such Obligations as provided in the Supplemental Resolution authorizing such Series.

3. If Obligations of a Series are being issued in part from time to time, the requirements in (1) and (2) above are satisfied upon the delivery to the Trustee of a certificate, dated the date of issuance, signed by an Authorized Officer of FMPA stating the documents mentioned therein have not been amended, modified, or changed in any way that affects such Obligations. The opinion in (1)(b) above is not required in connection with the subsequent issuance of a portion of Obligations of a Series issued from time to time unless, by the terms of the opinion initially rendered in connection with the issuance of the first portion of Obligations of such Series such opinion does not cover such subsequent issuances of Obligations.

4. One or more Series of Obligations other than Refunding Obligations may be issued at any time for the purpose of paying all or a portion of the amount need to fund a particular Loan as part of the Loan Project. Obligations of each such Series shall be authenticated and delivered by the Trustee only upon compliance with the terms and conditions set forth in this Article II.

5. Proceeds, including accrued interest, of each Series of Obligations authorized under this Section 2.03 shall be applied simultaneously with the delivery of such Obligations as shall be provided in the Supplemental Resolution authorizing such Series.

6. Except as otherwise permitted by Section 2.04, whenever FMPA has issued a Series of Obligations secured by the Applicable Trust Estate, FMPA shall not subsequently create or permit the creation of or issue any obligations or create any additional indebtedness which will be secured by any lien (whether, superior, equal or subordinate) on such Applicable Trust Estate. Notwithstanding any other provision to the contrary herein, FMPA may provide in a Supplemental Resolution which authorizes a particular Series of Obligations secured by a different trust estate that FMPA may thereafter incur or issue additional obligations or indebtedness, respectively (including additional Series of Obligations), secured by an equal or superior charge and lien on such trust estate relating to such Series of Obligations.

**SECTION 2.04**     Refunding Obligations. 1. One or more Series of Refunding Obligations may be issued at any time to refund (including by redemption, payment at maturity, or in connection with exchanges or tenders) any Outstanding Obligation or Obligations or any Outstanding Commercial Paper Note or Notes of a particular Series or all of the Obligations and/or Commercial Paper Notes of one or more Series. Refunding Obligations shall be issued in a

principal amount sufficient, together with other monies available therefor, to accomplish such refunding and to make the deposits in the Funds and Accounts under this Resolution required by the provisions of the Supplemental Resolution authorizing such Obligations or Commercial Paper Notes. Refunding Obligations shall be on a parity with and, except as otherwise provided in the Applicable Supplemental Resolution for such Refunding Obligations, shall be entitled to the same benefit and security of this Resolution or Commercial Paper Notes remaining Outstanding of the Series of Obligations which are being refunded.

2. Refunding Obligations of each Series shall be authenticated and delivered by the Trustee only upon receipt by the Trustee (in addition to the documents required by Section 2.03) of:

(a) If the Obligations or Commercial Paper Notes to be refunded are to be redeemed, instructions to the Trustee, satisfactory to it, to give due notice of redemption, if applicable, of all the Obligations or Commercial Paper Notes to be refunded on a redemption date or dates specified in such instructions, subject to the provisions of Section 12.01 hereof;

(b) If the Obligations to be refunded are not by their terms subject to redemption or will not be redeemed within the next succeeding 60 days, instructions to the Trustee, satisfactory to it, to mail the notice provided for in Section 12.01 to the Holders of the Obligations being refunded;

(c) If the Obligations to be refunded are to be deemed paid within the meaning of subsection 2 of Section 12.01, either (i) monies (including monies withdrawn and deposited pursuant to Section 5.06 and Section 5.07) in an amount sufficient to effect payment at the applicable Redemption Price of the Obligations to be refunded, together with accrued interest on such Obligations to the redemption date, which monies shall be held by the Trustee or any one or more of the Paying Agents in a separate account irrevocably in trust for and assigned to the respective Holders of the Obligations of a Series to be refunded, or (ii) Defeasance Securities in such principal amounts, of such maturities, bearing such interest, and otherwise having such terms and qualifications and any monies, as shall be necessary to comply with the provisions of subsection 2 of Section 12.01 which Defeasance Securities and monies shall be held in trust and used only as provided in said subsection 2;

(d) If the proceeds of such Refunding Obligations are to be applied by FMPA to purchase (in connection with a tender for or redemption of Obligations, or otherwise), Obligations to be delivered to the Trustee in accordance with Section 5.09 a certificate of an Authorized Officer of FMPA specifying the matters required thereby; and

(e) A certificate of an Authorized Officer of FMPA stating that the issuance of such Refunding Obligations is otherwise advantageous to FMPA or the Project Participants.

1. The proceeds, including accrued interest, of the Refunding Obligations of each Series shall be applied simultaneously with the delivery of such Obligations for the purposes of making deposits in such Funds and Accounts under this Resolution as shall be provided by the

Applicable Supplemental Resolution authorizing such Series of Refunding Obligations and shall be applied to the refunding purposes thereof in the manner provided in said Supplemental Resolution.

**SECTION 2.05**     Forms of Obligations and Authentication Certificate. 1. The Obligations and the Certificate of Authentication to be endorsed thereon shall be typewritten, lithographed, or printed in substantially the forms set forth in the Supplemental Resolution authorizing the issuance of such Series of Obligations. The Obligations may be in book-entry-only form if so determined by FMPA, such determination to be evidence by a certificate of an Authorized Officer specifying the Obligations to be held in book-entry-only form and approving the procedures relevant to the book-entry-only form of such Obligations.

2. The Obligations may contain, or have endorsed thereon, such provisions, specifications, and descriptive words either as required by this Resolution or not inconsistent with the provisions of this Resolution or any Supplemental Resolution authorizing the same as may be necessary or desirable and as may be determined by FMPA prior to the authentication and delivery of the Obligations.

**SECTION 2.06**     Commercial Paper Notes. 1. When authorized by a Supplemental Resolution, FMPA may execute Commercial Paper Notes for issuance under this Resolution from time to time and deliver such Commercial Paper Notes to the Trustee for completion, authentication, and delivery.

2. The Supplemental Resolution authorizing the issuance of Commercial Paper Notes shall specify the following, in addition to any conditions to be satisfied for the issuance of Obligations under Sections 2.03 and 2.04 hereof, prior to the authentication and delivery of such Commercial Paper Notes by the Trustee:

- (a) the principal amount of Commercial Paper Notes authorized to be Outstanding at any time thereunder;
- (b) the purposes for which such Commercial Paper Notes may be issued, which shall be for one or more of the purposes referred to in Section 2.02, 2.03, or 2.04 of this Resolution;
- (c) general terms and provisions of such Commercial Paper Notes including, to the extent applicable, terms and provisions applicable to such matters as are specified for Obligations in Article II hereof;
- (d) the maximum interest cost at which such Commercial Paper Notes may be issued;
- (e) if such Commercial Paper Notes are redeemable prior to maturity, provisions relating to the redemption of such Commercial Paper Notes;
- (f) additional covenants, if any, applicable to such Commercial Paper Notes;
- (g) provisions, if any, for defeasance of such Commercial Paper Notes;

- (h) the forms of the Commercial Paper Notes; and
- (i) such additional matters as shall not be inconsistent with the terms of this Resolution.

4. The proceeds, including accrued interest, if any, of Commercial Paper Notes shall be applied simultaneously with the delivery of such Commercial Paper notes as provided in the Supplemental Resolution authorizing such Commercial Paper Notes.

## ARTICLE III

### GENERAL TERMS AND PROVISIONS OF OBLIGATIONS

**SECTION 3.01**     Medium of Payment; Form and Date; Letters and Numbers. 1. The Obligations shall be payable, with respect to interest, principal, and Redemption Price, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

2. The Obligations of each Series may be issued only in the form of fully registered Obligations without coupons unless otherwise authorized by a Supplemental Resolution. The Obligations of each Series shall be in substantially the form set forth in the Applicable Supplemental Resolution authorizing such Series of Obligations.

3. Each Obligation shall be lettered and numbered as provided in this Resolution or the Applicable Supplemental Resolution authorizing the Series of which such Obligation is a part and so as to be distinguished from every other Obligation.

4. Except as may be otherwise provided for any Series of Obligations in the Supplemental Resolution authorizing such Series of Obligations, the Obligations of each Series shall be dated as of the date six months preceding the interest payment date next following the date of authentication thereof by the Trustee, unless such date of authentication shall be an interest payment date, in which case they shall be dated as of such date of authentication; provided, however, that if, as shown by the records of the Trustee, interest on the Obligations of any Series shall be in default, Obligations of such Series issued in lieu of Obligations surrendered for transfer or exchange may be dated as of the date to which interest has been paid in full on the Obligations surrendered; provided, further, that if the date of authentication shall be prior to the first interest payment date for the Obligations of such Series, Obligations shall be dated as provided in the Supplemental Resolution authorizing the Obligations of such Series. Except as may be otherwise provided for any Series of Obligations in the Supplemental Resolution authorizing such Series of Obligations, Obligations of each Series shall bear interest from their date.

**SECTION 3.02**     Legends. The Obligations of each Series may contain or have endorsed thereon such provisions, specifications, and descriptive words not inconsistent with the provisions of this Resolution as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by FMPA prior to the authentication and delivery thereof.



**SECTION 3.03**      Execution and Authentication. 1. The Obligations shall be executed in the name of FMPA by the manual or facsimile signature of its Chairman or any Vice Chairman and its seal (or a facsimile thereof), if any, shall be impressed, imprinted, engraved, or otherwise reproduced thereon and attested by the manual or facsimile signature of its Secretary or an Assistant Secretary, or in such other manner as may be required or permitted by law. In case any one or more of the officers who shall have signed or sealed any of the Obligations shall cease to be such officer before the Obligations so signed and sealed shall have been authenticated and delivered by the Trustee, such Obligations may, nevertheless, be authenticated and delivered as herein provided, and may be issued as if the persons who signed or sealed such Obligations had not ceased to hold such offices. Any Obligation of a Series may be signed and sealed on behalf of FMPA by such persons as at the time of the execution of such Obligations shall be duly authorized or hold the proper office in FMPA, although at the date borne by the Obligations of such Series such persons may not have been so authorized or have held such office.

2. The Obligations of each Series shall bear thereon a certificate of authentication, in the form set forth in the Supplemental Resolution authorizing such Series of Obligations, executed manually by the Trustee. Only such Obligations as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under this Resolution, and no Obligation shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of the Trustee upon any Obligation executed on behalf of FMPA shall be conclusive evidence that the Obligation so authenticated has been duly authenticated and delivered under this Resolution and that the Holder thereof is entitled to the benefits of this Resolution.

**SECTION 3.04**      Exchange, Transfer and Registry. 1. The Obligations shall be transferable only upon the books of FMPA, which shall be kept for such purposes at the corporate trust office of the Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any Obligation, FMPA shall issue in the name of the transferee a new Obligation or Obligations of the same aggregate principal amount and Series and maturity as the surrendered Obligation.

2. The registered owner of any Obligation or Obligations of one or more denominations shall have the right to exchange such Obligation or Obligations for a new Obligation or Obligations of any denomination then authorized for such Obligation or Obligations of the same aggregate principal amount and Series and maturity of the surrendered Obligation or Obligation. Such Obligation or Obligations shall be exchanged by FMPA for a new Obligation or Obligations upon the request of the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender of such Obligation or Obligations together with a written instrument requesting such exchange satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney.

3. FMPA and each Fiduciary may deem and treat the person in whose name any Obligation shall be registered upon the books of FMPA as the absolute owner of such Obligation, whether such Obligation shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and Redemption Price, if any, of and interest on such Obligation and for all other purposes, and all such payments so made to any such registered owner or upon his order

shall be valid and effectual to satisfy and discharge the liability upon such Obligation to the extent of the sum or sums so paid, and neither FMPA nor any Fiduciary shall be affected by any notice to the contrary. FMPA agrees to indemnify and save each Fiduciary harmless from and against any and all loss, cost, charge, expense, judgment, or liability incurred by it, acting in good faith and without negligence under this Resolution, in so treating such registered owner.

**SECTION 3.05** Regulations with Respect to Exchanges and Transfers. Except as may otherwise be provided in a Supplemental Resolution, in all cases in which the privilege of exchanging or transferring Obligations is exercised, FMPA shall execute and the Trustee shall authenticate and deliver Obligations in accordance with the provisions of this Resolution. All Obligations surrendered in any such exchanges or transfers shall forthwith be delivered to the Trustee and cancelled or retained by the Trustee. For every such exchange or transfer of Obligations, whether temporary or definitive, FMPA or the Registrar may make a charge sufficient to reimburse it for any tax, fee, or other governmental charge required to be paid with respect to such exchange or transfer. Neither FMPA nor the Registrar shall be required to exchange or transfer Obligations of any Series for a period of 15 days next preceding an interest payment date on the Obligations of such Series or next preceding any selection of Obligations to be redeemed or thereafter until after the mailing of any notice of redemption.

**SECTION 3.06** Obligations Mutilated, Destroyed, Stolen, or Lost. Except as may otherwise be provided in a Supplemental Resolution, if any Obligation becomes mutilated or is lost, stolen, or destroyed, FMPA may execute and the Trustee shall authenticate and deliver a new Obligation of like date of issue, maturity date, principal amount, and interest rate per annum as the Obligation so mutilated, lost, stolen, or destroyed, provided that (i) in the case of such mutilated Obligation, such Obligation is first surrendered to FMPA; (ii) in the case of any such lost, stolen, or destroyed Obligation, there is first furnished evidence of such loss, theft, or destruction satisfactory to FMPA together with indemnity satisfactory to FMPA and the Trustee; (iii) all other reasonable requirements of FMPA are complied with; and (iv) expenses in connection with such transaction are paid by the Holder. Any Obligation surrendered for transfer shall be cancelled. Any such new Obligations issued pursuant to this Section in substitution for Obligations alleged to be destroyed, stolen, or lost shall constitute original additional contractual obligations on the part of FMPA, whether or not the Obligations so alleged to be destroyed, stolen, or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Obligations issued under this Resolution, in any monies or securities held by FMPA or any Fiduciary for the benefit of the Holders.

**SECTION 3.07** Temporary Obligations. 1. Until the definitive Obligations of any Series are prepared, FMPA may execute, in the same manner as is provided in Section 3.03, and upon the request of FMPA, the Trustee shall authenticate and deliver, in lieu of definitive Obligations, but subject to the same provisions, limitations, and conditions as the definitive Obligations, one or more temporary Obligations substantially of the tenor of the definitive Obligations in lieu of which such temporary Obligation or Obligations are issued, and with such omissions, insertions, and variations as may be appropriate to temporary Obligations. FMPA at its own expense shall prepare and execute and, upon the surrender of such temporary Obligations for exchange and the cancellation of such surrendered temporary Obligations, the Trustee shall authenticate and, without charge to the Holder thereof, deliver in exchange therefor, definitive Obligations of the same aggregate principal amount and Series and maturity as the temporary Obligations surrendered. Until so exchanged, the temporary Obligations shall in all respects be

entitled to the same benefits and security as definitive Obligations authenticated and issued pursuant to this Resolution.

2. All temporary Obligations surrendered in exchange either for another temporary Obligation or Obligations or for a definitive Obligation or Obligations shall be forthwith cancelled by the Trustee.

## ARTICLE IV

### REDEMPTION OF OBLIGATIONS

**SECTION 4.01** Privilege of Redemption and Redemption Price. Obligations of a Series subject to redemption prior to maturity pursuant to the Supplemental Resolution authorizing such Series of Obligations shall be redeemable, upon notice as provided in this Article IV or upon such other notice as shall be provided in such Supplemental Resolution at such times, at such Redemption Prices plus interest accrued and unpaid to the redemption dates and upon such terms in addition to or in place of the terms contained in this Article IV as may be specified in the Supplemental Resolution authorizing such Series.

**SECTION 4.02** Redemption at the Election or Direction of FMPA. In the case of any redemption of Obligations at the election or direction of FMPA, FMPA shall give written notice to the Trustee of its election or direction so to redeem, of the redemption date, of the Series, and of the principal amounts of the Obligations of each maturity of such Series to be redeemed (which Series, maturities and principal amounts thereof to be redeemed shall be determined by FMPA in its sole discretion, subject to any limitations with respect thereto contained in this Resolution). Except as may otherwise be provided with respect to a particular Series of Obligations in the Supplemental Resolution authorizing the issuance of such Series, such notice shall be given to the Trustee at least 40 days prior to the redemption date or such shorter period as shall be acceptable to the Trustee. In the event notice of redemption shall have been given as in Section 4.05 provided below, there shall be paid on or prior to the redemption date to the appropriate Paying Agents an amount in cash which, in addition to other monies, if any, available therefor held by such Paying Agents, will be sufficient to redeem on the redemption date at the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, all of the Obligations to be redeemed. FMPA shall promptly notify the Trustee in writing of all such payments by it to such Paying Agents.

**SECTION 4.03** Redemption Otherwise Than at FMPA's Election or Direction. Whenever by the terms of this Resolution or any Supplemental Resolution, the Trustee is required or authorized to redeem Obligations otherwise than at the election or direction of FMPA, the Trustee shall (i) select the Obligations or portions of Obligations to be redeemed, (ii) give the notice of redemption, and (iii) pay out of monies available therefor the Redemption Price thereof, plus interest accrued and unpaid to the redemption date, to the appropriate Paying Agents in accordance with the terms of this Article IV and, to the extent applicable, Section 5.06.

**SECTION 4.04** Selection of Obligations to be Redeemed. Unless otherwise provided in a Supplemental Resolution, if fewer than all of the Obligations of like maturity of any Series and of like interest rate within a maturity shall be called for prior redemption, the particular Obligations or portions of Obligations to be redeemed shall, subject to the provisions of any

Supplemental Resolution authorizing the issuance of the Series of Obligations of which the Obligations being redeemed are part, be selected by the Trustee in such manner as the Trustee in its discretion may deem fair and appropriate; provided, however, that for any Obligation of a denomination of more than the minimum denomination specified in the Supplemental Resolution relating to such Series, the portion of such Obligation to be redeemed shall be in a principal amount equal to such minimum denomination or a multiple thereof, and that, in selecting portions of such Obligations for redemption, the Trustee shall treat each such Obligation as representing that number of Obligations of such minimum denomination which is obtained by dividing the principal amount of such Obligation to be redeemed in part by the amount of such minimum denomination.

**SECTION 4.05**      Notice of Redemption. When the Trustee shall receive notice from FMPA of its election or direction to redeem Obligations pursuant to Section 4.02, and when redemption of Obligations is authorized or required pursuant to Section 4.03, the Trustee shall give notice, in the name of FMPA, of the redemption of such Obligations, which notice shall specify the Series and maturities of the Obligations to be redeemed, the redemption date, and the place or places where amounts due upon such redemption will be payable and, if less than all of the Obligations of any like Series and maturity are to be redeemed, the letters and numbers or other distinguishing marks of such Obligations so to be redeemed, and, in the case of Obligations to be redeemed in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed. Such notice shall further state that on such date there shall become due and payable upon each Obligation to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Obligations to be redeemed in part only, together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable. Unless otherwise provided in a Supplemental Resolution, such notice shall be mailed by the Trustee postage prepaid, not less than 30 days, or such other number of days as shall be specified in the Supplemental Resolution authorizing the Series of Obligations of which such Obligations are a part, prior to the redemption date, to the registered owners of any Obligations or portions of Obligations which are to be redeemed, at their last addresses, if any, appearing on the registry books at the close of business on the last business day of the month preceding the month in which notice is given or at such other time as is specified in the Applicable Supplemental Resolution authorizing the Series of Obligations of which the Obligations to be redeemed are a part. Failure of the registered owner of any Obligations which are to be redeemed to receive any such notice shall not affect the validity of the proceedings for the redemption of Obligations.

Any notice of optional redemption given pursuant to this Section may state that it is conditional upon receipt by the Trustee of monies sufficient to pay the Redemption Price of such Obligations plus interest accrued and unpaid to the redemption date or upon the satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such Redemption Price plus interest accrued and unpaid to the redemption date if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission shall be given by the Trustee to affected Owners of such Obligations as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Notice of redemption of any Series of Obligations shall also be sent by the Trustee to such additional Persons as may be specified in the Applicable Supplemental Resolution authorizing such Series.

**SECTION 4.06** Payment of Redeemed Obligations. Notice having been given in the manner provided in Section 4.05, the Obligations or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to but not including the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Obligations, or portions thereof, shall be paid at the Redemption Price, plus interest accrued and unpaid to but not including the redemption date. If there shall be drawn for redemption less than all of an Obligation, FMPA shall execute and the Trustee shall authenticate and the Paying Agent shall deliver, upon the surrender of such Obligation, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Obligations so surrendered, Obligations of like Series and maturity in any of the authorized denominations. If, on the redemption date, monies for the redemption of all the Obligations or portions thereof of any like Series and maturity to be redeemed, together with interest to but not including the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Obligations or portions thereof of such Series and maturity so called for redemption shall cease to accrue and become payable. If said monies shall not be so available on the redemption date, such Obligations or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

**SECTION 4.07** Cancellation and Destruction of Obligations. All Obligations of a Series paid or redeemed, either at or before maturity shall be delivered to the Trustee when such payment or redemption is made, and such Obligations, together with all Obligations purchased or redeemed which have been delivered to the Trustee for application as a credit against Sinking Fund Installments, if any, and all Obligations purchased by the Trustee, shall thereupon be promptly cancelled. Obligations so cancelled shall, to the extent permitted by law, at any time be destroyed by the Trustee, who shall execute a certificate of destruction in duplicate by the signature of one of its authorized officers describing the bonds so destroyed, and one executed certificate shall be filed with FMPA and the other executed certificate shall be retained by the Trustee.

## ARTICLE V

### SECURITY FOR THE OBLIGATIONS; ESTABLISHMENT OF FUNDS AND ACCOUNTS AND APPLICATION THEREOF

**SECTION 5.01** Pledge; Payments. 1. The Obligations of each Series shall be special obligations of FMPA payable solely from and secured as to the payment of the principal and Redemption Price thereof, and interest thereon, in accordance with their terms and the provisions of this Resolution and the Applicable Supplemental Resolution solely by the Applicable Trust Estate (subject to the provisions governing the application of separate subaccounts in the Applicable Debt Service Reserve Fund for particular Series of Obligations required to be established in the Supplemental Resolution authorizing such Series of Obligations) and the Applicable Trust Estate hereby is pledged and assigned to the Trustee for the benefit of the holders of the Applicable Series of Obligations subject to only the provisions of this Resolution and the Applicable Supplemental Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in this Resolution. The Applicable Trust Estate hereby pledged and assigned shall immediately be subject to the lien of this pledge without any further physical delivery thereof or other further act, and the lien of this pledge shall be a first lien and shall be

valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against FMPA, irrespective of whether such parties have notice thereof.

**SECTION 5.02**      Creation of Funds and Accounts. Unless otherwise provided by a Supplemental Resolution, which Supplemental Resolution may establish funds and accounts which may be in addition to or in lieu of the following funds and accounts and which may modify the transfer of moneys to or from any fund or account as provided herein in connection with the Series of Obligations such Supplemental Resolution is authorizing, the following funds and separate accounts within funds shall be established, held and maintained for each such Series of Obligations by the Trustee:

1.      Project Fund, to be held by the Trustee, in which there shall be established a Proceeds Account for each Series of Obligations;
2.      Revenue Fund, to be held by the Trustee;
3.      Debt Service Fund, to be held by the Trustee, in which there shall be established an Interest Account and a Principal Account for each Series of Obligations;
4.      Debt Service Reserve Fund, to be held by the Trustee, in which there may be established a Debt Service Reserve Account for a Series of Obligation as may be provided in a Supplemental Resolution authorizing such Series of Obligations; and
5.      Project Expense Fund, to be held by the Trustee.

Each Supplemental Resolution may contain provisions with respect to the establishment, maintenance, and use of funds and accounts, and revenues and application thereof, which are in addition to or in lieu of the provisions of this Article V. FMPA and the Trustee shall not be required to establish any fund or account authorized pursuant to this Article V or any Supplemental Resolution prior to the date on which moneys are first required to be deposited into such fund or account.

Each of the funds and accounts created by a Supplemental Resolution in accordance with, to the extent and in the manner provided by this Resolution and such Supplemental Resolution, is hereby pledged to, and charged with, the payment of the principal or Redemption Price of and interest on, and the purchase price of, the Obligations of a Series to which the Applicable Supplemental Resolution applies as the same shall become due or to the payment of amounts due to the Applicable Credit Facility Issuer, if any, as the same became due.

**SECTION 5.03**      Deposit of Proceeds of Obligations. Upon receipt thereof, the Trustee shall apply the proceeds of a Series of Obligations as provided in the Applicable Supplemental Resolution.

**SECTION 5.04**      Project Fund. 1. Upon the issuance of the Obligations of a Series, there shall be paid into the Proceeds Account established for such Series of Obligations in the Applicable Project Fund from the proceeds of the Obligations of such Series the amounts required to be so paid by the provisions of this Resolution and the Applicable Supplemental Resolution.

2. Moneys deposited in the Proceeds Account in the Applicable Project Fund from the proceeds of a Series of Obligations shall be used (i) to pay, or reimburse the Applicable Project Participant for the payment of, the Costs of the Participant's Projects financed and refinanced pursuant to the Applicable Loan Agreement in an amount equal to the amount set forth in Exhibit A to such Loan Agreement as the amount of the Loan commitment made thereunder; (ii) to pay the Costs of Issuance of the such Series of Obligations in an amount equal to the amount set forth in Exhibit A to such Loan Agreement; (iii) to fund a Debt Service Reserve Account in the Applicable Debt Service Reserve Fund, if any, in an amount equal to the amount of the Debt Service Reserve Fund Requirement set forth in Exhibit A to such Loan Agreement; (iv) pay capitalized interest, if any, on the Obligations of such Series issued to fund a Loan in an amount to equal to the amount set forth in Exhibit A to such Loan Agreement; (v) to pay any Applicable Project Expenses, which may include fees and expenses of the Applicable Credit Facility, or (vi) as provided in paragraph 4 of this Section 5.04.

3. The amounts on deposit in the Proceeds Account in the Applicable Project Fund shall be disbursed at one time or from time to time by the Trustee to pay or reimburse such Project Participant for the payment of the Costs of the Participant's Project described in, and in all respects in accordance with, Exhibit A to the Loan Agreement among FMPA, such Project Participant and the Credit Facility Issuer, if any, upon satisfaction of any requirements set forth in or delivery of any certificates required by the Applicable Loan Agreement or the Applicable Supplemental Resolution.

4. If on any Interest Payment Date, maturity date or redemption date, the amounts on deposit in the Applicable Interest Account or Principal Account in the Debt Service Fund applicable to a Project Participant are less than required on such date to pay either interest or principal on Obligations of such Series for such Project Participant then the Trustee [upon the Order of FMPA] shall transfer amounts in the Applicable Proceeds Account in the Project Fund for such Project Participant to the relevant account in the Applicable Debt Service Fund to cure such deficiency.

5. All net earnings from the investment of moneys in each Proceeds Account in the Applicable Project Fund established for a Series of Obligations shall, unless FMPA otherwise directs in an Order, be deposited into the Interest Account in the Debt Service Fund established for the same Series of Obligations and applied to the purposes thereof at the times and in the amounts as provided herein.

6. Additional terms and provisions relating to the deposit, disbursement and investment of amounts on deposit in any Applicable Project Fund or any Account established therein may be set forth in a Supplemental Resolution.

**SECTION 5.05**     Deposit of Applicable Revenues; Applicable Revenue Fund.

1. Except as otherwise provided in the Applicable Supplemental Resolution relating to a particular Series of Obligations, all Applicable Revenues shall be promptly deposited by the Trustee upon receipt thereof into the Applicable Revenue Fund.

2. Amounts received by the Trustee pursuant to Section 5.04 of any Loan Agreement that is in substantially the form of Exhibit A hereto (or the equivalent section of any other Loan Agreement) and amounts that constitute Project Expenses shall be promptly deposited by the Trustee into the Project Expense Fund.

3. Except as may otherwise be provided in the Applicable Supplemental Resolution for a Series of Obligations, in each Month after the deposit of Applicable Revenues into the Applicable Revenue Fund (but in any case no later than the last business day of such Month), the Trustee shall credit to, or shall transfer to the required party for deposit in, as appropriate and to the extent available, the following Funds and Accounts in the following order (such application to be made in such a manner so as to assure good funds in such Funds on the last business day of such Month):

(i) first, the Trustee shall transfer from the moneys on deposit in the Applicable Revenue Fund to the Interest Account in the Applicable Debt Service Fund an amount which when added to the amount then on deposit in the Interest Account shall be equal to the interest to accrue on Outstanding Obligations of such Series during the immediately succeeding calendar month, assuming for any portion of such month for which the interest accruing on any portion of the Outstanding Obligations of such Series has not yet been determined that such Obligations will accrue interest either (i) at a rate equal to the rate of interest set forth in an Order of FMPA delivered to the Trustee or (ii) the Maximum Interest Rate; provided that, for the purposes of computing the amount to be transferred to the Applicable Interest Account in the Applicable Debt Service Fund from the Applicable Revenue, there shall be excluded the amount, if any, set aside in said Account from the proceeds of Obligations or the amount on deposit in the Proceeds Account in the Applicable Project Fund and transferred from such Proceeds Account and transferred in accordance with Section 5.04(4) hereof; and

(ii) second, the Trustee shall transfer from the moneys on deposit in the Applicable Revenue Fund to the Principal Account in the Applicable Debt Service Fund an amount which when added to the amount then on deposit in the Principal Account shall be equal to the amount of Principal Installments due and unpaid and that portion of the Principal Installment for such Series of Obligations next due which would have accrued (if deemed to accrue daily in equal amounts from the next preceding Principal Installment due date for such Series or, if there shall be no such preceding Principal Installment due date, from a date one year preceding the due date of such Principal Installment or from the date of issuance of the Obligations of such Series, whichever date is later) to the end of such calendar month.

4. After making the transfers referred to in clause (i) of paragraph 2 above, if there is any deficiency in the amount required to be in the Interest Account in the Applicable Debt Service Fund pursuant to clause (i), the Trustee shall transfer from the following funds and accounts the amount necessary to cure such deficiency in the following order of priority: first, if a Debt Service Reserve Account in the Applicable Debt Service Reserve Fund for such Series of Obligations has been established in accordance with a Project Participant's Loan Agreement, then from Debt Service Reserve Account in the Debt Service Reserve Funds the amount required to cure such deficiency; and second, from amounts on deposit in the Applicable Proceeds Account of the Applicable Project Fund established for such Series of Obligations.



5. After making the transfers referred to in clause (ii) of paragraph 2 above, if there is any deficiency in the amount required to be in the Principal Account in the Applicable Debt Service Fund pursuant to clause (i), the Trustee shall transfer from the following funds and accounts the amount necessary to cure such deficiency in the following order of priority: first, if a Debt Service Reserve Account in the Applicable Debt Service Reserve Fund for such Series of Obligations has been established in accordance with the Project Participant's Loan Agreement, then from Debt Service Reserve Account, the amount required to cure such deficiency; and second, from amounts on deposit in the Applicable Proceeds Account of the Applicable Project Fund for such Series of Obligations.

6. The Trustee shall keep records and accounts with respect to the Applicable Revenue Fund so that all amounts received by the Trustee from the Project Participants under the Loan Agreements with respect to a particular Series of Obligations can be properly designated as interest or principal payments on the Loans, Project Expenses, other amounts payable under the Loan Agreements, or investment earnings attributable to such amounts.

**SECTION 5.06**      Debt Service Fund. 1. On each Interest Payment Date, the Trustee shall make available to the Paying Agent moneys in the Applicable Interest Account in the Applicable Debt Service Fund for a Series of Obligations in an amount equal to the interest due on such Series of Obligations to which such Interest Account relates on such Interest Payment Date, which moneys shall be applied by the Paying Agent to the payment of such interest to the Applicable Holders of such Obligations or if such Obligations are Variable Rate Obligations or Commercial Paper Notes to the Applicable Credit Facility Issuer if such payments of interest or Redemption Price were paid with proceeds from a draw on the Applicable Credit Facility.

2. On the maturity or redemption date of any Obligations, the Trustee shall make available to the Paying Agent moneys in the Applicable Principal Account in the Applicable Debt Service Fund in an amount equal to the principal or Redemption Price of the Series of Obligations due on such date, which moneys shall be applied by the Paying Agent to the payment of such principal or Redemption Price to the Applicable Holders of a Series of Obligations or Obligations or if such Obligations are Variable Rate Obligations or Commercial Paper Notes to the Applicable Credit Facility Issuer if such payments of principal or Redemption Price were paid with proceeds from a draw on the Applicable Credit Facility.

3. To the extent that on any date the amounts available for the payments of interest on and principal of Obligation of such Series on deposit in the Interest Account and/or the Principal Account in the Applicable Debt Service Fund, as the case may be, are insufficient to make all such payments of interest and/or principal on Obligations of a particular Series, such amounts shall be paid, pro rata, to each Holder of the Obligations of such Series in proportion to the amount of the payments then due on the respective Obligations of such Series.

4. In the event of the refunding of all or a portion of any Series of Obligations, the Trustee shall, if FMPA so directs, withdraw from the Applicable Interest Account and/or Applicable Principal Account in the Applicable Debt Service Fund all, or any portion of, the amounts accumulated therein with respect to debt service on the Series of Obligations being refunded and deposit such amounts with the Trustee to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Series of Obligations being refunded; provided that such withdrawal shall not be made unless (a) immediately thereafter the Series of Obligations

being refunded shall be deemed to have been paid pursuant to subsection 2 of Section 12.01 and (b) the amount remaining in the Applicable Interest Account and/or Applicable Principal Account, as applicable, in the Applicable Debt Service Fund, after giving effect to the issuance of Refunding Obligations and the disposition of the proceeds thereof, shall not be less than the requirement of such accounts.

**SECTION 5.07** Debt Service Reserve Fund — Debt Service Reserve Account.

1. Upon the issuance of a Series of Obligations for which the Applicable Supplemental Resolution or Loan Agreement requires that a Debt Service Reserve Account in the Applicable Debt Service Reserve Fund is required to be established for a Series of Obligations and funded in an amount equal to the Debt Service Reserve Fund Requirement for a particular Loan, there will be deposited from the proceeds of the Obligations of such Series in the Debt Service Reserve Account the amount, if any, required for deposit therein as provided in the Applicable Supplemental Resolution authorizing such Series of Obligations or in the Applicable Loan Agreement. Moneys in the Applicable Debt Service Reserve Account in the Applicable Debt Service Reserve Fund shall be applied solely as provided in this Section in the following order of priority:

(ii) If, on the last Business Day of each calendar month, after the transfer to the Applicable Interest Account in the Applicable Debt Service Fund for the Series of Obligations for which such Debt Service Reserve Account has been established, the amount on deposit in such Interest Account is less than such Interest Account Requirement for the Applicable Obligations of a Series and such deficiency results from the failure of the Project Participant for whom such Debt Service Reserve Account was established to make a Loan Repayment, the Trustee shall transfer from the Applicable Debt Service Reserve Account in the Applicable Debt Service Reserve Fund to such Interest Account in the Debt Service Fund an amount equal to the amount of such deficiency; and

(iii) If, on the Business Day preceding any day on which the principal or Redemption Price of a Series of Obligations for which such Debt Service Reserve Account has been established becomes due, the amount on deposit in such Principal Account shall be less than the principal or Redemption Price due on such day and such deficiency results from the failure of the Project Participant for whom such Debt Service Reserve Account was established to make a Loan Repayment, the Trustee shall transfer the amount of the deficiency from such Debt Service Reserve Account in the Applicable Debt Service Reserve Fund to such Principal Account.

2. In the event of the refunding of any Series of Obligations for which a Debt Service Reserve Account in the Debt Service Reserve Fund was established, the Trustee shall, if FMPA so directs in writing, withdraw from the related Debt Service Reserve Account in the Debt Service Reserve Account in the Applicable Debt Service Reserve Fund all, or any portion of the amounts accumulated therein with respect to such Series or Obligations being refunded and deposit such amounts with itself as Trustee to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Series of Obligations being refunded; provided that such withdrawal shall not be made unless (a) immediately thereafter the Obligations being refunded shall be deemed to have been paid pursuant to subsection 2 of Section 12.01, and (b) the amount remaining in the related Debt Service Reserve Account, after giving effect to the issuance of the Refunding Obligations, shall not be less than the Debt Service Reserve Requirement. In the event of such refunding, FMPA may also direct the Trustee to withdraw from the related Account all, or any

portion of, the amounts accumulated therein with respect to principal and interest on the Obligations being refunded and deposit such amounts in any Fund or Account under this Resolution; provided, however, that such withdrawal shall not be made unless items (a) and (b) referred to hereinabove have been satisfied and provided, further, that, at the time of such withdrawal, there shall exist no deficiency in any Fund or Account held under this Resolution.

**SECTION 5.08** Project Expense Fund. On each date on which any amounts are deposited in the Project Expense Fund from the Applicable Revenue Fund, as long as no Event of Default shall have occurred and be continuing hereunder, the Trustee shall, unless otherwise directed in writing by FMPA, transfer all amounts on deposit in the Project Expense Fund to FMPA for application to the payment of Project Expenses.

**SECTION 5.09** Sinking Fund Installments. Unless otherwise provided in a Supplemental Resolution, if at any time Obligations of any Series or maturity for which Sinking Fund Installments shall have been established are purchased or redeemed pursuant to this Section 5.09 or otherwise purchased by FMPA, FMPA may from time to time and at any time by written notice to the Trustee specify the portion, if any, of such Obligations so purchased or redeemed and not previously applied as a credit against any Sinking Fund Installment which are to be credited against future Sinking Fund Installments. Such notice shall specify the amounts of such Obligations to be applied as a credit against each Sinking Fund Installment or Installments and the particular Sinking Fund Installment or Installments against which such Obligations are to be applied as a credit; provided, however, that none of such Obligations may be applied as a credit against a Sinking Fund Installment to become due less than 45 days after such notice is delivered to the Trustee. All such Obligations to be applied as a credit shall be surrendered to the Trustee for cancellation on or prior to the due date of the Sinking Fund Installment against which they are being applied as a credit. The portion of any such Sinking Fund Installment remaining after the deduction of any such amounts credited toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

**SECTION 5.10** Enforcement of Credit Facility. The Trustee, in its name or in the name of FMPA, shall enforce all rights of the Trustee and all obligations of each Credit Facility Issuer under and pursuant to the Credit Facility, for the benefit of the Holders of the Obligations secured thereby, whether or not FMPA is in default hereunder. The Trustee shall not assign or transfer any Credit Facility except to any successor Trustee under this Resolution.

**SECTION 5.11** Moneys to Be Held in Trust. All moneys required to be deposited with or paid to the Trustee for the account of any Fund or Account established under any provision of this Resolution and the Applicable Supplemental Resolution for Obligations of a Series in accordance with this Resolution shall be held by the Trustee in trust for the Holders of such Series of Obligations and the Applicable Credit Facility Issuer and shall constitute part of the Applicable Trust Estate while held by the Trustee; provided, however, that moneys deposited with or held by the Trustee for the payment of the principal of or interest on Obligations on or after the date on which such amounts shall have become due shall be held and applied solely for the purchase, redemption or payment of such Obligations or the payment of such interest (as the case may be).

**SECTION 5.12**     Investments.     Except as otherwise provided in the Applicable Supplemental Resolution relating to a particular Series of Obligations, subject to the further provisions of this Section, all moneys in any of the Funds and Accounts created hereby shall be invested by the Trustee in Investment Securities. In making any investment in any Investment Securities with moneys in any Fund or Account established under this Resolution, the Trustee or FMPA, as the case may be, may combine such moneys with moneys in any other Fund or Account held by it, but solely for the purposes of making such investment in such Investment Securities.

Moneys in the Funds and Accounts shall be invested in Investment Securities, the principal of and interest on which are payable not later than the dates on which it is estimated that such moneys will be required hereunder.

Investment Securities acquired as an investment of moneys in any Fund or Account shall be credited to such Fund or Account. For the purpose of determining the amount in any Fund or Account at any time in accordance with this Resolution, all Investment Securities credited to such Fund or Account shall be valued at amortized cost (exclusive of accrued interest).

All interest, profits, and other income earned, net of any losses suffered (herein called the “net earnings”) from investment of moneys in any Fund or Account established for a particular Series of Obligations, shall be deposited in the Applicable Interest Account in the Debt Service Fund for the Series of Obligations to which such Fund or Accounts relates and applied to the purposes thereof unless FMPA otherwise directs in an Order that all or any portion of such net earnings be transferred to FMPA for application to the payment of any rebate due under the Code and/or for the payment of Applicable Project Expenses. The Trustee may act as principal or agent in the acquisition or disposition of any Investment Securities. The Trustee may sell at the best price obtainable, or present for redemption, any Investment Securities to the credit of any Fund or Account whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal, or disbursement from such fund or account, and the Trustee shall not be liable for any loss resulting from such Investment.

All uninvested moneys held under this Resolution by the Trustee shall be (a) either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by lodging with the Trustee or any Federal Reserve Bank, as custodian, as collateral security, Investment Securities hereof having a market value not less than the amount of such moneys, and (b) held in such other manner as may then be required by applicable Federal or State of Florida laws and regulations and applicable state laws and regulations of the state in which the Trustee is located, regarding security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that, to the extent permitted by law, it shall not be necessary for the Trustee to give security under this paragraph for the deposit of any moneys with them held in trust and set aside by them for the payment of the principal of or interest on any Obligations, or for the Trustee to give security for any moneys which shall be represented by obligations or certificates of deposit purchased as an investment of such moneys.

## ARTICLE VI

### THE LOANS

**SECTION 6.01** Terms and Conditions of Loans. FMPA shall make Loans to Project Participants for the purpose of paying the Cost of the Participants' Projects from moneys available therefor in the Applicable Project Fund and shall enter into Loan Agreements, in the manner, on the terms and conditions and upon submission of the documents required by this Article VI, and not otherwise.

**SECTION 6.02** Loan Terms and Loan Repayments; Form of Loan Agreement.  
1. On such dates as FMPA shall, in its sole discretion, specify by Order, which dates shall occur not less frequently than once every six months or such other period of time as set forth in a Supplemental Resolution relating to a particular Series of Obligations (each, a "Loan Rate Determination Date"), an Authorized Officer of FMPA shall compute, and advise the Trustee in writing of, the interest rate applicable to each Loan (the "Loan Interest Rate") for the period from such Loan Rate Determination Date until the immediately succeeding Loan Rate Determination Date (each, a "Loan Interest Period") in accordance with this Section. On each Loan Rate Determination Date, FMPA shall estimate the aggregate amount required to be paid by each of the Project Participants as interest under their respective Loan Agreements for the Loan Interest Period commencing on such Loan Rate Determination Date (the "Loan Interest Amount"), which shall be equal to the difference between:

- (i) the sum of (a) the estimated amount of interest accruing on the Outstanding Obligations during such Loan Interest Period; and (b) the estimated amount required to pay the Project Expenses accruing during such Loan Interest Period, and
- (ii) the estimated aggregate amount of net earnings expected to be available for transfer to or deposit in the Applicable Interest Account in the Applicable Debt Service Fund or for the payment of Project Expenses during such Loan Interest Period.

2. In computing the Applicable Loan Interest Amount for any Loan Interest Period, FMPA shall take into account any overestimation or underestimation of the Applicable Loan Interest Amount for any prior Loan Interest Period to the extent required by FMPA, and shall otherwise estimate the amounts referred to in this paragraph on any reasonable basis as FMPA shall deem appropriate. FMPA shall advise the Trustee of the Applicable Loan Interest Amount so determined promptly after making such determination, and shall furnish such other information with respect thereto as the Trustee shall request.

3. The Loan Interest Rate for each Loan Interest Period for each Loan shall equal the interest rate which, when multiplied by (a) the estimated principal amount of the Loan to be outstanding during such Loan Interest Period (other than Defaulted Loans), as estimated by FMPA on the Loan Rate Determination Date for such Loan Interest Period and (b) a fraction the numerator of which is the number of months in such Loan Interest Period and the denominator of which is 12, produces the Loan Interest Amount. FMPA shall notify the Trustee and each Project Participant of the Loan Interest Rate within five Business Days after each Loan Rate Determination Date; such notification shall specify the portion of such Loan Interest Rate representing FMPA's

estimate of interest to be paid on Applicable Obligations of such Series and the portion of such Loan Interest Rate representing amounts necessary to pay Applicable Project Expenses.

4. Notwithstanding the foregoing provisions of this Section 6.02, to the extent provided in a Supplemental Resolution, with the prior written consent of the Applicable Credit Facility Issuer, FMPA may, from time to time, in its discretion, change the method of determining the Loan Interest Rate; provided, however, that the Applicable Loan Agreements, in the aggregate, will provide that the Project Participants shall pay as interest thereunder amounts that, together with other funds available therefor under this Resolution and the Applicable Supplemental Resolution, shall be sufficient to provide funds in such amounts and at such times as shall be necessary to make full and timely payment of the interest on the Applicable Obligations and the Applicable Project Expenses relating to such Applicable Obligations as the same become due, and to make up any deficiencies in the Applicable Debt Service Reserve Account in the Debt Service Reserve Fund resulting from any cause other than the failure of a Project Participant to make up any payments required under the Loan Agreement in the period specified in the Applicable Supplemental Resolution.

5. If at any time FMPA determines that the interest then payable on the Loans may not provide funds that, together with income from the investment of the funds established hereunder and available for the payment thereof, are equal to the sum of the interest accruing on the Obligations of a particular Series during such Loan Interest Period and the Applicable Project Expenses accruing during such Loan Interest Period or the interest on such Obligations and Applicable Project Expenses as they become due and payable during such Loan Interest Period, FMPA may increase the Loan Interest Rate to produce an amount sufficient to cure such deficiency. FMPA shall give the Trustee and each Project Participant notice of any such increase in the Loan Interest Rate at least ten days prior to the date on which such increase is to become effective, specifying the period for which such increase is to be in effect.

6. The Loan Agreements shall be substantially in the form of Exhibit A hereto with such changes therein as shall be approved by FMPA, as evidenced by the execution thereof by an Authorized Officer of FMPA including any changes required to permit FMPA to borrow, other than as agent for the Initial Pooled Loan Project, under a Loan Agreement; provided, however, that, the Loans and the Loan Agreements shall in any event conform in all material respects to the provisions of this Article VI.

7. On such dates as FMPA shall, in its sole discretion, specify by Order, which dates shall occur not less frequently than once every twelve months, FMPA shall determine whether a Project Participant's interest portion of Loan Repayments since the date of the last such determination together with interest earnings on moneys on deposit in the Proceeds Account in the Applicable Project Fund that are allocable to such Project Participant not, in the opinion of FMPA, potentially subject to rebate pursuant to the Code exceeds the amount of interest accruing or paid on the principal amount of the Tax-Exempt Obligations allocable to such Project Participant during the same period. If FMPA determines that such interest portion of Loan Repayments and interest earnings did exceed the allocable interest on the Tax-Exempt Obligations and allocable Project Expenses for such period, FMPA shall credit such excess against future Loan Repayments by such Project Participant or shall reduce the Loan Interest Rate on such Project Participant's Loan for future periods, in either case, in a manner agreed upon by both FMPA and such Project Participant.

**SECTION 6.03**     Restrictions on Loans for Initial Pooled Loan Project.

The following restrictions shall apply to Loans made by FMPA hereunder:

(i) No Loan may be made without the Applicable Credit Facility Issuer's written approval of the Project Participant, the Loan and the Loan Agreement.

(ii) In the event that Loan is funded by the issuance by FMPA of Tax-Exempt Obligations, no Loan may be made to reimburse a Project Participant for all or a portion of the Cost of a Participant's Project, or to refinance indebtedness or reimburse the Project Participant for the refinancing of indebtedness previously incurred by such Project Participant to finance all or a portion of the Cost of such Participant's Project, unless the Project Participant shall deliver to FMPA and the Trustee an opinion of Bond Counsel approved by FMPA, in form and substance satisfactory to FMPA to the effect that such reimbursement or refinancing will not adversely affect the tax-exempt status for federal income tax purposes of interest paid on such Tax-Exempt Obligations, or each of the following conditions shall be met:

(a) If such Loan is for the purpose of reimbursing a Project Participant for all or a portion of the Cost of a Participant's Project, the Project Participant shall have paid the Costs thereof to be reimbursed in anticipation of being reimbursed by FMPA or any other issuer of indebtedness the interest on which is exempt from federal income taxation under Section 103 of the Code. Furthermore, prior to the payment of any such Costs to be reimbursed, the Project Participant's governing body shall have adopted a resolution, in form and substance acceptable to Bond Counsel, to the effect that such Costs were paid in anticipation of the reimbursement of such Costs through a loan from FMPA or any other issuer of indebtedness the interest on which is exempt from federal income taxation under Section 103 of the Code; and

(b) such Project Participant shall deliver to FMPA and the Trustee such documents and instruments as shall be required by FMPA and the Trustee to evidence compliance with the provisions of subsection (a) of this paragraph (ii).

(iii) No Loan may be made from the proceeds of Tax-Exempt Obligations to refinance in advance of the maturity thereof any indebtedness of a Project Participant, the interest on which is exempt from federal income taxation, unless the Project Participant delivers to FMPA and the Trustee an opinion of Bond Counsel approved by FMPA, in form and substance satisfactory to FMPA, to the effect that such refinancing will not adversely affect the tax-exempt status for federal income tax purposes of interest paid on the Tax-Exempt Obligations.

**SECTION 6.04**     Closing Submissions. 1. Prior to or at each Closing of a Loan, FMPA, the Credit Facility Issuer, and the Trustee shall have received the following documents from the Project Participant receiving the Loan:

(i) a letter from the Applicable Credit Facility Issuer, or other evidence satisfactory to FMPA and the Trustee, to the effect that such Credit Facility Issuer has approved (a) the Project Participant as an eligible borrower, (b) the Loan, and (c) the Loan

Agreement and, if such approval is subject to the satisfaction of any conditions (which shall be set forth in such approval), evidence satisfactory to FMPA and the Trustee that each of such conditions has been satisfied;

(ii) an opinion of the Project Participant's Counsel substantially in the form set forth in Exhibit D to the form of Loan Agreement; provided, however, that, with the written approval of the Applicable Credit Facility Issuer, FMPA may permit variances in such opinion from the form of substance of such Exhibit D if such variances are not to the material detriment of the interests of the Applicable Holders;

(iii) counterparts of the Loan Agreement executed by the parties thereto, including the promissory note evidencing the payment obligations of the Project Participant under such Loan Agreement, duly executed by such Project Participant and endorsed by FMPA to the Trustee;

(iv) evidence satisfactory to FMPA that the Costs provided by the Project Participant are reasonable;

(v) copies of this Resolutions of the governing body of the Project Participant authorizing the execution and delivery of such Loan Agreement, certified by an Authorized Officer of the Project Participant;

(vi) an opinion of General Counsel and Chief Legal Officer of FMPA that the Participant's Project is permissible under the Act and this Resolution;

(vii) such other certificates, documents, opinions and information as FMPA, the Trustee or the Applicable Credit Facility Issuer may require;

(viii) a bill or bills of sale, invoice or invoices, or other evidence satisfactory to FMPA that the Cost of the Participant's Project to be financed or refinanced under the Loan Agreement has been or will be incurred by the Project Participant and, in the case of any Loan for the purpose of refinancing any indebtedness, the cancelled note, or other financing document or other evidence satisfactory to FMPA that the proceeds of the Loan will be used to refinance such indebtedness; and

(ix) such opinions, certificates, and other showings, if any, as are required by Section 6.03(ii) hereof if such Loan is being made to reimburse the Project Participant for the Cost of the Participant's Project or as are required by Section 6.03(iii) hereof if such Loan is being made to refinance prior indebtedness of the Project Participant.

2. All opinions and certificates required under this Section shall be dated the date of Closing and all such opinions shall be addressed to FMPA, the Trustee, and the Applicable Credit Facility Issuer. FMPA shall deliver or cause to be delivered to the Applicable Credit Facility Issuer copies of each of the items referred to in this Section 6.04 promptly after each Closing; provided, however, that the items referred to in clause (viii) of Section 6.04 shall only be delivered to the Applicable Credit Facility Issuer if and to the extent it requests copies thereof.



## ARTICLE VII

### SERVICING OF LOANS

**SECTION 7.01** Servicer. FMPA shall service each Loan; however, the Trustee shall be entitled to receive and shall collect and receive all Loan Repayments and any other amounts payable pursuant to each Loan Agreement prior to any transfer of any such Loan Agreement to the Applicable Credit Facility Issuer as provided in Section 7.06 hereof or in a Supplemental Resolution. The Trustee shall give any notice required to be given under this Resolution or any Loan Agreement to the Applicable Credit Facility Issuer.

**SECTION 7.02** Defaults. The Trustee shall notify FMPA and the Applicable Credit Facility Issuer of any failure by any Project Participant to make the Loan Repayment, if any, due under the Loan Agreement to which such Project Participant is a party in any month on the last Business Day of such month and of any other event of default under such Loan Agreement immediately upon the occurrence thereof.

The Trustee shall diligently enforce, and take all reasonable steps, actions, and proceedings necessary for the enforcement of, all terms, covenants, and conditions of all Applicable Loan Agreements, including (without limitation) the prompt payment of all Loan Repayments and all other amounts due FMPA thereunder; provided, however, that, unless otherwise provided in the Applicable Supplemental Resolution or the Applicable Credit Facility Agreement, the Trustee shall not accelerate the payment of amounts due under any Applicable Loan Agreement following any event of default thereunder (other than any event of default referred to in Section 5.01(d) of such Applicable Loan Agreement), unless the Trustee shall have given FMPA written notice of the occurrence of such event of default and shall have afforded FMPA the opportunity to cause such event of default to be cured during the 30-day period following receipt by FMPA of such notice.

Subject to the terms and provisions of any Applicable Supplemental Resolution, Credit Facility Agreement or Loan Agreement, the Trustee shall not release the obligations of any Project Participant under any Loan Agreement and shall at all times, to the extent permitted by law, defend, enforce, preserve, and protect the rights and privileges of FMPA, the Applicable Credit Facility Issuer, and the Applicable Holders of a Series of Obligations under or with respect to each Loan Agreement; provided, however, that this provision shall not be construed to prevent the Trustee (with the consent of FMPA and the Applicable Credit Facility Issuer) from settling a default under any Loan Agreement on such terms as the Trustee shall determine to be in the best interests of FMPA, the Applicable Credit Facility Issuer, and the Holders of such Series of Obligations. FMPA hereby appoints the Trustee its agent and attorney-in-fact for purposes of enforcing all rights of FMPA under the Loan Agreements, subject to the provisions of this Section.

**SECTION 7.03** Termination and Assignment of Loan Agreements. Upon the payment of all amounts due under a Loan Agreement, FMPA shall cancel the obligation of the Project Participant evidenced by such Loan Agreement (except for any Obligations which by the terms thereof may be stated to survive) and terminate and release all security interests and liens created under such Loan Agreement and FMPA, the Trustee and the Applicable Credit Facility Issuer shall take any other action required of FMPA, the Trustee, or the Applicable Credit Facility Issuer, respectively, in such Loan Agreement in connection with such cancellation, termination,

and release, including (without limitation) the execution of all relevant documents in connection with such actions; provided, however, that if FMPA has issued Tax-Exempt Obligations to fund such Loan no such cancellation, termination, or release shall be effected by FMPA unless FMPA has received adequate assurance of the payment by the Project Participant of that portion of any rebate payment under the Code which may become due in the future including, without limitation, any amounts related to the payment of such Loan Agreement. The Loan Agreement may be assigned to the Applicable Credit Facility Issuer and their successors and assigns upon the terms and conditions as set forth in the Applicable Supplemental Resolution; in the event of such assignment the Applicable Supplemental Resolution may provide that upon the direction of the Applicable Credit Facility Issuer that a principal amount of the Series of Obligations related to such Loan Agreement determined as provided in the Applicable Supplemental Resolution be redeemed.

**SECTION 7.04**      Loan Files. After each Closing, the Trustee shall retain all the documents received by it pursuant to Article VI hereof in connection with such Closing or in connection with the Loan made at such Closing in a file pertaining to such Loan, to which file the Trustee shall from time to time add all records and other documents pertaining to disbursements of amounts to the Project Participant under the Loan Agreement, to Loan Repayments and other amounts received by the Trustee under such Loan Agreement and all communications from or received by the Trustee with respect to such Loan. Such file shall be kept at the principal corporate trust office of the Trustee and shall be available for inspection by FMPA, the Applicable Credit Facility Issuer, and their agents at reasonable times and under reasonable circumstances. Upon any assignment of a Loan Agreement to the Applicable Credit Facility Issuer in accordance with Section 7.06 hereof, the Trustee shall transfer the file with respect to such Loan Agreement to such Credit Facility Issuer.

**SECTION 7.05**      FMPA Obligations under Loan Agreement. The Trustee shall perform all obligations and duties of FMPA under each Loan Agreement to the extent specified herein.

**SECTION 7.06**      Rights of Credit Facility Issuer upon Event of Default under Loan Agreement. 1. Unless otherwise provided in a Supplemental Resolution with respect to a particular Series of Obligations, if any Event of Default as described in any Loan Agreement shall have occurred (a “Defaulted Loan Agreement”), the Applicable Credit Facility Issuer shall have the right, so long as there exists no default by the Applicable Credit Facility Issuer in the performance of its obligations under the Applicable Credit Facility, to direct the time, method, and plan of conducting all proceedings and actions to be taken in connection with the enforcement of the terms and conditions of such Defaulted Loan Agreement and to control or direct all actions or waivers required to or permitted to be taken or given by the Trustee or FMPA under this Resolution and such Defaulted Loan Agreement.

2. If an Event of Default as described in any Loan Agreement shall have occurred, the Applicable Credit Facility Issuer shall have the right, so long as there exists no default by the Applicable Credit Facility Issuer in the performance of its obligations under the Applicable Credit Facility, to direct the Trustee to transfer and assign such Defaulted Loan Agreement and related promissory note thereunder to the Applicable Credit Facility Issuer, provided that, (a) if Obligations were issued by FMPA to fund the Loan made under such Loan Agreement, upon such transfer and assignment a principal amount of Outstanding Obligations of the Series of Obligations

to which such Defaulted Loan Agreement relates shall be paid in full by the Bank or if the Bank is the Holder of such Obligations, such Obligations shall be deemed paid and cancelled by the Trustee or (b) if Commercial Paper Notes were issued by FMPA to fund the Loan made under such Loan Agreement, a principal amount of Commercial Paper Notes equal to the outstanding balance of the loan under such Loan Agreement shall be paid at the maturity date thereof from the proceeds of a drawing under the LOC and no new Commercial Paper Notes shall be issued in replacement thereof. The particular Commercial Paper Notes or portions thereof to be paid shall be selected by FMPA in the manner set forth in the Applicable Credit Facility Agreement.

## ARTICLE VIII

### COVENANTS

FMPA hereby covenants, warrants, and agrees as follows:

**SECTION 8.01** Payment of the Obligations. FMPA shall pay or cause to be paid the principal or Redemption Price of and interest on, and the purchase price of, every Obligation of each Series of any Series on the date, at the place, and in the manner provided herein and in the Applicable Supplemental Resolution and in such Obligations according to the true intent and meaning thereof; provided, however, that the Obligations of each Series are special obligations of FMPA, the principal or Redemption Price of and interest on and the purchase price of which are payable solely from the Applicable Trust Estate.

The Obligations of any Series shall not be payable from the general funds of FMPA or the funds of any project of FMPA other than the Applicable Trust Estate for the Obligations of such Series of the Initial Pooled Loan Project, and shall not constitute a legal or equitable pledge of, or lien or encumbrance upon, any of the assets or property of FMPA or upon any of its income, receipts, or revenues, except as provided in this Resolution and the Applicable Supplemental Resolution. The faith and credit of FMPA are not pledged, either expressly or by implication, to the payment of the Obligations of any Series. FMPA has no taxing power and has no claim on any revenues or receipts of the State of Florida or any agency or political subdivision thereof or any Project Participant except as may be expressly provided in a Project Participant's Loan Agreement. There is no provision for appropriations for the benefit of FMPA by the State of Florida or any other political entity having taxing powers.

**SECTION 8.02** Performance of Covenants, Undertakings, and Agreements; Representations as to Authorization and Validity of the Obligations. FMPA shall faithfully perform at all times its covenants, undertakings, and agreements contained in the Loan Agreements or in any Obligations of a Series executed, authenticated, and delivered under this Resolution and the Applicable Supplemental Resolution or in any proceedings of FMPA pertaining thereto.

FMPA represents and covenants that: (i) it is duly authorized under the Constitution and laws of the State of Florida, particularly the Act, to adopt this Resolution, to issue the Obligations of each Series, to enter into the Loan Agreements, and to pledge the Applicable Revenues and Applicable Trust Estate in the manner and to the extent set forth in this Resolution and as shall be set forth in the Applicable Supplemental Resolution; (ii) all action on its part for the issuance of the Obligations of each Series will be duly and effectively taken; and (iii) the Obligations of each

Series in the hands of the holders thereof will be valid and binding special obligations of FMFA according to their terms.

**SECTION 8.03**     Liens, Encumbrances, and Charges. FMFA shall perform all duties with respect to the Initial Pooled Loan Project required to be performed by it by the Constitution and laws of the State of Florida, this Resolution, any Applicable Supplemental Resolution, and the Loan Agreements. FMFA shall not create and, to the extent Applicable Revenues are received for the discharge thereof, shall not suffer to remain, any lien, encumbrance, or charge upon the Applicable Trust Estate except the pledge, lien, and charge created for the security of Holders of the Obligations of each Series and the Applicable Credit Facility Issuer. To the extent Revenues are received, FMFA will cause to be discharged, or will make adequate provision to satisfy and discharge, within 60 days after the same shall accrue, all lawful claims and demands that if unpaid, might by law become a lien upon any Applicable Trust Estate; provided, however, that nothing contained in this Section shall require FMFA to pay or cause to be discharged, or make provision for, any such lien, encumbrance, or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

So long as Obligations of any Series shall be Outstanding, FMFA shall not issue any bonds, notes, or other evidences of indebtedness, other than such Obligations, secured by any pledge of or other lien or charge on the Applicable Trust Estate. Nothing in this Resolution is intended to or shall affect the right of FMFA to issue bonds, notes, and other obligations under other resolutions or indentures for any of its other purposes.

**SECTION 8.04**     Further Assurance. At any and all times FMFA shall, as far as it may be authorized by law, pass, make, do, execute, acknowledge, and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers, or assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning, or confirming all the rights, moneys, securities, and funds hereby pledged or assigned, or intended so to be, or which FMFA may become bound to pledge or assign.

**SECTION 8.05**     Power to Pledge Applicable Trust Estate. FMFA is duly authorized under all applicable laws to pledge amounts held in the Applicable Trust Estate. The moneys, securities, and funds so pledged are and will be free and clear of any pledge, lien, charge, or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by this Resolution, and all corporate or other action on the part of FMFA to that end has been and will be duly and validly taken. FMFA shall at all times, to the extent permitted by law, defend, preserve, and protect the pledge of the moneys, securities, and funds pledged hereby to a particular Series of Obligations and all the rights hereunder of the Holders of such Series of Obligations, against all claims and demands of all persons.

**SECTION 8.06**     Accounts and Audits. FMFA shall keep proper books of records and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Initial Pooled Loan Project, this Resolution, which books and accounts (at reasonable hours and subject to the reasonable rules and regulations of FMFA) shall be subject to the inspection of the Trustee, the Credit Facility Issuer, any Holder of any Series of Obligations, or their agents or representatives duly authorized in writing. FMFA shall cause such books and accounts to be audited annually within 180 days after the end of its fiscal year by a nationally recognized independent certified public accountant selected by FMFA.

Annually within 30 days after the receipt by FMPA of the report of such audit, a signed copy of such report shall be furnished to the Trustee for the Holders and the Applicable Credit Facility Issuer. Such report shall include at least: (i) a statement of all funds (including investments thereof) held by the Trustee pursuant to the provisions of this Resolution; (ii) a statement of the Revenues collected in connection with this Resolution; and (iii) a statement that, in making such audit, no knowledge of any default in the fulfillment of any of the terms, covenants, or provisions of this Resolution was obtained, or if knowledge of any such default was obtained, a statement thereof.

**SECTION 8.07**      Tax Covenant with respect to Tax-Exempt Obligations. 1. In order to maintain the exclusion from gross income for federal income tax purposes of interest on the Obligations issued as Tax-Exempt Obligations, and for no other purpose, FMPA covenants to comply with each requirement of the Code necessary to maintain such exclusion. In furtherance of the covenant contained in the preceding sentence, FMPA agrees to comply with the provisions of the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 (the “Tax Certificate”), to be executed by FMPA on or before each Closing, as such Tax Certificate may be amended from time to time, as a source of guidance for achieving compliance with the Code.

2. On or before the Effective Date, FMPA shall furnish the Tax Certificate to the effect that, on the basis of the facts, estimates, and circumstances in existence on the date of delivery of the Tax Certificate, it is not expected that the proceeds of the Tax-Exempt Obligations will be used in a manner that would cause such Tax-Exempt Obligations to be “arbitrage bonds” within the meaning of the applicable provisions of the Code and Treasury Regulations, and such Certificate shall set forth such facts and circumstances which may be in brief and summary terms, and shall state that to the best of the knowledge and belief of FMPA, there are no other facts or circumstances that would materially change the expectations expressed in such Certificate.

3. Notwithstanding any other provisions of this Resolution to the contrary, for so long as necessary in order to maintain the exclusion from gross income under Section 103(a) of the Code of interest on the Tax-Exempt Obligations, the covenants contained in this Section shall survive the payment of the Tax-Exempt Obligations and the interest thereon, including any payment or defeasance thereof pursuant to Section 8.09 of this Resolution.

4. It is the intention of FMPA that interest on the Taxable Obligations is to be included in the gross income for federal income tax purposes of the Holders thereof. Accordingly, for the purpose of failing to satisfy the requirements of Section 103 of the Code, FMPA covenants not to file any information report with respect to the Taxable Obligations pursuant to Section 149(e) of the Code.

**SECTION 8.08**      Accounts and Reports of the Trustee. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which complete and accurate entries shall be made of all transactions relating to the proceeds of Obligations, the Revenues, the Loan Agreements, and, subject to the provisions of Section 5.01 hereof, all Funds and Accounts created herein and in a Supplemental Resolution. Such books of record and account shall be available for inspection by FMPA, the Credit Facility Issuer, if any, and the Holders of not less than 10% in aggregate principal amount of any Series of Obligations Outstanding or their agents or representatives duly

authorized in writing, at the principal corporate trust office of the Trustee at reasonable hours and under reasonable circumstances.

The Trustee shall provide to FMPA within 90 days after each October 1 a statement of the outstanding principal amount of each Loan as of such October 1.

**SECTION 8.09** Supplemental Resolutions. 1. FMPA will not adopt any resolutions supplemental to this Resolution which would change the amount of the principal and interest to be paid to any Holder of a particular Series of the Obligations or change the lien and pledge securing the payment of a particular Series of the Obligations.

2. Additional restrictions or limitations on the adoption of amendments or supplements to this Resolution may be contained in Supplemental Resolutions, Loan Agreements and Credit Facility Agreements.

## ARTICLE IX

### THE TRUSTEE

**SECTION 9.01** Appointments, Duties, Immunities, and Liabilities of Trustee.  
1. The Trustee for each Series of Obligations shall be appointed in the Supplemental Resolution authorizing the issuance of the first Series of Obligations to be issued hereunder. The Trustee shall signify its acceptance of the duties and obligations imposed upon it by this Resolution and all other agreements with FMPA by executing and delivering to FMPA a written acceptance thereof, and by executing such acceptance, the Trustee shall be deemed to have accepted such duties and obligations with respect to all the Obligations of a Series thereafter to be validly issued, but only, however, upon the terms and conditions set forth in this Resolution. Notwithstanding the provisions of any other Section hereof, the Trustee shall make payments on the Obligations when due.

2. FMPA may remove the Trustee at any time unless an Event of Default with respect to any Series of Obligations shall have occurred and then be continuing, and shall remove the Trustee if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Holders of not less than a majority in aggregate principal amount of the Obligations then Outstanding (or their attorneys-in-fact duly authorized in writing) or the Credit Facility Issuer or if at any time the Trustee shall cease to qualify in accordance with paragraph 7 of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation, in each case by giving written notice of such removal to the Trustee. Upon any removal of the Trustee in accordance with this paragraph, FMPA shall appoint a successor Trustee by a duly executed written instrument signed by an Authorized Officer of FMPA.

3. The Trustee may at any time resign by giving not less than 120 days' written notice of such resignation to FMPA, the Applicable Credit Facility Issuers, the Rating Agencies, and mailing notice thereof to the Holders of Obligations then Outstanding, specifying the date when such resignation shall take effect and, if applicable, by transferring each Credit Facility to the successor Trustee prior to such resignation date. Upon receiving such notice of resignation, FMPA

shall promptly appoint, by an instrument in writing, a successor trustee meeting the requirements set forth herein.

4. Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of such appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within 60 days of the giving of notice of removal or notice of resignation as aforesaid, a successor may be appointed by the Holders of a majority in principal amount of the Obligations then Outstanding, excluding any Obligations held by or for the account of FMPA, by an instrument or concurrent instruments in writing signed and acknowledged by such Holders or by their attorneys-in-fact duly authorized and delivered to such successor Trustee, notification thereof being given to FMPA and the predecessor Trustee. After such appointment of a successor Trustee, FMPA shall mail notice of any such appointment by it or the Holders to the registered owner of the Obligations then Outstanding.

5. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 120 days after the Trustee shall have given to FMPA written notice as provided in paragraph 3 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, removal, or any other reason whatsoever, the Holder of any Obligation may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

6. Any successor Trustee appointed under this Resolution shall signify its acceptance of such appointment by executing and delivering to FMPA and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties, and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless, at the Request of FMPA or the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title, and interest of such predecessor Trustee in and to any property held by it under this Resolution and shall pay over, transfer, assign, and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, FMPA shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties, and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the successor Trustee shall give written notice thereof to each Credit Facility Issuer and the Holders of all Outstanding Obligations.

7. Any successor Trustee appointed under the provisions of this Section shall be a commercial bank with trust powers, trust company, or national banking association with trust powers, having a combined capital and surplus of at least \$50,000,000 (if there be such a bank, trust company, or national banking association willing and able to accept the appointment on reasonable and customary terms), or primary capital (i.e., equity minus reserves) equal to or greater than \$75,000,000 and shall be subject to supervising or examination by federal or state authority. If such bank, trust company, or national banking association publishes a report of condition at least

annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this paragraph the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be qualified in accordance with the provisions of this paragraph, the Trustee shall resign immediately in the manner and with the effect specified in this Section.

**SECTION 9.02**      Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion, or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its municipal corporate trust business, provided such company shall qualify under Section 9.01 hereof, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

**SECTION 9.03**      Recitals and Representations; Responsibilities of the Trustee. The recitals, statements, and representations contained in this Resolution, or in any Obligations shall be taken and construed as made by and on the part of FMPA and not by the Trustee, and the Trustee neither assumes nor shall be under any responsibility for the correctness of the same.

The Trustee makes no representations as to the validity or sufficiency of this Resolution or of any Obligations issued hereunder or in respect of the security afforded by this Resolution, and the Trustee shall incur no responsibility in respect thereof. Except as otherwise expressly provided in this Resolution, the Trustee shall be under no responsibility or duty with respect to: (i) the issuance of the Obligations for value; (ii) the application of the proceeds thereof except as to the extent that such proceeds are received by it in its capacity as Trustee; or (iii) the application of any moneys paid to FMPA or others in accordance with this Resolution except as to the application of any moneys paid to it in its capacity as Trustee. The Trustee shall not be liable in connection with the performance of its duties and obligations hereunder except for its own negligence or willful misconduct.

**SECTION 9.04**      Trustee Not Required to Take Action Unless Indemnified. Except as expressly required herein or in a Supplemental Resolution, the Trustee shall not be required to institute any suit, action, or other proceeding, or to take any steps in the execution of the trusts hereby created or in the enforcement of any Loan Agreement, nor shall the Trustee be deemed liable for failure to take any such action, unless and until it shall have been indemnified to its satisfaction against any and all reasonable costs, expenses, outlays, counsel fees, and other reasonable disbursements, including its own reasonable fees, and against all liability and damages. Notwithstanding any other provision set forth herein, the Trustee shall be under no duty to expend its own funds for any reason. The Trustee may, nevertheless, begin any suit, or appear in and defend any suit, or do anything else in its judgment properly to be done by it as the Trustee, without prior assurance of indemnity, and in such case the Trustee shall be entitled to reimbursement for all reasonable costs, expenses, outlays, counsel fees, and other reasonable disbursements, including its own reasonable fees, and for all liability and damages suffered by the Trustee in connection therewith, except any liability arising from or related to the Trustee's negligence or willful misconduct. If the Trustee begins, appears in, or defends any such suit, the Trustee may reimburse itself from any surplus moneys on hand and available therefor in accordance herewith in any fund or account created by its Resolution; provided, however, that upon the occurrence of



an Event of Default, the Trustee shall have a first claim upon the amount recovered for payment of its reasonable costs, expenses, outlays, counsel fees, and other reasonable disbursements incurred to the extent provided in Section 9.07 hereof. Notwithstanding the foregoing provisions of this Section, the Trustee shall not be entitled to indemnification prior to making any demand for payment under any Credit Facility in accordance with the terms thereof and of this Resolution.

**SECTION 9.05**      Employment of Experts. The Trustee may employ as its agents such attorneys at law, certified public accountants, and recognized authorities in their fields (who are not employees of the Trustee), as it may deem reasonably necessary to carry out any of its obligations hereunder, and shall be reimbursed for all reasonable expenses and charges in so doing.

The Trustee may consult with Counsel and the written advice of such Counsel and any opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or not taken by the Trustee hereunder in good faith and in reliance thereon.

**SECTION 9.06**      Reliance Upon Documents. The Trustee may rely upon and shall be protected in acting or refraining from acting in reliance upon any document, including (without limitation) any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, or other paper or document reasonably believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties; provided, however, that in the case of any such document specifically required to be furnished to the Trustee hereby, the Trustee shall be under a duty to examine the same to determine whether or not it conforms to the requirements hereof. The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit. Whenever, in the administration hereof, Trustee shall deem it desirable that a matter be proved or established prior to taking or not taking any action hereunder, the Trustee may rely upon any document provided for in this Section (unless other evidence be specifically prescribed herein).

**SECTION 9.07**      Fees, Charges, and Expenses of the Trustee. The Trustee shall be entitled to payment of its reasonable fees for services rendered hereunder (subject to any contract or agreement entered into by or on behalf of FMPA with respect thereto) and to reimbursement for all advances, legal fees, and other expenses reasonably and necessarily made or incurred by it in and about the execution of the trusts created by this Resolution and in and about the exercise and performance of the powers and duties of the Trustees hereunder and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful default of the Trustee). Upon the occurrence of an Event of Default, the Trustee shall have a right of payment prior to payment on account of any obligation from the amounts in any fund or account created by this Resolution for such fees, advances, legal fees, and expenses (other than any amount on deposit in the Interest Account or any moneys realized under any Credit Facility or Credit Facility Agreement).

**SECTION 9.08**      Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Resolution shall be retained in its possession and shall be subject at all reasonable times to the inspection of FMPA, any Holder, the Credit Facility Issuer,

and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES OF HOLDERS

**SECTION 10.01** Events of Default. If any one or more of the following events shall have occurred and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” for the Applicable Series of Obligations:

(a) default shall be made in payment of the principal of or interest on any Obligation of a Series when and as the same shall become due and payable;

(b) default shall be made in the performance or observance by FMPA of any other of the covenants, agreements, or conditions required to be performed or observed by FMPA pursuant to this Resolution or the Obligations of a Series, and such default shall continue for a period of 30 days after written notice thereof to FMPA specifying such default by Holders of not less than 25% of the Obligations of the Series to which such default relates then outstanding; and

(c) if (i) FMPA shall be adjudicated a bankrupt or become subject to an order for relief under federal bankruptcy law; (ii) FMPA shall institute a proceeding seeking an order for relief under federal Bankruptcy law or seeking to be adjudicated a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment, or composition of it or all of its debts under Florida bankruptcy or insolvency law; (iii) with the consent of FMPA, there shall be appointed a receiver, liquidator, or similar official for FMPA under federal bankruptcy law or under Florida bankruptcy or insolvency law; or (iv) without the application, approval, or consent of FMPA, a receiver, trustee, liquidator, or similar official shall be appointed for FMPA under federal bankruptcy law or under Florida bankruptcy or insolvency law, or a proceeding described in clause (ii) above shall be instituted against FMPA and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of 60 consecutive days; provided, however, that no such proceeding, order, adjudication, or appointment referred to in the preceding items (i) through (iv) of this paragraph (c) affecting only assets of FMPA pledged for the benefit of the holders of bonds or other obligations of FMPA in connection with a default under such bonds of a series or other obligations shall give rise to an Event of Default pursuant to this paragraph (c); or

(d) if (i) FMPA shall make an assignment for the benefit of creditors, (ii) FMPA shall apply for or seek, the appointment of a receiver, custodian, trustee, examiner, liquidator, or similar official for it or any substantial part of its property; (iii) FMPA shall fail to file an answer or other pleading denying the material allegations of any proceeding filed against it described under clause (ii) of paragraph (c) of this Section; (iv) FMPA shall take any action to authorize or effect any of the actions set forth in paragraph (c) or (d) of this Section; (v) FMPA shall fail to contest in good faith any appointment or proceeding described in paragraph (c) or (d) of this Section; or (vi) without the application, or approval or consent of FMPA, a receiver, trustee, examiner, liquidator, or similar official shall be

appointed for any substantial part of FMPA's property and such appointment shall continue undischarged or such proceedings shall continue undismissed or unstayed for a period of 30 consecutive days; provided, however, that no such proceeding, order, adjudication, or appointment referred to in the preceding items (i) through (vi) of this paragraph (d) affecting only assets of FMPA pledged for the benefit of the holders of Obligations of any Series in default or other obligations of FMPA in connection with the default under such Obligations or other obligations shall give rise to an Event of Default pursuant to this paragraph (d); or

(e) such other event in connection with a Series of Obligations as is specified in the Applicable Supplemental Resolution or Credit Facility with respect to such Series of Obligations.

Notwithstanding the foregoing provisions of this Section, if the Credit Facility Agreement so requires, no Event of Default specified in this Section shall be deemed to have occurred with respect to a particular Series of Obligations so long as the Applicable Credit Facility Issuer shall not have failed to honor any demand for payment made under the Applicable Credit Facility for such Series of Obligations in accordance with its terms.

**SECTION 10.02** Acceleration of Obligations; Remedies. With respect to a particular Series of Obligations, if (A) an Event of Default described in Section 10.01(a) shall occur for any reason other than the failure of a Project Participant to make a Loan Repayment or (B) an Event of Default as described in Sections 10.01(b), 10.01(c), 10.01(d) and 10.01(e) shall occur, then, unless as otherwise provided in a Supplemental Resolution relating to a particular Series of Obligations, the Trustee may, and at the written request of the Holders of not less than 25% in aggregate principal amount of the outstanding Obligations of such Series of Obligations, shall, by telephonic notice to FMPA (promptly confirmed in writing) declare the principal of all Obligations of such Series then Outstanding, to be due and payable. At the expiration of five days from the giving of notice of such declaration, such principal, together with the interest accrued thereon, shall become and be immediately due and payable, anything in this Resolution, in the Applicable Supplemental Resolution or in the Obligations of such Series relates to the contrary notwithstanding. Upon any such declaration, the Trustee shall forthwith give notice thereof to FMPA, the Project Participants, and the Applicable Credit Facility Issuer and each Rating Agency, if any, then rating such Obligation.

Except as otherwise provided in a Supplemental Resolution relating to a particular Series of Obligations, with respect to a particular Series of Obligations, if an Event of Default described in Section 10.01(a) shall occur as a result of the failure of a Project Participant to make a Loan Repayment, then the Trustee may, and at the written request of the Holders of not less than 25% in aggregate principal amount of the outstanding Obligations of such Series shall, by telephonic notice to FMPA (promptly confirmed in writing) declare a pro rata portion of principal amount of the Obligations of such Series Outstanding in an amount equal to the principal amount of the Applicable Loan or Loans of the Project Participant that has failed to make such Loan Repayment or Repayments, to be due and payable. At the expiration of five days from the giving of notice of such declaration, such principal, together with the interest accrued thereon, shall become and be immediately due and payable, anything in this Resolution, in the Applicable Supplemental Resolution, or in the Obligations of such Series to the contrary notwithstanding. Upon any such

declaration, the Trustee shall forthwith give notice thereof to FMPA, the Project Participants, and the Applicable Credit Facility Issuer and each Rating Agency then rating such Obligation.

At any time after all or a portion of the principal of the Obligations of such Series shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action, or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Resolution, the Trustee, by written notice to FMPA, may annul such declaration and its consequences if: (i) moneys shall have accumulated in the Applicable Debt Service Fund sufficient to pay all arrears of interest, if any, upon all or the applicable portion of the Outstanding Obligations of such Series (except the interest accrued on such Obligations since the last Interest Payment Date) and the principal or the purchase price then due on all Obligations of such Series (except the principal on any such Obligations due solely as a result of any such declaration of acceleration); (ii) moneys shall have accumulated and be available sufficient to pay all amounts then due to the Applicable Credit Facility Issuer; (iii) moneys shall have accumulated and be available sufficient to pay the charges, compensation, expenses, disbursements, advances, and liabilities of the Trustee; and (iv) every other default known to the Trustee in the observance or performance of any covenant, condition, or agreement contained in the Obligations of such Series, in this Resolution or, in the Applicable Supplemental Resolution shall have been remedied to the satisfaction of the Trustee and the Applicable Credit Facility Issuer. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

Upon the occurrence of an Event of Default, the Trustee shall also have the following rights and remedies:

(a) the Trustee may pursue any available remedy at law or in equity or by statute to enforce the payment of the principal of and interest on the Obligations of such Series then Outstanding, including (without limitation) enforcement of any rights of FMPA or the Trustee under the Applicable Loan Agreements;

(b) the Trustee by action or suit in equity may require FMPA to account as if it were the trustee of an express trust for the Holders of Obligations of such Series and may take such action with respect to the Applicable Loan Agreements as the Trustee deems necessary or appropriate and in the best interest of the Holders of Obligations of such Series, subject to the terms of such Loan Agreements; and

(c) upon the filing of a suit or other commencement of judicial proceedings to enforce any rights of the Trustee and of the Holders of Obligations of such Series under this Resolution and the Applicable Supplemental Resolution of Obligations of a particular Series, the Trustee will be entitled, as a matter of right to the appointment of a receiver or receivers of the Applicable Trust Estate and the issues, earnings, income, products, and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

If an Event of Default shall have occurred with respect to any or a portion of a Series of Obligations, and if requested so to do by the Holders of a majority in principal amount of the obligations of such Series then Outstanding, upon being indemnified to its reasonable satisfaction therefor, the Trustee shall be obligated to exercise such one or more of the rights, remedies, and

powers conferred by this Section as the Trustee shall deem most expedient in the interests of the Holders of Obligations of such Series.

No right or remedy by the terms of this Resolution and the Applicable Supplemental Resolution conferred upon or reserved to the Trustee (or to the Holders of Obligations of a particular Series) is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and shall be in addition to any other right or remedy given to Trustee or to such Holders hereunder or under the Applicable Supplemental Resolution or now or hereafter existing at law or in equity or by statute. The assertion or employment of any right or remedy shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy.

No delay or omission to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right or remedy may be exercised from time to time and as often as may be deemed expedient.

No waiver of any Event of Default hereunder, whether by the Trustee or by the Holders of any Series of Obligations in default, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

**SECTION 10.03** Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Holders of Obligations of a particular Series is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised at any time or from time to time, and as often as may be necessary, by the Holders of any one or more of the Obligations of a particular Series.

**SECTION 10.04** Suits at Law or in Equity. In case one or more Events of Default shall occur with respect to a particular Series of Obligations, then and in every such case the Holders of any Obligations of a particular Series at the time Outstanding shall be entitled to proceed to protect and enforce such Holder's rights by such appropriate judicial proceeding as such Holders shall deem most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Resolution, or in aid of the exercise of any power granted in this Resolution, or to enforce any other legal or equitable right vested in the Holders of the Obligations of a particular Series by this Resolution or by law.

**SECTION 10.05** Right of Holders of a Series of Obligations to Direct Proceedings with Respect to that Series. Anything in this Resolution or the Applicable Supplemental Resolution to the contrary notwithstanding, the Holders of a majority in aggregate principal amount of Obligations of any Series in default then Outstanding shall have the right, subject to the rights of the Applicable Credit Facility Issuer, at any time during the continuance of an Event of Default, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method, and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Resolution and the Applicable Supplemental Resolution, or for the appointment of a receiver or any other proceedings hereunder; provided, however, that such direction shall not be otherwise than in accordance with the provisions of law

and of this Resolution and the Applicable Supplemental Resolution and that the Trustee shall have the right to decline to follow any such direction that in the opinion of the Trustee would be unjustly prejudicial to itself or the Holders of such Series of Obligations not parties to such direction.

**SECTION 10.06** Remedies Vested in the Trustee. All rights of action (including, without limitation, the right to file proofs of claims) under this Resolution and the Applicable Supplemental Resolution or under any Series of Obligations in default may be enforced by the Trustee without the possession of any of the Obligations of such Series or the production thereof in any trial or other proceeding related thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee for the equal and ratable benefit of the Holders of all the Outstanding Obligations of a particular Series without the necessity of joining as plaintiffs or defendants any Holders of such Obligations.

**SECTION 10.07** Rights and Remedies of Holders of Obligations of a Particular Series. Except as otherwise provided in a Supplemental Resolution relating to a particular Series of Obligations, no Holder of an Obligation of a Series of Obligations or portion of Obligations in default shall have any right to institute any suit, action, or proceeding at law or in equity for the enforcement of this Resolution and the Applicable Supplemental Resolution or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (i) an Event of Default shall have occurred; (ii) the owners of not less than 25% in aggregate principal amount of the Obligations of such Series then Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the remedies hereinbefore granted or to institute such action, suit, or proceeding in its own name; (iii) the Holders of such Series of Obligations shall have offered to the Trustee reasonable indemnity against the costs, expenses, and liabilities to be incurred in compliance with such request; and (iv) the Trustee shall have refused, or for 60 days after receipt of such request and offer of indemnification shall have failed to exercise the remedies hereinbefore granted, or to institute such action, suit, or proceeding in its own name, and such request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Resolution, and to any action or cause of action for the enforcement of this Resolution, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Holders of the Series of Obligations shall have any right in any manner whatsoever to effect, disturb, or prejudice the lien of this Resolution by his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the Holders of all Obligations of a particular Series then Outstanding; provided, however, that nothing contained in this Resolution shall affect or impair the right of the Holder of any Obligation of a particular Series to enforce the payment of the principal of and interest on, or the purchase price of, such Obligation at and after the maturity thereof, or the obligation of FMPA to pay the principal of and interest on, or the purchase price of, such Obligation at and after the maturity thereof, or the obligation of FMPA to pay the principal of and interest on each of the Obligations of a particular Series issued hereunder to the respective Holders thereof at the time and place, from the source and in the manner provided in the Obligations of such Series and in this Resolution and the Applicable Supplemental Resolution.

**SECTION 10.08** Termination of Proceedings. In case the Trustee or a Holder of an Obligation of a particular Series in default shall have proceeded to enforce any right under this Resolution and the Applicable Series Resolution by the appointment of a receiver or otherwise,

and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or such Holder, then and in every such case FMPA, the Trustee, and the Holders of such Obligations of such Series shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, and powers of the Trustee and the Holders shall continue as if no such proceedings have been taken.

**SECTION 10.09** Waivers of Events of Default. Except as otherwise provided in a Supplemental Resolution relating to a particular Series of Obligations, the Trustee may and, upon the written request of the Holders of 25% in aggregate principal amount of all Obligations of a particular Series in default then Outstanding, shall waive any Event of Default which in its opinion shall have been remedied before the completion of the enforcement of any remedy under this Resolution or the Applicable Supplemental Resolution; but no such waiver shall extend to any subsequent or other Event of Default, or impair any rights consequent thereon.

**SECTION 10.10** Notice of Certain Defaults; Opportunity of FMPA to Cure Defaults. Except as otherwise provided in a Supplemental Resolution relating to a particular Series of Obligations, anything herein to the contrary notwithstanding, no Default under Section 10.01(b) hereof shall constitute an Event of Default until actual notice of such Default shall be given to FMPA by registered or certified mail by the Trustee or by the Holders of not less than 25% in aggregate principal amount of all Obligations of a Series in default then Outstanding and FMPA shall not have corrected the Default or caused the Default to be corrected within 30 days following the giving of such notice; provided, however, that if the default be such that it is correctable but cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by FMPA within the applicable period and diligently pursued until the Default is corrected.

FMPA hereby grants to the Trustee full authority for the account of FMPA to perform any covenant or obligation alleged in any alleged default concerning which notice is given to FMPA under the provisions of this Section in the name and stead of FMPA with full power to do any and all things and acts to the same extent that FMPA could do and perform any such things and acts and with power of substitution.

**SECTION 10.11** Application of Moneys. All moneys constituting part of the Applicable Trust Estate, including moneys received by the Trustee pursuant to any right or remedy given or action taken under the provisions of this Article upon any acceleration of the due date for the payment of the principal of and interest on the Obligations of any Series or portion of any Series in default (including, without limitation, moneys received by virtue of action taken under provisions of any Applicable Loan Agreement; however, if only a portion of a Series of Obligations is in default, then not including any amount on deposit in the Interest Account in the Applicable Debt Service Fund or the Applicable Debt Service Reserve Account in the Applicable Debt Service Reserve Fund that relates to a Project Participant whose Loan Agreement is not in default) after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities, and advances incurred or made by the Trustee and any other moneys owed to the Trustee in connection with such Series of Obligations or portion of such Series hereunder, shall except as otherwise provided in a Supplemental Resolution, Loan Agreement or Credit Facility be applied (i) first, to the payment of the principal and interest then due and unpaid upon the Obligations of such Series or portion of such Series is in default, without preference or priority of principal over interest or of interest over principal, or of any installment

of interest over any other installment of interest, or of any Obligation of such Series over any other Obligation of such Series, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto, without any discrimination or privilege and (ii) after the payment required by clause (i) above, to the payment of any amounts due under the Applicable Credit Facility Agreement.

Except as otherwise provided in a Supplemental Resolution relating to a particular Series of Obligations, whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application in the future. Except as otherwise provided in a Supplemental Resolution relating to a particular Series of Obligations, whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. Except as otherwise provided in a Supplemental Resolution relating to a particular Series of Obligations, the Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Obligation of a Series in default until such Obligation shall be presented to the Trustee for appropriate endorsement or for cancellation (as the case may be).

**SECTION 10.12** Rights of Credit Facility Issuer upon Occurrence of Event of Default. If an Event of Default described in Section 10.01 of this Resolution or in the Applicable Supplemental Resolution for any Series of Obligations or portion thereof shall have occurred, the Applicable Credit Facility Issuer, if any, shall have the right, so long as there exists no default by the Credit Facility Issuer in the performance of its obligations under the Credit Facility or the Credit Facility Agreement, to the extent and in the manner provided in the Applicable Supplemental Resolution, to direct the time, method, and place of conducting all proceedings and actions to be taken in connection with the enforcement of the terms and conditions of this Resolution and the Applicable Supplemental Resolution and to control and direct all actions or waivers required to or permitted to be taken by the Trustee, FMPPA, or the Holders of the Series of Obligations for which the Credit Facility Issuer provides credit or liquidity support under this Resolution.

## ARTICLE XI

### SUPPLEMENTAL RESOLUTIONS; AMENDMENTS

**SECTION 11.01** Supplemental Resolutions Effective Upon Filing With the Trustee. For any one or more of the following purposes and at any time or from time to time, a Supplemental Resolution of FMPPA may be adopted, which, upon the filing with the Trustee of a copy thereof certified by an Authorized Officer of FMPPA, shall be fully effective in accordance with its terms:

- (i) To close this Resolution against, or provide limitations and restrictions in addition to the limitations and restrictions contained in this Resolution on, the authentication and delivery of a Series of Obligations;



(ii) To add to the covenants and agreements of FMPA in this Resolution, other covenants and agreements to be observed by FMPA which are not contrary to or inconsistent with this Resolution as theretofore in effect;

(iii) To add to the limitations and restrictions in this Resolution, other limitations and restrictions to be observed by FMPA, including limitations and restrictions on the adoption of Supplemental Resolutions, which are not contrary to or inconsistent with this Resolution as theretofore in effect;

(iv) To add to the Events of Default in this Resolution one or more additional Events of Default with respect to a particular Series of Obligations;

(v) To confirm, as further assurance, any security interest, pledge, or assignment under, and the subjection to any security interest, pledge, or assignment created or to be created by, this Resolution of the Revenues or of any other moneys, securities, or funds;

(vi) To modify any of the provisions of this Resolution in any other respect whatever, provided that such modification shall be, and be expressed to be, effective only after all Obligations Outstanding at the date of the adoption of such Supplemental Resolution shall cease to be Outstanding;

(vii) To modify any of the provisions of this Resolution in any respect, provided that the modifications affect only a Series of Obligations issued subsequent to the date of such modifications;

(viii) To comply with the provisions of any federal or state securities law, including, without limitation, the Trust Indenture Act of 1939, as amended, or to comply with Section 103 of the Internal Revenue Code of 1986, as amended, replaced, or substituted;

(ix) To provide the form in which any Obligations in bearer form or book-entry-only form shall be issued;

(x) To appoint the Trustee or a successor Trustee, Registrar and Paying Agent;  
and

(xi) To authorize Obligations of a Series, Commercial Paper Notes of a Series, and, in connection therewith, specify and determine the matters and things referred to in Article II, and also any other matters and things relative to such Obligations including whether to issue Obligations in book-entry-only form and Commercial Paper Notes which are not contrary to or inconsistent with this Resolution as theretofore in effect, or to amend, modify or rescind any such authorization, specification, or determination contained in Article II at any time prior to the first authentication and delivery of such Obligations and Commercial Paper Notes.

**SECTION 11.02** Supplemental Resolutions Effective Upon Consent of Trustee.  
For any one or more of the following purposes and at any time or from time to time, a Supplemental Resolution may be adopted, which, upon (i) the filing with the Trustee of a copy thereof certified

by an Authorized Officer of FMPA, and (ii) the filing with FMPA of an instrument in writing made by the Trustee consenting thereto, shall be fully effective in accordance with its terms:

(i) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provisions in this Resolution;

(ii) To insert such provisions clarifying matters or questions arising under this Resolution as are necessary or desirable and are not contrary to or inconsistent with this Resolution as theretofore in effect; or

(iii) To make any other modification or amendment of this Resolution which the Trustee shall in its sole discretion determine will not have a material adverse effect on the interests of Holders of the Obligations of a particular Series.

**SECTION 11.03** General Provisions. This Resolution shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article XI. Nothing contained in this Article XI shall affect or limit the right or obligation of FMPA to adopt, make, do, execute, acknowledge or deliver any resolution, act, or other instrument pursuant to the provisions of this Resolution or the right or obligation of FMPA to execute and deliver to any Trustee any instrument which elsewhere in this Resolution it is provided shall be delivered to said Trustee.

1. Any Supplemental Resolution referred to and permitted or authorized by Section 11.01 or 11.02 may be adopted by FMPA without the consent of any of the Holders of the Obligations, but shall become effective only on the conditions, to the extent and at the time provided in said Sections, respectively. The copy of every Supplemental Resolution when filed with the Trustee shall be accompanied by an opinion of Counsel stating that such Supplemental Resolution has been duly and lawfully adopted in accordance with the provisions of this Resolution, is authorized or permitted by this Resolution, and is valid and binding upon FMPA in accordance with its terms.

2. The Trustee is hereby authorized to accept the delivery of a certified copy of any Supplemental Resolution referred to and permitted or authorized by Sections 11.01 or 11.02 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in taking such action, shall be fully protected in relying on an opinion of Counsel that such Supplemental Resolution is authorized or permitted by the provisions of this Resolution.

3. No Supplemental Resolution shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto.

4. In the event of any inconsistent provision between this Resolution and an Applicable Supplemental Resolution, the terms of such Applicable Supplemental Resolution shall control.

**SECTION 11.04** Effect of Supplemental Resolutions. Upon the effective date of any Supplemental Resolution adopted in accordance with the terms hereof, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations under this Resolution of FMPA, the Trustee and all Holders of Obligations Outstanding shall thereafter be determined, exercised, and enforced hereunder subject in all

respects to such modification and amendment, and all the terms and conditions of any such Supplemental Resolution shall be deemed to be part of the terms and conditions of this Resolution for any and all purposes.

**SECTION 11.05** Amendment of Loan Agreements. FMPA shall not supplement, amend, modify, or terminate any Loan Agreement, or consent to any such supplement, amendment, modification, or termination, without the written consent of the Applicable Credit Facility Issuer, or, if there be at such time no Applicable Credit Facility Issuer for the Applicable Obligations, the Trustee, which consent shall not be unreasonably withheld. If no Credit Facility is in effect, the Trustee shall give such written consent only if (a) in the opinion of the Trustee, after such supplement, amendment, modification, or termination is effective, such Loan Agreement shall continue to meet the requirements of Article VI of this Resolution, or (b) the Trustee first obtains the written consent of the Holders of a majority in aggregate principal amount of the Outstanding Obligations of the Series affected by the amendment of the Loan Agreement to such supplement, amendment, modification, or termination.

**SECTION 11.06** Amendment of Credit Facility. The Trustee shall notify the Holders of a Series of Obligations of any proposed amendment of any Applicable Credit Facility related thereto that would adversely affect the interests of the Holders of Obligations of such Series and the Trustee may consent thereto upon evidence of the written consent of the Holders of at least 66 2/3% in aggregate principal amount of the Series of Obligations then Outstanding that would be affected by the action proposed to be taken; provided, that the Trustee shall not, without the unanimous consent of the Holders of a Series of Obligations then Outstanding, consent to any amendment of any Credit Facility related thereto that would decrease the amount payable thereunder to an amount less than the aggregate principal amount of the Series of Obligations Outstanding secured by such Credit Facility. The Trustee shall notify each of the Rating Agencies, if any, then rating the Obligations of such Series, if any, of any proposed amendment of any Credit Facility.

**SECTION 11.07** Consent of Credit Facility Issuer. FMPA shall not adopt a Supplemental Resolution or enter into or consent to any amendment or termination of an Applicable Credit Facility which becomes effective prior to the expiration of such Credit Facility without the prior written consent of such Credit Facility Issuer (so long as such Credit Facility Issuer shall have not failed to honor any drawing under such Credit Facility in accordance with the terms thereof).

**SECTION 11.08** Notice of Amendments. Promptly upon the adoption by FMPA of any Supplemental Resolution amending this Resolution or the approval by FMPA and the Trustee of any amendment of any Credit Facility, the Trustee shall mail a notice, setting forth in general terms the substance thereof, to the Holders of the Series of Obligations affected by such amendment and each of the Rating Agencies then rating such Obligations of such Series. Any failure to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Resolution.

## ARTICLE XII

### MISCELLANEOUS

**SECTION 12.01** Defeasance of Obligations Generally. 1. If FMPA shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Obligations of any Series the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated in the Obligations and in this Resolution and all amounts due to the Applicable Credit Facility Issuer, then the pledge of the Applicable Trust Estate and all covenants, agreements, and other obligations of FMPA to Holders of such Series, shall thereupon cease, terminate, and become void and be discharged and satisfied. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by FMPA to be prepared and filed with FMPA and, upon the request of FMPA, shall execute and deliver to FMPA all such instruments as may be desirable to evidence such discharge and satisfaction, and the Fiduciaries shall pay over or deliver to FMPA all monies or securities held by them pursuant to this Resolution which are not required for the payment of principal or Redemption Price, if applicable, on Obligations of any Series not theretofore surrendered for such payment or redemption. If FMPA shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Outstanding Obligations of any Series the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, such Obligations shall cease to be entitled to any lien, benefit, or security under this Resolution, and all covenants, agreements, and obligations of FMPA to the Holders of such Obligations shall thereupon cease, terminate, and become void and be discharged and satisfied.

2. Obligations or interest installments for the payment or redemption of which monies shall have been set aside and shall be held in trust by the Paying Agents (through deposit by FMPA of funds for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in subsection 1 of this Section. Subject to the provisions of subsection 3 through subsection 6 of this Section, any Outstanding Obligations of any Series shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection 1 of this Section if (a) in case any of said Obligations are to be redeemed on any date prior to their maturity, FMPA shall have given to the Trustee instructions accepted in writing by the Trustee to mail as provided in Article IV notice of redemption of such Obligations (other than Obligations which have been purchased by the Trustee at the direction of FMPA or purchased or otherwise acquired by FMPA and delivered to the Trustee as hereinafter provided prior to the mailing of such notice of redemption) on said date; (b) there shall have been deposited with the Trustee either monies (including monies withdrawn and deposited pursuant to subsection 4 of Section 5.06 and subsection 2 of Section 5.07) in an amount which shall be sufficient, or Defeasance Securities (including any Defeasance Securities issued or held in book-entry-only form on the books of the Department of the Treasury of the United States) the principal of and the interest on which when due will provide monies which, together with the monies, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal or Redemption Price, if applicable, and interest due and to become due on said Obligations on or prior to the redemption date or maturity date thereof, as the case may be; and (c) in the event said Obligations are not by their terms subject to redemption within the next succeeding 60 days, FMPA shall have given the Trustee in form satisfactory to it instructions to mail, as soon as practicable, a notice to the Holders of such Obligations at their last addresses appearing upon the registry books at the close of business

on the last business day of the month preceding the month for which notice is mailed that the deposit required by (b) above has been made with the Trustee and that said Obligations are deemed to have been paid in accordance with this Section 12.01 and stating such maturity or redemption date upon which monies are expected, subject to the provisions of subsection 6 of this Section 12.01, to be available for the payment of the principal or Redemption Price, if applicable, on said Obligations (other than Obligations which have been purchased by the Trustee at the direction of FMPA or purchased or otherwise acquired by FMPA and delivered to the Trustee as hereinafter provided prior to the mailing of the notice of redemption referred to in clause (a) hereof). Any notice of redemption mailed pursuant to the preceding sentence with respect to Obligations which constitute less than all of the Outstanding Obligations of any maturity within a Series shall specify the letter and number or other distinguishing mark of each such Obligation. The Trustee shall, as and to the extent necessary, apply monies held by it pursuant to this Section 12.01 to the retirement of said Obligations in amounts equal to the unsatisfied balances (determined as provided in Section 5.09 or as otherwise provided in a Supplemental Resolution) of any Sinking Fund Installments with respect to such Obligations, all in the manner provided in this Resolution. The Trustee shall, if so directed by FMPA (i) prior to the maturity date of Obligations deemed to have been paid in accordance with this Section 12.01 which are not to be redeemed prior to their maturity date or (ii) prior to the mailing of the notice of redemption referred to in clause (a) above with respect to any Obligations deemed to have been paid in accordance with this Section 12.01 which are to be redeemed on any date prior to their maturity, apply monies deposited with the Trustee in respect of such Obligations and redeem or sell Defeasance Securities so deposited with the Trustee and apply the proceeds thereof to the purchase of such Obligations and the Trustee shall immediately thereafter cancel all such Obligations so purchased; provided, however, that the monies and Defeasance Securities remaining on deposit with the Trustee after the purchase and cancellation of such Obligations shall be sufficient to pay when due the Principal Installment or Redemption Price, if applicable, and interest due or to become due on all Obligations in respect of which such monies and Defeasance Securities are being held by the Trustee on or prior to the redemption date or maturity date thereof, as the case may be. If, at any time (i) prior to the maturity date of Obligations deemed to have been paid in accordance with Section 12.01 which are not to be redeemed prior to their maturity date or (ii) prior to the mailing of the notice of redemption referred to in clause (a) with respect to any Obligations deemed to have been paid in accordance with this Section 12.01 which are to be redeemed on any date prior to their maturity, FMPA shall purchase or otherwise acquire any such Obligations and deliver such Obligations to the Trustee prior to their maturity date or redemption date, as the case may be, the Trustee shall immediately cancel all such Obligations so delivered; such delivery of Obligations to the Trustee shall be accompanied by directions from FMPA to the Trustee as to the manner in which such Obligations are to be applied against the obligation of the Trustee to pay or redeem Obligations deemed paid in accordance with this Section 12.01. The directions given by FMPA to the Trustee referred to in the preceding sentences shall also specify the portion, if any, of such Obligations so purchased or delivered and cancelled to be applied against the obligation of the Trustee to pay Obligations deemed paid in accordance with this Section 12.01 upon their maturity date or dates and the portion, if any, of such Obligations so purchased or delivered and cancelled to be applied against the obligation of the Trustee to redeem Obligations deemed paid in accordance with this Section 12.01 on any date or dates prior to their maturity. In the event that on any date as a result of any purchases, acquisitions, and cancellations of Obligations as provided in this Section 12.01 the total amount of monies and Defeasance Securities remaining on deposit with the Trustee under this Section 12.01 is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of the remaining Obligations in order to satisfy clause (b)

of this subsection 2 of Section 12.01, the Trustee shall, if requested by FMPA, pay the amount of such excess to FMPA free and clear of any trust, lien, security interest, pledge, or assignment securing said Obligations or otherwise existing under this Resolution. Except as otherwise provided in this subsection 2 of Section 12.01 and in subsection 3 through subsection 6 of this Section 12.01, neither Defeasance Securities nor monies deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or Redemption Price, if applicable, and interest on said Obligations; provided that any cash received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, (A) to the extent such cash will not be required at any time for such purpose, shall be paid over to FMPA as received by the Trustee, free and clear of any trust, lien, or pledge securing said Obligations or otherwise existing under this Resolution, and (B) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Defeasance Securities maturing at times and in amounts sufficient to pay when due the principal or Redemption Price, if applicable, and interest to become due on said Obligations on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to FMPA, as received by the Trustee, free and clear of any trust, lien, security interest, pledge, or assignment securing said Obligations or otherwise existing under this Resolution. For the purposes of this Section, upon compliance with the provisions of subsection 5 of this Section 12.01, Defeasance Securities may include securities which are subject to redemption prior to maturity at the option of the issuer thereof on a specified date or dates.

3. For purposes of determining whether Variable Interest Rate Obligations shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of monies, or Defeasance Securities and monies, if any, in accordance with the second sentence of subsection 2 of this Section 12.01, the interest to come due on such Variable Interest Rate Obligations on or prior to the maturity date or redemption date thereof, as the case may be (which maturity or redemption date shall not be later than the first date following the date of such deposit on which the Variable Interest Rate Obligations are subject to mandatory or optional tender for purchase), shall be calculated at the maximum rate permitted by the terms thereof; provided, however, that if on any date, as a result of such Variable Interest Rate Obligations having borne interest at less than such maximum rate for any period, the total amount of monies and Defeasance Securities on deposit with the Trustee for the payment of interest on such Variable Interest Rate Obligations is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of such Variable Rate Obligations in order to satisfy the second sentence of subsection 2 of this Section 12.01, the Trustee shall, if requested by FMPA, pay the amount of such excess to FMPA free and clear of any trust, lien, security interest, pledge, or assignment securing the Obligations or otherwise existing under this Resolution.

4. Defeasance Securities described in the last sentence of subsection 2 of Section 12.01 may be included in the Defeasance Securities deposited with the Trustee in order to satisfy the requirements of clause (b) of subsection 2 of Section 12.01 only if the determination as to whether the monies and Defeasance Securities to be deposited with the Trustee in order to satisfy the requirements of such clause (b) would be sufficient to pay when due either on the maturity date thereof or, in the case of any Obligations to be redeemed prior to the maturity date thereof, on the redemption date or dates specified in any notice of redemption to be mailed by the Trustee or in the instructions to mail a notice of redemption provided to the Trustee in accordance with subsection 2 of Section 12.01, the principal and Redemption Price, if applicable, and interest on

the Obligations which will be deemed to have been paid as provided in subsection 2 of Section 12.01 is made both (i) on the assumption that the Defeasance Securities described in the last sentence of subsection 2 of this Section 12.01 were not redeemed at the option of the issuer prior to the maturity date thereof and (ii) on the assumptions that such Defeasance Securities would be redeemed by the issuer thereof at its option on each date on which such option could be exercised, that as of such date or dates interest ceased to accrue on such Defeasance Securities and that the proceeds of such redemption would not be reinvested by the Trustee.

5. In the event that after compliance with the provisions of subsection 4 of Section 12.01 the Defeasance Securities described in the last sentence of subsection 2 of Section 12.01 are included in the Defeasance Securities deposited with the Trustee in order to satisfy the requirements of clause (b) of subsection 2 of Section 12.01 and any such Defeasance Securities are actually redeemed by the issuer thereof prior to their maturity date, then the Trustee at the direction of FMPA, provided that the aggregate of the monies and Defeasance Securities to be held by the Trustee, taking into account any changes in redemption dates or instructions to give notice of redemption given to the Trustee by FMPA in accordance with subsection 7 of Section 12.01, shall at all times be sufficient to satisfy the requirements of clause (b) of subsection 2 of Section 12.01, shall reinvest the proceeds of such redemption in Defeasance Securities.

6. Notwithstanding any other provision hereof, FMPA may at the time of defeasance elect to retain the right to redeem or require the tender of any Obligations deemed paid pursuant to subsection 2 of this Section 12.01. The Trustee shall, at the direction of FMPA, select the Obligations or portions thereof that are deemed to have been paid in advance of the redemption of such Obligations.

7. In the event that after compliance with the provisions of subsection 5 of Section 12.01 the Defeasance Securities described in subsection 2 of Section 12.01 are included in the Defeasance Securities deposited with the Trustee in order to satisfy the requirements of clause (b) of subsection 2 of Section 12.01, then any notice of redemption to be mailed by the Trustee and any set of instructions relating to a notice of redemption given to the Trustee may provide, at the option of FMPA, that any redemption date or dates in respect of all or any portion of the Obligations to be redeemed on such date or dates may at the option of FMPA be changed to any other permissible redemption date or dates and that redemption dates may be established for any Obligations deemed to have been paid in accordance with this Section 12.01 upon their maturity date or dates at any time prior to the actual mailing of any applicable notice of redemption in the event that all or any portion of any Defeasance Securities described in subsection 2 of Section 12.01 have been called for redemption pursuant to an irrevocable notice of redemption or have been redeemed by the issuer thereof prior to the maturity date thereof; no such change of redemption date or dates or establishment of redemption date or dates may be made unless taking into account such changed redemption date or dates or newly established redemption date or dates the monies and Defeasance Securities deposited with the Trustee in connection with any reinvestment of redemption proceeds in accordance with subsection 5 of Section 12.01 pursuant to clause (b) of subsection 2 of Section 12.01 would be sufficient to pay when due the principal and Redemption Price, if applicable, and interest on all Obligations deemed to have been paid in accordance with subsection 2 of Section 12.01 which have not as yet been paid.

8. FMPA agrees that it will take no further action in connection with any of the transactions referred to in this Section 12.01 which will cause the Obligations to be “Arbitrage Bonds” within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder in effect on the date of the transaction and applicable to the transaction.

9. Anything in this Resolution to the contrary notwithstanding, any monies held by a Fiduciary in trust for the payment and discharge of any of the Obligations which remain unclaimed for six years after the date when such Obligations have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such monies were held by the Fiduciary at such date, or for six years after the date of deposit of such monies if deposited with the Fiduciary after the said date when such Obligations became due and payable, shall, at the written request of FMPA, be repaid by the Fiduciary to FMPA, as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Holders shall look only to FMPA for the payment of such Obligations; provided, however, that before being required to make any such payment to FMPA the Fiduciary shall, at the expense of FMPA, cause to be published at least twice, at an interval of not less than seven days between publications, in the Authorized Newspaper, a notice that said monies remain unclaimed and that, after a date named in said notice, which date shall not be less than 30 days after the date of the first publication of such notice, the balance of such monies then unclaimed will be returned to FMPA

**SECTION 12.02** Evidence of Signatures of Holders and Ownership of Obligations.

Any request, consent, revocation of consent, or other instrument which this Resolution may require or permit to be signed and executed by the Holders may be in one or more instruments of similar tenor, and shall be signed or executed by such Holders in person or by their attorneys appointed in writing. Proof of (i) the execution of any such instrument, or of an instrument appointing any such attorney, or (ii) the holding by any person of the Obligations shall be sufficient for any purpose of this Resolution (except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(b) The fact and date of the execution by any Holder or his attorney of such instruments may be proved by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature, guarantee, certificate, or affidavit shall also constitute sufficient proof of his authority.

(c) The amount of Obligations transferable by delivery held by any person executing any instrument as a Holder, the date of his holding such Obligations, and the numbers and other identification thereof, may be proved by a certificate, which need not be acknowledged or verified, in form satisfactory to the Trustee, executed by the Trustee or by a member of a financial firm or by an officer of a bank, trust company, insurance company, or financial corporation or other depository wherever situated, showing at the date therein mentioned that such person exhibited to such member or officer or had on



deposit with such depository the Obligations described in such certificate. Such certificate may be given by a member of a financial firm or by an officer of any bank, trust company, insurance company, or financial corporation or depository with respect to Obligations owned by it, if acceptable to the Trustee. In addition to the foregoing provisions, the Trustee may from time to time make such reasonable regulations as it may deem advisable permitting other proof of holding of Obligations transferable by delivery.

1. The ownership of Obligations registered otherwise than to bearer and the amount, numbers and other identification, and date of holding the same shall be proved by the registry books.

2. Any request of consent by the owner of any Obligation of a Series shall bind all future owners of such Obligation in respect of anything done or suffered to be done by FMPA or any Fiduciary in accordance therewith.

**SECTION 12.03** Money Held for Particular Obligations. The amounts held by any Fiduciary for the payment of the interest, principal, or Redemption Price due on any date with respect to particular Series of Obligations shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Holders of the Obligations of such Series entitled thereto.

**SECTION 12.04** Preservation and Inspection of Documents. All documents received by any Fiduciary under the provisions of this Resolution shall be retained in its possession and shall be subject at all reasonable times to the inspection of FMPA, any other Fiduciary, and any Holder and their agents and their representatives, any of whom may make copies thereof.

**SECTION 12.05** Parties Interested Herein. Nothing in this Resolution expressed or implied is intended or shall be construed to confer upon, or to give to, any person or corporation, other than FMPA, the Fiduciaries, any Credit Facility Issuer and the Holders of the Obligations, any right, remedy, or claim under or by reason of this Resolution or any covenant, condition, or stipulation thereof; and all the covenants, stipulations, promises, and agreements in this Resolution contained by and on behalf of FMPA shall be for the sole and exclusive benefit of FMPA, the Fiduciaries, any Credit Facility Issuer, and the Holders of the Obligations.

**SECTION 12.06** No Recourse on the Obligations. No recourse shall be had for the payment of the principal of or interest on a Series of the Obligations or for any claim based thereon or on this Resolution against any member or officer of FMPA or any person executing the Obligations of a particular Series.

**SECTION 12.07** Publication of Notice; Suspension of Publication.  
1. Any publication to be made under the provisions of this Resolution in successive weeks or on successive dates may be made in each instance upon any business day of the week and need not be made in the same Authorized Newspaper for any or all of the successive publications but may be made in a different Authorized Newspaper.

2. If, because of the temporary or permanent suspension of the publication or general circulation of any Authorized Newspaper or for any other reason, it is impossible or impractical to publish any notice pursuant to this Resolution in the manner herein provided, then such publication in lieu thereof as shall be made with the approval of the Fiduciary shall constitute a sufficient publication of such notice.

**SECTION 12.08** Severability of Invalid Provisions. If any one or more of the covenants or agreements provided in this Resolution on the part of FMPA or any Fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Resolution.

**SECTION 12.09** FMPA Protected in Acting in Good Faith. In the exercise of the powers of FMPA and its members, officers, employees, and agents under this Resolution, the Loan Agreements, the Credit Facility Agreements or any other document executed in connection with the Obligations, FMPA shall not be accountable to any Project Participant, the Trustee, Registrar, Paying Agent, any Credit Facility Issuer, or any Holder for any action taken or omitted by it or its members, officers, employees, and agents in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred.

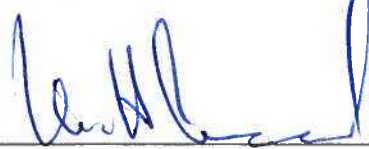
**SECTION 12.10** Holidays. Unless otherwise provided in a Supplemental Resolution relating to any Series of Obligations, if the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Resolution, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Trustee or the operational office of FMPA in Orlando, Florida, are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed with the same force and effect as if done on the nominal date provided in this Resolution, and no interest shall accrue for the period from and after such nominal date.

**SECTION 12.11** Effective Date. This Resolution shall take effect immediately after its adoption by the Board of Directors of FMPA and a filing of a copy thereof certified by the Secretary or the Assistant Secretary of said Board with the Trustee.

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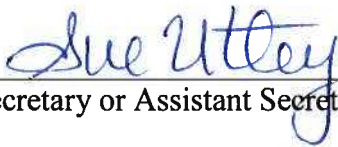
Approved and adopted by the Florida Municipal Power Agency on April 18, 2019.

**FLORIDA MUNICIPAL POWER AGENCY**



\_\_\_\_\_  
Chairman of the Board of Directors

ATTEST:



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

**EXHIBIT A**

**[FORM OF LOAN AGREEMENT<sup>1</sup>]**

**FLORIDA MUNICIPAL POWER AGENCY  
INITIAL POOLED LOAN PROJECT**

**LOAN AGREEMENT**

**AMONG**

**FLORIDA MUNICIPAL POWER AGENCY,  
AS AGENT FOR THE  
INITIAL POOLED LOAN PROJECT**

**AND**

**[NAME OF BORROWER]**

**AND**

**[NAME OF BANK]**

**DATED \_\_\_\_\_, 20\_\_**

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<sup>1</sup> This form of loan agreement contemplates that (i) FMPA will enter into an agreement with the Bank and that FMPA will loan the proceeds from moneys received by FMPA from the Bank to the Project Participant, (ii) FMPA will administer the Pooled Loan Program, and (iii) FMPA will deliver bonds or notes to the Bank in a direct purchase transaction to evidence the repayment obligation of FMPA under the agreement with the Bank which payments will be made solely from the Loan Repayments made under this loan agreement with the Bank.

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## LOAN AGREEMENT

This **LOAN AGREEMENT**, dated as of the commencement date set forth on Exhibit A attached hereto and made a part hereof (the “Loan Agreement”) and entered into by and among **FLORIDA MUNICIPAL POWER AGENCY**, a legal entity organized under the laws of the State of Florida, as agent for the Initial Pooled Loan Project (“FMPA”), and the member of FMPA named in Exhibit A (the “Project Participant”) and [NAME OF BANK, a \_\_\_\_\_, (together with its permitted successors and assigns, the “Credit Facility Issuer”)].

### WITNESSETH:

**WHEREAS**, pursuant to the Constitution and laws of the State of Florida, including particularly Section 163.01, Florida Statutes, as amended, Chapter 166, Part II, Florida Statutes, as amended, Chapter 361, Part II, Florida Statutes, as amended, and the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended and supplemented, and other applicable provisions of law (collectively, the “Act”), and in accordance with the Initial Pooled Loan Project 2019 Obligation Resolution adopted April 18, 2019, as the same may be further amended and supplemented from time to time in accordance with the provisions thereof (the “Resolution”), FMPA has determined to loan to the Project Participant the amount necessary to enable the Project Participant to finance and refinance all or a portion of the Costs of the Participant’s Project described in Exhibit A and the Project Participant has determined to borrow such amount from FMPA, subject to the terms and conditions of and for the purposes set forth in this Loan Agreement; and

**WHEREAS**, the Project Participant is authorized and has taken all action necessary to enter into this Loan Agreement for the purposes set forth herein; and

**WHEREAS**, FMPA has no taxing power and the bonds, notes, and any other obligations issued from time to time under this Resolution and all obligations to be undertaken by FMPA pursuant to this Resolution are special obligations of FMPA payable solely from Revenues; and FMPA shall be required to pay and perform its obligations under this Resolution only to the extent that there are Revenues sufficient to provide therefor;

**NOW, THEREFORE**, for and in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**SECTION 1.01** Definitions. Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in this Resolution, as applied to the Loan Agreement. The following terms have the meanings indicated below for all purposes of this Loan Agreement unless the context clearly requires otherwise.

“Administrative Expenditures” means any expenditures of FMPA reasonably or necessarily incurred by FMPA in connection with the administration of the Initial Pooled Loan Project including, without limitation, those incurred by reason of its issuance of the particular Series of the Obligations in order to finance or refinance the Applicable Project Fund applicable to Series of Obligations from which the amounts loaned to the Project Participant hereunder are taken, including (without limitation) fees and expenses of auditing; the fees and expenses of the Trustee and the Registrar and Paying Agent allocable to such Series of Obligations; legal, financing, and administrative expenses; and any expenses incurred by

FMPA or the Trustee to compel full and punctual performance of all the provisions of the Loan Agreements and the Credit Facility in accordance with the terms thereof.

“Authorized Officer” means, in the case of the Project Participant, any person or persons authorized pursuant to a resolution of the governing body of the Project Participant to perform any act or execute any document relating to the Loan or this Loan Agreement.

“Commencement Date” means the date of commencement of the term of this Loan Agreement, which shall be the commencement date set forth in Exhibit A, which is attached hereto and made a part hereof.

“Cost,” with respect to a Project Participant, shall mean the Project Participant’s costs, expenses, and liabilities paid or incurred or to be paid or incurred by the Project Participant, including any costs relating to any project designed or intended to decrease the costs of Project Participant’s Eligible Utility System or to increase the capacity or reliability of Project Participant’s Eligible Utility System including, without limitation, costs incurred in connection with the planning, engineering, designing, acquiring, leasing, constructing, installing, financing, operating, maintaining, retiring, decommissioning, and disposing of (A) any part of Project Participant’s Eligible Utility System; (B) any part of an electric, water, wastewater, waste or refuse disposal, telecommunications, resource recovery or gas facility or other Eligible Utility System facility in which a Project Participant has a joint ownership interest; or (C) any project entered into by FMPA permitted by law and the obtaining of all governmental approvals, certificates, permits, and licenses with respect thereto, including, but not limited to, any good faith or other similar payment or deposits required in connection with the purchase thereof, the cost of acquisition by or for the Project Participant of real and personal property related thereto, and costs of the Project Participant incidental to such construction or acquisition, the costs of acquisition of fuel or fuel inventory or facilities for the production or transportation of fuel and working capital and reserves therefore and working capital and reserves for reload fuel and for additional fuel inventories, all costs related to the payment or repayment of purchased power or other utility services, all costs relating to injury and damage claims relating to any item described in clause (A), (B) or (C) above, the cost of any indemnity or surety bonds and premiums on any insurance required to be obtained or which a Project Participant finds it desirable to obtain, self-insurance, including the funding of a pool for insurance purposes; preliminary investigation and development costs; engineering fees and expenses; contractors’ fees and expenses; the costs of labor, materials, equipment, and utility services and supplies; legal and financial advisory fees and expenses; interest and financing costs, including, without limitation, bank commitment and letter of credit fees and bond insurance and indemnity premiums, fees, and expenses of the trustees, registrars, paying agents, administration and general overhead expense; and costs of keeping accounts and making reports required by this Resolution or the Project Participant’s bond resolution prior to or in connection with the completion of construction of any item described in clauses (A), (B), or (C) above; amounts, if any, required by this Resolution or resolutions of the Project Participant relating to any item described in clauses (A), (B), or (C) above to be paid into various funds and accounts thereunder for any of the respective purposes thereof, including capitalized interest for any Loan and working capital of the Project Participant’s Eligible Utility System; costs of paying or prepaying interest, principal, premium on any obligation issued to finance the Project Participant’s Eligible Utility System or joint ownership interest described in clause (B) above; or cost of purchasing either on the open market or in response to a request for tenders or otherwise any of such obligations, payments or prepayments of any amounts owed to FMPA in connection with any project of FMPA, or any project entered into by FMPA permitted by law and reserves therefor to enable the Project Participant to implement and carry out such portion of the Initial Pooled Loan Project relating to such Project Participant. It is intended that this definition be broadly construed to encompass all costs, expenses, and liabilities of the Project Participant related to (A) the Project Participant’s Eligible Utility System, (B) any part of an Eligible Utility System in which a Project Participant has a joint ownership interest, or (C) any project entered into by FMPA permitted by law which on the date hereof or in the future shall be



permitted to be funded with the proceeds of bonds pursuant to the provisions of the Act or any other applicable laws of the State of Florida.

“Eligible Utility System” means the Project Participants electric, water, wastewater, waste or refuse disposal, telecommunications, resource recovery, or gas system or any other utility system of Project Participant.

“Event of Default” means any occurrence or event specified in Section 5.01 hereof.

“Loan” means the loan made by FMPA to the Project Participant to finance or refinance the Costs of the Participant’s Project pursuant to this Loan Agreement.

“Loans” means this Loan and other Loans made to other Project Participants under Loan Agreements from the Applicable Project Fund and financed with the proceeds of a particular Series of Obligations issued by FMPA.

“Loan Agreement” means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified, or amended from time to time in accordance with the terms hereof and of this Resolution.

“Loan Agreements” means this Loan Agreement and any other loan agreements entered into among FMPA, the Credit Facility Issuer, and one or more of the Project Participants pursuant to which such Project Participants will borrow money from the Applicable Project Fund financed with the proceeds of a particular Series of Obligations issued by FMPA.

“Loan Project” means the Initial Pooled Loan Project encompassing FMPA’s program of making loans pursuant to the Act and this Resolution.

“Loan Rate Determination Date” means the dates specified in the definition of “Loan Rate Determination Date” set forth in Section 6.02 of this Resolution.

“Loan Repayments” means the payments payable by the Project Participant pursuant to Section 3.02 of this Loan Agreement, including payments payable under the Promissory Note.

“Loan Term” means the term of this Loan Agreement determined as provided in Sections 3.01 and 3.02 of this Loan Agreement and reflected on Exhibit B, which is attached hereto and made a part of this Loan Agreement, as the same may be amended or modified as provided herein.

“Promissory Note” means the Promissory Note executed and delivered by the Project Participant to FMPA to evidence the Loan, in substantially the form of Exhibit C, which is attached hereto and made a part hereof.

“Obligations” means a Series of Obligations as defined in this Resolution authenticated and delivered in order to finance or refinance the particular account in the Applicable Project Fund from which the amounts loaned to the Project Participant pursuant to this Loan Agreement are provided.

“Participant’s Project” means the project of the Project Participant related to its Eligible Utility System described in Exhibit A, which is attached hereto and made a part hereof, which constitutes a project for which FMPA is permitted to make loans to the Project Participant pursuant to the Act, all or a portion of the Cost of which is financed or refinanced by FMPA through the making of the Loan under this Loan Agreement.

“Project Expenses” means the expenses of the Initial Pooled Loan Project applicable to a particular Series of Obligations, including (without limitation) all such amounts payable pursuant to or in connection with the Credit Facility Agreement, if any, applicable to such Series of Obligations, the Annual Administration Fee applicable to such Series of Obligations, the Administrative Expenditures and such other fees and expenses necessary or incidental to the Initial Pooled Loan Project applicable to such Series of Obligations as shall be approved by FMPA, including any amounts at any time constituting a rebate due or anticipated by FMPA to be due under the Code, as shall be approved by FMPA.

“Project Participant” means the member of FMPA that is described in the first paragraph of the Loan Agreement and its successors and assigns or FMPA, in any capacity other than as agent for the Initial Pooled Loan Project (which capacity shall be specified in the Loan Agreement entered into by FMPA in such capacity).

“Project Participants” means the members of FMPA or FMPA, in any capacity other than as agent for the Initial Pooled Loan Project (which capacity shall be specified in the Loan Agreement executed by FMPA in such capacity), that have entered into Loan Agreements with FMPA as agent for the Initial Pooled Loan Project pursuant to which such members of FMPA, or FMPA in such other capacity, will borrow money from the Applicable Project Fund financed or refinanced through the issuance of a particular Series of Obligations.

“Promissory Note” means the Promissory Note executed and delivered by the Project Participant to FMPA to evidence the Loan, in substantially the form of Exhibit C, which is attached hereto and made a part hereof.

“Resolution” means the Initial Pooled Loan Project 2019 Obligation Resolution as adopted by the Board of Directors of FMPA on April 18, 2019, and all further amendments and supplements thereto adopted in accordance with the provisions thereof applicable to the Obligations.

“Taxable Loan” means a Loan that is funded with proceeds of a particular Series of Obligations issued by FMPA the interest on which is *not* intended to be excluded from gross income for federal income taxes or which could be issued by FMPA in the future.

“Tax-Exempt Loan” means a Loan that is funded with proceeds of a particular Series of Obligations issued by FMPA the interest on which is intended to be excluded from gross income for federal income taxes or which could be issued by FMPA in the future as that status is governed by Section 103(a) of the Code or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction.

“Trustee” means the Trustee for the Series of Obligations issued to fund the Loan made hereunder and appointed pursuant to this Resolution and its successors as Trustee under this Resolution as provided in Section 9.01 of this Resolution.

“Utility System” means the Eligible Utility System of the Project Participant described in Exhibit A for which the Project Participant is making the borrowing under this Loan Agreement and from the revenues or other receipts of which the Project Participant will repay the Loan. In the case of a borrowing by FMPA, “Utility System” shall mean the capacity in and/or project for which FMPA is borrowing and the revenues or receipts related thereto.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF PROJECT PARTICIPANT

**SECTION 2.01** Representations of Project Participant. The Project Participant represents for the benefit of FMPA, the Trustee, the Holders, and the Credit Facility Issuer as follows:

(a) Organization and Authority.

(i) The Project Participant is “a public agency” as defined in Section 163.01(3)(b), Florida Statutes, as amended, and “an electric utility” as defined in Section 163.01(3)(f), Florida Statutes, as amended, or a municipality for purposes of Section 163.01(7)(d), Florida Statutes, as amended, duly created and validly existing pursuant to the constitution and statutes of the State of Florida.

(ii) The Project Participant has full legal right and authority and all necessary licenses and permits required as of the date hereof to own and operate its properties, to carry on its activities, to enter into this Loan Agreement, to execute and deliver the Promissory Note, to undertake and complete the Participant’s Project related to its Utility System, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(iii) The proceedings of the Project Participant’s governing body approving this Loan Agreement and the Promissory Note and authorizing their execution and delivery on behalf of the Project Participant and authorizing the Project Participant to undertake and complete the Participant’s Project have been duly and lawfully adopted at a meeting or meetings duly called and held at which quorums were present and acting throughout and such meeting or meetings were duly called pursuant to necessary public notice and held in accordance with all applicable laws, including Section 286.011, Florida Statutes, as amended.

(iv) This Loan Agreement and the Promissory Note have been duly authorized, executed, and delivered by an Authorized Officer of the Project Participant and, assuming that each of FMPA and the Credit Facility Issuer has all the requisite power and authority to execute and deliver, and has duly authorized, executed, and delivered this Loan Agreement, this Loan Agreement and the Promissory Note constitute the legal, valid and binding obligations of the Project Participant enforceable in accordance with their respective terms.

(b) Full Disclosure. There is no fact that the Project Participant has not disclosed to the Credit Facility Issuer and FMPA in writing on the Project Participant’s application for the Loan or otherwise that materially adversely affects or (so far as the Project Participant can now foresee) that will materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Project Participant or its Utility System or the ability of the Project Participant to make all Loan Repayments and otherwise perform its obligations under this Loan Agreement and the Promissory Note, and the information contained in Exhibit A, which is attached hereto and made a part hereof, is true and accurate in all respects.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Project Participant threatened, against or affecting the Project Participant in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Project Participant or its Utility System, or the ability of the Project Participant to make all Loan Repayments and otherwise perform its obligations under this Loan Agreement and the Promissory Note that have not been disclosed in writing to the Credit Facility Issuer and FMPA in the Project Participant’s application for the Loan or otherwise.

(d) Compliance with Existing Laws and Agreements. The execution and delivery of this Loan Agreement and the Promissory Note by the Project Participant, the performance by the Project Participant of its obligations hereunder and thereunder and the consummation of the transactions provided for in this Loan Agreement and the Promissory Note and compliance by the Project Participant with the provisions of this Loan Agreement and the Promissory Note and the undertaking and completion of the Participant's Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any property or assets of the Project Participant pursuant to any existing bond ordinance, trust agreement, indenture, mortgage, deed of trust, loan agreement, or other instrument (other than the subordinated lien on the revenues of the Utility System created under this Loan Agreement and the Promissory Note) to which the Project Participant is a party or by which the Project Participant, its Utility System or any of its property is or may be bound nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Project Participant was established or any laws, ordinances, governmental rules, regulations or court orders to which the Project Participant, its Utility System or its property or operations is subject.

(e) No Defaults. No event has occurred and no condition exists that, upon execution of this Loan Agreement and the Promissory Note or receipt or application of all or any portion of the amount of the Loan, would constitute an Event of Default hereunder. The Project Participant is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it, its Utility System or its property or operations may be bound, which violation would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Project Participant or its Utility System or the ability of the Project Participant to make all Loan Repayments or otherwise perform its obligations under this Loan Agreement and the Promissory Note.

(f) Governmental Consent. The Project Participant has obtained all permits and approvals required to date by any governmental body or officer for the making and performance by the Project Participant of its obligations under this Loan Agreement and the Promissory Note or for the undertaking or completion of the Participant's Project and the financing and refinancing thereof, and the Project Participant has complied with any applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making and performance by the Project Participant of its obligations under this Loan Agreement and the Promissory Note or with the undertaking or completion of the Participant's Project and the financing or refinancing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority that has not been obtained is required on the part of the Project Participant as a condition to the execution and delivery of this Loan Agreement and the Promissory Note, the undertaking or completion of the Participant's Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law. The Project Participant:

(i) is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Project Participant to conduct its activities or the condition (financial or otherwise) of the Project Participant or its Utility System; and

(ii) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Project Participant to conduct its activities or undertake or complete the Participant's Project or the condition (financial or otherwise) of the Project Participant or its Utility System.

(h) Use of Proceeds from Taxable and Tax-Exempt Loans. (A) The Project Participant will apply the proceeds of the Taxable Loan received from FMPA as described in Exhibit A, which is attached hereto and made a part hereof, to finance all or a portion of the Cost of the Participant's Project; (ii) to reimburse the Project Participant for all or a portion of the Cost of the Participant's Project, or (iii) to retire indebtedness of the Project Participant incurred to finance the Cost of the Participant's Project. All of such costs constitute Costs for which FMPA is authorized to make Loans to the Project Participant pursuant to the Act and this Resolution. Before each and every disbursement of the proceeds of the Loan to the Project Participant, the Project Participant shall submit to FMPA a certificate meeting the requirements of Section 5.04(2) of this Resolution.

(i) Application of Proceeds. The Project Participant will apply the proceeds of the Tax-Exempt Loan received from FMPA as described in Exhibit A, (i) to finance all or a portion of the Cost of the Participant's Project; (ii) to reimburse the Project Participant for all or a portion of the Cost of the Participant's Project, which Cost was paid or incurred in anticipation of reimbursement by FMPA or any other issuer (including the Project Participant) of indebtedness the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code; or (iii) to retire indebtedness of the Project Participant incurred to finance the Cost of the Participant's Project, which Cost was paid or incurred in anticipation of reimbursement by FMPA or any other issuer (including the Project Participant) of indebtedness the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code. All of such costs constitute Costs for which FMPA is authorized to make Loans to the Project Participant pursuant to the Act and this Resolution. Before each and every disbursement of the proceeds of the Loan to the Project Participant, the Project Participant shall submit to FMPA a certificate meeting the requirements of Section 5.04(2) of this Resolution.

## **SECTION 2.02**      Particular Covenants of Project Participant.

(a) The Project Participant agrees (i) to maintain its Utility System in good repair and operating condition; (ii) to cooperate with FMPA and the Credit Facility Issuer in the performance of the respective obligations of such Project Participant and FMPA under this Loan Agreement; (iii) to establish, levy and collect rents, rates, and other charges for the products and services provided by its Utility System, which rents, rates, and other charges shall be at least sufficient (A) to meet the operation and maintenance expenses of such Utility System; (B) to comply with all covenants pertaining thereto contained in, and all other provisions of, any bond ordinance, resolution, trust indenture, or other security agreement relating to any bonds or other evidences of indebtedness issued or to be issued by the Project Participant, to pay the debt service requirements on any bonds, notes or other evidences of indebtedness, whether now outstanding or incurred in the future, secured by such revenues or other receipts and issued to finance improvements to the Utility System and to make any other payments required by the laws of the State of Florida; (C) to generate funds sufficient to fulfill the terms of all other contracts and agreements made by the Project Participant, including, without limitation, this Loan Agreement; and (D) to pay all other amounts payable from or constituting a lien or charge on the revenues or other receipts of its Utility System; and (iv) to deliver to FMPA, the Credit Facility Issuer and any designee of such parties any report or certificate required to comply or to evidence compliance with the Credit Facility Agreement.

(b) The Project Participant further covenants and agrees that it will treat its integrated utility system as the Utility System for all purposes of this Loan Agreement. The Project Participant's Utility System shall be deemed to be a part of an integrated utility system for purposes of the Initial Pooled Loan Project if the revenues or other receipts of the Utility System (i) are commingled with the revenues or other receipts of one or more other utility systems owned by the Project Participant, or (ii) are utilized to pay operating expenses of the Project Participant's Utility System and one or more other utility systems owned by the Project Participant, or (iii) are pledged to secure bonds issued to finance one or more other utility systems owned by the Project Participant.

(c) The Project Participant shall not be required to make payments under this Loan Agreement except from the revenues or other receipts of its Utility System and from other funds of such Utility System legally available therefor. In no event shall the Project Participant be required to make payments under this Loan Agreement from ad valorem tax revenues.

(d) The Project Participant shall not sell, lease, abandon, or otherwise dispose of all or substantially all of its Utility System except on 90 days' prior written notice to FMPA and, in any event, shall not so sell, lease, abandon, or otherwise dispose of the same unless the following conditions are met: (i) the Project Participant shall assign this Loan Agreement in accordance with Section 4.02 herein and its rights and interests hereunder to the purchaser or lessee of the Utility System and such purchaser or lessee shall assume all obligations of the Project Participant under this Loan Agreement; and (ii) FMPA shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment, or other disposition will not adversely affect FMPA's ability to meet its obligations under this Resolution, and will not adversely affect the value of this Loan Agreement as security for the payment of the particular Series of Obligations issued by FMPA to fund the Loan made hereunder and the interest thereon or, if applicable, affect the eligibility of interest on such Series of Obligations then outstanding or which could be issued in the future for exclusion from gross income for federal income tax purposes; provided, however, that so long as the Credit Facility is securing the payment of principal and interest on such Series of Obligations, the Project Participant shall not sell, lease, abandon, or otherwise dispose of all or substantially all of its Utility System without the prior written consent of the Credit Facility Issuer.

(e) Solely with respect to a Tax-Exempt Loan, the Project Participant covenants and agrees that it shall not take any action or omit to take any action which would result in the loss of the exclusion from gross income for Federal income tax purposes of the interest on any Obligation or Obligations of the Series issued by FMPA to fund the Loan made hereunder the interest on which is intended to be excluded from gross income for federal income taxes or which could be issued by FMPA in the future as that status is governed by Section 103(a) of the Code or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction.

(f) The Project Participant covenants and agrees that it shall, in accordance with prudent utility practice, (1) at all times operate the properties of its Utility System and the business in connection therewith in an efficient manner; (2) maintain its Utility System in good repair, working order, and condition; and (3) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterment, and improvement with respect to its Utility System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Project Participant to expend any funds which are derived from sources other than the operation of its Utility System or other receipts of such Utility System and provided further that nothing herein shall be construed as preventing the Project Participant from doing so.

(g) The Project Participant shall keep accurate records and accounts for its Utility System, separate and distinct from its other records and accounts. Such records and accounts shall be audited annually by an independent certified public accountant, which may be part of the annual audit of the accounts of the Project Participant. Such records and accounts shall be made available for inspection by FMPA and the Credit Facility Issuer at any reasonable time, and a copy of such annual audit, including all written comments and recommendations of such accountants, shall be furnished to FMPA and the Credit Facility Issuer as soon as available. If such Utility System audit is part of a municipal audit, then the Project Participant shall furnish the entire municipal audit to FMPA and the Credit Facility Issuer.

(h) The Project Participant shall permit FMPA and the Credit Facility Issuer and any party designated by any of such parties to examine, visit, and inspect, at any and all reasonable times, the property, if any, constituting the Participant's Project and the Project Participant's other Utility System facilities, and to inspect and make copies of any accounts, books, and records, including (without limitation) its records

regarding receipts, disbursements, contracts, investments, and any other matters relating thereto and to its financial standing, and shall supply such reports and information as FMPA, the Trustee or the Credit Facility Issuer may reasonably require in connection therewith.

(i) The Project Participant shall maintain or cause to be maintained, in force, insurance with responsible insurers with policies or self-insurance providing against risk or direct physical loss, damage, or destruction of their Utility System, at least to the extent that similar insurance is usually carried by utilities constructing and operating Utility System facilities of the nature of the Utility System facilities of the Project Participant's Utility System, including liability all to the extent available at reasonable cost but in no case less than will satisfy all applicable regulatory requirements.

(j) The Project Participant certifies that the Cost of the Participant's Project is a reasonable and accurate estimation thereof and, upon direction of the Credit Facility Issuer or FMPA, will supply the same with a certificate stating that such Cost of the Participant's Project is a reasonable and accurate estimation thereof.

(k) Concurrently with the execution and delivery of this Loan Agreement, the Project Participant will cause to be delivered to FMPA, the Credit Facility Issuer, and the Trustee each of the items required by Section 6.04 of this Resolution.

(l) The Project Participant shall promptly notify FMPA, Credit Facility Issuer, and any party designated by such parties of any material adverse change in the Project Participant's Utility System.

(m) The Project Participant further agrees to comply with the additional covenants, if any, included on Exhibit E, which is attached hereto and made a part hereof.

(n) In the event that FMPA issued a particular Series of Obligations (as defined in this Resolution) to provide the moneys for the Loan made hereunder and is required to comply with the continuing disclosure undertakings of Rule 15(c)2-12 of the United States Securities and Exchange Commission (the "Rule") in connection with such issuance, the Project Participant agrees to provide to FMPA: (a) such financial and operating information as may be requested by FMPA including its most recent audited financial statements for use in FMPA's offering documents for such Series of Obligations; and (b) annual updates to such information and statements to enable FMPA to comply with the Rule. Failure by the Project Participant to comply with its agreement to provide such annual updates shall not be a default under this Loan Agreement, but any such failure shall entitle FMPA or an owner of such Series of Obligations to take such actions and to initiate such proceedings as may be necessary and appropriate to cause the Project Participant to comply with such agreement, including without limitation the remedies of mandamus and specific performance.

### **SECTION 2.03**      Particular Covenants of FMPA.

(a) FMPA, in good faith and in accordance with prudent utility practice, shall use its best efforts to issue and sell the Obligations of a particular Series to fund a Loan, provided that in each such case, Obligations of such Series may then be legally issued and sold.

(b) Notwithstanding any other provision of this Agreement, in the event that market conditions or other circumstances beyond FMPA's control render FMPA unable to issue and sell a Obligations or a particular Series of Obligations, or FMPA deems the issuance and sale of such Series of Obligations to be inconsistent with prudent utility practice, FMPA shall be under no obligation to issue or sell such Series of Obligations or to make a Loan to the Project Participant.

## ARTICLE III

### LOAN TO PROJECT PARTICIPANT; AMOUNTS PAYABLE; GENERAL AGREEMENTS

**SECTION 3.01**     The Loan; Loan Term. FMPA hereby agrees to loan to the Project Participant, and the Project Participant agrees to borrow from FMPA, the Loan in the principal amount of the commitment set forth on Exhibit A. The proceeds of the Loan shall be deposited in the funds and accounts as set forth on Exhibit A. FMPA shall cause the Trustee to disburse proceeds of the Loan deposited in the Applicable Project Fund to the Project Participant or its designee or to FMPA for payment to the Project Participant or its designee upon receipt of certificates meeting the requirements of Section 5.04(2) of this Resolution; provided, however, FMPA shall be under no obligation to disburse or cause to be disbursed all or any portion of the Loan to the Project Participant if an Event of Default has occurred and is continuing under this Resolution, the Credit Facility Agreement, or this Loan Agreement. Although FMPA intends to disburse the full amount of the proceeds of the Loan in the Applicable Project Fund to the Project Participant to pay the Cost of the Participant's Project, due to unforeseen circumstances, including, but not limited to, investment losses or application of amounts in the Applicable Project Fund to make Loan Repayments, there may not be a sufficient amount on deposit in the Applicable Project Fund on any date to disburse the full amount of the proceeds of the Loan in the Applicable Project Fund to the Project Participant; in such event, the Project Participant agrees that the obligation of the Project Participant to repay the Loan shall not be affected thereby, and neither FMPA, nor the Trustee nor the Credit Facility Issuer shall have any obligation to disburse any additional amounts to the Project Participant. The proceeds of the Loan shall be used strictly in accordance with Section 2.01(h) hereof.

This Loan Agreement is a special obligation of the Project Participant payable solely from the revenues or other receipts of the Utility System specified in Exhibit A hereto.

This Loan Agreement will terminate upon payment in full of all amounts payable hereunder.

**SECTION 3.02**     Amounts Payable. (a) The Project Participant shall repay the Loan in installments payable to the Trustee as follows:

(i) the principal of the Loan shall be repaid in accordance with the schedule set forth on Exhibit B attached hereto as the same may be amended or modified as provided herein; provided, however, that (1) if the Credit Facility Issuer shall at any time fail to extend the expiration date of the Credit Facility on or prior to the latest date available for such extension pursuant to the terms of the Credit Facility, and if the date of final principal payment set forth on Exhibit B hereto shall be later than the final expiration date of the Credit Facility (or if the Credit Facility Agreement provides for a term loan facility extending to a date later than such expiration date, the expiration date of such term loan facility), then, unless a substitute Credit Facility applicable to the Series of Obligations has been obtained or the Project Participant shall have delivered to the Trustee, FMPA, and the Credit Facility Issuer a commitment from a financial institution reasonably acceptable to the Credit Facility Issuer to refinance the remaining outstanding principal amount of the Loan on or before such expiration date, subject only to the condition that no Event of Default has occurred and is continuing hereunder and such other conditions as to which the Credit Facility Issuer does not reasonably object, at the option of FMPA, the Loan Term may be reduced to end on the day that is the first Business Day of the month prior to such expiration date and the principal payments due as set forth in Exhibit B hereto shall be recalculated so as to amortize the then outstanding principal balance of the Loan in equal monthly installments over the remaining Loan Term as so reduced; (2) if the expiration date of the Credit Facility (or any applicable term loan facility) shall later be extended or if a replacement Credit Facility with a later expiration date shall come into effect, the Loan Term shall be increased to end on the earlier of (i) the original date of final principal payment set forth on Exhibit B hereto or (ii) the first day of the month prior to such revised expiration date, and the principal payments due as set forth on Exhibit B hereto shall be similarly recalculated; and (3), subject to Sections 5.01 and 5.03



hereof, if this Loan Agreement shall be assigned or transferred to the Credit Facility Issuer pursuant to this Resolution, then the Loan Term shall be reduced to end on the date computed as provided in the Credit Facility Agreement, and the principal payments due as set forth on Exhibit B hereto shall be recalculated so as to amortize the then outstanding principal balance of the Loan in equal monthly installments over the Loan Term as so reduced; and

(ii) the interest on the Loan shall be received by the Trustee on the fifteenth day of each month commencing on the fifteenth day of the month following the month in which proceeds of a particular Series of Obligations are deposited in the Applicable Project Fund to fund the Loan to the Project Participant in the amount calculated in the manner prescribed by paragraph (b) of this Section; provided, however, that upon the occurrence of an Event of Default or the transfer of this Loan Agreement to the Credit Facility Issuer the interest rate payable on the Loan shall thereafter for the period specified in the Credit Facility Agreement be determined as provided in the Credit Facility Agreement, but in no event in excess of the maximum rate permitted by Florida Law.

On or prior to the date on which FMPA enters into an agreement to sell or issue a Series of Obligations the proceeds of which will provide amounts to be advanced to the Project Participant under this Loan Agreement, the Project Participant shall execute the Promissory Note to evidence such obligation in substantially the form of the Promissory Note attached hereto as Exhibit C and deliver the original Promissory Note to the Trustee. The obligations of the Project Participant under the Promissory Note shall be deemed to be amounts payable under this Section 3.02. Each payment made to the Trustee pursuant to the Promissory Note shall be deemed to be a credit against the corresponding obligation of the Project Participant under this Section 3.02 and any such payment made to the Trustee shall fulfill the Project Participant's obligation to pay such amount hereunder and under the Promissory Note. Except as otherwise provided in the Credit Facility Agreement, each payment made pursuant to this Section 3.02 shall be applied first to interest then due and payable on the Loan and then to the principal of the Loan.

(b) Except as otherwise provided in this Resolution and subject to Sections 5.01 and 5.03 of this Loan Agreement, the interest rate applicable to the Loan and the effective date of such rate (which shall be the first day of a month) shall be determined by FMPA on each Loan Rate Determination Date which date shall not be more than 15 days prior to the effective date (which rate shall apply until the effective date specified on the next succeeding Loan Rate Determination Date). FMPA shall notify the Project Participant of the rate determined on the Loan Rate Determination Date at least 10 days prior to the effective date of a new interest rate determined. Notwithstanding the foregoing, if at any time FMPA determines that the interest payable on the Loan will not provide sufficient funds, together with other funds available therefor under this Resolution (i) to pay the interest to become due on the particular Series of Obligations allocable to the Loan as provided in this Resolution and (ii) to pay the Project Expenses, FMPA may increase the interest rate on the Loan in an amount so that, together with amounts to be generated from identical increases in the interest rate on all other Loans, shall be sufficient to cure such deficiency; FMPA shall give the Project Participant notice of such increased interest rate on the Loan and the period for which such interest rate shall be effective at least ten days prior to the date such increased interest rate shall become effective.

(c) In addition to the payments of principal and interest on the Loan required by paragraph (a) of this Section, the Project Participant shall pay a late charge for any payment of principal of or interest on the Loan that is received by the Trustee later than the day following its due date, in an amount equal to 5% of such payment or such lesser amount as is necessary so that such late charges together with the interest rate payable on the Loan is not in excess of the maximum rate permitted by law; provided, however, that the interest rate payable on the Loan including such late charge shall not be in excess of the maximum rate permitted by law.

**SECTION 3.03**      Unconditional Obligations. The obligations of the Project Participant to make the Loan Repayments and all other payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed, or otherwise modified in any manner or to any extent whatsoever, while any Obligations of the Series issued to fund the Loan made hereunder remain outstanding or any Loan Repayments remain unpaid, regardless of any contingency, act of God, event, or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to Participant's Project or its Utility System, commercial frustration of purpose, any change in the laws of the United States of America or of the State of Florida or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of FMPA, the Trustee, or the Credit Facility Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with Participant's Project, this Loan Agreement or this Resolution or any rights of set off, recoupment, abatement, or counterclaim that the Project Participant might otherwise have against FMPA, the Trustee, the Credit Facility Issuer, or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. Furthermore, the Project Participant is not obligated to make any payments required to be made by any other Project Participant under a separate Loan Agreement or this Resolution.

The obligations of the Project Participant to make the Loan Repayments and all other payments required hereunder are junior and subordinated in all respects to certain payments and obligations incurred as specified in Utility System Resolution (as defined in Exhibit E) as to source and security for payment from revenues, receipts, or other available moneys of the Project Participant's Utility System.

The Project Participant acknowledges that payment of Series of Obligations issued to fund the Loan made hereunder (including, if so provided in the Credit Facility Agreement, payment from funds drawn by the Trustee under the Credit Facility) does not constitute payment of the amounts due under this Loan Agreement and the Promissory Note and that if this Loan Agreement and the Promissory Note are assigned to the Credit Facility Issuer, the Credit Facility Issuer will be fully subrogated to the rights of FMPA and the Trustee under this Loan Agreement and the Promissory Note.

**SECTION 3.04**      Loan Agreement to Survive Resolution and Series of Obligations. The Project Participant acknowledges that its obligations hereunder shall survive the discharge of this Resolution and payment of the principal of and interest on the Series of Obligations issued to fund the Loan made hereunder.

**SECTION 3.05**      Disclaimer of Warranties. Neither FMPA nor the Credit Facility Issuer nor the Trustee nor any of their respective agents makes any warranty or representation, either express or implied as to the value, design, condition, merchantability, or fitness for particular purpose or fitness for use of Participant's Project or any portion thereof or any other warranty or representation with respect thereto. In no event shall FMPA, the Credit Facility Issuer, or the Trustee or their respective agents be liable for any incidental, indirect, special, or consequential damages in connection with or arising out of this Loan Agreement or the Participant's Project or the existence, furnishing, functioning, or use of the Participant's Project or any item or products or services provided for in this Loan Agreement.

**SECTION 3.06**      Option to Prepay Loan Repayments. The Project Participant may prepay the Loan Repayments, in whole or in part on any Business Day, and upon payment by the Project Participant to the Trustee of the principal amount of the Loan Repayments to be prepaid, plus the interest to accrue on such amount to the date of prepayment in accordance with the terms and provisions for such prepayments set forth on Exhibit B attached hereto as the same may be amended or modified as provided herein. Except as otherwise provided in the Credit Facility Agreement, prepayments shall be applied first to accrued interest on the portion of the Loan to be prepaid and then to principal payments (including

premium, if any) on the Loan in inverse order of their maturity. Any such full or partial prepayment may be made without compliance with the notice requirements set forth on Exhibit B attached hereto on any Business Day upon the occurrence of any event requiring or permitting the transfer of this Loan Agreement to the Credit Facility Issuer pursuant to this Resolution.

## ARTICLE IV

### ASSIGNMENT

**SECTION 4.01** Assignment and Transfer. (a) The Project Participant expressly acknowledges that all right, subject to Section 5.07 herein, title and interest of FMPA in, to and under this Loan Agreement and the Promissory Note may be assigned to the Trustee as security for the Series of Obligations issued to fund the Loan made hereunder and amounts due under the Credit Facility Agreement as provided in this Resolution, and on and after the date of such assignment that if any Event of Default shall occur, the Trustee, subject to the provisions of the Credit Facility Agreement, or, at such time, if any, as this Loan Agreement is required to be transferred to the Credit Facility Issuer pursuant to this Resolution and the Credit Facility Agreement, the Credit Facility Issuer shall be entitled to act hereunder in the place and stead of FMPA and the Trustee. The Project Participant hereby approves this Resolution and consents to such assignment. This Loan Agreement and the Promissory Note including, without limitation, the right to receive payments required to be made by the Project Participant hereunder and to compel or otherwise enforce performance by the Project Participant of its other obligations hereunder, may be further transferred, assigned, and reassigned in whole or in part to one or more assignees or subassignees by the Trustee at any time subsequent to their execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Project Participant.

(b) The Project Participant acknowledges that following the occurrence of an Event of Default, this Resolution, or the Credit Facility Agreement may require that this Loan Agreement and the Promissory Note be transferred to the Credit Facility Issuer in the manner and to the extent provided therein and/or the amounts payable as interest hereunder may be increased and the time at which principal payments are due may be modified to the extent required in the Credit Facility Agreement. The Project Participant hereby consents to such transfer and/or increase and/or modification.

(c) The Project Participant further acknowledges that if the Obligations of a particular Series or the portion thereof applicable to the Loan are subject to purchase from moneys drawn under the Credit Facility and any other monies available to the Trustee upon the occurrence of certain events as may be provided for and set forth in the Credit Facility Agreement for such particular Series of Obligations and that upon the occurrence of any of such events, the Credit Facility Agreement requires that, if demanded by the Credit Facility Issuer, this Loan Agreement and the Promissory Note be transferred to the Credit Facility Issuer in the manner and to the extent provided therein. The Project Participant hereby consents to such transfer.

(d) Upon receipt of notice of any transfer of this Loan Agreement and the Promissory Note as set forth in paragraphs (b) and (c) of this Section, the Project Participant shall make all payments required hereunder and under the Promissory Note directly to the Credit Facility Issuer or its designee regardless of any defense or right of set-off that the Project Participant may have against FMPA or the Trustee.

(e) The Project Participant hereby approves and consents to any further assignment or transfer of this Loan Agreement and the Promissory Note that FMPA deems to be necessary in connection with any refunding of Series of Obligations issued to fund the Loan made hereunder under this Resolution or otherwise in connection with the Initial Pooled Loan Project or any successor pooled loan program of FMPA.

**SECTION 4.02** Assignment by Project Participant. Neither this Loan Agreement nor the Promissory Note may be assigned by the Project Participant for any reason without the prior written consent of FMPA, the Trustee, and the Credit Facility Issuer.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES

**SECTION 5.01** Events of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an “Event of Default”:

(a) failure by the Project Participant to pay any Loan Repayment required to be paid hereunder when due, which failure shall continue until the last day of the month in which such Loan Repayment was due;

(b) failure by the Project Participant to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Project Participant by the Credit Facility Issuer (or the Trustee at the direction of the Credit Facility Issuer) or the Trustee if no Credit Facility is then in effect, unless the Credit Facility Issuer (or the Trustee at the direction of the Credit Facility Issuer) or the Trustee if no Credit Facility is then in effect shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Credit Facility Issuer or the Trustee, as appropriate, may not unreasonably withhold their consent to an extension of such time up to 120 days from the delivery of the written notice referred to above if corrective action is instituted by the Project Participant within the applicable period and diligently pursued until the Event of Default is corrected;

(c) any representation made by or on behalf of the Project Participant contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect on the date on which such representation is made;

(d) a petition is filed by or against the Project Participant under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Project Participant such petition shall be dismissed within 30 days after such filing and such dismissal shall be final and not subject to appeal; or the Project Participant shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator, or trustee) of the Project Participant or any of its property shall be appointed by court order or take possession of the Project Participant or its property if such order remains in effect or such possession continues for more than 30 days; and

(e) The Project Participant shall be in default in the payment of any principal of or interest on any obligation for borrowed money or for the deferred purchase price of any property or asset (unless the failure to make payment of such deferred purchase price is contingent upon a contest or negotiation being diligently pursued and in connection with which adequate reserves have been established) or on any obligation guaranteed by the Project Participant or in respect of which it is otherwise contingently liable beyond any period of grace stated with respect thereto in any such obligation or in any agreement under which any such obligation is created, or shall default in the performance of any agreement under which any such obligation is created if the effect of such default is to cause such obligation to become, or to permit any holder or beneficiary thereof, or a trustee or trustee on behalf thereof, which notice is required, to declare such obligation to be due prior to its normal maturity, and any of the foregoing may (in the

reasonable judgment of FMPA, or the Credit Facility Issuer) have a material adverse effect on the ability of the Project Participant to perform its obligations hereunder.

**SECTION 5.02**      Notice of Default. The Project Participant shall give the Trustee, the Credit Facility Issuer, and FMPA prompt telephonic notice followed by written confirmation of the occurrence of any event referred to in Section 5.01 hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Project Participant becomes aware of the existence thereof.

**SECTION 5.03**      Remedies on Default. Whenever an Event of Default referred to in Section 5.01 hereof shall have happened and be continuing, FMPA shall have the right to direct the Trustee, to take any action permitted or required pursuant to this Resolution and to take one or more of the following remedial steps:

(a) declare all Loan Repayments and all other amounts due hereunder (including, without limitation, payments under the Promissory Note), to be immediately due and payable, and upon notice to the Project Participant the same shall become immediately due and payable by the Project Participant without further notice or demand; and

(b) take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any obligation, agreement, or covenant of the Project Participant hereunder.

In addition, if an Event of Default referred to in Section 5.01(a), (b), (c), or (e) shall have occurred and be continuing, the Credit Facility Issuer may, without declaring all Loan Repayments to be immediately due and payable, in the manner and for the period specified in the Credit Facility Agreement, direct FMPA to increase the rate of interest applicable to the Loan to the rate specified in the Credit Facility Agreement provided, however, the interest rate shall not be in excess of the maximum rate permitted by law, and the Trustee shall apply the additional amounts collected as interest as a result of such increase as provided in the Credit Facility Agreement.

Further, if an Event of Default referred to in Section 5.01(d) hereof shall have occurred, the Trustee shall declare all Loan Repayments and all other amounts due hereunder (including, without limitation, payments under the Promissory Note) to be immediately due and payable, and upon notice to the Project Participant the same shall become due and payable without further notice or demand.

**SECTION 5.04**      Attorney's Fees and Other Expenses. The Project Participant shall on demand pay to FMPA, the Credit Facility Issuer, or the Trustee the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred by any of them in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance of any other obligations of the Project Participant upon an Event of Default. In addition, the Project Participant shall pay the reasonable expenses (including any fees required by a Credit Facility Issuer under the Credit Facility Agreement) of FMPA and the Trustee incurred in connection with the Loan (including fees of counsel to the Credit Facility Issuer) in excess of any amount of such expenses that shall be included in the Project Expenses.

**SECTION 5.05**      Application of Moneys. Any moneys collected by FMPA or the Trustee pursuant to Section 5.03 hereof, shall be applied (a) first, to pay any attorney fees or other fees and expenses owed by the Project Participant pursuant to Section 5.04 hereof, (b) second, to pay interest due on the Loan, (c) third, to pay principal due on the Loan, (d) fourth, to pay any other amounts due hereunder, and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder as such amounts become due and payable.

**SECTION 5.06** No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to FMPA, the Credit Facility Issuer, or the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy, or power accruing upon any Event of Default shall impair any such right, remedy, or power or shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle FMPA, the Credit Facility Issuer, or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

**SECTION 5.07** Retention of FMPA's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of this Resolution, or anything else to the contrary contained herein, FMPA shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation), bringing an action against the Project Participant at law or in equity, as FMPA may, in its discretion, deem necessary to enforce the obligations of the Project Participant to FMPA pursuant to Section 5.04 hereof.

## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.01** Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the project Participant at the address specified on Exhibit A attached hereto and made a part hereof and to FMPA, the Trustee, and the Credit Facility Issuer at the following addresses:

- (a) FMPA: Florida Municipal Power Agency  
(Initial Pooled Loan Project)  
8553 Commodity Circle  
Orlando, Florida 32819-9002
- (b) Trustee: [To be determined]
- (c) Credit Facility Issuer: [To be determined]

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent, by notice in writing given to the others.

**SECTION 6.02** Binding Effect. This Loan Agreement shall inure to the benefit of the parties and shall be binding upon FMPA, the Project Participant, and the Credit Facility Issuer and their respective successors and assigns.

**SECTION 6.03** Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any other provision hereof.

**SECTION 6.04** Amendments, Changes, and Modifications. This Loan Agreement may not be amended without the prior written consent of the parties hereto.

**SECTION 6.05**      Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 6.06**      Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**SECTION 6.07**      Consents and Approvals. Whenever the written consent or approval of FMPA shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by FMPA unless otherwise provided by law or by rules, regulations, or resolutions of FMPA or unless expressly delegated to the Trustee and except as otherwise provided in Section 6.10 hereof.

**SECTION 6.08**      Captions. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit, or describe the scope or intent of any provisions or sections of this Loan Agreement.

**SECTION 6.09**      Benefit of Loan Agreement; Compliance with Resolution. This Loan Agreement is executed, among other reasons, to induce the purchase and sale of the Series of Obligations issued to fund the Loan made hereunder and the issuance of the Credit Facility by the Credit Facility Issuer. Accordingly, all covenants, representations, and agreements of the Project Participant herein contained are hereby declared to be for the benefit of and are enforceable by the Holders, FMPA, and the Credit Facility Issuer. The Project Participant covenants and agrees to comply with, and to enable FMPA to comply with, all covenants and requirements contained in this Resolution.

**SECTION 6.10**      Rights of Credit Facility Issuer. At such time as all rights, power, and privileges (collectively, the “Rights”) under this Loan Agreement shall vest with the Credit Facility Issuer pursuant to this Resolution upon the termination of the assignment to the Trustee and transfer of this Loan Agreement to the Credit Facility Issuer, the Credit Facility Issuer shall be entitled to act hereunder in the place and stead of FMPA and the Trustee, and upon receipt of notice of the vesting of such Rights in the Credit Facility Issuer, the Project Participant shall make all payments required under this Loan Agreement and the Promissory Note directly to the Credit Facility Issuer, without any defense, set off, counterclaiming deduction, interruption, or deferment whatsoever, whether arising out of this Loan Agreement, the Initial Pooled Loan Project, the Participant’s Project, or otherwise, and notwithstanding any rights that the Project Participant may have against FMPA, the Trustee, or any other person or entity. Thereafter, (a) the Credit Facility Issuer shall have all rights to receive notices and give consents and approvals hereunder, (b) the Credit Facility Issuer may exercise or not exercise any of the remedies set forth herein or otherwise provided at law with respect to any failure of the Project Participant to fulfill any of its obligations hereunder, and (c) all references to “FMPA” and the “Trustee” herein shall be deemed to be references to the “Credit Facility Issuer.”

Upon the vesting of the rights under this Loan Agreement in the Credit Facility Issuer, this Loan Agreement, including (without limitation) the right to receive payments under this Loan Agreement and the Promissory Note and to enforce performance by the Project Participant of its other obligations hereunder, may be further transferred, assigned, and reassigned in whole or in part to one or more assignees or subassignees of the Credit Facility Issuer, without the necessity of obtaining the consent of, but after giving written notice to, the Project Participant.

**SECTION 6.11**      Further Assurances. The Project Participant shall, at the request of the Credit Facility Issuer or FMPA, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning, and confirming the rights, security interests, and agreements granted or intended to be granted by this Loan Agreement and the Promissory Note.

**IN WITNESS WHEREOF**, the Parties have caused this Loan Agreement to be executed by their proper officers, respectively, being thereunto duly authorized and their corporate seals, if applicable, to be hereto affixed as of the day and year first above written.

**FLORIDA MUNICIPAL POWER AGENCY,**  
as Agent for the Initial Pooled Loan Project

(SEAL)

By: \_\_\_\_\_  
William H. Conrad  
Chairman, Board of Directors

By: \_\_\_\_\_  
Jacob A. Williams  
General Manager and CEO

ATTEST:

Approved as to Form and Legality:

By: \_\_\_\_\_  
Sue Utley  
Assistant Secretary

By: \_\_\_\_\_  
Jody Lamar Finklea  
General Counsel and CLO

ATTEST:

**[NAME OF PARTICIPANT]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

(Participant Seal)

**[NAME OF BANK]**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Loan Agreement]



**EXHIBIT A TO LOAN AGREEMENT**

**DESCRIPTION OF THE LOAN**

- (1) Commencement Date: \_\_\_\_\_, 20\_\_
- (2) Name and Address of Project Participant: \_\_\_\_\_
- (3) Utility System for which Loan is being incurred: \_\_\_\_\_
- (4) Principal Amount of Loan Commitment: \$ \_\_\_\_\_
- (5) Estimated Completion Date: \_\_\_\_\_, 20\_\_
- (6) Series of Obligations of FMPA from which Loan is being financed: \_\_\_\_\_  
Single advance on Commencement Date or advances made from time to time: \_\_\_\_\_  
If from time to time, date of expected final advance under Loan Agreement: \_\_\_\_\_, 20\_\_
- (7) (a) Loan Term: \_\_ Years  
(b) Prepayment Provisions: \_\_\_\_\_
- (8) (a) Description of the Participant's Project:  
\_\_\_\_\_  
\_\_\_\_\_  
(b) Taxable Loan or Tax-Exempt Loan: \_\_\_\_\_
- (9) Amount of the Loan to be deposited into the Applicable Project Fund: \$ \_\_\_\_\_
- (10) Breakdown of Participant's Project Costs: \$ \_\_\_\_\_
  - A. Portion of Participant's Project Costs to be directly financed:

<u>Description</u>	<u>Allocated Amount of Loan</u>
Costs of Participant's Project	
Costs of Issuance	
[Debt Service Reserve Fund Requirement]	
[Capitalized Interest]	
[Project Expenses]	
  - B. Portion of Participant's Project Costs for which Project Participant will be reimbursed, which the Project Participant hereby certifies were paid or incurred in anticipation of being reimbursed from FMPA or any other issuer of tax-exempt debt:

<u>Description</u>	<u>Allocated Amount of Loan</u>
--------------------	---------------------------------
- (11) Security for repayment of loan: \_\_\_\_\_

**EXHIBIT B TO LOAN AGREEMENT**

**PRINCIPAL REPAYMENT SCHEDULE**

<u>Payment Number</u>	<u>Payment Date</u>	<u>Principal Outstanding</u>	<u>Principal Amount Due</u>	<u>Principal Amount Remaining</u>
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## EXHIBIT C TO LOAN AGREEMENT

### FORM OF PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_, the (“Project Participant”), hereby promises to pay to the order of Florida Municipal Power Agency, as agent for the Initial Pooled Loan Project (“FMPA”), the principal amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) at the times and in the amounts determined as provided in the Loan Agreement, dated as of \_\_\_\_\_ by and among FMPA, \_\_\_\_\_ (the “Credit Facility Issuer”), and the Project Participant (the “Loan Agreement”), together with interest thereon in the amount calculated as provided in the Loan Agreement, payable on the dates and in the amounts and as provided in the Loan Agreement.

This Promissory Note is a special obligation of the Project Participant and neither the faith and credit nor the taxing power of the Project Participant is pledged to the payment of the Promissory Note.

This Promissory Note is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the “Loan”) and to evidence the obligations of the Project Participant set forth in Section 3.02(a) thereof. This Promissory Note has been assigned to \_\_\_\_\_, as trustee (the “Trustee”) under the Initial Pooled Loan Project 2019 Obligation Resolution adopted by FMPA on April 18, 2019, and as further amended and supplemented in accordance with the terms thereof (the “Resolution”) and payments hereunder shall, except as otherwise provided in the Loan Agreement, be made directly to the Trustee for the account of FMPA pursuant to such assignment. Such assignment has been made as security for the payment of the Series of Obligations (as defined in this Resolution) issued by FMPA to finance or refinance the Applicable Project Fund (as defined in this Resolution) from which the Loan is being made, and the obligations to the Credit Facility Issuer (as defined in this Resolution) and as otherwise described in the Loan Agreement. This Promissory Note is subject to further assignment or endorsement in accordance with the terms of this Resolution. All of the terms, conditions, and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Promissory Note.

Unless otherwise provided in the Loan Agreement, disbursements of the Loan proceeds shall be made by the Trustee at the direction of FMPA to the Project Participant, its designee, or FMPA under the Loan Agreement from time to time upon the terms and conditions set forth in the Loan Agreement, which disbursements shall be noted by the Trustee on the Disbursements and Payments Grid annexed hereto and all payments of principal on this Promissory Note shall be made to the Trustee and be noted by the Trustee on the Disbursements and Payments Grid annexed hereto; provided, however, that any failure by the Trustee to make any such notation shall not affect in any respect the Project Participant’s obligations hereunder.

This Promissory Note is entitled to the benefits and is subject to the conditions of the Loan Agreement. The obligations of the Project Participant to make the payments required hereunder shall be absolute and unconditional without any defense or right of set off, counterclaim, or recoupment by reason of any default by FMPA under the Loan Agreement or under any other agreement between the Project Participant and FMPA or out of any indebtedness or liability at any time owing to the Project Participant by FMPA or for any other reason.

This Promissory Note is subject to optional prepayment under the terms and conditions, and in the amounts, provided in Section 3.06 of the Loan Agreement.

If an “Event of Default” occurs under Section 5.01 of the Loan Agreement, the principal of and interest on this Promissory Note may be declared due and payable in the manner and to the extent provided in Article V of the Loan Agreement.

This Promissory Note is junior and subordinate in all respects to certain payments and obligations incurred as specified in Resolution \_\_\_\_\_ of the Project Participant, adopted on \_\_\_\_\_, 20 \_\_, as to lien on and source and security for payment from such pledged revenues.

[This Promissory Note is a parity obligation payable on a parity in all respects to certain payments and obligations incurred as specified in each of the Loan Agreements between the Florida Municipal Power Agency, as agent for the Initial Pooled Loan Project, \_\_\_\_\_, as Credit Facility Issuer, and the Project Participant, dated \_\_\_\_\_, 20 \_\_, and dated \_\_\_\_\_, 20 \_\_, as to lien on and source of security for payment from such pledged revenues.]

IN WITNESS WHEREOF, the Project Participant has caused this Promissory Note to be duly executed, sealed, and delivered, as of this \_\_\_\_\_, day of \_\_\_\_\_, 20 \_\_.

(SEAL)

**[NAME OF PROJECT PARTICIPANT]**

By: \_\_\_\_\_  
Name:  
Title:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNMENT**

Florida Municipal Power Agency hereby assigns the foregoing Promissory Note to \_\_\_\_\_, as Trustee under the Initial Pooled Loan Project 2019 Obligation Resolution adopted on April 18, 2019, all as of the date of this Promissory Note as security for the particular Series of the Obligations issued or to be issued to finance or refinance the Applicable Project Fund.

**FLORIDA MUNICIPAL POWER AGENCY,**  
as Agent for the Initial Pooled Loan Project

(SEAL)

By: \_\_\_\_\_  
William H. Conrad  
Chairman, Board of Directors

By: \_\_\_\_\_  
Jacob A. Williams  
General Manager and CEO

ATTEST:

Approved as to Form and Legality:

By: \_\_\_\_\_  
Sue Utley  
Assistant Secretary

By: \_\_\_\_\_  
Jody Lamar Finklea  
General Counsel and CLO

**APPENDIX A  
TO THE PROMISSORY NOTE**

**DISBURSEMENT AND PAYMENT GRID**

Original Principal Amount: \_\_\_\_\_

Original Deposit to Proceeds Account \_\_\_\_\_

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Date of Disbursement or Payment	Disbursement from Applicable Project Fund	Principal Amount Repaid	Principal Amount Outstanding	Trustee Signature
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**EXHIBIT D TO LOAN AGREEMENT**

**FORM OF OPINION OF COUNSEL TO PROJECT PARTICIPANT**

[TO BE PUT ON LETTERHEAD OF COUNSEL TO PROJECT PARTICIPANT]

[DATED THE DATE OF THE FIRST DRAWING UNDER THE LOAN AGREEMENT]

Florida Municipal Power Agency  
(Initial Pooled Loan Project)  
8553 Commodity Circle  
Orlando, Florida 32819

[Trustee]  
[Address]  
[Address]

[Credit Facility Issuer]  
[Address]  
[Address]

Ladies and Gentlemen:

I am an attorney admitted to practice in the State of Florida and I have acted as counsel to \_\_\_\_\_ (the "Project Participant"), a member of Florida Municipal Power Agency ("FMPA"), which has entered into a Loan Agreement (as hereinafter defined) with FMPA, and have acted as such in connection with the authorization, execution, and delivery by the Project Participant of its Loan Agreement.

In so acting I have examined the Constitution and laws of the State of Florida and [add local ordinance, charter, and/or bylaws as appropriate] of the Project Participant. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

(a) FMPA's Initial Pooled Loan Project 2019 Obligation Resolution, adopted by the Board of Directors of FMPA on April 18, 2019, which amends and restates in its entirety FMPA's Initial Pooled Loan Project Revenue Bond Resolution, adopted by the Board of Directors of FMPA on April 18, 1986, as amended and restated (as so amended and restated, the "Resolution");

(b) the Loan Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Loan Agreement"), by and among FMPA, the Project Participant, and \_\_\_\_\_ (the "Credit Facility Issuer");

(c) proceedings of the governing body of the Project Participant relating to authorization of the Loan Agreement and the Participant's Project (each as defined in the Loan Agreement);

(d) the Promissory Note from the Project Participant to FMPA, dated \_\_\_\_\_, 20\_\_ (the "Note") (the Loan Agreement and the Note are referred to herein collectively as the "Loan Documents"); and

(e) all outstanding instruments relating to bonds, notes, or other indebtedness of or relating to the Project Participant's Utility System (as defined in the Loan Agreement).

I have also examined and relied upon originals or copies, certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates, and other instruments, and made such investigation of law, as in my judgement have deemed necessary or appropriate to enable me to render the opinions expressed below.

I am of the opinion that:

(a) The Project Participant is “a public agency as defined in Section 163.01(3)(b), Florida Statutes, as amended, and an electric utility as defined in Section 163.01(3)(f), Florida Statutes, as amended,” or “a municipality for purposes of Section 163.01(7) (d), Florida Statutes, as amended” duly created and validly existing pursuant to the constitution and statutes of the State of Florida, with the legal right to carry on the business of its Utility System as currently being conducted and as proposed to be conducted.

(b) The Project Participant has full legal right and authority to enter into the Loan Documents and to carry out its obligations thereunder and to undertake and complete the Participant’s Project.

(c) The proceedings of the Project Participant’s governing body approving the Loan Documents and the Participant’s Project and authorizing the execution and delivery of the Loan Documents on behalf of the Project Participant have been duly and lawfully adopted at a meeting or meetings duly called and held at which quorums were present and acting throughout and such meeting or meetings were called pursuant to necessary public notice and held in accordance with all applicable law including Section 286.011, Florida Statutes.

(d) The Loan Documents have been duly authorized, executed, and delivered by the Authorized Officers of the Project Participant; and, assuming in the case of the Loan Agreement, that each of FMPA and the Credit Facility Issuer has all the requisite power and authority to execute and deliver, and has duly authorized, executed, and delivered, the Loan Agreement constitute the legal, valid, and binding obligation of the Project Participant enforceable in accordance with their respective terms subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors’ rights generally. No opinion is rendered as to the availability of any particular remedy.

(e) The execution and delivery of the Loan Documents by the Project Participant, the performance by the Project Participant of its obligations thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Participant’s Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule, or regulation of any court of administrative agency having jurisdiction over the Project Participant or its property or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, trust agreement, indenture, mortgage, deed of trust, or other agreement to which the Project Participant is a party or by which it, its Utility System (as defined in the Loan Agreement), or its property is bound.

(f) All approvals, consents, or authorizations of, or registrations or filings with, any governmental or public agency, authority, or person required to date on the part of the Project Participant in connection with the execution, delivery, and performance of the Loan Documents and the undertaking and completion of the Participant’s Project have been obtained or made.



(g) To my knowledge, after due inquiry, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization, or existence of the Project Participant of the validity, legality of enforceability of the Loan Documents, or the undertaking or completion of the Participant's Project.

I hereby authorize \_\_\_\_\_, acting as General Counsel and Chief Legal Officer of FMPA, and \_\_\_\_\_, acting as Bond Counsel to FMPA, to rely on this opinion as if we had addressed this opinion to them in addition to you.

Very truly yours,

## EXHIBIT E TO LOAN AGREEMENT

### ADDITIONAL COVENANTS

Each defined term used herein and not otherwise defined herein shall have the meaning set forth in the Loan Agreement to which this Exhibit E is attached (determined without regard to the first sentence of Section 1.01 of the Loan Agreement) or, if not defined therein, in the Utility System Resolution.

[To be customized for each Project Participant]

[(1) For a Tax-Exempt Loan, the following covenant shall be applicable:

(a) The Project Participant will not use any of the proceeds of the Loan in a manner which would constitute either (1) private business use within the meaning of Section 141(b) of the Code or (2) a loan to a person other than a governmental unit within the meaning of Section 141(c) of the Code.

(b) Further, the Project Participant (or any related person, as defined in Section 144(a)(3) of the Code) shall not, pursuant to an arrangement, formal or informal, purchase Obligations of the Series issued to fund the Loan made hereunder in an amount related to the amount of the Loan.

(2) Additional Covenants of a Project Participant

[to be determined at time Loan is made]

(3) Additional Definitions:

["Utility System Resolution" means, with respect to the Project Participant, Resolution(s) No. \_\_\_\_\_, as amended and supplemented as of the date hereof and as in effect as of such date (whether or not (i) such resolution or resolutions are terminated after the date hereof and (ii) any debt is outstanding after the date hereof thereunder.)]

**AGENDA ITEM 8 – ACTION ITEMS**

**c. Approval of Procurement  
Modifications for FY 2025**

**Board of Directors Meeting  
September 19, 2024**



# 8c – Approval of Procurement Modifications for FY 2025

Board of Directors  
September 19, 2024

# Proposed Changes in Procurement Thresholds

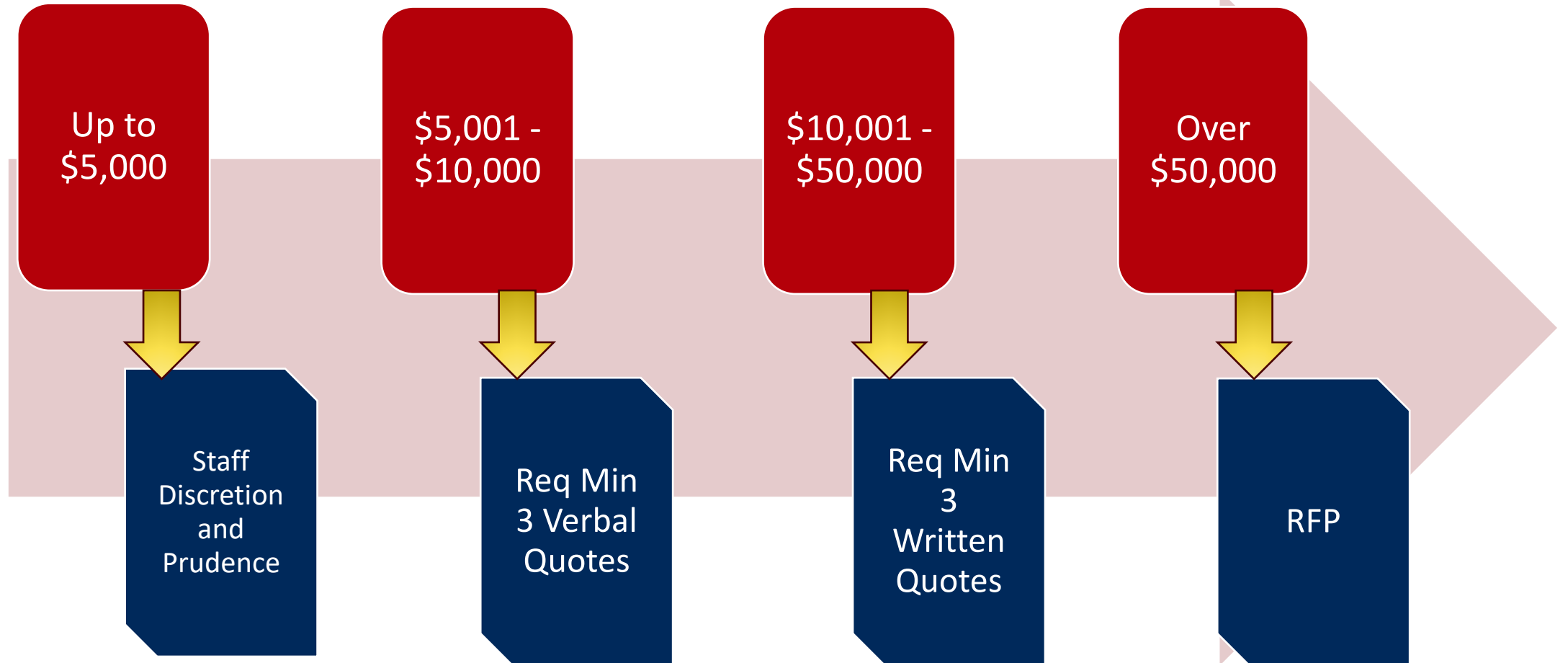
## *Why Increase the Thresholds?*

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- Align with other generating municipality thresholds, for example:
  - JEA – RFP > \$300,000 \$50,000 - \$300,000 Informal Published Bid to Request Quotes
  - OUC – RFP > \$50,000 Projects >\$100,000 Must go to the commission for funding approval
  - GRU – RFP > \$100,000
- Thresholds have not been changed to reflect inflation over many years
- Allow for quicker & more efficient decision-making
- Reduce administrative burden
- Proposing to adjust every 3 years, index to the Consumer Price Index, rounding to the nearest \$2,500 Agency and nearest \$10,000 for ARP

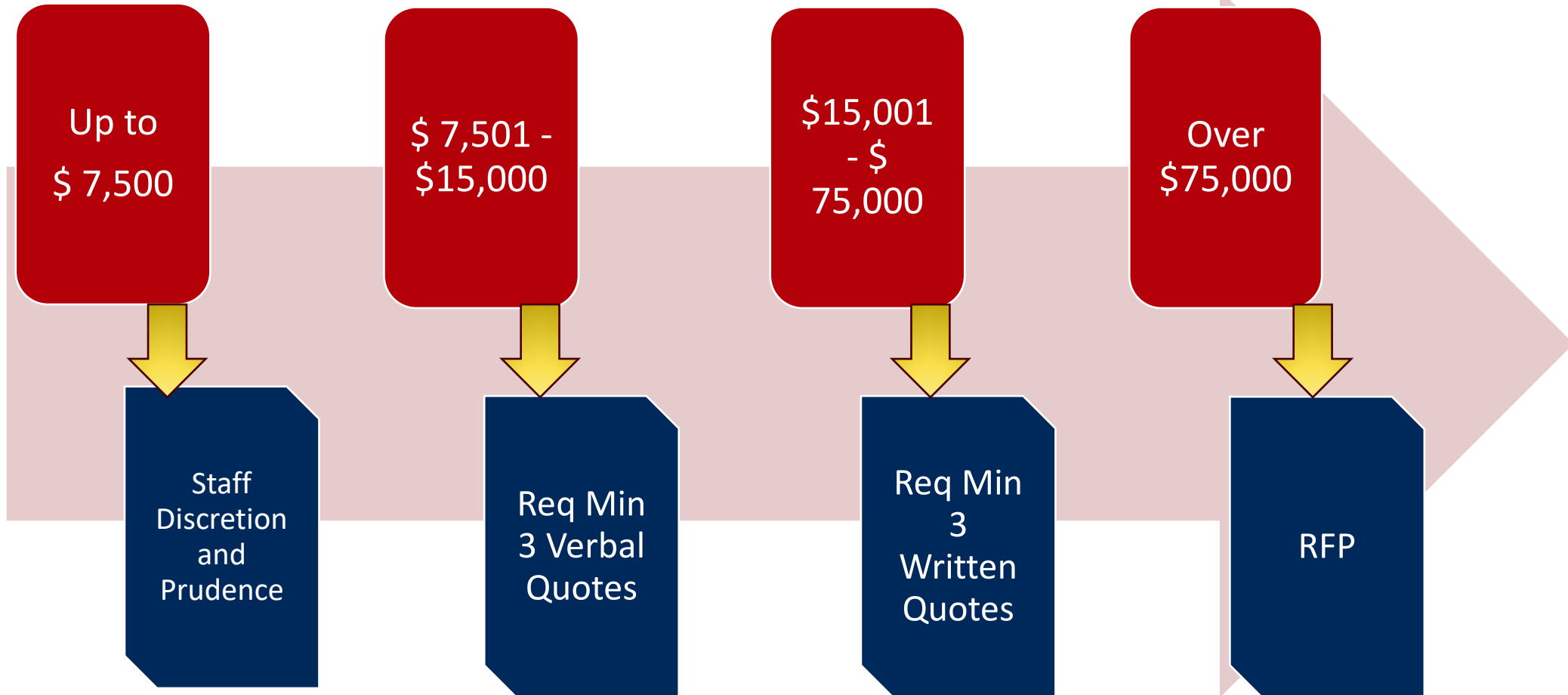
# Agency & ARP Current Procurement Thresholds

## *Total Cost & Procurement Requirements*



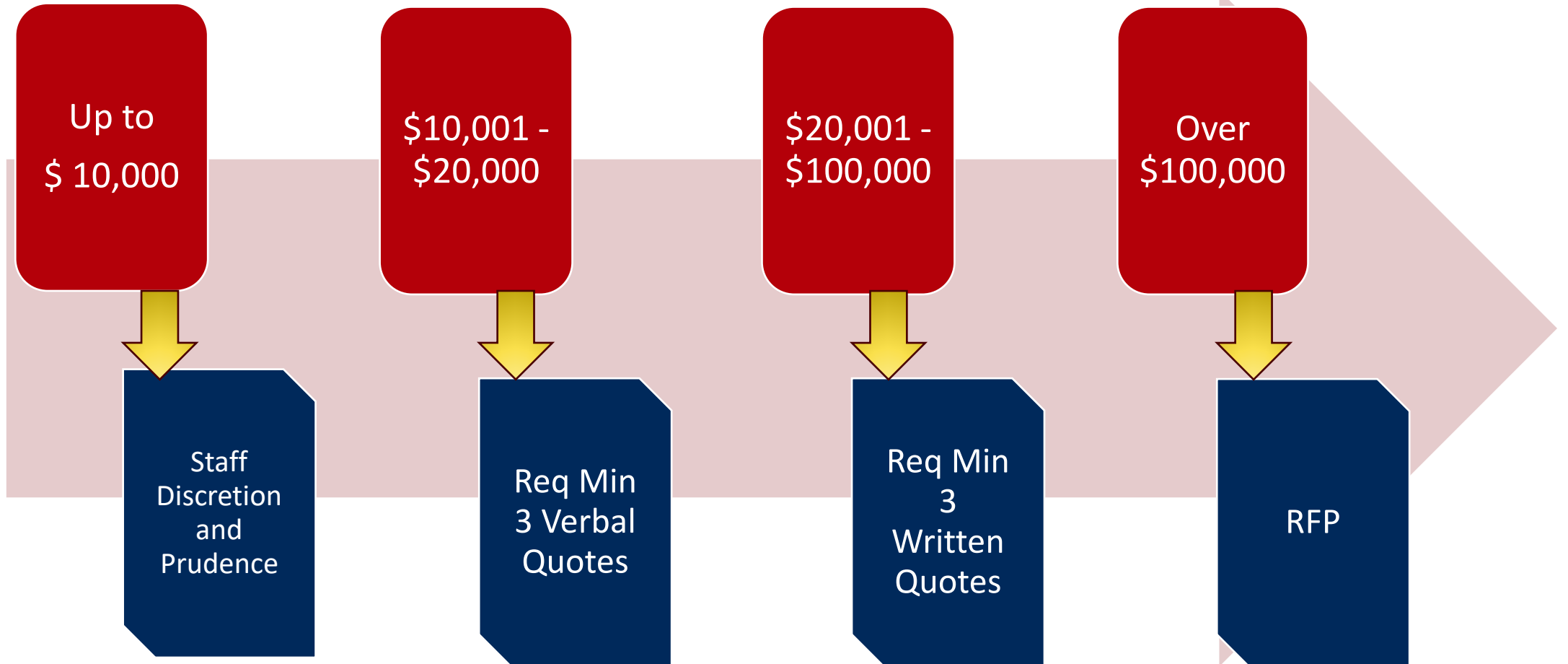
# Proposed Agency Procurement Thresholds

*Total Cost & Procurement Requirements (To reflect Inflation since 2014)*



# Proposed ARP Procurement Thresholds

## *Total Cost & Procurement Requirements*





# Recommended Motion

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- Move approval of the revised procurement limits as presented to the Board of Directors.

**AGENDA ITEM 8 – ACTION ITEMS**

**d. Approval of Moving Stanton II  
Project Funds**

**Board of Directors Meeting  
September 19, 2024**



## **8d – Approval of Moving Stanton II Project Funds**

Board of Directors

September 19, 2024

# Stanton II Project Cash Running Low

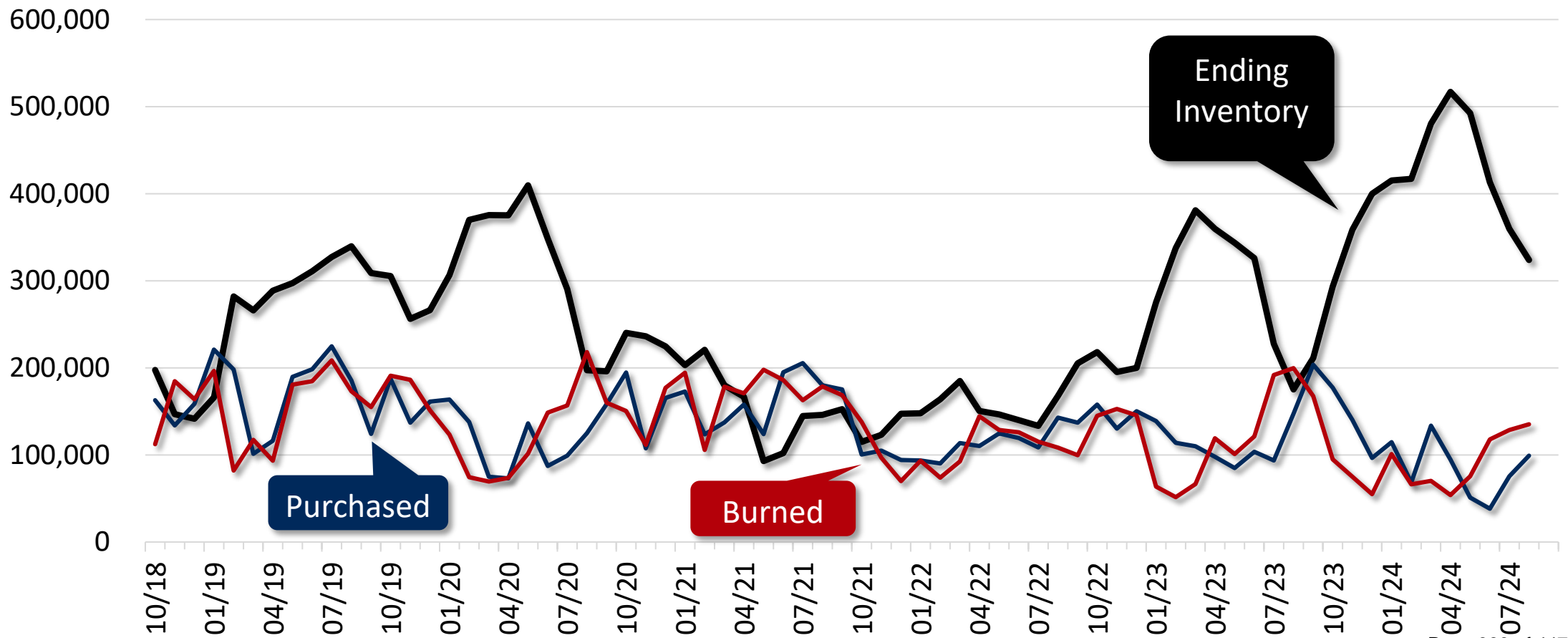
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- Stanton II Project O&M cash dropped to near 30 days at end of June due to coal purchases and cash returned to Participants
- Coal pile built to record levels through last spring, \$3.5M net cash reduction through payments to OUC
  - Project pays OUC based on tons of coal purchased but doesn't collect payment from Participants until the coal is burned
- True-up in FY 2024 is \$2.5M cash return to Participants
  - FY 2024 Budget had forecasted collection from Participants
- Project's cash position should improve in FY 2025, but interim liquidity support needed

# Stanton Coal Inventory > 500k Tons April 2024

*Much Higher Inventory Driven by Low Gas Prices and Outages*

## Stanton Monthly Coal Activity and Inventory (Tons)



# Stanton II Liquidity Support Plan

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- Seeking \$3M transfer from General Reserve Fund to O&M to build cash to near 60-day target
- General Reserve balance at 8/31/24 was \$31.8M
- Currently, only planned usage of General Reserve is for payoff of debt in FY 2027
- Repayment of borrowed funds to General Reserve can be included as part of FY 2026 budget

# Recommended Motion

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- Move approval of transferring \$3 million from the Stanton II Project General Reserve Fund to the Project's Operation and Maintenance Fund, with repayment of the funds planned to be included as part of the proposed FY 2026 Stanton II Project budget.

**AGENDA ITEM 8 – ACTION ITEMS**

- e. Approval of 2022-2023 OUC Audit Report**

**Board of Directors Meeting  
September 19, 2024**





# **8e– Approval of 2022-2023 OUC Audit Report**

Board of Directors

September 19, 2024

# Over \$970k of Audit Findings Returned to FMPA

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- SEC-B Shared Facilities Variable O&M Charges \$335,785 (Credit Received)
- Benefit Participants Currently and Future
  - A&G Allocation Proposed Changes - Osceola Generation \$ 157,610
  - O&M Allocation Proposed Changes - Osceola Generation \$20,881
  - Fuel Services Allocated at 80% vs 60% per Minority Reports \$7,323
- Benefit Participants Currently
  - Hurricane Recoveries \$254,056
  - SEC-A Shared Facilities Revenues - FY22 & FY23 True-ups \$191,609
  - Three other Audit Findings \$10,043
- Interest owed \$67,482

# Audit Finding Summary

## *KUA Findings Flow to ARP Under the TARP Agreement*

	SEC1	SEC2	CTs A&B	CTs C&D	Total
Stanton Project	\$ (111,918)		\$ (174,662)	\$ (2,781)	\$ (289,361)
Stanton II Project	\$ -	\$ (140,649)	\$ -	\$ -	\$ (140,649)
All Requirements	\$ (49,135)	\$ (31,308)	\$ -	\$ -	\$ (80,442)
Tri-City	\$ (40,036)	\$ -	\$ -	\$ -	\$ (40,036)
<b>FMPA Total:</b>	<b>\$ (201,088)</b>	<b>\$ (171,956)</b>	<b>\$ (174,662)</b>	<b>\$ (2,781)</b>	<b>\$ (550,488)</b>
<b>KUA Total:</b>	<b>\$ (36,396)</b>	<b>\$ -</b>	<b>\$ (54,638)</b>	<b>\$ -</b>	<b>\$ (91,034)</b>
<b>Total FMPA &amp; KUA</b>	<b>\$ (237,485)</b>	<b>\$ (171,956)</b>	<b>\$ (229,300)</b>	<b>\$ (2,781)</b>	<b>\$ (641,522)</b>

# Open Items - Continuation of A&G Disagreement

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- A&G Open Items
  - Delivery and setup for Solar Event
  - Vikocell 100Pcs a grade monocrystalline solar cell panel
  - Retail remittance processing
  - Marketing communication services, graphic design, and messaging for spring advertising campaign
  - Florida Trend advertising
  - Lake Lorna Doone Park Solar Pavilion
  - UFT site licenses
  - Distribution related expenses
  - Osceola County subdivision process
  - Lake Ivanhoe related expenses
  - Evok Advertising, etc.

# Open Items (Cont'd)

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- OUC disagreed with these audit findings and stated that all of them mainly because of the concept behind the A&G expenses. Not all A&G expenses are going to be directly attributable to the plant, and as such, we use the allocable expense formula as defined in Exhibit S which uses headcount. The attorney fees and the others fit the description for FERC 923.

# Open Items (Cont'd)

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- SEC-B Shared Facilities/Wastewater Processing Assets
- Orange County Water Impact – Lost Opportunity
- OUC Response:

*“To be addressed by leadership - not part of the audit.”*



## Discussion



# Recommended Motion

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- Move to approve 2022-2023 OUC Audit Report





# **Stanton I & II, IRCTs A-D Participation Agreement Audit Report**

**Audit Performed By:**  
Veda Sharma, CGAP, MS  
Victor Gaines, CGIP, CFE, PHD  
Steve Ruppel, CPA  
Liyuan Woerner, CPA, MBA

September 18, 2024

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## Executive Summary

We have audited the actual costs billed to FMPA and KUA under the Stanton Energy Center Unit No. 1 (“SEC1”- Stanton I Project, ARP SECI, Tri-City, KUA) Participation Agreements, the Stanton Energy Center Unit No. 2 (“SEC2” – Stanton II Project, ARP SEC II) Participation Agreements, the Indian River Combustion Turbines A & B (“CTs A&B”) Participation Agreements and the Indian River Combustion Turbines C & D (“CTs C&D”) Participation Agreements, for the two year period from October 1, 2021 through September 30, 2023. This is the sixteenth audit of SEC1, the twelfth audit of SEC2, the fifteenth audit of CTs A&B, and the fifteenth audit of CTs C&D.

Based on our audit procedures, issues were noted in several areas including O&M, A&G, Shared Facilities, Brine Plant water usage, Indian River CTs #2 fuel expense, Fuel Service Department allocation, etc.

The audit findings or exceptions, result in net refunds or payments of (\$201,088), (\$171,956), (\$174,662), and (\$2,781) to the SEC1, SEC2, CTs A&B and CTs C&D Participants, respectively. FMPA projects’ and KUA’s share of these refunds are (\$36,396) and (\$54,638), respectively. KUA share is returned to FMPA’s ARP due to the revised capacity & energy sales contract.

	SEC1	SEC2	CTs A&B	CTs C&D	Total
Stanton Project	\$ (111,918)		\$ (174,662)	\$ (2,781)	\$ (289,361)
Stanton II Project	\$ -	\$ (140,649)	\$ -	\$ -	\$ (140,649)
All Requirements	\$ (49,135)	\$ (31,308)	\$ -	\$ -	\$ (80,442)
Tri-City	\$ (40,036)	\$ -	\$ -	\$ -	\$ (40,036)
<b>FMPA Total:</b>	<b>\$ (201,088)</b>	<b>\$ (171,956)</b>	<b>\$ (174,662)</b>	<b>\$ (2,781)</b>	<b>\$ (550,488)</b>
<b>KUA Total:</b>	<b>\$ (36,396)</b>	<b>\$ -</b>	<b>\$ (54,638)</b>	<b>\$ -</b>	<b>\$ (91,034)</b>
<b>Total FMPA &amp; KUA</b>	<b>\$ (237,485)</b>	<b>\$ (171,956)</b>	<b>\$ (229,300)</b>	<b>\$ (2,781)</b>	<b>\$ (641,522)</b>

Per Section 8.02 of each of the SEC1CTs A&B, CTs C&D , and Section 9.02 of the SEC2 Participation Agreements, these adjustments qualify for interest. Interest is not included in the amounts shown above. See General Comment A for interest payment due information.

## Scope and Objectives

The scope of this audit consisted of reviewing SEC1, SEC2 (collectively referred to as “SEC”), CTs A&B, and CTs C&D (collectively referred to as “CT”) Participant billings to FMPA and KUA from October 1, 2022 through September 30, 2023.

All components of the monthly invoices were reviewed and included the following: #6 oil expenses, coal burn, landfill gas, capital additions, operation & maintenance expenses (“O&M”), inventory use charges, common/external facilities use charges, replacement units use charges, shared facilities revenues and fixed assets, reserve power, property and liability insurance expenses, administrative & general expenses (“A&G”), SEC coal and freight payments, coal car repair and maintenance expenses, CT fuel expenses and the CT variable operation and maintenance expenses.

The objectives of this audit were to determine whether:

- (a) Costs billed followed the terms of the Participation Agreements.
- (b) OUC’s billing process produced/captured costs in compliance with the terms of the Participation Agreements.
- (c) Costs billed were supported by OUC’s accounting records and other appropriate documentation.
- (d) Allocations, which are necessary for billing certain costs, were reasonable and in compliance with the terms of the Participation Agreements, especially those necessary to assign costs among SEC1, SEC2, CTs A&B and CTs C&D.

## Background Information

SEC1 is a 425 MW coal-fired plant jointly owned by OUC, FMPA, and KUA. The plant is operated by OUC who owns 68.5542%. FMPA's Stanton, All-Requirements, and Tri-City Projects own a combined total of 26.6265%. KUA owns 4.8193%.

SEC1's commercial operation date was July 1, 1987, with a total useful life of 40 years.

SEC2 is a 429 MW coal-fired plant jointly owned by OUC and FMPA. The plant is operated by OUC who owns 71.5909%. FMPA's Stanton II and All-Requirements Projects own a combined total of 28.4091%.

SEC2's commercial operation date was June 1, 1996, with a total useful life of 40 years. SEC2 was updated in 2013 resulting in a 480 gross MW capability.

CTs A&B are each 48 MW units and are jointly owned by OUC, FMPA's All-Requirements Project, and KUA. The CTs are operated by OUC who owns 48.8%. FMPA's All-Requirements Project owns 39% and KUA owns 12.2%.

CTs A&B's commercial operation dates were June 1, 1989, and July 1, 1989, respectively, with minimum useful lives of 25 years each.

CTs C&D are each 128 MW units and are jointly owned by OUC and FMPA's All-Requirements Project. The CTs are operated by OUC who owns 79%. FMPA's All-Requirements Project owns 21%.

CTs C&D's commercial operation dates were August 28, 1992, and October 1, 1992, respectively, with minimum useful lives of 25 years each.

Through individual Participation Agreements with OUC, FMPA and KUA pay their ownership share of costs to construct, operate, maintain, and improve the projects, and in return, are entitled to their ownership share of capacity and energy.

### Summary of Audit Recommendations

	FMPA Audit Recommendation	SEC1	SEC2	CTs A&B	CTs C&D	Total	
1*	Purchasing OH Rate doubled on Capital Assets	(2,563)	(2,316)	-	-	(4,879)	a
2*	IRCTs Fuel Expense	-	-	(232)	(1,439)	(1,671)	a
3*	Maintenance Work Orders Classification Incorrect	(36,175)	32,681	-	-	(3,493)	a
4*	SEC-A Shared Facilities Revenues - FY22 & FY23 True-ups	(100,665)	(90,944)	-	-	(191,609)	a
5*	Fuel Services Allocated at 80% vs 60% per Minority Reports	(3,847)	(3,476)	-	-	(7,323)	a
6*	O&M Allocation Proposed Changes - Osceola Generation	(10,970)	(9,911)	-	-	(20,881)	a
7*	A&G Allocation Proposed Changes - Osceola Generation	(81,515)	(73,643)	(1,176)	(1,276)	(157,610)	a
8*	Hurricane Recoveries	(1,750)	(24,349)	(227,893)	(65)	(254,056)	a
	<b>Total amount due FMPA</b>	<b>(237,485)</b>	<b>(171,956)</b>	<b>(229,300)</b>	<b>(2,781)</b>	<b>(641,522)</b>	
9**	SEC-B Wastewater System (Brine Plant & Pond) Capital Buy-in	(3,442,270)	(3,109,852)	-	-	(6,552,122)	
10**	Orange County Water - Lost Opportunity	(2,279,267)	(2,481,717)	-	-	(4,760,984)	
		-	-	-	-	-	
	<b>Due to (Participants)/OUC</b>	<b>(5,959,022)</b>	<b>(5,763,525)</b>	<b>(229,300)</b>	<b>(2,781)</b>	<b>(11,954,628)</b>	

\* OUC has agreed to this audit recommendation

\*\* OUC has disagreed with this audit recommendation

a Per Section 8.02 of each of the SEC1, SEC2, CTs A&B , CTs C&D and Section 9.02 SEC2 Participation Agreements, these adjustments qualify for interest. Interest is not included in the amounts shown above. As of August 31, 2024, net interest of \$67,482 would be due to FMPA for the above adjustments.

## Audit Finding and Recommendations

### 1. Purchasing Overhead Rate Doubled on SEC Common Capital Assets

Per OUC Overhead Rates, a purchasing overhead rate of 5% is charged to both capital and O&M work orders. Testing of the FY2022 and FY2023 capital work orders closed to SEC Common Fixed Assets and billed to the Participants, identified several SEC Common assets that had 10% versus the 5% purchasing overhead rate charged to them. SEC Unit 1 and SEC Unit 2 capital work orders closed to fixed assets tested okay, as well as the maintenance work orders in the test sample.

#### OUC Response

Our Fixed Assets group reviewed, and it appears that the SEC Common business unit was unintentionally added twice to this recurring journal entry, therefore it was calculating the 5% x2. This was discovered and corrected this past December during a larger review.

#### Audit Follow-up

Per review of the Fixed Assets included in the monthly bills for February 2024, the fixed asset values have not been corrected for the excess purchasing overhead allocated to them. As a result, the Participants request refunds of \$2,563 for the SEC1 Participants and \$2,316 for the SEC2 Participants. The interest impact is not included in the audit adjustment values above. See General Comment A for more detail. The interest impact is not included in the audit adjustment values above. See General Comment A for more detail.

#### OUC Follow-up Response

OUC agreed with this audit finding and will include \$2,563 for the SEC1 Participants and \$2,316 for the SEC2 Participants in future invoices.

### 2. Indian River CTs #2 Fuel Expense

In April 2023, OUC transferred 656 barrels of #2 Fuel Oil from the Indian River CTs site to their Osceola Gas Generation Site. The quantity of 656 barrels was removed from the inventory balance. However, the \$ value of the fuel oil was not removed. This error increased the average cost of #2 fuel oil used at the Indian River CTs (for consumption and generation) in the following month.

Proper removal of the associated value of \$83,240.08 related to the 656 barrels, lowers the average #2 Fuel oil inventory carrying price from \$152.69 to the correct average price of \$127.59.

This error impacts the billing of all usage of and generation on #2 Fuel Oil at the Indian River CTs A-D site beginning in April 2023 and impacts all billings to Participants through the current date.

#### Audit Request

The Indian River CTs A-D Participants request refunds totaling \$232 for IRCTs A&B and \$1,439 for the IRCTs C&D through January 2024 for the overbilling resulting in overstated pricing beginning April 2023 and continue to current. The interest impact is not included in the audit adjustment values above. See General Comment A for more details.

OUC Response

OUC agreed with this audit finding and will include \$232 for IRCTs A&B and \$1,439 for the IRCTs C&D Participants in future invoices.

**3. Maintenance Work Orders Improperly Classified**

Review of the Work Order set-up data identified that several SEC Unit #1 and SEC Common maintenance work orders were incorrectly coded to the wrong business unit.

Correction of the misclassification results in \$36,175 in refunds due to the SEC 1 Participants and the SEC2 Participants owing OUC a total of \$32,681, for a net correction of \$3,493 due to the Participants. The interest impact is not included in the audit adjustment values above. See General Comment A for more details.

OUC Response

OUC agreed with this audit finding and will include \$3,493 for the participants in future invoices.

**4. SEC-A Shared Facilities**

The revenues credited to the SEC1 and SEC2 Participants for the Stanton Unit A variable and fixed charges were understated due to an erroneous debit entry related to miscellaneous electric revenue reductions to the revenue accounts being allocated to the Participants in both Fiscal Years 2022 and 2023. Per OUC's response to the data request, a clean-up of FERC accounts in the General Ledger was completed at some time during the audit period, causing the revenue accounts that flow through the Participant's invoices to be understated.

Audit Request

The SEC1 and SEC2 Participants request the correction of the Stanton Unit A Shared Facilities revenue for FY2022 and FY2023. Refunds of \$100,665 and \$90,944 to SEC1 and SEC2 Participants are being requested, respectively. The interest impact is not included in the audit adjustment values above. See General Comment A for more details.

OUC Response

OUC agreed with this audit finding and will include \$100,665 for the SEC1 Participants and \$90,994 for the SEC2 Participants in future invoices.



**5. Fuel Services Department Allocation**

Support provided by OUC in the current audit for allocation of the Fuel Services Department provided that the department should have been allocated 60% to Stanton Energy Center, 20% to Indian River and 20% to Other for both FY2022 and FY2023. However, the billings to the SEC 1 and SEC 2 Participants continued to use the previous allocation factor of 80% for both fiscal years.

Application of the proper 60% allocation rate to the total Fuel Services Department expenses for Stanton Energy Center for both fiscal years 2022 and results in \$3,847 due to the SEC1 Participants and \$3,476 due to the SEC2 Participants. The interest impact is not included in the audit adjustment values above. See General Comment A for more details.

Additional refunds will also be due to the Participants for the rebilling of the FY2024 invoices for the period of October 1, 2023, to current.

OUC Response

OUC agreed with this audit finding and will include \$3,847 for the SEC1 Participants and \$3,476 for the SEC2 Participants in future invoices.

**6-7. Allocation Percentages – Headcount Allocations Proposed Changes impacting O&M and A&G**

Prior to FY2023, OUC added the Osceola Gas Generation facility to its electric generation mix. However, there have been no changes in the allocation of Operation & Maintenance (O&M) expenses for Power Resources departments of Administrative, Safety & Training, Development & Support, Fuel Services, Contract & Settlements or Engineering.

The audit inquired about any allocation changes being made during the audit period of Fiscal Years 2022 and 2023, and OUC responded that none had been made. Implementing these changes effective October 1, 2022 (for the FY2023) would result in the following allocation changes to the Power Resources Business Unit:

	<u>Current</u>	<u>Proposed</u>	<u>Change</u>
<b>Power Resources Business Unit Allocation to:</b>			
Stanton Energy Center Units 1 & 2	79.40%	73.81%	-5.59%
Indian River CTs A-D	3.52%	3.33%	-0.19%

These changes would also impact the Administrative & General (A&G) Overhead Allocations:

<b>A&amp;G Overhead Allocations to:</b>	<u>Current</u>	<u>Proposed</u>	<u>Change</u>
SEC	18.6905%	18.0046%	-0.6859%

IRCTs 0.8333% 0.8028% -0.0305%

As a result, the following refunds are due to the Participants:

Participants	O&M	A&G	Total
SEC-1	\$ (10,975)	\$ (81,515)	\$ (92,490)
SEC-2	\$ (9,915)	\$ (73,643)	\$ (83,558)
IRCTs A&B	immaterial	\$ (1,176)	\$ (1,176)
IRCTs C&D	immaterial	\$ (1,276)	\$ (1,276)
<b>Total</b>	<b>\$ (20,890)</b>	<b>\$ (157,610)</b>	<b>\$ (178,500)</b>

The interest impact is not included in the audit adjustment values above. See General Comment A for more details.

Additional refunds will also be due to the Participants for the rebilling of the FY2024 invoices for O&M and A&G for the period of October 1, 2023 to current for the correction of the Allocation %'s.

OUC Response

OUC Agreed with these audit findings and will include \$178,500 refund on future invoices. Additional refunds will be credited for O&M and A&G for the period of October 1, 2023, to current for the correction of the Allocation %'s.

**8. Hurricane Recoveries**

During fiscal years 2022 and 2023, OUC received reimbursements for various Hurricane IRMA related damages at the Indian River CTs and Stanton Energy Center. The audit identified that the costs were included in the invoices billed to Participants (credits to defer the hurricane expenses never flowed through to the Participants).

The Indian River CTs site received \$277,213 in reimbursements for building and Administration Complex damage repairs. The SEC Site received \$865,206 for the SEC Campus and Engineering Roof and Fence repair. OUC had posted these recoveries to a business unit / object account combination that did not flow through to the Participant invoices.

The FMPA Participants request refunds of their share of the hurricane charges. Since the original expenses were billed to the Participants through the O&M expenses, the refunds should follow the same refund treatment through O&M for the related recoveries. As a result, the Indian River CTs A&B Participants are due refunds of \$227,893, the Indian River CTs C&D Participant is due a refund of \$65, the Stanton Unit 1 Participants are due a refund of \$1,750 and the Stanton Unit 2 Participants are due a refund of \$24,349.

The interest impact is not included in the audit adjustment values above. See General Comment A for more details.

#### OUC Response

OUC Agreed with this audit findings and will include \$227,893 to Indian River CTs A&B, \$65 to Indian River CTs C&D, \$1,750 to the Stanton Unit 1 and \$24,349 to the Stanton Unit 2 Participants in the future invoice.

### **9. SEC-B Shared Facilities/Wastewater Processing Assets – Buy-in**

Stanton Unit B's commercial operation date was October 27, 2009. Since then, the SEC-1 and SEC-2 Participants have questioned OUC on the allocation of shared facilities and common facilities. FMPA's review of the Stanton coal contracts indicates that a process sets forth how to allocate fixed common facilities and shared facilities capital costs. Section 4.12 of the Participation Agreements for Stanton Unit 1 and Section 4.13 of the Participation Agreement for Stanton Unit 2 specify how new site capacity should participate in common fixed costs. More specifically, the units on the Stanton Energy Center site that use common or shared facilities of Stanton Unit 1 and Unit 2, will purchase a pro-rata share of the Common Facilities from the current Owners.

In the FY 2012 – 2013 audit, OUC responded to data requests stating that "SEC-B was not interconnected to the Brine Plant. However, the used water does get deposited in the pond so I guess we could investigate what incremental amount that might be for the usage of the pond".

In subsequent years, a diagram of the interconnection of Stanton B was provided to the Participants and the Brine plant and other Shared Facilities were found to be interconnected to Stanton B. This is evidenced by Stanton B paying variable costs for the use of those facilities. However, Stanton B still has not contributed to the common or shared facilities assets capital as required in the SEC 1 and SEC 2 contracts.

#### Audit Request

The Participants are requesting refunds related to Stanton B paying for its share of the Common and Shared Facilities capital assets. An allocation of the capital asset costs to Stanton B was presented to OUC in which the Participants are requesting refunds of \$3,442,270 and \$3,109,852 for SEC-1 and SEC-2 Participants, respectively. The interest impact is not included in the audit adjustment values above. See General Comment A for more details.

#### OUC Response

OUC replied: "To be addressed by leadership -not part of the audit."

**10. Orange County Water Impact – Lost Opportunity**

During the water treatment model review, FMPA discovered that 435,000+ gallons of water per day are injected into the “recycle basin loop” from the Orange County supplied makeup water supply pond. This flow is at OUC discretion and results in roughly 28 days of out of economics operation per year.

Description	Value	Units
Orange County Water Introduced into Recycle Basin Loop	435,000	gal/day
Annual equivalent	158,775,000	gallons
Daily SEC Unit 1 & 2 FGD _ cooling tower evaporation	5,816,642	gal/day
Days equivalent Orange County water to evaporate	27	days
Unit 1 0.40 capacity factor daily operational MWhs	4,426	mwhs
Unit 2 0.48 capacity factor daily operational MWhs	5,334	mwhs
Total MWhs over 28 days	266,398	mwhs
Lost opportunity financial spread coal to gas	\$ 12	\$/MWh
Annual extended value	\$ 3,196,777	dollars
5 year extended value	\$ 15,983,886	dollars

FMPA seeks cost recovery for this imprudent operation decision for the last five years for its impact on the SEC-1 and SEC-2 Participants. Refunds of \$2,279,267 and \$2,481,717 are being requested for the SEC-1 and SEC-2 Participants, respectively. The interest impact is not included in the audit adjustment values above. See General Comment A for more details.

OUC Response

OUC replied: “To be addressed by leadership -not part of the audit.”

## General Comments

### A. Interest

Per Section 8.02 of each of the SEC1, SEC2, CTs A&B, C&D And Section 9.02 of SEC2 Participation Agreements, these adjustments qualify for interest. Interest charges are not included in the amounts shown above. As of August 31, 2024, a net interest charge of \$67,482 would be due to FMPA for these adjustments.

### B. Open Items

#### 1. Administration & General Expenses

Based on the support provided during our audit, we identified possible non-billable expenses included in the Participants billing related to A&G expenses as follows:

- Delivery and setup for Solar Event
- Vikocell 100Pcs a grade monocrystalline solar cell panel
- Retail remittance processing
- Marketing communication services, graphic design and messaging for spring advertising campaign
- Florida trend advertising
- Lake Lorna Doone Park Solar Pavilion
- UFT site licenses
- Distribution related expenses
- Osceola county subdivision process
- Lake Ivenho related expenses
- Evok Advertising, etc.

Pursuant to Sections 1.10 and 1.13 of the Participation Agreements, billable expenses shall include that portion of expenses incurred by OUC and determined to be allocable to the Project in satisfying OUC's responsibility to manage, control, operate and maintain the Project.

Pursuant to Section 8 – Accounting and Auditing, *“Nothing in this Agreement shall require OUC to change, or otherwise affect, the accounting practices and procedures used by it. All accounting practices, procedures and records necessary to obtain a proper allocation of costs to the Project and Common and External Facilities under this Agreement may be maintained independently of OUC’s accounting records and/or may include allocations not otherwise utilized by OUC. The manner in which accounts are kept pursuant to this Agreement is not intended to be a determination of the manner in which they are treated in the separate books of account of the Parties.”*

FMPA is not challenging OUC's accounting practices and procedures. However, FMPA is challenging billing of the costs to the Participants for the expenditures listed above. Review of the charges identified that the expenditures were global in nature (applied to all functional operations) or were not allocable to the operations of the jointly owned generation facilities. Per review, the evidence obtained during the invoice testing supports removing these costs.

**AGENDA ITEM 8 – ACTION ITEMS**

- f. Approval of Recommendation of FMPA's Officers for Evaluations of the General Manager and CEO and General Counsel and CLO**

**Board of Directors Meeting  
September 19, 2024**



September 6, 2024

TO: FMPA Board of Directors

FROM: FMPA Board Officers  
Barbara Quiñones, Homestead, Chair  
Lynne Tejeda, Key West, Vice Chair  
Bob Page, Green Cove Springs, Secretary  
Allen Putnam, Jacksonville Beach, Treasurer  
Howard McKinnon, Havana, Executive Committee Chairman

RE: BOD Item 8f – Approval of Board Officers Recommendation on Evaluations of Jacob Williams, General Manager and CEO and Jody Finklea, General Counsel and CLO

On September 6, 2024, the Officers met via Microsoft Teams with the Board of Directors to solicit input on the performance of the General Manager and CEO and General Counsel and CLO. Officers present were Barbara Quiñones, Homestead, Chair; Lynne Tejeda, Key West, Vice Chair; Bob Page, Secretary; Allen Putnam, Jacksonville Beach, Treasurer; and Howard McKinnon, Havana, Executive Committee Chairperson.

Others present were Javier Cisneros, Fort Pierce; Ed Liberty, Lake Worth Beach; James Braddock, Wauchula; Christina Simmons, Bushnell; Christopher Miller, New Smyrna Beach; Lisa Vedder and Jamie England, Winter Park; and Ken Zambito, OUC.

Staff present were Jacob Williams, General Manager and CEO; Jody Finklea, General Counsel and CLO; Sharon Adams, Chief People and Member Services Officer; and Lindsay Jack, Senior Administrative & Member Services Assistant.

The purpose of the meeting was to give the Board an opportunity to provide input to the Board Officers on the General Manager and CEO's and General Counsel and CLO's past year's performance and to consider compensation or benefit adjustments for both the General Manager and CEO and General Counsel and CLO. These meetings also provided an opportunity for verbal comments from the Board members. Everyone provided positive comments on both the General Manager and CEO's performance and the General Counsel and CLO's performance this past year.

### **Recommendations in Salaries and/or Benefits for the General Manager and CEO**

The Board Officers and Executive Committee Chairperson recommend to the Board of Directors the following:

- There was consensus by the Board Officers that Jacob Williams has done an outstanding job this past year. His many accomplishments on achieving great results on the Strategic Goals for this past year were highlighted.

**Recommended Motion:** Move approval of the Board Officers recommendation for a 6% percent merit increase to the base salary for excellent performance of the General Manager and CEO. The Officers recommend authorizing the Chair to execute amendments to the employment agreements for the compensation changes approved by the Board. This percentage is being recommended by all the Board Officers and the Executive Committee Chairperson.

### **Recommendations in Salaries and/or Benefits for the General Counsel and CLO**

The Board Officers and Executive Committee Chairperson recommend to the Board of Directors the following:

- There was consensus by the Board Officers that Jody Finklea has done an outstanding job this past year. His many accomplishments on achieving great results on the Strategic Goals for this past year were highlighted.

**Recommended Motion:** Move approval of the recommendation from the Board Officers and Executive Committee Chairperson for the General Counsel and CLO of a 6% percent merit increase for excellent performance be added to the base salary of the General Counsel and CLO. The Officers recommend authorizing the Chair to execute amendments to the employment agreements for the compensation changes approved by the Board. This percentage is being recommended by all the Board Officers and the Executive Committee Chairperson.

BQ/LT/BP/AP/HM/sa



**AGENDA ITEM 8 – ACTION ITEMS**

- g. Approval of CY 2025 Meeting  
Schedule**

**Board of Directors Meeting  
September 19, 2024**



# 8g – Approval of Calendar Year 2025 Meeting Schedule

Board of Directors

September 19, 2024

# Proposed Meeting Dates for 2025

## *Board of Directors and Executive Committee*

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Meeting Date
January 16
February 12 Strategic Planning Session February 13 (APPA Leg. Rally Feb. 24-26, 2025)
March 20
April 17
May 15
June 19 (APPA National Conf. June 6-11, 2025)

Meeting Date
July 23 (during FMEA Annual Conference)
August 21
September 18
October 16
November 13 (2 <sup>nd</sup> Thursday due to holiday)
December 11 (2 <sup>nd</sup> Thursday due to holidays)

# Recommended Motion

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- Move approval of the recommended meeting schedule for calendar year 2025.

Content to be presented at the Board of Directors Meeting

**AGENDA ITEM 9 – INFORMATION  
ITEMS**

- a. 2024 FMPA Member Satisfaction  
Study Results**

**Board of Directors Meeting  
September 19, 2024**

**AGENDA ITEM 9 – INFORMATION  
ITEMS**

**b. Draft FY 25 Goals**

**Board of Directors Meeting  
September 19, 2024**

# Draft Fiscal Year 2025 Management Goals

Goal	Status	Actual	YTD Actual	YTD Target	FY 2025 Target	Comment
<b>1. Safety</b>	Lost-time Accidents				0	
	OSHA Recordables				0	
<b>2. Compliance</b>	Environmental				0	No audit findings
	Financial				0	
	<u>Regulatory</u> Successful Audit				0	
<b>3. Low Cost</b> (\$/MWh)	FY25 Rate Objective					
	Fuel					
	Non-Fuel					
<b>4. Stanton Cost Reduction Resolution</b>						<p>Ensure Stanton 1 Operating Costs End 1/26</p> <p>SEC2 Meaningful Cost Reduction /Elimination Plan 6/25</p>

Goal	Status	Actual	YTD Actual	YTD Target	FY 2025 Target	Comment
5. Cyber-security	Breaches	0	0	0	0	
	Phishing tests % Acknowledge Phishing				<6% >60%	
6. Reliability	Base Generation EAF				90%	
	Intermediate Gen EAF				89%	
	Peaking Generation EAF				92%	
	Successful SI Starts				100%	
7. Member Reliability	Reliability Major				12	
	Reliability Minor				18	
	RP3				6	
8. Member Services	Leadership member visits				75	
	Member training attendance				275	
	Stakeholder Presentations & Major Policy Advocacy (Bal. Energy/Nuke) Posts				40	



Goal		Status	Actual	YTD Actual	YTD Target	FY 2025 Target	Comment
<b>9. Long-Term Plant Reliability</b>	Complete 90% of Tier 1 plant capital projects					90%	
	Complete Keys long-term resource reliability plan					Complete	
<b>10. Financing &amp; Long-Term Rate Reductions</b>	Pre-pay Gas/Solar					1	
	External Sales – Margins					\$12M	
	Complete Bond Financings					3	
<b>11. People</b>	Plant Succession/Training						Complete Succession by 1/25 - Training throughout year
	Agency Succession Plan Refresh						Complete by 3/25
	Agency & Plant Engagement					80%	
<b>12. Balancing Authority Direction</b>							Recommendation for Best Option for <del>EMPA</del> ARP to EC by 3/25

**AGENDA ITEM 9 – INFORMATION  
ITEMS**

**c. Regulatory Compliance Update**

**Board of Directors Meeting  
September 19, 2024**



# 9c – Regulatory Compliance Update

Board of Directors  
September 19, 2024

# NERC Update

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- NERC August Board Highlights
  - Approves 2025 Business Plan and Budgets
  - Progress report on 2024 work plan priorities
  - Invokes special standards authority for first time

# Roles of FMPA Regulatory Compliance Department

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**FMPA Internal Compliance**



**Member Support**



**Industry Influence**

# FMPA Internal Compliance

## *Data Requests*

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- Request For Information (RFI) – Category 2 GO and GOP
- Proposed Data Request Cold Weather Data Collection comments
- Level 2 NERC Alerts
  - Inverter-Based Resources (IBR) Model Quality Deficiencies

# FMMPA Internal Compliance

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- FMMPA had no applicable standards subject to enforcement for Q3 2024
- FMMPA has no self-reportable compliance violations since the last quarterly update
- Plant coordination
  - Weekly Plant coordination meetings
- Quarterly compliance/SME meetings to foster collaboration
- KUA/FMMPA JRO Update\*

# Member Support

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- Member bi-weekly calls
  - EOP-012-2 Cold Weather Standard discussions
- Peer reviews



# Industry Influence

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- Standards balloting
- APPA
- TAPS
- NAGF



# FMIPA Compliance Playbook Overview

# FMMPA Compliance Playbook

Documents > General > Compliance Playbook

Name	Modified	Modified By
COM-001-3	October 9, 2023	LaKenya VanNorman
COM-002-4	August 30, 2023	LaKenya VanNorman
EOP-004-4	July 15	LaKenya VanNorman
EOP-005-3	July 15	LaKenya VanNorman
EOP-011-2	July 15	LaKenya VanNorman
EOP-012-2	July 15	LaKenya VanNorman
FAC-001-4	July 15	LaKenya VanNorman
FAC-002-4	July 15	LaKenya VanNorman
FAC-003-5	July 15	LaKenya VanNorman
FAC-008-5	July 23	LaKenya VanNorman
FAC-010-3	July 15	LaKenya VanNorman
FAC-014-3	July 15	LaKenya VanNorman
IRO-001-4	August 30, 2023	LaKenya VanNorman
IRO-010-4	July 15	LaKenya VanNorman
IRO-017-1	July 15	LaKenya VanNorman
MOD-004-1	July 15	LaKenya VanNorman
MOD-025-2	July 15	LaKenya VanNorman








Documents > General > Compliance Playbook

Name	Modified	Modified By
PRC-004-6	July 15	LaKenya VanNorman
PRC-005-6	July 31	LaKenya VanNorman
PRC-006-5	July 15	LaKenya VanNorman
PRC-006-SERC-03	July 15	LaKenya VanNorman
PRC-008-0	July 15	LaKenya VanNorman
PRC-010-2	July 15	LaKenya VanNorman
PRC-011-0	July 15	LaKenya VanNorman
PRC-012-2	July 15	LaKenya VanNorman
PRC-017-1	July 26	LaKenya VanNorman
PRC-019-2	July 15	LaKenya VanNorman
PRC-023-6	July 15	LaKenya VanNorman
PRC-024-3	July 15	LaKenya VanNorman
PRC-025-2	July 15	LaKenya VanNorman
PRC-026-2	July 15	LaKenya VanNorman
PRC-027-1	August 21	LaKenya VanNorman
TOP-001-5	August 30, 2023	LaKenya VanNorman
TOP-002-4	July 15	LaKenya VanNorman

# Example: Reliability Standard EOP-004-4 “Event Reporting”

Documents > General > Compliance Playbook > EOP-004-4

 Name	Modified
 Supporting Documents	May 4, 2023
 2023-05-04 0-01 - EOP-004-4 Summary.docx	July 8
 EOP-004-4.pdf	February 5
 RSAW EOP-004-4_2018_v1_FMPA.docx	July 3





## **EOP-004-4 Standard Overview**

### **Version 1**

#### **EOP-004-4 – Event Reporting**

Applicable Requirements: R1, R2

Applicable Registration: RC, BA, TO, TOP, GO, GOP, DP

#### ***EOP-004 Summary:***

The purpose of EOP-004-4 is “to improve the reliability of the Bulk Electric System by requiring the reporting of events by Responsible Entities.”

Generally, EOP-004-4 requires FMPA to have an event reporting Operating Plan in accordance with EOP-004-4 Attachment 1 that includes the protocol(s) for reporting to the Electric Reliability Organization and other organizations (e.g. Regional Entity, company personnel, Responsible Entity’s Reliability Coordinator, law enforcement, or governmental authority). Each Responsible Entity shall report events specified in EOP-004-4 Attachment 1 to the entities specified per their event reporting Operating Plan by the later of 24 hours of recognition of meeting an event type threshold for reporting or by the end of the Responsible Entity’s next business day (4 p.m. local time will be considered the end of the business day).

### *FMPA Compliance Activities:*

FMPA complies with EOP-004-4 by developing and implementing FMPA procedure EOP-004-FMPA-Event Reporting Operating Plan, which is compliant with EOP-004-4, Attachment A, as well as FMPA GO-GOP Operator Notification Procedure v.4<sup>1</sup>

FMPA's Event Reporting Operating Plan defines the reportable events, identifies the entity(ies) and contact information to which reports must be submitted, provides key definitions, and otherwise establishes the parameters by which plant operators must identify and report or otherwise take some action in response to specified events. For additional detail, please refer to the Event Reporting Operating Plan.

Generally, the Event Reporting Operating Plan provides as follows:

- Upon determining that a system event may have met the threshold for EOP-004-4 reporting, FMPA's plant personnel are instructed to immediately call the designated FMPA staff members and log the event/communication.
- These FMPA staff members are instructed to discuss the event with plant personnel to assess the impact and compile the information. After completing the initial assessment and review of the event with plant personnel, the FMPA staff members are to coordinate with plant personnel and review the event to determine if FMPA is required to file an EOP-004 Attachment 2 and/or DOE OE-417 form with North American Electric Reliability Corporation (NERC) and report to the Florida Reliability Coordination Council (FRCC) and Southeast Regional Council (SERC) (and the Department of Energy (DOE) if applicable).
- FMPA staff then takes the appropriate reporting action.
  - If FMPA staff deems the event OE-417 reportable utilizing the criteria to file below, the Regulatory Compliance Specialist or delegate(s) will submit an OE-417 form through the [OE-417 Electric Emergency Incident and Disturbance Report portal](#).

## Schedule 1 - Alert Criteria

### Criteria for Filing<sup>4</sup>

### Emergency Alert

**File within 1-Hour**

If any box (1-9) on the right is checked, this form must be filed within 1 hour of the incident. Check Emergency Alert for the Alert Status on Line A below.

- 1 - Physical attack that causes major interruptions or impacts to critical infrastructure facilities or to operations
- 2 - Reportable Cyber Security Incident (as defined in the NERC Glossary of Terms)
- 3 - Cyber event that is not a Reportable Cyber Security Incident that causes interruptions of electrical system operations
- 4 - Complete operational failure or shut-down of the transmission and/or distribution electrical system
- 5 - Electrical System Separation (islanding) where part or parts of a power grid remains operational in an otherwise blacked-out area or within the partial failure of an integrated electrical system
- 6 - Uncontrolled loss of 300 megawatts or more of firm system loads for incident
- 7 - Firm load shedding of 100 megawatts or more implemented under an
- 8 - System-wide voltage reductions of 3 percent or more
- 9 - Public appeal to reduce the use of electricity for purposes of maintaining the

### Normal Report

**File within file within 6-Hours**

If any box (10-13) on the right is checked AND none of the boxes 1-9 are checked, this form must be filed within 6 hours of the incident. Check Normal Report for the Alert Status on Line A below.

- 10 - Physical attack that could potentially impact electric power system and targets components of any security systems
- 11 - Cyber event that could potentially impact electric power system and
- 12 - Loss of electric service to more than 50,000 customers for 1 hour or more
- 13 - Fuel supply emergencies that could impact electric power system and

### Attempted Cyber Compromise

**File within file within 1-Day**

If box 14 on the right is checked AND none of the boxes 1-13 are checked, this form must be filed by the end of the next calendar day after the determination of the attempted cyber compromise. Check Attempted Cyber Compromise for the Alert Status on Line A below.

- 14 - Cyber Security Incident that was an attempt to compromise a High or Medium Impact Bulk Electric System Cyber System or their associated Electronic Access Control or Monitoring Systems

### System Report

**File within file within 1-Business Day**

If any box (15-27) on the right is checked AND none of the boxes 1-14 are checked, this form must be filed by the later of 24 hours after the recognition of the incident OR by the end of the next business day. (Note: 10:00pm local time will be considered the end of the business day. Check System Report for the Alert Status on Line A below.)

- 15 - Damage or destruction of a Facility within its Reliability Coordinator Area, Balancing Authority Area or Transmission Operator Area that results in action(s) to avoid a Bulk Electric System Emergency.
- 16 - Damage or destruction of its Facility that results from actual or suspected intentional human action.
- 17 - Physical threat to its Facility excluding weather or natural disaster related threats, which has the potential to degrade the normal operation of the Facility. Or suspicious device or activity at its Facility.
- 18 - Physical threat to its Bulk Electric System control center excluding weather or natural disaster related threats which has the potential to degrade the normal operation of the control center. Or suspicious device or activity at its Bulk Electric System control center.
- 19 - Bulk Electric System emergency resulting in voltage deviation on a Facility. A voltage deviation equal to or greater than 10 percent of nominal voltage sustained for greater than or equal to 15 continuous minutes.
- 20 - Uncontrolled loss of 200 megawatts or more of firm system loads for 15 minutes or more from a single incident for entities with previous year's peak demand less than or equal to 3,000 megawatts.
- 21 - Total generation loss, within one minute, of greater than or equal to 2,000 megawatts in the Eastern or Western Interconnection or greater than or equal to 1,400 megawatts in the FERCOT Interconnection.
- 22 - Complete loss of off-site power (OSP) affecting a nuclear generating station per the Nuclear Plant Interface requirements.
- 23 - Unexpected Transmission loss within its area, contrary to design, of three or more Bulk Electric System facilities caused by a common disturbance (excluding successful automatic reclosing).
- 24 - Unplanned evacuation from its Bulk Electric System control center facility for 30 continuous minutes or more.
- 25 - Complete loss of Interpersonal Communication and Alternative Interpersonal Communication capability affecting its staffed Bulk Electric System control center for 30 continuous minutes or more.
- 26 - Complete loss of monitoring or control capability at its staffed Bulk Electric System control center for 30 continuous minutes or more.
- 27 - Uncontrolled loss of a total of 500 MW or more from inverter-based resource(s) for greater than 30 minutes at a common point of interconnection to the bulk electric system.

In addition, the FMPA GO-GOP Operator Notification Procedure directs plant operators to notify FMPA in the event of any reportable incident under EOP-004-4. Specifically, the FMPA GO-GOP Operator Notification Procedure provides:

**“EOP-004-4 R2 EVENT REPORTING**

**(TCEC or Cane Island shift operators are not responsible for evaluating events – they just report these activities.)**

Please notify FMPA immediately if any of the following occur:

- (a) Damage or destruction to the Facility from actual or suspected intentional human action.
- (b) Physical threat to the Facility that has a potential to degrade the normal operation (this excludes weather or natural disaster related threats).
- (c) Suspicious device or activity at the Facility.

(FMPA will evaluate these operator notifications under EOP-004-4 R2 Event Reporting.)”



***Evidence Retention:***

EOP-004-FMPA-11\_Event Reporting Operating Plan and FMPA GO-GOP Operator Notification Procedure are maintained by FMPA Compliance. Any communication between plant personnel and FMPA staff regarding EOP-004-4 reportable events are logged in the plant operator logs. Operator logs are maintained by FMPA staff in P:\Staff\Generation\Department Reporting\11 Compliance\Operator Log Checklist\2023. FMPA Compliance also retains any/all EOP-004 Attachment 2 or DOE OE-417 filings.

<b>Registered Function</b>	<b>Requirement(s)</b>	<b>SME Assigned/Applicability</b>	<b>SME Supervisor/Director</b>
GO	R1, R2	David Radio (Peter Bunora)	David Schumann
GOP	R1, R2	Plant Operators	Jay Butters
TO	R1, R2	Brett Carleton	Navid Nowakhtar
RC	R1, R2	FMPA is not registered as a Reliability Coordinator.	N/A
BA	R1, R2	FMPA is not registered as a Balancing Authority.	N/A
TOP	R1, R2	FMPA is not registered as a Transmission Operator.	N/A
DP	R1, R2	FMPA is not registered as a Distribution Provider.	N/A

NERC Compliance Specialist: LaKenya VanNorman  
Manager of Regulatory Compliance: Dan O'Hagan

## Supporting Documentation

Link to [EOP-004-4 Standard](#)



















Link to [EOP-004-4 RSAW](#)

Link to procedures and process documents:



















- [EOP-004-FMPA-Event Reporting Operating Plan](#)
- [FMPA GO-GOP Operator Notification Procedure](#)
- [TCEC Disturbance Event Reporting Procedure \(EOP-004\) with Flowchart](#)
- [DOE-417 Report](#)
- [DOE-417 FAQ](#)

# FMPA Compliance Playbook

Documents > General > Compliance Playbook

 Name	Modified	Modified By
 COM-001-3	October 9, 2023	LaKenya VanNorman
 COM-002-4	August 30, 2023	LaKenya VanNorman
 EOP-004-4	July 15	LaKenya VanNorman
 EOP-005-3	July 15	LaKenya VanNorman
 EOP-011-2	July 15	LaKenya VanNorman
 EOP-012-2	July 15	LaKenya VanNorman
 FAC-001-4	July 15	LaKenya VanNorman
 FAC-002-4	July 15	LaKenya VanNorman
 FAC-003-5	July 15	LaKenya VanNorman
 FAC-008-5	July 23	LaKenya VanNorman
 FAC-010-3	July 15	LaKenya VanNorman
 FAC-014-3	July 15	LaKenya VanNorman
 IRO-001-4	August 30, 2023	LaKenya VanNorman
 IRO-010-4	July 15	LaKenya VanNorman
 IRO-017-1	July 15	LaKenya VanNorman
 MOD-004-1	July 15	LaKenya VanNorman
 MOD-025-2	July 15	LaKenya VanNorman

Documents > General > Compliance Playbook

 Name	Modified	Modified By
 PRC-004-6	July 15	LaKenya VanNorman
 PRC-005-6	July 31	LaKenya VanNorman
 PRC-006-5	July 15	LaKenya VanNorman
 PRC-006-SERC-03	July 15	LaKenya VanNorman
 PRC-008-0	July 15	LaKenya VanNorman
 PRC-010-2	July 15	LaKenya VanNorman
 PRC-011-0	July 15	LaKenya VanNorman
 PRC-012-2	July 15	LaKenya VanNorman
 PRC-017-1	July 26	LaKenya VanNorman
 PRC-019-2	July 15	LaKenya VanNorman
 PRC-023-6	July 15	LaKenya VanNorman
 PRC-024-3	July 15	LaKenya VanNorman
 PRC-025-2	July 15	LaKenya VanNorman
 PRC-026-2	July 15	LaKenya VanNorman
 PRC-027-1	August 21	LaKenya VanNorman
 TOP-001-5	August 30, 2023	LaKenya VanNorman
 TOP-002-4	July 15	LaKenya VanNorman

# FMPA Compliance Playbook

## *Next Steps*

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- Disseminate & educate
- Establish Playbook document review schedule
- Internal spot check/audit schedule
- SME & Compliance personnel training & onboarding tool

## **Annual Disclosure Training**

Content to be presented for the Board of Directors and  
Executive Committee  
after this meeting.

### **AGENDA ITEM 9 – INFORMATION ITEMS**

- d. Annual Disclosure Training for the  
Board of Directors and Executive  
Committee**

**Board of Directors Meeting  
September 19, 2024**

**AGENDA ITEM 10 – MEMBER  
COMMENTS**

**Board of Directors Meeting  
September 19, 2024**

**AGENDA ITEM 11 – ADJOURNMENT**

**Board of Directors Meeting  
September 19, 2024**