



# city commission agenda

**Regular Meeting**  
March 12, 2018  
3:30 PM  
Commission Chambers

## mayor & commissioners

seat 1  
Gregory Seidel

seat 2  
Sarah Sprinkel

Mayor  
Steve Leary

seat 3  
Carolyn Cooper

seat 4  
Pete Weldon

## welcome

Welcome to the City of Winter Park City Commission meeting. The agenda for regularly scheduled Commission meetings is posted in City Hall the Tuesday before the meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's website at [cityofwinterpark.org](http://cityofwinterpark.org).

## meeting procedures

**Persons desiring to address the Commission MUST fill out and provide the the City Clerk a yellow "Request to Speak" form located by the door.** After being recognized by the Mayor, persons are asked to come forward and speak from the podium, state their name and address, and direct all remarks to the Commission as a body and not to individual members of the Commission, staff or audience.

**Citizen comments at 5 p.m. and each section of the agenda where public comment is allowed are limited to three (3) minutes. The yellow light indicator will remind you that you have one (1) minute left.** Large groups are asked to name a spokesperson. The period of time is for comments and not for questions directed to the Commission or staff for immediate answer. Questions directed to the City Commission will be referred to staff and should be answered by staff within a reasonable period of time following the date of the meeting. Order and decorum will be preserved at all meetings. Personal, impertinent or slanderous remarks are not permitted. Thank you for participating in your city government.

## agenda

*\*times are projected and  
subject to change*

### **1. Meeting Called to Order**

### **2. Invocation**

- a. **Reverend Dr. Jason T. Micheli, Winter Park Presbyterian Church** 2 minutes

### **Pledge of Allegiance**

### **3. Approval of Agenda**

### **4. Mayor's Report**

### **5. City Manager's Report**

- a. **City Manager's Report** 5 minutes
- b. **Update on the status of the Orange Avenue traffic investigation** 10 minutes
- c. **Video Presentation: "Living the Senior Life"** 5 minutes

## **6. City Attorney's Report**

## **7. Non-Action Items**

## **8. Citizen Comments and budget comments | 5 p.m. or soon thereafter**

## **9. Consent Agenda**

- a. **Approve the minutes of February 26, 2018.** 1 minute
- b. **Approve the easement conveyance from Orange County for the St. Andrews Canal.** 2 minutes
- c. **Approve the following solicitation award and authorize the Mayor to execute the contract:** 1 minute
  - 1. Tetra Tech, Inc. - RFP-4-2018 - Emergency Debris Monitoring Services; As-needed basis

## **10. Action Items Requiring Discussion**

- a. **May 28, 2018 Commission meeting cancellation/rescheduling** 5 minutes
- b. **Proposed Winter Park Tennis Center Operation Model** 10 minutes
- c. **Solar Project Power Sales Agreement Between Florida Municipal Power Agency, Solar Power Project and the City of Winter Park** 15 minutes

## **11. Public Hearings**

- a. **Ordinance - Vacating and abandoning a portion of the right-of-way of Loren Avenue from Elvin Avenue to the City limit line, Home Acres, in Ravaudage (2)** 10 minutes

## **12. City Commission Reports**

### Appeals and Assistance

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"If a person decides to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may

need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." (F.S. 286.0105)

"Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office (407-599-3277) at least 48 hours in advance of the meeting."



# city commission **agenda item**

item type	City Manager's Report	meeting date	3/12/2018
prepared by	City Clerk	approved by	
board approval	final vote		
strategic objective			

## **subject**

City Manager's Report

## **motion / recommendation**

## **background**

## **alternatives / other considerations**

## **fiscal impact**

### ATTACHMENTS:

#### Description

City Manager's Report

#### Upload Date

3/6/2018

#### Type

Cover Memo





# city commission city manager's report

item type

meeting date

Below are issues of interest to the Commission and community that are currently being worked on by staff, but do not currently require action on the Commission agenda. These items are being tracked to provide the Commission and community the most up to date information regarding the status of the various issues. The City Manager will be happy to answer questions or provide additional updates at the meeting.

issue	update
Quiet zones	FDOT Schedule Update 2/5/2018 – Construction will begin April 2018 at the Pennsylvania and Webster Avenues crossing. This involves the installation of additional crossing gates, signal houses and some concrete curb and sidewalk.
Seminole County Ditch Drainage Improvement	Dredging the drainage ditch behind the homes along the east side of Arbor Park Drive continues in March. Preliminary design for additional ditch outfall to be completed by Summer 2018.
Electric undergrounding	<b><u>Miles of Undergrounding performed</u></b> Grove Terrace: 95% complete. Project G: 4.03 miles Boring has begun. McKean Circle Phase 2 is underway.  <b>TOTAL so far for FY 2018: 2 miles</b>
Fairbanks transmission	Working through the FDOT to acquire additional funding as well as trying to acquire some level of "not to Exceed" assurance from Duke.
Power contracts	Currently working with the FMPA to acquire 10MW solar. GRU contract ends at the end of 2018 for 10MW. Working on negotiating new deals to replace the 10MW block with favorable pricing.
Denning Drive	Phase 2 (from Fairbanks to Webster) began February 5 with construction of bus bays on west side of the road which are complete. Work to construct the new path on east side of the road began February 19 and is anticipated to be substantially complete by June 1.
Library Design	Schematic design is still in progress following review of the designer's first submission and staff/user review. Working with design team on the next submission schedule.

Sign Code Revisions	Staff will be meeting with business reps at the Chamber on March 23 to review revised code changes.
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Once projects have been resolved, they will remain on the list for one additional meeting to share the resolution with the public and then be removed.



# city commission agenda item

item type	City Manager's Report	meeting date	3/12/2018
prepared by	City Clerk	approved by	
board approval	final vote		
strategic objective			

## **subject**

Update on the status of the Orange Avenue traffic investigation

## **motion / recommendation**

## **background**

Following the fatal vehicle crash on 12/31/17 the City Police Department and Public Works team have been coordinating with the FDOT to assess the cause of the problem, identify additional similar problems in the past using crash data, determine the severity of the problem and provide solutions to best solve the problem.

Preliminary investigation details severe excessive speed on Orange Avenue as the cause of the fatal crash on new year's eve. This incident however led the City to perform an investigation into additional incidents in this stretch of Orange from !7-92 to the western City limit. What we found was a moderate number of additional crashes (11 over 2 years) primarily at the Westchester/ Orange intersection and primarily angle/left turn crashes resulting from left turns at the intersection or vehicles crossing Orange Ave at the intersection. Preliminary results from the FDOT studies underway detail similar problems.

The preliminary volume and speed data show 14000 vehicles per day (vpd) with an 85<sup>th</sup> percentile speed of 41 mph (posted speed limit is 35 mph). The volumes are relatively low for a 4 lane road and the speed is not excessively high for this type of corridor. As this is a state road, any changes or modifications to configuration, signage , limits, etc would have to be approved by the FDOT.

Preliminary studies from the FDOT also show a signal does not appear to be warranted based on volumes. Potential improvements that could be considered are:

1. Restrict movements from side streets to right turn only during peak hours, 2. Investigate "de-widening" the road, 3. Provide speed message signs (either static or active) as a means to alert drivers to excessive speed. Since each of these improvements also has potentially negative ramifications, Additional study is contemplated to ensure the benefits outweigh these ramifications.

A short term improvement could be installing speed message signs on the asphalt to reinforce speed limits. Adding speed feedback signs (active radar with LED readout

displaying current speed) could also be implemented quickly at an estimated cost of below \$10,000. Since there is a distinct possibility of shifting traffic problems from one intersection to another, the option of restricting left turns and through movements at Westchester needs further study and public education prior to implementation. Obviously, the "de-widening" proposal warrants further scrutiny to understand all positive and negative aspects of such a change in traffic patterns.

The FDOT studies underway are expected to be complete in the next month or so and City staff is working to supply necessary data and comments as requested by this organization.

### **alternatives / other considerations**

### **fiscal impact**



# city commission **agenda item**

item type	City Manager's Report	meeting date	3/12/2018
prepared by	City Clerk	approved by	
board approval	final vote		
strategic objective			

## **subject**

Video Presentation: "Living the Senior Life"

## **motion / recommendation**

## **background**

## **alternatives / other considerations**

## **fiscal impact**



# city commission **agenda item**

item type	Consent Agenda	meeting date	3/12/2018
prepared by	City Clerk	approved by	
board approval	final vote		
strategic objective			

## **subject**

Approve the minutes of February 26, 2018.

## **motion / recommendation**

## **background**

## **alternatives / other considerations**

## **fiscal impact**

### ATTACHMENTS:

#### Description

Minutes

#### Upload Date

3/1/2018

#### Type

Cover Memo

**REGULAR MEETING OF THE CITY COMMISSION  
FEBRUARY 26, 2018**

The meeting of the Winter Park City Commission was called to order by Mayor Steve Leary, at 3:30 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. The invocation was provided by Building Director George Wiggins, followed by the Pledge of Allegiance.

Members present:

Mayor Steve Leary  
Commissioner Pete Weldon  
Commissioner Greg Seidel  
Commissioner Sarah Sprinkel  
Commissioner Carolyn Cooper

Also Present:

City Manager Randy Knight  
City Clerk Cynthia Bonham  
City Attorney Dan Langley

**Approval of agenda**

**Motion made by Commissioner Sprinkel to approve the agenda; seconded by Commissioner Cooper and carried unanimously with a 5-0 vote.**

**Mayor's Report**

- a. Winter Park High School Foundation check presentation

Vince Furey, President, Winter Park High School Foundation, presented the City with a \$25,000 check from the 2017 proceeds of the Restore the Roar event to go toward continued improvements at Showalter Field.

**City Manager's Report**

City Manager Knight had no report. Commissioner Cooper asked about the after action report for IRMA. City Manager commented that it will be provided.

Commissioner Seidel asked about the Orange Avenue speed study issue. Public Works Director Troy Attaway stated an update will be provided at the next meeting.

**City Attorney's Report**

No report.

**Maitland Mayor MacDonald**

Mayor Dale McDonald spoke about the resolution under public hearings concerning Wymore Road where all three cities have worked together to support this.

### **Non-Action Items**

a. Update – Community Paramedicine Program – Fire Rescue

Fire Chief Jim White provided a PowerPoint presentation on the strategic plan 2016-2021; the direction previously provided by the Commission; the program enrollment; the services provided in the program; EMS versus fires statistics; the call volume from January-June 2017 to 911 for the six highest callers and the volume dropping from the start of the program by nearly 63%; and the vision to include partnering with the Winter Park Health Foundation. Chief White answered questions of the Commission.

b. GIS Connectivity Map

Tim Egan, Parks and Recreation Department, provided a PowerPoint presentation concerning the Connectivity Mapping Project (GIS based analysis of multi-modal transportation infrastructure and opportunities in Winter Park). The project is focusing on safe, convenient connections between neighborhoods, city parks and other popular destinations.

The presentation also included our comprehensive plan, our current connectivity map user controlled features, the existing layers and ones to be added, current bicycle connectivity, pedestrian connectivity, the varying needs and multiple perspectives by residents, level of service considerations related to pedestrian/bicycle trails and bicycling, additional considerations related to sidewalks and pedestrian mobility, opportunities to include large scale dedicated trails and neighborhood connectors, and digital opportunities. Mr. Egan and Mr. Margraf answered questions of the Commission. There was a consensus to schedule a work session in the next two months to discuss this further.

### **Consent Agenda**

- a. Approve the minutes of February 12, 2018.
- b. Approve the following solicitation award and authorize the execution of a purchase order:
  1. Anixter, Inc. – IFB-6-2018, Cooper Outdoor LED Lighting; to be installed on the Denning Drive Streetscape; \$85,179.

**Motion made by Commissioner Cooper to approve the Consent Agenda; seconded by Commissioner Seidel.** There were no public comments. **The motion carried unanimously with a 5-0 vote.**



### **Action Items Requiring Discussion**

- a. Request of Bebe's/Liz Fashion Experience, 311 S. Park Avenue to host a fashion runway show with street closure.

City Manager Knight commented that this is an appeal of a staff decision to deny a special event that requires the closure of a portion of Park Avenue.

Liz Shepherd, Bebe's and Liz Fashion Experience, 311 S. Park Avenue, explained her appeal/request for her fashion show and the closure of a portion of Park Avenue for the event. She spoke about the need to be more creative on Park Avenue to support the current merchants and to keep them there. She spoke about other events she has held and that they wish to have a runway show prior to their lunch that entails closing a small portion of the south end of Park Avenue as they have done in the past and this event is by invitation only.

City Manager Knight explained the reason for their denial because of over the years the merchants prefer a limited number of street closures so staff has put a limit on the approvals for new closures of Park Avenue. There was discussion that the road would be closed to allow enough time to set up, have the show, and take down the 60' runway. Commissioner Seidel suggested using New England Avenue. Ms. Shepherd stated the customers do not want to come on a side street. She addressed merchants on the south end of Park Avenue that want to be a part of this event.

Commissioner Weldon asked if the Park Avenue Merchant's Association has endorsed this event. Ms. Shepherd stated she did not ask them because this is a charity event and not a whole Merchant's Association event. Commissioner Weldon expressed concerns that without a larger public interest from the Park Avenue businesses, he struggled with granting an exception that will become a precedent with other merchants and without the PAAA support. He explained that all of the Commissioners want Park Avenue to work for everyone; however, in the absence of any broad base support for this program he has to deny it.

**Motion made by Commissioner Weldon to deny the request, seconded by Mayor Leary.**

**Motion made by Commissioner Seidel to table this item to allow them time to come back with a more broad base support and delay until the next Commission meeting.** Mayor Leary explained the challenge of this setting a precedent if approved. **The motion failed for lack of a second.**

There were no public comments made.

**Upon a roll call vote to deny the request, Mayor Leary and Commissioners Sprinkel, Cooper and Weldon voted yes. Commissioner Seidel voted no. The motion carried with a 4-1 vote.**

**Public Hearings:**

- a. RESOLUTION NO. 2205-18: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, ADOPTING A NON-AD VALOREM SPECIAL ASSESSMENT TO FUND THE INSTALLATION OF STREET BRICK AND RELATED ACTIVITIES UPON A PORTION OF PANSY AVENUE GENERALLY DESCRIBED AS BEGINNING AT PENNSYLVANIA AVENUE AND EXTENDING WESTERLY ABOUT 670 FEET; ESTABLISHING THE LIEN ASSOCIATED THEREWITH; ADOPTING AN ASSESSMENT ROLL; DIRECTING THAT THE ASSESSMENT ROLL BE CERTIFIED TO THE ORANGE COUNTY TAX COLLECTOR; PROVIDING FOR COLLECTION AND ENFORCEMENT OF THE SPECIAL ASSESSMENT; PROVIDING FOR OTHER MATTERS RELATED TO THE SPECIAL ASSESSMENT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

Attorney Langley read the resolution by title. Public Works Director Troy Attaway explained the residents on the east end of Pansy Avenue (eastern 670') approached the City and requested consideration of bricking Pansy Avenue (western portion is already bricked). He explained there was over 2/3 majority that voted in favor of the bricking. Commissioner Cooper explained phone calls she received regarding the poor condition of the existing bricks. Mr. Attaway explained they will be working to improve the existing portion. How the assessment amount was determined was discussed.

**Motion made by Commissioner Sprinkel to adopt the resolution; seconded by Commissioner Weldon.**

Derek Slasser, 1201 N. Pennsylvania Avenue (corner of Pennsylvania and Pansy Avenues), spoke against the bricking project and assessment that he believed should be equal and not based on linear footage.

Commissioner Weldon addressed the ballot sent that was clear that the assessment would be based on linear footage that passed the vote. He addressed options for consideration for assessing the various property owners. Commissioner Cooper spoke about the policy that should be reviewed.

Bud Kirk, Pansy Avenue, spoke in favor of the bricking.

**Upon a roll call vote, the motion carried unanimously with a 5-0 vote.**

### **PUBLIC COMMENTS (ITEMS NOT ON THE AGENDA)**

Beth Hall, 516 Sylvan Drive, asked for consideration of whether the public notice provisions of our zoning code for written notice signs as currently implemented are working. She spoke about the request for building 18 townhomes on Aloma Avenue that only has one sign posted on one of the five lots for the project and concerns that residents may not see the one sign.

Deirdre Macnab, 1860 Summerland Avenue, League of Women Voters, Orange County, spoke about solar energy and launching 28 cooperatives around the state. She spoke about the savings to our citizens. She addressed the public information session at Rollins College taking place this week. She stated she wanted to speak with each Commissioner individually regarding getting their energy from clean removal energy.

- b. RESOLUTION NO. 2204-18: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, FLORIDA, THE CITY COUNCIL OF THE CITY OF MAITLAND, FLORIDA AND THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA SUPPORTING THE EXPANSION OF THE ORANGE COUNTY OWNED WYMORE ROAD; AND PROVIDE FOR AN EFFECTIVE DATE.

Attorney Langley read the resolution by title. City Manager Knight explained this request came from the Town of Eatonville and the City of Maitland who have already adopted the resolution. He stated a small portion of the road is in the Winter Park City limits north of Lee Road.

**Motion made by Commissioner Sprinkel to adopt the resolution; seconded by Commissioner Weldon.** Commissioner Seidel expressed his preference of conducting a study to determine where widening of the road would be beneficial. Maitland Mayor McDonald spoke at the beginning of the meeting on this resolution. There were no other public comments. **Upon a roll call vote, the motion carried unanimously with a 5-0 vote.**

- c. Request of the 717 North Capen Avenue LLC for subdivision or lot split approval to divide the property at 717 North Capen Avenue, zoned R-1A, into two single family building lots.

Planning Manager Jeff Briggs explained the request to split the property at 717 North Capen Avenue and the two required variances. He addressed the commendation of staff to deny the request based on the lot sizes in comparison to the majority of larger lots. He stated the Planning and Zoning Board looked at the alternatives for the property and realized if it is not split they can maximize the return on their investment and build a home twice as big as other homes in the neighborhood. Because of this and building two homes, each on a 50' lot would produce smaller homes, the P&Z recommended approval inclusive of the variances.

Frank Hamner, 1011 N. Wymore Road, Winter Park, addressed speaking with neighbors to obtain approvals for this request. He stated there were no objections and that the P&Z unanimously approved the request.

**Motion made by Commissioner Seidel to approve the request as recommended by the P&Z Board with the varied architecture, seconded by Commissioner Weldon.**

John Skolfield, 118 W. Comstock Avenue, spoke in favor of the lot split because of the proposed lot sizes.

Lurline Fletcher, 811 English Court, spoke in favor of the lots split because of building two single family homes on the lots.

**Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weldon voted yes. The motion carried unanimously with a 5-0 vote.**

- d. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING A PORTION OF THE LOREN AVENUE RIGHT-OF-WAY FROM ELVIN AVENUE TO THE CITY LIMIT LINE, DEDICATED BY HOME ACRES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "M", PAGE 97, OF THE PUBLIC RECORDS OF ORANGE COUNTY, MORE PARTICULARLY DESCRIBED IN EXHIBIT A; PROVIDING FOR CONFLICTS, RECORDING AND AN EFFECTIVE DATE First Reading

Attorney Langley read the ordinance by title. Public Works Director Troy Attaway explained the request received from the master developer of Ravaudage to vacate this portion of Loren Avenue. He stated the Loren Avenue portion south of this has already been vacated as well as Elvin Avenue west of this portion.

**Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Commissioner Cooper.** There were no public comments.  
**Upon a roll call vote, the motion carried unanimously with a 5-0 vote.**

- e. RESOLUTION NO. 2203-18: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, IN OPPOSITION TO THE PROPOSED FUTURE LAND USE AMENDMENT AND REZONING FOR A RACETRAC GAS STATION DEVELOPMENT AT 2300 S. SEMORAN BOULEVARD IN ORANGE COUNTY

Attorney Langley read the resolution by title.

Planning Manager Jeff Briggs addressed the direction from the last Commission meeting to provide this resolution to forward to Orange County. He spoke about it not being compatible with having a gas station next to a golf course and the City's Golfside neighborhood.

**Motion made by Commissioner Sprinkel to adopt the resolution; seconded by Commissioner Cooper.**

The following spoke in favor of adopting the resolution:

Scott Clark, Clark & Albaugh, LLP, representing the Winter Pines Golf Club  
Thomas Yost, 1156 Fairway Drive

**Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, Cooper and Weldon voted yes. The motion carried unanimously with a 5-0 vote.**

**City Commission Reports:**

Commissioner Seidel – Spoke about the tragedy at the Parkland High School and the use of guns that kill or injure people. He addressed the need for reasonable laws to be put into place so they are effective.

Commissioner Sprinkel – Spoke about her opposition to educators having guns in schools and that she believed the gun issue will be fixed. Addressed her visit to the JFS Counseling Center on Lee Road and the upcoming St. Patrick's Day Parade.

Commissioner Cooper – Spoke about guns and the need to only put guns in the hands of mentally competent and trained people. She stated that the American people need to put their family first and stop entertaining their children with violence. Commissioner Cooper also spoke about street bricking and provided excerpts from the policy for review before they have their work session to clarify it.

Commissioner Weldon – Spoke about being proud of our City and being a part of it.

Mayor Leary – Spoke about the gun issue and should expect our leaders to figure this out. Mayor Leary thanked Ronnie Moore for throwing out the first pitch at the opening of the Babe Ruth season.

The meeting adjourned at 6:00 p.m.

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Mayor Steve Leary

ATTEST:

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City Clerk Cynthia S. Bonham, MMC



# city commission **agenda item**

item type	Consent Agenda	meeting date	3/12/2018
prepared by	Public Works	approved by	City Attorney
board approval	N/A final vote		
strategic objective	Investment in Public Assets and Infrastructure		

## **subject**

Approve the easement conveyance from Orange County for the St. Andrews Canal.

## **motion / recommendation**

Approve execution of agreement for the conveyance of drainage and roadway easements along the St Andrews ditch from Orange County to the City of Winter Park.

## **background**

In 2004 Orange County declared they no longer would maintain the St Andrews ditch. Since 2004 the City has maintained the ditch by cleaning debris which obstructs stormwater flows and rebuilds ditch banks from erosion. Ditch property is owned by Four Seasons Condominiums. Access is provided by easements.

## **alternatives / other considerations**

No alternatives to the reassignment of easements were considered.

## **fiscal impact**

The City maintains the St Andrews ditch for storm water conveyance at an average cost of \$30,000 annually.

### **ATTACHMENTS:**

Description

Easement Conveyance Agreement

Upload Date

2/26/2018

Type

Cover Memo



**PUBLIC WORKS DEPARTMENT ■ ROADS & DRAINAGE DIVISION**

**DEODAT BUDHU, P.E., *Manager***

4200 South John Young Parkway ■ Orlando, Florida 32839-9205

407-836-7958 ■ Fax 407-836-7839

E-mail: deodat.budhu@ocfl.net

December 18, 2017

Mr. Troy Attaway  
Director  
City of Winter Park  
300 West Plant Street  
Winter Garden, FL 34787

**Subject: Assignment of Easements – St. Andrews Canal**

Mr. Attaway

Pursuant to the request from the City of Winter Park, Orange County has prepared the Assignment of Easement for the St. Andrews Canal Easements to transfer to the City of Winter Park all interest, authority and responsibility over the easements.

Once Orange County receives the executed assignment, we will submit the assignment to the Board of County Commissioners for their approval. Upon approval, we will record the assignment and then forward to the City of Winter Park.

Thank you for your cooperation and if you have any questions please contact George Shupp, Assistant Project Manager at (407) 836-7903.

Sincerely,

A handwritten signature in blue ink that reads "Deodat Budhu".

Deodat Budhu, P.E.  
Manager  
Roads & Drainage Division

DB/GS/rs

Attachment

cc: Mark Massaro, P.E., Director, Public Works Department  
Joel Prinsell, Deputy County Attorney  
Maricela Torres, P.E., Assistant Manager, Roads & Drainage Division  
Mehul Parekh, P.E., Chief Engineer, Roads & Drainage Division  
Hitesh Barde, P.G. GISP, Project Manager, Roads & Drainage Division  
George Shupp, Assistant Project Manager, Roads & Drainage Division

**This instrument prepared by:**

Joel Prinsell, Deputy County Attorney  
Orange County Attorney's Office  
201 S. Rosalind Avenue  
Orlando, Florida 32801

Project: St. Andrews Canal Easements

**ASSIGNMENT of EASEMENTS**

THIS ASSIGNMENT of EASEMENTS, (hereinafter referred to as the "Assignment") is made by **ORANGE COUNTY**, a charter county and political subdivision of the state of Florida, whose address is P. O. Box 1393, Orlando, Florida 32802-1393, (hereinafter referred to as the "**Assignor**"), to and in favor of **CITY OF WINTER PARK**, a Florida municipal corporation, whose address is 401 South Park Avenue, Winter Park, Florida 32789, (hereinafter referred to as the "**Assignee**").

WHEREAS, Assignor is the holder of certain right-of-way and easement interests pursuant to that certain Right-of-Way Agreement and Drainage Easement filed July 2, 1969, and recorded in Official Records Book 1849, Page 152, Public Records of Orange County, Florida (the "**Easement One**"); and

WHEREAS, Assignor is the holder of certain right-of-way and easement interests pursuant to that certain Right-of-Way Agreement and Drainage Easement filed July 2, 1969, and recorded in Official Records Book 1849, Page 155, Public Records of Orange County, Florida (the "**Easement Two**"); and

WHEREAS, Assignor is the holder of certain easement interests pursuant to that certain Drainage Easement filed January 14, 1965, and recorded in Official Records Book 1409, Page 453, Public Records of Orange County, Florida (the "**Easement Three**"); and

WHEREAS, by virtue of annexation, as outlined in Ordinance #1961 and adopted on December 11, 1991, by Assignee all of the lands subject to Easement One, all of the lands subject to Easement Two, and a portion of the lands subject to Easement Three are now located within the jurisdictional limits of the City of Winter Park; and

WHEREAS, all of the lands subject to Easement One, all of the lands subject to Easement Two, and the portion of the lands subject to Easement Three collectively described in the attached Exhibit "A-1" and Exhibit "A-2" are now located within the jurisdictional limits of the City of Winter Park, and hereinafter referred to as the "**Annexed Lands**"; and

WHEREAS, subject to the provisions herein, Assignor desires to assign, and Assignee desires to assume, all of Assignor's right, title, duties, obligations, and interest in Easement One, in Easement Two, and in the portion of Easement Three applicable to the Annexed Lands.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Assignment. Assignor hereby assigns and transfers to Assignee, to the extent assignable, all of the Assignor's right, title, duties, obligations, and interest in Easement One, in Easement Two, and in the portion of Easement Three applicable to the Annexed Lands.



Project: St. Andrews Canal Easements

3. Assumption. Assignee hereby assumes from Assignor all of Assignor's rights, duties, and obligations under the terms and conditions of Easement One, of Easement Two, and of Easement Three as applicable to the Annexed Lands, including the maintenance of existing easement areas, and Assignee further agrees that, as a condition of this Assignment, Assignee shall assume and abide by all terms and conditions of Easement One, Easement Two, and Easement Three.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Easements, as of the dates respectively written below.

ASSIGNOR

(Official Seal)

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: \_\_\_\_\_  
Teresa Jacobs  
Orange County Mayor

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

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

BY: \_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Printed Name

Signed, sealed, and delivered  
in the presence of:

Witnesses:

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Printed Name

ASSIGNEE

CITY OF WINTER PARK, FLORIDA

By: \_\_\_\_\_,  
\_\_\_\_\_, Mayor

ATTEST: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM AND  
LEGALITY for the use and reliance  
of the City of Winter Park, Florida only.

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
City Attorney, City of Winter Park, Florida

\_\_\_\_\_  
Printed Name

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, by \_\_\_\_\_, Mayor, and \_\_\_\_\_, City Clerk, of the City of Winter Park, a Florida municipal corporation. They are personally known to me or have produced \_\_\_\_\_ and \_\_\_\_\_ as identification.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Notary Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Printed Notary Name

Notary Public in and for the  
County and State aforesaid

My commission expires:

**EXHIBIT "A-1"****SKETCH OF DESCRIPTION****Estate: Perpetual Easement****Purpose: Road Right-of-way and Drainage****LEGAL DESCRIPTION**

Being a drainage easement as described in Official Record Book 1409, page 453, and right-of-way and drainage easements in Official Record Book 1849, Pages 152 - 154 and Official Record Book 1849, Pages 155 - 157, all of the Public Records of Orange County, Florida being further described as follows:

Begin at the Southeastern corner of FOUR SEASON CONDOMINIUM as recorded in Condominium Book 6, Pages 55-65 Public Records of Orange County, Florida also being a point lying on the Northerly line of the vacated former Seaboard Coast Line Railroad Right-of-Way as recorded in Official Record Book 2527, Pages 862-866 and Official Record Book 3835, Pages 724-727; thence run South 66 Degrees 35 Minutes 01 Seconds West along the Southern boundary line of said FOUR SEASON CONDOMINIUM and the Northerly line of the vacated former Seaboard Coastline Railroad Right-of-Way a distance of 1024.50 feet to the Southwest corner of said FOUR SEASON CONDOMINIUM; thence run North 22 Degrees 30 Minutes 26 Seconds West along the West boundary line of said FOUR SEASON CONDOMINIUM a distance of 711.99 feet; thence run South 53 Degrees 56 Minutes 59 Seconds West along the Northeasterly extension of the centerline of the vacated Loch Lomond Drive as recorded in ALOMA, SECTION 1, Plat Book O, Page 51, Public Records of Orange County, Florida a distance of 56.91 feet; thence run North 21 Degrees 36 Minutes 00 Seconds West along the centerline of St. Andrews Boulevard a distance of 424.49 feet to a point; thence run North 14 Degrees 50 Minutes 00 Seconds West along the centerline of St. Andrews Boulevard a distance of 767.07 feet to a point said point lying on the North line of the Southeast quarter of the Southwest quarter of Section 4 Township 22 South, Range 30 East; thence run South 89 Degrees 53 Minutes 24 Seconds East along the aforementioned Section line a distance of 82.81 feet to a point, said point lying on the South line of the parcel as recorded in Official Record Book 9934, page 4979, Public Records of Orange County, Florida, and on a line 80.00 feet Easterly of and parallel with the centerline of St. Andrews Boulevard; thence along said parallel line run South 14 Degrees 50 Minutes 00 Seconds East a distance of 740.98 feet to a point; thence along said parallel line run South 21 Degrees 36 Minutes 00 Seconds East a distance of 399.15 feet to the Northeasterly extension of the centerline of the vacated Loch Lomond Drive as recorded in ALOMA, Section 1, Plat Book O, Page 51; thence along a line run South 22 Degrees 30 Minutes 26 Seconds East 25.00 feet Easterly of and parallel with the Westerly boundary line of FOUR SEASON CONDOMINIUM as recorded in Condominium Book 6, Pages 55-65, a distance of 663.61 feet; thence along a line run North 66 Degrees 35 Minutes 01 Seconds East 54 feet Northerly of and parallel with the Southerly boundary line of the

PREPARED FOR: Roads &amp; Drainage

ORANGE COUNTY PUBLIC WORKS ENGINEERING DIVISION

DRAWN BY: A. GILEV

DATE: 11/02/17

SECTION: 4,9

CHECKED BY: Daynes

JOB No: 8062

TOWNSHIP: 22

APPROVED BY: Daynes

DRAWING FILE:

RANGE: 30

REVISION DATE:

8062 Four Seasons

SHEET 1 OF 6

SURVEY SECTION  
4200 SOUTH JOHN YOUNG PARKWAY  
ORLANDO, FLORIDA 32839-9205  
(407) 836-7940

DRAWING SCALE:  
NTSPROJECT NUMBER  
8062

**EXHIBIT "A-1"****SKETCH OF DESCRIPTION****Estate: Perpetual Easement****Purpose: Road Right-of-way and Drainage**

aforementioned FOUR SEASON CONDOMINIUM, as measured perpendicularly to said Southerly boundary line a distance of 1006.83 feet to a point, said point lying on the Easterly line of aforementioned FOUR SEASON CONDOMINIUM; thence South 14 Degrees 47 Minutes 47 Seconds East along said Easterly line a distance of 54.62 feet to the point of beginning.

Containing 92441.39 square feet, or 2.12 acres, more or less.

PREPARED FOR:  
Roads & Drainage

DRAWN BY: A. GILEV      DATE: 11/02/17      SECTION: 4,9

CHECKED BY: Daynes      JOB No: 8062      TOWNSHIP: 22

APPROVED BY: Daynes      DRAWING FILE:      RANGE: 30

REVISION DATE:      SHEET 2 OF 6

PUBLIC WORKS  
ENGINEERING DIVISION  
SURVEY SECTION  
4200 SOUTH JOHN YOUNG PARKWAY  
ORLANDO, FLORIDA 32839-9205  
(407) 836-7940



DRAWING SCALE:

PROJECT NUMBER

8062

# EXHIBIT "A-1"

## SKETCH OF DESCRIPTION

### Estate: Perpetual Easement

### Purpose: Road Right-of-way and Drainage

S.E. 1/4 SEC.4,TWP.22 S.,RGE.30E.

#### LEGEND

O.R.B. OFFICIAL RECORD BOOK  
P.O.B. POINT OF BEGINNING  
BL BASE LINE  
C.B. CONDOMINIUM BOOK  
O.C. ORANGE COUNTY  
PG. PAGE  
P.B. PLAT BOOK  
⊗ CHANGE OF DIRECTION NO POINT SET  
SEC. SECTION  
TWP. TOWNSHIP  
RGE. RANGE  
ROW RIGHT-OF-WAY

0 100 200 Feet

I HEREBY AFFIRM THAT THIS SKETCH OF DESCRIPTION REPRESENTED HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. IT HAS BEEN PREPARED IN ACCORDANCE WITH THE STANDARDS SET FORTH IN CHAPTER 177 AND 472, OF THE FLORIDA STATUTES AND THE ORIGINAL PLACED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS DRAWING, SKETCH, PLAT, OR MAP, FOR ANY INFORMATIONAL PURPOSES ONLY AND IS NOT VALID.

Mark A. Daynes  
REGISTERED LAND SURVEYOR  
AND MAPPER  
STATE OF FLORIDA LICENSE NO. 5479

11/8/17  
DATE

**SKETCH AND DESCRIPTION**  
THIS IS NOT A SURVEY, NOR HAS FIELD WORK BEEN PERFORMED IN ACCORDANCE WITH 53-17, FLORIDA ADMINISTRATIVE CODE FOR PREPARATION OF THIS DRAWING.

- NOTES:**
1. BEARINGS ARE BASED ON THE NORTH LINE OF THE N.W. 1/4 OF SECTION 9, T.22S R.30E SOUTH 89°57'47" WEST. IT WAS CALCULATED BASED ON THE COORDINATES AS DESCRIBED IN CCR#071684 AND CCR#071685
  2. THIS SKETCH OF DESCRIPTION AND LEGAL DESCRIPTION WAS PREPARED BY ORANGE COUNTY ENGINEERING DIVISION, SURVEY SECTION.
  3. THERE MAY BE OTHER RECORDS DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY, A COMPLETE TITLE RECORD SEARCH WAS NOT PERFORMED.
  4. NO IMPROVEMENTS ABOVE OR BELOW GROUND, OTHER THAN THOSE SHOWN, WERE LOCATED.
  5. SKETCH WAS DONE WITHOUT THE BENEFIT OF TITLE WORK OR ABSTRACT.

PREPARED FOR:  
Roads & Drainage

DRAWING SCALE:  
1" = 100'

PROJECT NUMBER

8062

DRAWN BY: A.GILEV	DATE: 11/02/17	SECTION: 4,9
CHECKED BY: Daynes	JOB No: 8062	TOWNSHIP: 22S
APPROVED BY: Daynes	DRAWING FILE:	RANGE: 30E
REVISION DATE: Agenda	Packet Page 25s	SHEET 3 OF 6

PUBLIC WORKS  
ENGINEERING DIVISION  
SURVEY SECTION  
4200 SOUTH JOHN YOUNG PARKWAY  
ORLANDO, FLORIDA 32839-9205  
(407) 836-7940





## Purpose: Road Right-of-way and Drainage



DRAWING SCALE:  
1"=100'

---

PROJECT NUMBER  
8062

PUBLIC WORKS  
ENGINEERING DIVISION  
SURVEY SECTION  
4200 SOUTH JOHN YOUNG PARKWAY  
ORLANDO, FLORIDA 32839-9205  
(407) 836-7940



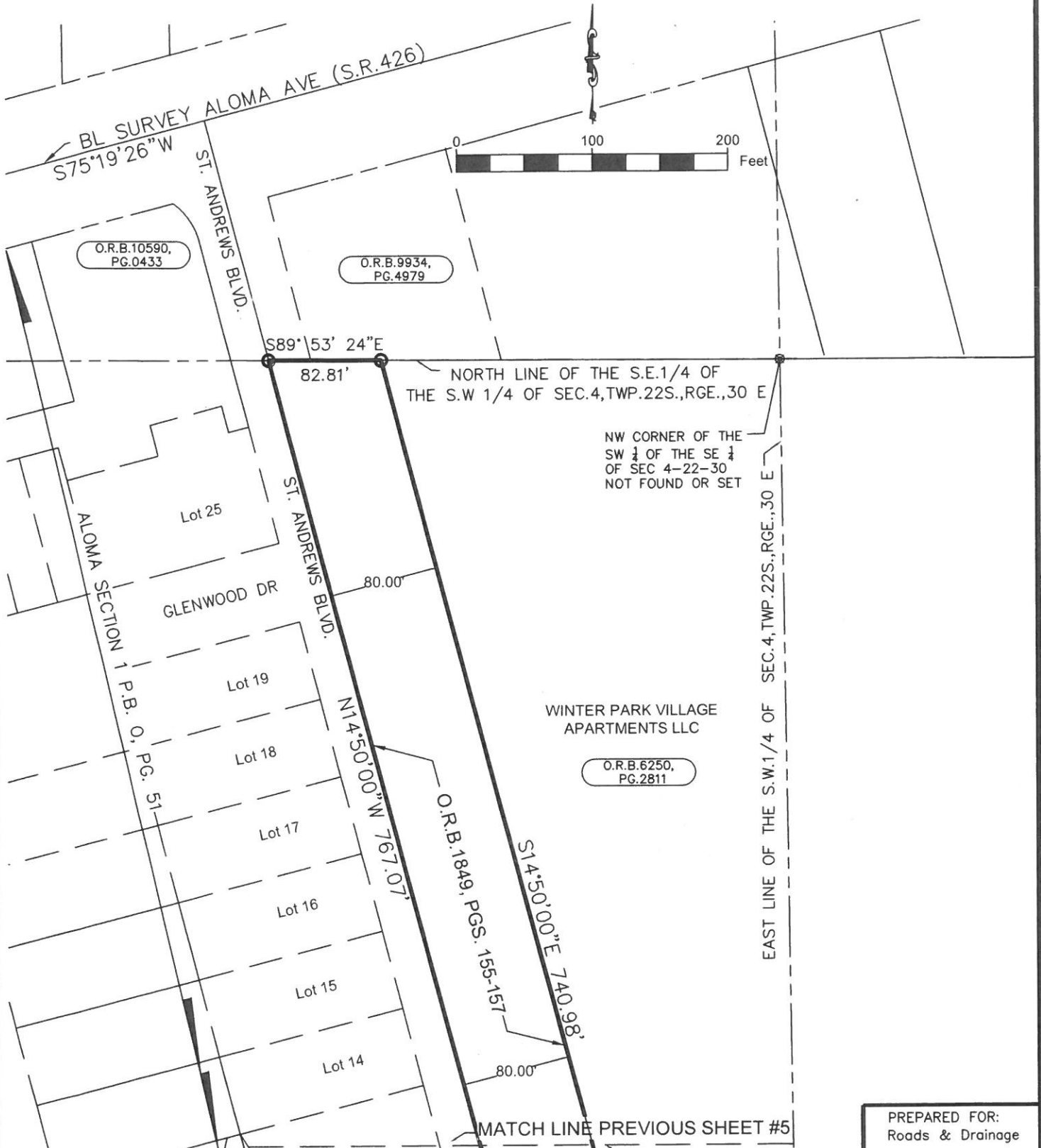


# EXHIBIT "A-1"

## SKETCH OF DESCRIPTION

Estate: Perpetual Easement

Purpose: Road Right-of-way and Drainage



DRAWN BY: A.GILEV	DATE: 11/02/17	SECTION: 4,9
CHECKED BY: Daynes	JOB No: 8062	TOWNSHIP: 22S
APPROVED BY: Daynes	DRAWING FILE:	RANGE: 30E
REVISION DATE:	11/02/17	SHEET 6 OF 6

PUBLIC WORKS  
ENGINEERING DIVISION  
SURVEY SECTION  
4200 SOUTH JOHN YOUNG PARKWAY  
ORLANDO, FLORIDA 32839-9205  
(407) 836-7940



PREPARED FOR:  
Roads & Drainage

DRAWING SCALE:  
1"=100'

PROJECT NUMBER  
8062




**EXHIBIT "A-2"****LEGAL DESCRIPTION****Estate: Perpetual Easement****Purpose: Drainage****LEGAL DESCRIPTION**

A portion of a drainage easement 25 feet wide as described in Official Records Book 1409, Page 453 of the Public Records of Orange County, Florida, being particularly described as follows:

Begin at the Southwest corner of Lot 1, Block "E" of Winter Park Pines - Merry Oaks Section - Unit Number Three, as recorded in Plat Book I, Page 76, Public Records of Orange County, Florida, said point being on the North line of the former Seaboard Coast Line Railroad right of way; thence run South  $66^{\circ}35'00''$  West a distance of 178.35 feet along the aforesaid line to intersect with the Southerly extension of the East right of way line of Balfour Drive, as recorded in Official Records Book 1849, Pages 148 -149, Public Records of Orange County, Florida; thence North  $14^{\circ}48'00''$  West along said Southerly extension of the East right of way line of Balfour Drive a distance of 25.29 feet; thence run North  $66^{\circ}35'00''$  East a distance of 174.96 feet along a line 25.00 feet North of the right of way line of the former Seaboard Coast Line Railroad to a point on the Westerly boundary of Lot 1, Block "E", Winter Park Pines - Merrie Oaks Section - Unit Number Three, as recorded in Plat Book I, Page 76, Public Records of Orange County, Florida; thence run South  $22^{\circ}30'34''$  East along the Westerly boundary of said Lot 1, Block "E" of said plat, also being the Easterly boundary of Winter Park Point I, Condominium Book 5, Pages 90 - 91, Public Records of Orange County, Florida, a distance of 25.00 feet to the Point of Beginning.

Containing 4,417.22 square feet, or 0.10 acres, more or less.

PREPARED FOR: Roads & Drainage		ORANGE COUNTY PUBLIC WORKS ENGINEERING DIVISION	
DRAWN BY: Alvarez	DATE: 11/08/17	SECTION: 4,9	 SURVEY SECTION 4200 SOUTH JOHN YOUNG PARKWAY ORLANDO, FLORIDA 32839-9205 (407) 836-7940
CHECKED BY: Daynes	JOB No: 8020	TOWNSHIP: 22	
APPROVED BY: Daynes	DRAWING FILE:	RANGE: 30	
REVISION DATA	8020 Four Seasons	SHEET 1 OF 2	
DRAWING SCALE: NTS		PROJECT NUMBER 8020	

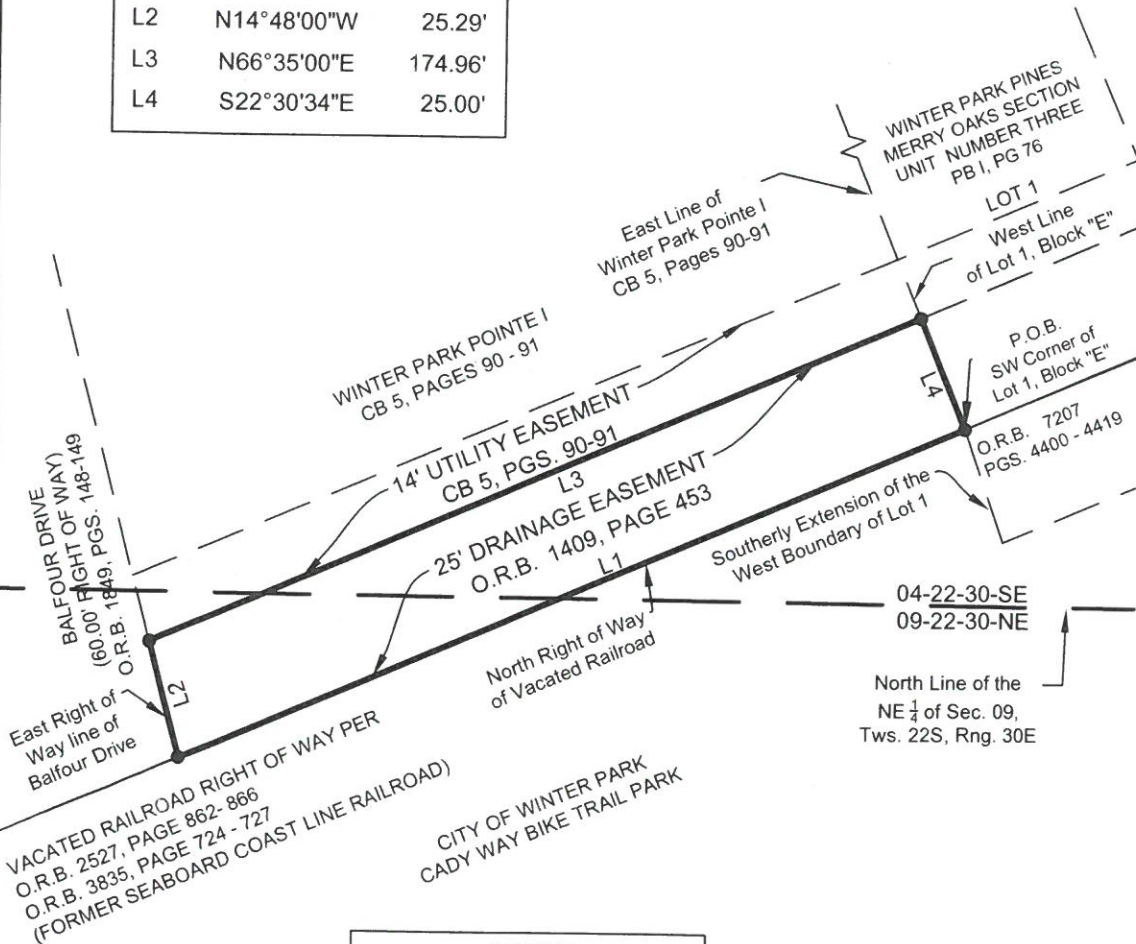
# EXHIBIT "A-2"

## SKETCH OF DESCRIPTION

### Estate: Perpetual Easement

### Purpose: Drainage

Line Data		
Line	Bearing	Distance
L1	S66°35'00"W	178.35'
L2	N14°48'00"W	25.29'
L3	N66°35'00"E	174.96'
L4	S22°30'34"E	25.00'



LEGEND	
O.R.B.	Official Record Book
P.O.B.	Point of Beginning
BCC	Board of County Commissioners
CB	Condominium Book
O.C.	Orange County
P.G.	Page
P.B.	Book
●	Change of direction
○	No point set

I HEREBY AFFIRM THAT THIS SKETCH OF DESCRIPTION REPRESENTED HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. IT HAS BEEN PREPARED IN ACCORDANCE WITH THE STANDARDS SET FORTH IN CHAPTER 5J-17, F.A.C., PURSUANT TO CHAPTERS 177 AND 477, OF THE FLORIDA STATUTES AND UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS DRAWING, SKETCH, PLAN, OR MAP IS FOR INFORMATION PURPOSES ONLY AND IS NOT VALID.

Mark A. Daynes  
REGISTERED LAND SURVEYOR  
AND MAPPER  
STATE OF FLORIDA LICENSE NO. 5479

11/8/17  
DATE:

**SKETCH AND DESCRIPTION**  
THIS IS NOT A SURVEY, NOR HAS FIELD WORK BEEN PERFORMED IN ACCORDANCE WITH 5J-17, FLORIDA ADMINISTRATIVE CODE FOR PREPARATION OF THIS DRAWING.

#### NOTES:

1. BEARINGS ARE BASED ON THE NORTH RIGHT OF WAY LINE OF THE VACATED SEABOARD COAST LINE RAILROAD BEING SOUTH 66°35'00" WEST.
2. THIS SKETCH OF DESCRIPTION AND LEGAL DESCRIPTION WAS PREPARED BY ORANGE COUNTY ENGINEERING DIVISION, SURVEY SECTION.
3. THERE MAY BE OTHER RECORDS DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY, A COMPLETE TITLE RECORD SEARCH WAS NOT PERFORMED.
4. NO IMPROVEMENTS ABOVE OR BELOW GROUND, OTHER THAN THOSE SHOWN, WERE LOCATED.
5. SKETCH WAS DONE WITHOUT THE BENEFIT OF TITLE WORK OR ABSTRACT.

PREPARED FOR:  
Roads & Drainage

DRAWN BY: Alvarez	DATE: 11/08/17	SECTION: 4,9
CHECKED BY: Daynes	JOB No: 8020	TOWNSHIP: 22
APPROVED BY: Daynes	DRAWING FILE:	RANGE: 30
REVISION DATE: Agenda Packet Page 30	8020, Four Seasons	SHEET 2 OF 2

PUBLIC WORKS  
ENGINEERING DIVISION  
SURVEY SECTION

4200 SOUTH JOHN YOUNG PARKWAY  
ORLANDO, FLORIDA 32839-9205  
(407) 836-7940



DRAWING SCALE:  
1"=40'  
PROJECT NUMBER  
8020



# city commission **agenda item**

item type	Consent Agenda	meeting date	3/12/2018
prepared by	Purchasing	approved by	City Manager
board approval	final vote		
strategic objective	Fiscal Stewardship		

## **subject**

Approve the following solicitation award and authorize the Mayor to execute the contract:

1. Tetra Tech, Inc. - RFP-4-2018 - Emergency Debris Monitoring Services; As-needed basis

## **motion / recommendation**

Commission approve the item as presented.

## **background**

A formal solicitation was issued to award this contract.

## **alternatives / other considerations**

N/A

## **fiscal impact**

Fiscal impact dependent on vendor activation in declared state of emergency. Contract provisions in place to ensure federal-aid reimbursement should activation be required.

### ATTACHMENTS:

Description

Formal Solicitations

Upload Date

3/6/2018

Type

Cover Memo



# city commission agenda item

item type	Formal Solicitations	meeting date	March 12, 2018
prepared by department division	Purchasing Division	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A final vote		

## Formal Solicitations

	vendor	item   background	fiscal impact	motion   recommendation
1.	Tetra Tech, Inc.	RFP-4-2018 – Emergency Debris Monitoring Services	Fiscal impact dependent on vendor activation in declared state of emergency.	Commission approve the award and authorize the Mayor to execute the contract.
A formal solicitation was issued to award this contract. Contract provisions in place to ensure federal-aid reimbursement should activation be required.				



# city commission **agenda item**

item type	Action Items Requiring Discussion	meeting date	3/12/2018
prepared by	City Clerk	approved by	City Manager
board approval	final vote		
strategic objective			

## **subject**

May 28, 2018 Commission meeting cancellation/rescheduling

## **motion / recommendation**

Commission either cancel this meeting due to the Memorial Day holiday or reschedule the meeting for Tuesday, May 29, 2018.

## **background**

The Memorial Day holiday falls on the May 28 Commission meeting day. City Hall is closed.

## **alternatives / other considerations**

## **fiscal impact**



# city commission agenda item

item type	Action Items Requiring Discussion	meeting date	3/12/2018
prepared by	City Clerk	approved by	City Manager
board approval	yes final vote		
strategic objective	Exceptional Quality of Life, Investment in Public Assets and Infrastructure		

## subject

Proposed Winter Park Tennis Center Operation Model

## motion / recommendation

Staff is presenting proposed changes to the current operation model of the Winter Park Tennis Center that would place maintenance and general operation of the facility under the Parks and Recreation Department and utilize an outside contractor for providing tennis programming and instruction. If approved, the City would move forward with issuing of a Request for Qualifications and selection process.

## background

On January 22<sup>nd</sup> the Parks and Recreation Department requested Commission approval to move forward with budgeted renovations and to engage in public meetings with our tennis community regarding the current state of the facility and operations. Over the course of late January through mid-February the Parks and Recreation Department held four public input meetings at the tennis center at varying times and days to allow us to get feedback from a wide cross section of the membership and users. In addition, a general survey was sent to the current tennis contractor's membership database reaching 146 households and receiving 76 responses.

Based on feedback received over the course of the public input process and taking into consideration customer and resident feedback received over the course of the past few years, the Parks and Recreation Department feels that by placing management of maintenance and operations in the hands of the City it will allow for better oversight and protection of the City asset, a more consistent guest experience, and will allow our tennis contractor to better focus on what they do best in providing high quality tennis programs and instruction.



### **alternatives / other considerations**

The City can maintain the current operational model and issue a Request for Proposal for a Tennis Center operator as done in the past

### **fiscal impact**

Based on the financial data for the Winter Park Tennis Center over the past 3 years, budget and revenue forecasting based on the proposed operational plan would result in an increased budget of approximately \$595,000 with an annual revenue increase of \$620,000. The most significant expense driver in the operational model would be the revenue share with the tennis contractor and would be directly tied to revenue earned.



# city commission agenda item

item type	Action Items Requiring Discussion	meeting date	3/12/2018
prepared by	Electric Utilities	approved by	City Manager, City Attorney
board approval	yes	final vote	
strategic objective	Fiscal Stewardship		

## **subject**

Solar Project Power Sales Agreement Between Florida Municipal Power Agency, Solar Power Project and the City of Winter Park

## **motion / recommendation**

Approve the attached Solar Project Power Sales Agreement Between Florida Municipal Power Agency, Solar Power Project and the City of Winter Park

## **background**

The Florida Municipal Power Agency (FMPA) is a joint action agency comprised of 31 cities that own their own electric utilities. The City of Winter Park joined FMPA in August of 2012 to access future FMPA power projects determined to be beneficial to the City of Winter Park. To date, the City has not participated in any of the agency's power supply projects. Recently FMPA issued an RFP seeking proposals from solar developers. Six developers responded. FMPA selected NextEra Energy Florida Renewables, Inc. as the solar provider and has negotiated the necessary agreements for FMPA to purchase a portion of the project's output. For your information NextEra Energy, Inc. is the parent company of Florida Power & Light Company (FPL). The city currently purchases about 50% of its wholesale power from FPL. FMPA, along with the Orlando Utilities Commission (OUC), under contract with NextEra will develop either two or three 74.5 MW solar "farms" located in Osceola county interconnected with Duke Power Company's high voltage transmission system. The size and number of solar farms will be based on FMPA's ALL Requirements Project (ARP) needs, OUC's needs and the expected needs of FMPA members that are not ARP members, including the City of Winter Park. Commercial operation of the solar project is expected in the 4<sup>th</sup> quarter of 2020.

Project pricing is considered a trade secret and is confidential and is therefore not specifically included in this agenda item. Staff and its consultants have reviewed "key terms" of the agreements, including pricing. Participation in the project would not require any upfront payments by the City of Winter Park. The City would be obligated to take energy from its share of the project and pay a price for that energy



that is expected to be below 4 cents per kWh. In recent years the cost of solar panels has decreased significantly primarily due to increasing market share of panels produced in China. To put the 4 cent pricing into perspective, the price of solar kWh from the Clean Footprint solar installation located on the roof of the garage at the City's Public Works Compound is 6.5 cents per kWh. The purchase of power from the FMPA solar project represents a reduction of over 40% for solar kWh as compared to the Clean Footprint project.

Staff and our consultants have identified 4 likely benefits of purchasing solar power from the FMPA project, potential savings in energy costs, potential savings in demand charges, providing a hedge against the volatility of natural gas prices for a portion of the City's power supply portfolio, and incorporating additional renewable resources into the City's power supply portfolio. Energy prices from the solar project are expected to be below 4 cents per kWh. The current cost of energy from the City's various power suppliers ranges from approximately 3.1 cents/kWh to 4.5 cents/kWh. Output from solar participation will offset the need for purchasing power supply with demand charges. An hourly load analysis including solar output predicts savings in wholesale demand charges in the range of \$462k to \$587k per year for a 10 MW purchase.

## **alternatives / other considerations**

### **fiscal impact**

Staff has evaluated various inflation assumptions for the purchase of 10, 15, and 20 MW from the FMPA solar project. Additionally, the energy cost of the solar project was evaluated at various prices, not to exceed 4.0¢/kWh. With expected "typical" inflation rates, the FMPA project is expected to provide savings in demand charges and energy charges. Savings in transmission may result from a reduction in the purchase of less power transmitted over the FPL transmission system. For conservatism, those savings have not been included in the evaluation summarized below. If solar from the FMPA project replaces FPL power over the 20 year life of the purchased power agreement, then the FPL transmission savings are real and add another \$105.3 thousand per year of average annual savings to the zero % inflation case and \$129 thousand to the base case inflation assumption case.

The economic benefit of purchasing solar energy from the FMPA solar project generally increases with the amount of purchase which argues for purchasing solar MWh at the higher levels of 15 or 20 MW. At the 20 MW level, there are hours of the day in which it is possible that output of the solar project approach Winter Park minimum hourly loads. In those hours Winter Park would not be able to take its full output obligation. As a result, staff did not further consider a 20 MW purchase. A principal risk of this project is the risk of improving technology and further price reductions in solar cells. The decrease from 6.5 cents/kWh of the City's Clean Footprint project with commercial operation in February of 2014 to a price under 4.0 cents/kWh for the FMPA project with expected commercial operation in the fourth quarter of 2020 may suggest further technology improvements and associated price

decreases for the future. Given that possibility and the minimum load concerns at the 20 MW level, staff concluded that a 10 MW purchase would represent a reasonable compromise giving the City an additional source of renewable power while minimizing the risk that future price decreases may cause. A 10 MW purchase of power from the FMPA solar project will represent about 7.2% of the City's overall energy requirements.

The table below shows the estimated savings associated with a purchase of 10MW at the base case inflation assumptions and a conservative zero% inflation case.

Inflation of natural gas prices drives up the cost of alternative power supply energy and increases the value of the project. The highlighted case is the base case.

#### Estimated Savings from 10 MW

Solar Energy Price \$/kWh	Inflation Assumptions		20 yr Average Annual Savings /(costs) Thousands of dollars			20 yr. Net Present Value \$ x Millions
	Demand Cost	Energy Cost	Demand	Energy	Total	
4.0	1.50%	3.5%	\$586.4	\$351.6	\$938.0	\$11.8
4.0	0%	0%	\$485.0	(\$130.4)	\$354.65	\$4.8

With reasonable inflation rates assumed for market energy prices, the solar project produces savings in both demand and energy charges. Staff has included a zero inflation rate scenario to avoid decision making based strictly on assumed inflation rates. Based on the pricing information provided by FMPA, the cost of output of the solar project will be below 4.0\$/kWh. It should be noted that under all scenarios evaluated for 10 MW of participation, the total evaluated savings are a very small part of the system's expected 20 year net present value of power supply costs (i.e. less than 3.5%)

#### ATTACHMENTS:

Description

Agreement

Upload Date

3/5/2018

Type

Cover Memo

**DRAFT – FOR DISCUSSION PURPOSES ONLY**  
**SUBJECT TO MANAGEMENT AND LEGAL REVIEW**  
**(Draft of 02/1/2018)**

**Solar Project**

**Power Sales Contract**

**Between**

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

**and**

**[MEMBER]**

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**SOLAR PROJECT  
POWER SALES CONTRACT**

This POWER SALES CONTRACT is made and entered into as of \_\_\_\_\_, 2018, by and between FLORIDA MUNICIPAL POWER AGENCY, a legal entity organized under the laws of the State of Florida ("FMPA") and \_\_\_\_\_, a public agency of the State of Florida and member of FMPA who has executed this Power Sales Contract (the "Project Participant").

**WITNESSETH:**

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

**WHEREAS**, FMPA is authorized and empowered, among other things, (i) to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate jointly in one or more electric projects; (ii) to issue its bonds, notes or other evidences of indebtedness to pay all or part of the costs of acquiring such electric projects; and (iii) to exercise all other powers which may be necessary and proper to further the Purposes of FMPA which have been or may be granted to FMPA under the laws of the State of Florida; and;

**WHEREAS**, NextEra Florida Renewables, Inc., including its successors or assigns, ("Seller") is developing a solar photovoltaic single-axis tracking electric generating facility having a nameplate capacity of 74.5 MW alternating current ("ac"), which will be designed, financed, constructed and operated by Seller in Osceola County, Florida ("Solar Facility"); and

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

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

**WHEREAS**, the execution of the Solar Project PPA for the supply of Solar Product produced by or attributable to the Solar Facility to the Project Participant and the other Project Participants contracting with FMPA therefor has been authorized by the Interlocal Agreement Creating the Florida Municipal Power Agency, as amended to date and as such Interlocal Agreement has been supplemented by a resolution adopted by the Board of FMPA at a meeting duly called and duly held on \_\_\_\_\_, 2018, which Interlocal Agreement, as so amended and supplemented, constitutes "an agreement to implement a project" and a "joint power agreement" for the Solar Project, as such terms are used in Chapter 361, Part II, Florida Statutes, as amended; and

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

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

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

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

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

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

Contract Year shall mean the twelve (12) month period commencing at 12:01 a.m. on October 1 of each year, except that the first Contract Year shall commence on 12:01 a.m. on October 1, 2018, and shall expire at 12:01 a.m. the next succeeding October 1.

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

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

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

Electric Energy shall mean kilowatt hours (kWh).

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

Energy Share shall mean FMPA's [\_\_\_\_%] share under the Solar Project PPA in the Solar Product produced by or associated with the Solar Facility.

Facility Attributes has the meaning given in the Solar Project PPA.

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

Month shall mean a calendar month.

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

Network Upgrades shall have the meaning set forth in the Solar PPA.

Network Upgrade Costs shall have the meaning set forth in the Solar PPA.

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

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

Project Development Fund Costs shall mean those costs incurred by FMPA and funded by the FMPA Project Development Fund used for the establishment of the FMPA Solar Project. The Project Development Fund Costs as of the Effective Date are set forth in Attachment D of this Power Sales Contract.

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

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

Renewable Attributes has the meaning given in the Solar Project PPA.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Effective Date. This Power Sales Contract shall become effective upon the last date of execution and delivery of all Power Sales Contracts by all Project Participants originally listed in the Schedule of Project Participants and by FMPA (the "Effective Date") and shall, unless this Power Sales Contract is terminated early pursuant hereto, continue until the expiration or earlier termination of the Solar Project PPA. Neither termination nor expiration of this Power Sales Contract shall affect any accrued liability or obligation hereunder. Notwithstanding the foregoing, in the event it is ultimately determined that any other Project Participant failed to duly and validly execute and deliver its Power Sales Contract, or if any other Power Sales Contract, or any portion thereof, shall be deemed invalid or unenforceable for any other reason whatsoever, such determination shall in no way affect the commencement, term or enforceability of this Power Sales Contract or the Project Participant's obligations hereunder.

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

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

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

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

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

(b) On or before August 1, 2018, and on or before August 1 prior to the beginning of each Contract Year thereafter, the Board of FMPA shall review the proposed Solar Project budget submitted by the Solar Project Committee, and shall adopt and submit to the Project Participant an Annual Budget for the following Contract Year which shall provide an estimate of the Project Participant's monthly payments hereunder and serve as a basis for Project Participants' payments hereunder for Monthly Energy Costs and Project Related Costs for such Contract Year.

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



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

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

(b) Monthly payments required to be paid to FMPA pursuant to this SECTION 5 SECTION 4 shall be due and payable to FMPA on the 25th day of the Month in which the monthly statement was rendered. The Project Participant shall make payment to FMPA by the transfer of funds from the Project Participant's bank account, using an ACH Push or domestic Wire Transfer, through instructions to be provided by FMPA to the Project Participant.

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

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

(e) The obligation of the Project Participant to make the payments under this SECTION 5 shall constitute an obligation of the Project Participant payable as an operating expense of the Project Participant's electric utility system solely from the revenues and other available funds of the electric utility system. The obligation of the Project Participant to make payments under this Power Sales Contract shall not be subject to any reduction, whether by offset, counterclaim, or otherwise, and shall not be otherwise conditioned upon performance of FMPA or Seller under the Solar Project PPA or the performance by FMPA under this or any other agreement or instrument or the validity or enforceability of any other Power Sales Contract or any other agreement between FMPA and any other Project Participant; provided, however, that the Monthly Energy Costs payable by Project Participant shall reflect the quantity of Solar Product made available by the Seller at the Point of Delivery, and payable by FMPA under the Solar Project PPA, during that month. The obligation of the Project Participant to make payments under this SECTION 5 SECTION 4 shall not constitute a debt of the Project Participant within the meaning of any constitutional or statutory provision or limitation or a general obligation of or pledge of the full faith and credit of the Project Participant, and neither the Project Participant nor the State of Florida or any agency or political subdivision thereof shall ever be obligated or compelled to levy ad valorem taxes to make the revenues provided for in this SECTION 5, and the obligation of the Project Participant to make

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

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

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

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

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

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

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

Discretionary Term Decision. In such event, the non-exercising Project Participant(s)' Solar Project Power Sales Contract shall be terminated, and the Power Sales Contract of the assuming Project Participant(s)' shall be amended to reflect the revised Solar Entitlement Shares. In the event that the Project Participant(s) that wish to exercise the Discretionary Term Decision cannot agree to assume 100% of the terminating Project Participant(s)' Solar Entitlement Share, then the Discretionary Term Decision shall not be exercised. All other, non-Discretionary Term Decisions made by the Solar Project Committee shall be by a simple majority, with each Project Participant having one equally-weighted vote on Solar Project matters. A copy of the Solar Project Committee Charter is attached to this Power Sales Contract as Attachment E. Amendments to the Solar Project Committee Charter shall be by unanimous consent of the Project Committee.

(b) Pursuant to the Solar Project PPA, Seller is required, at its sole expense, to interconnect the Solar Facility to the transmission system at the Point of Delivery, as defined in the Solar Project PPA. To the extent that Network Upgrades are necessary in order to obtain Network Resource Interconnection Service for the Solar Facility from the Transmission Service Provider, the Solar Project may be required to fund such Network Upgrades. Such funding entitles the Solar Project to reimbursement from the Transmission Service Provider in the form of transmission credits for service related to the Solar Facility. In the event that the Transmission Service Provider's required transmission system studies identify Network Upgrades, the Solar Project Committee shall meet to determine, consistent with the terms of the Solar PPA, whether to fund such Network Upgrades, how to fund the Network Upgrades, and how to appropriately apply the credits that the Solar Project will receive from the Transmission Service Provider in order to reimburse funds used for the Network Upgrades. This funding plan will be submitted to the FMPA Board of Directors for approval. In the event that the Solar Project Committee elects to fund such Network Upgrades, as approved by the Board of Directors, the costs associated with such funding shall be included in the Project Related Costs billable to the Project Participants. In the event that one or more Project Participants do not desire to fund Network Upgrades in excess of the threshold provided for in the Solar PPA, then the step-up option and termination rights provided for in SECTION 7(a) shall apply. To the extent a Project Participant funds Network Upgrades and assigns to FMPA the Project Participant's right to receive a refund from the Transmission Provider, FMPA shall refund such Project Participant the value of the refund credits as they are received by FMPA from its transmission provider.

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

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

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

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

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

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

(a) Based, in each case, upon the data most recently available to FMPA pursuant to the Solar Project PPA, upon request, FMPA will prepare and issue to the Project Participant the following reports:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any portion of the Solar Entitlement Share of a defaulting Project Participant transferred pursuant to SECTION 12(c)(1) to a non-defaulting Project Participant shall become a part of and shall be added to the Solar Entitlement Share of such Project Participant(s), and each such Project Participant(s) shall be obligated to pay for its Solar Entitlement Share increased as aforesaid, as if the Solar Entitlement Share of such Project Participant(s), increased as aforesaid, had been stated originally as the Solar Entitlement Share of such Project Participant(s) in its Power Sales Contract with FMPA.

(4) The defaulting Project Participant shall remain liable for all payments to be made on its part pursuant to the Power Sales Contract, except that the obligation of the defaulting Project Participant to pay FMPA shall be reduced to the extent that payments shall be received by FMPA, net of any administrative and legal costs incurred by FMPA that is caused by the default,

for that portion of the defaulting Project Participant's Solar Entitlement Share which may be transferred or sold or for the Solar Product associated therewith which may be sold as provided in clauses (1), (2), or (3) of this SECTION 12. Notwithstanding the foregoing, to the extent a defaulting Project Participant has failed to pay its Solar Project invoice, in order to prevent FMPA from defaulting under the Solar PPA, the non-defaulting Project Participants' monthly Solar Project invoices shall be increased on a pro rata basis, based on such Project Participants Solar Entitlement Shares, unless and until FMPA shall recover from the defaulting Project Participants amounts owed, upon which FMPA shall reimburse the non-defaulting Project Participants.

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

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

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

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

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

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

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

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

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

(b) FMPA covenants and agrees to use its commercially reasonable best efforts for the benefit of the Project Participant to comply in all material respects with all terms, conditions and covenants of the Solar Project PPA.

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

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

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

FMPA and the Project Participant shall assume full responsibility and liability for the maintenance and operation of their respective properties and each shall indemnify and save harmless the other from all liability and expense on account of any and all damages, claims, or actions, including injury to or death of persons arising from any act in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying party and not caused by the negligence of the other party; provided that any liability which is incurred by FMPA pursuant to the Solar Project PPA and not covered, or not covered sufficiently, by insurance shall be paid solely from the revenues of FMPA derived from the Solar Project, and any payments made by FMPA, or which FMPA is obligated to make, to satisfy such liability shall become part of Monthly Energy Costs, as required in order to satisfy the obligation of FMPA to make such payments as provided in the Solar Project PPA.

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

(a) Project Participant may terminate this Power Sales Contract upon 90 days advance written notice to FMPA and provided that Project Participant pay, prior to the termination date, the amounts set forth in this SECTION 19(a). Prior to the termination date, Project Participant shall pay to FMPA all stranded cost obligations, as determined by FMPA, to hold the other, non-terminating, Project Participants harmless from the costs associated with Project Participant's termination. For purposes of this SECTION 19(a), stranded cost obligations are defined as an estimate of the solar energy costs that FMPA will pay for the terminating Project Participant's Solar Entitlement Share during each remaining month of the remaining Initial Term of the Solar PPA based on a forecast of expected solar production. The forecast of expected solar production is defined as a P50 (probability of exceedance is 50 percent) production estimate under typical meteorological year conditions using an industry standard modeling tool (PV System or its successor/peer products) reflective of a degradation rate of 0.3% per year relative to the original nominal alternating current capacity of the solar resource in the current year (prorated over a partial year as applicable) and each subsequent remaining year of the Solar PPA Initial Term. Upon such payment and termination, Project Participant shall have no further obligation to the Solar Project or other Project Participants under this Power Sales Contract.

(b) Project Participant may assign this Power Sales Contract to another Project Participant or another FMPA member, provided that such assignee agrees to fully assume, and fully accept all terms and conditions of, this Power Sales Contract for the Term hereof. Upon such assignment and assumption, this Power Sales Contract shall terminate, and Project Participant shall have no further obligation to the Solar Project or other Project Participants under this Power Sales Contract.

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

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

(a) This Power Sales Contract shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Power Sales Contract; provided, however, that, except as provided in (1) SECTION 12 hereof in the event of a default; (2) SECTION 19(a), and (3) SECTION 20(b), neither this Power Sales Contract nor any interest herein shall be transferred or assigned by either party hereto except with the consent in writing of the other party hereto, which consent shall not be unreasonably withheld.

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

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

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

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

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

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

Any notice or demand by the Project Participant to FMPPA under this Power Sales Contract shall be deemed properly given if mailed, certified mail, postage prepaid, return receipt requested and addressed to FMPPA at its operational office; any notice or demand by FMPPA to the Project Participant under this Power Sales Contract shall be deemed properly given if mailed, certified mail postage prepaid, return receipt requested, and addressed to the Project Participant at the address set forth on Schedule 1 hereto; in computing any period of time from such notice, such period shall commence at noon on the date mailed. The designations of the name and address to which any such notice or demand is directed may be changed at any time and from time to time by either party giving notice as above provided.

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

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

**SECTION 24. Severability.**



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

**SECTION 25. Solar Project Responsibility**

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

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

FLORIDA MUNICIPAL POWER AGENCY

(SEAL)

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

Attest:

\_\_\_\_\_  
Secretary

[MEMBER]

(SEAL)

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

Attest:

\_\_\_\_\_  
Secretary

**ATTACHMENT A**  
**POWER PURCHASE AGREEMENT**

# **RENEWABLE ENERGY POWER PURCHASE AGREEMENT**

**between**

**[FLORIDA MUNICIPAL POWER AGENCY / OUC]**

**as Buyer**

**and**

**[PROJECT COMPANY]**

**as Seller**

**dated as of**

**February [\_\_], 2018**

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## RENEWABLE ENERGY POWER PURCHASE AGREEMENT

This RENEWABLE ENERGY POWER PURCHASE AGREEMENT (this “Agreement”) is made this [\_\_\_\_] day of [February], 2018 (the “Effective Date”), by and between [FLORIDA MUNICIPAL POWER AGENCY/OUC], a [\_\_\_\_\_] (“**Buyer**”) and [PROJECT COMPANY], a Delaware limited liability company (“**Seller**”). Buyer and Seller are each individually referred to herein as a “Party” and collectively as the “Parties”.

### WITNESSETH:

WHEREAS, Seller intends to develop a photovoltaic solar energy generation facility of approximately 74.5 MW alternating current (“AC”) aggregate nameplate capacity on a site located in [Orange County/Osceola County], Florida (“**Site**”); and

WHEREAS, Seller desires to sell and deliver to Buyer and Buyer desires to purchase and receive all of Buyer’s Share (as defined hereinafter) of the nameplate capacity, electric energy and environmental credits from the Project (as defined hereinafter), on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

#### 1.1 *Definitions.*

The capitalized terms listed in this Article 1 shall have the meanings set forth herein. Other terms used in this Agreement but not listed in this Article shall have the meanings as commonly used in the English language and, where applicable, in Prudent Operating Practice.

**“Abandon”** means after having commenced construction of the Project, Seller stops construction of the Project for more than ninety (90) consecutive days excluding Permitted Excuses.

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

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

**“Affiliate”** means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the power, directly or indirectly, to direct or cause the direction of the management, policies or operations of such Person, whether through the ownership of voting securities or by contract or otherwise.

**“After-Tax Basis”** means, with respect to Sections 12.2 and 12.3, any payment received or deemed to have been received by any Person, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in the State of Florida and shall take into account the deductibility (for federal income tax purposes) of any state and local income taxes.

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

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

**“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) has been adjudicated bankrupt or has filed a petition or an answer seeking an arrangement with creditors, (vi) has taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceedings, (vii) becomes subject to an order, judgment or decree for relief, entered in an involuntary case, by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive Days, (viii) fails to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) Days of the filing thereof, or (ix) becomes subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and closes at 5:00 p.m. Eastern Prevailing Time.

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



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

***“Buyer's Performance Assurance”*** means a letter of credit issued for the account of Buyer in the amount of the product of Buyer's Share percentage and [REDACTED] as security for Buyer's obligation to pay for Product pursuant to this Agreement in the event of a Downgrade Event in respect of Buyer.

***“Buyer Purchase Damages”*** means:

(a) the Buyer Purchase Damages shall be the discounted value (discounted at the Interest Rate of the positive difference, if any, of: (i) all dollar amounts that Buyer would, in the manner set forth below, be expected to pay at then prevailing market conditions to buy from a third party a product comparable to the Product being purchased under this Agreement through the remaining Delivery Term; plus (ii) all incremental costs over and above those that Buyer would otherwise incur; provided that such costs are quantifiable and directly related to the termination of this Agreement, and provided further that the incremental costs explicitly excludes costs related to any retail electric customer program; less (iii) all dollar amounts Buyer would have been expected to pay to Seller for Product under this Agreement through the remainder of the Term.

(b) Buyer shall calculate the Buyer Purchase Damages in a Commercially Reasonable manner by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants, if available. The average of the quotes that were obtained shall be deemed to be the market price. The quotes obtained shall be: (i) for a like amount, (ii) of the same Products, (iii) at the same or reasonably similar Delivery Point, (iv) for the remaining Term, and (v) determined in any other Commercially Reasonable manner. In no event shall Buyer Purchase Damages include any penalties or ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall not be required to actually have purchased replacement Product to calculate Buyer Purchase Damages as set forth herein. If Buyer Purchase Damages are owed as a result of an Event of Default and the Buyer Purchase Damages are a negative number then the Buyer Purchase Damages shall be deemed to equal zero dollars (i.e. if the estimated cost for Buyer of obtaining substantially similar products is less than the amount it would have paid Seller, neither Party shall owe any damages to the other).

(c) Buyer shall provide Seller Notice containing the Buyer Purchase Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Buyer Purchase Damages, to the degree Buyer deems pertinent within sixty (60) days after the Early Termination Date. Upon receipt of the Buyer Purchase Damages, if Seller disputes the calculation of the Buyer Purchase Damages, in whole or in part, Seller shall, within fifteen (15) Business Days following its receipt of such Notice, provide to Buyer a detailed written explanation of the basis for such dispute; provided, however, Seller can only dispute the calculation based on a failure as to the

material assumptions used in preparation of the Buyer Purchase Damages. Buyer shall nevertheless be entitled during the pendency of any dispute to draw the entire amount due from the Seller's Performance Assurance. Any dispute with regard to Buyer Purchase Damage computation shall be pursued through the dispute resolution process of Article 18. Upon resolution of the dispute (i) any amount owed by Seller to Buyer in addition to the amount drawn on Seller's Performance Security shall be paid by Seller to Buyer within thirty (30) Business Days following such resolution with interest accrued at the Interest Rate, or (ii) any amount required to be returned to Seller by Buyer shall be paid within thirty (30) Business Days following such resolution along with interest accrued at the Interest Rate.

**"Buyer's Share"** means Buyer's undivided pro rata entitlement share of the Product which as of the Effective Date is [XXX] percent ([X]%). The sum of Buyer's Share and the share(s) of Other Buyer(s) shall equal one hundred percent (100%) of the Product.

**"Change of Law"** means any change in or addition to any Applicable Law on or after the 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 consistent with its required performance under this Agreement while protecting its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Prudent Operating Practices, including electric system reliability and stability, state or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. "Commercially Reasonable" or "Commercially Reasonable Efforts" shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, decision or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

**"Commercial Operation"** means the Project is fully operable and capable of continuous operation at the Project Capacity and able to produce and deliver the Product to Buyer in accordance with the terms of this Agreement.

**"Commercial Operation Date"** means the date following the Initial Energy Delivery Date, on which (a) Commercial Operation has occurred with respect to the full Project Capacity; (b) Seller shall have delivered to Buyer the Seller's Delivery Term Security required under Section 10.4(a)(ii); (c) Seller shall have delivered to Buyer a report with the results of start-up and operational and performance testing conducted by Seller to demonstrate the attainment of Commercial Operation of the Project; (d) Seller has received all local, state and federal Governmental Approvals and other approvals, consents and authorizations as may be required by Applicable Law for the construction, operation and maintenance of the

Project and generation, delivery and sale of Product hereunder and (e) Seller has executed and delivered to Buyer a certificate certifying to Buyer the fulfillment of all conditions precedent to Commercial Operation of the Project substantially in the form of Exhibit L.

**“Confidential Information”** has the meaning set forth in Section 14.1.

**“Contract Price”** has the meaning set forth in Section 3.3.

**“Contract Quantity”** has the meaning set forth in Section 3.19(a).

**“Contract Year”** means each one year period during the Term, with the first Contract Year commencing on the Commercial Operation Date and ending on the day before the anniversary of the Commercial Operation Date, and subsequent Contract Years commencing on the anniversary of the Commercial Operation Date.

**“Credit Rating”** means, (a) with respect to Seller or any other Person, the rating then assigned to Seller’s or such Person’s unsecured, senior long-term debt obligations (not supported by third-party credit enhancements); and (b) with respect to Buyer, the rating then assigned to Buyer’s long-term bonds or if Buyer does not have a rating for its long-term bonds, then the rating then assigned to such entity as an issuer rating by the Rating Agencies.

**“Cure Payment Period”** has the meaning set forth in Section 3.19(f).

**“Curtailment Period”** means the period of time during which there is any of the following occur: (a) Transmission Provider orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for the following reasons: (i) any System Emergency; (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes Transmission Provider’s electric system integrity; (b) a curtailment ordered by the Transmission Provider for reasons including, (i) any situation that affects normal function of the electric system, including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s Transmission System integrity or the integrity of other systems to which the Transmission Provider is connected; (c) scheduled or unscheduled maintenance on the Transmission Provider’s Transmission System that prevents (i) Buyer from receiving Energy at or (ii) Seller from delivering Energy to the Delivery Point; or (d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement.

**“Daily Delay Damages”** means [REDACTED] per day payable to Buyer and Other Buyers pro rata based on their respective entitlement share of Product.

**“Daily Delay Damages Cap”** has the meaning set forth in Section 4.4(a).

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

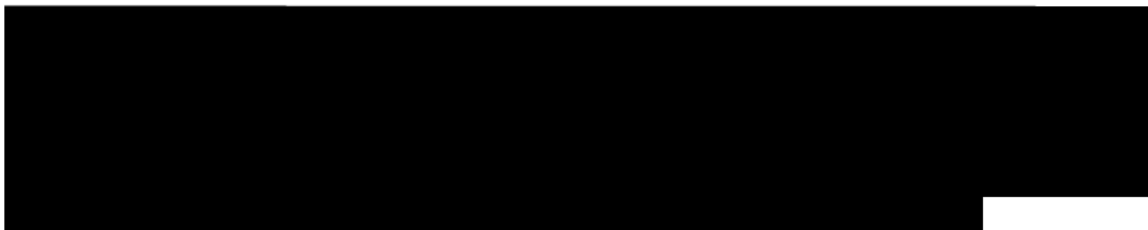
***“Delivered Energy”*** means Buyer’s Share of the Energy produced from the Project and delivered to Buyer at the Delivery Point net of all electrical losses associated with the transmission or transformation (from direct current to AC) of the Energy to the Delivery Point, including, if applicable, any losses between the Metering System and the Delivery Point.

***“Delivery Point”*** means the point, more specifically described as the ring bus in Exhibit C, where Seller’s Interconnection Facilities connect to the Transmission Provider’s Interconnection Facilities.

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

***“Disclosing Party”*** has the meaning set forth in Section 14.1.

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



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

***“Effective Date”*** has the meaning set forth in the Preamble to the Agreement.

***“Electric Interconnection Upgrade”*** means complete or cause to be completed all work, services, installations, equipment and facilities and obtains all required Governmental Approvals necessary to interconnect the Project with the Transmission Provider’s Transmission System.

***“Energy”*** means net electric energy generated by the Project and available for delivery to the Delivery Point, which shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current (AC). Energy shall include any and all associated Renewable Attributes and Facility Attributes.

***“Energy Not Received”*** means, in any hour where Energy is not delivered to the Delivery Point, Buyer's Share of (i) the positive difference between (a) the most recently available forecast of Energy deliveries as defined in Section 3.16, and (b) the actual amount of Energy delivered to the Delivery Point during such hour, if any; or (ii) if such forecast is

unavailable, the positive difference between (a) the estimate of Energy production for such hour derived from a P50 (probability of exceedance is fifty percent (50%)) simulation using actual meteorological data for the hours in question and an industry standard solar energy forecasting tool (i.e. PV System or its successor or peer tools or products), reflective of the same degradation rate as was assumed in the preparation of Exhibit D per year relative to the Project Capacity (prorated over a partial year as applicable) and (b) the actual amount of Energy delivered to the Delivery Point for such hour, if any.

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

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

***“Excess Energy Delivery”*** has the meaning set forth in Section 3.19(d).

***“Excess Energy Rate”*** means the rate set forth in Exhibit A that Buyer will have paid Seller for Buyer’s Share of Excess Energy Delivery after giving effect to Seller’s payment to Buyer of a credit pursuant to Section 3.19(f).

***“Executives”*** has the meaning set forth in Section 18.2(a).

***“Facility Attributes”*** means Buyer's Share of all ancillary products, services, capabilities or attributes which are or can be produced by or associated with the Project at any time during the Term.

***“Fair Market Value”*** means the price that would be paid in an arm’s length, free market transaction, in cash, between an informed, willing seller and informed willing buyer neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology and the commercial benefits that Seller may be able to derive from the Project, provided that installed equipment will be valued on an installed basis and costs of removal from current location will not be a deduction from the value.

***“Fitch”*** means Fitch Ratings Ltd. or any successor thereto, or if there is no such successor, a nationally recognized credit rating agency.

***“FMPA Solar Project”*** means the joint-action solar project created by the FMPA Board of Directors pursuant to FMPA Resolution No. ##, dated March XX, 2018.

***“Forced Outage”*** means a time period during which there is a reduction or suspension of the Energy from the Project or unavailability of the Project in an amount greater than five percent (5%) of the Project Capacity in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip or unavailability that is not a Planned Outage or Maintenance Outage, due to a Curtailment Period, or the result of a Force Majeure Event.

***“Force Majeure Event”*** means any event or circumstance after the Effective Date that wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, other than the obligation to pay amounts due, but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event and thereafter to mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement, (3) such Party could not reasonably have been expected to prevent or avoid such event and could not overcome such event by the exercise of due diligence, and (4) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

- (a) Subject to the foregoing, events that could qualify as a Force Majeure Event include the following:
- (i) acts of God, flooding, landslide, earthquake, fire, explosion, epidemic, quarantine, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
  - (ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation which directly impact operations;
  - (iii) except as set forth in subpart (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);
  - (iv) environmental and other contamination at or affecting the Project prior to the Effective Date which was not reasonably discoverable during Site due diligence using Prudent Operating Practices;
  - (v) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine, air crash, shipwreck, train wrecks or other failures or delays of transportation;
  - (vi) vandalism beyond that which could not be reasonably prevented by Seller using Prudent Operating Practices;
  - (vii) the discovery of Native American burial grounds not evidenced in Seller’s Phase I environmental assessment of the Site and not reasonably discoverable during Site due diligence using Prudent Operating Practices;
  - (viii) the discovery of endangered species at the Site, as defined by Applicable Law, not reasonably discoverable during Site due diligence using Prudent Operating Practices;

- (ix) damage to or destruction of the Project generator step-up transformer that requires installation of a replacement unit; and
- (x) damage to or destruction of the Transmission Provider's Transmission System which prevents Buyer from accepting delivery of Energy to the Delivery Point.

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

- (i) Buyer's inability to economically use or resell 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 consents, approvals or authorizations of any type for the ownership, construction, operation, or maintenance of the Project or the production, transmission, delivery and sale of Product;
- (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to install, equip, build, operate, maintain or repair the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event of the specific type described in any of subsections (a)(i) through (a)(vi) above;
- (v) Seller's failure to obtain Performance Assurance, financing or other funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement; or
- (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller or Seller's Affiliates.

***"Force Majeure Extension"*** has the meaning set forth in Section 4.3(c)(iii).

***"GEP Damages"*** has the meaning set forth in Section 3.19(c).

***"GEP Failure"*** has the meaning set forth in Section 3.19(c).

***"Governmental Approvals"*** means all authorizations, consents, approvals, waivers, exceptions, variances, filings, notices, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority and shall include those siting, construction and operating permits and licenses, and any of the foregoing under any Applicable Law that are required to construct, interconnect, operate, maintain and repair the Project and deliver Delivered Energy to the Delivery Point.

***“Governmental Authority”*** means any federal, state, local or municipal government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; any court or governmental tribunal; or any independent operator, regional transmission organization or other regulatory body; in each case having jurisdiction over either Party, the Project, the Site, the generation, delivery and sale of Product, Seller’s Interconnection Facilities, the Transmission Provider’s Interconnection Facilities, or the Transmission Provider’s Transmission System.

***“Governmental Charges”*** has the meaning set forth in Section 13.2.

***“Guaranteed Commercial Operation Date”*** is June 30, 2020.

***“Guaranteed Energy Production” or “GEP”*** has the meaning set forth in Section 3.19(a).

***“Guarantor”*** means an entity providing payment security on behalf of a Party which at the time it is to provide a Guaranty (a)(i) has a Credit Rating of “Baa3” or higher by Moody’s, (ii) “BBB-“ or higher by S&P, and (iii) “BBB-“ or higher by Fitch, or (b) if such Person is rated by each of Moody’s, S&P and Fitch, the two highest ratings will be the applicable standard. The Guarantor must be incorporated or organized in a jurisdiction of the United States and be in good standing in such jurisdiction.

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

***“Holopaw Project”*** means the project identified as such in Exhibit O.

***“Initial Energy Delivery Date”*** means the first date that Seller delivers Energy from the Project to Buyer at the Delivery Point that Buyer is able to receive and transmit from the Delivery Point.

***“Initial Negotiation End Date”*** has the meaning set forth in Section 18.2(a).

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

***“Interconnection Agreement”*** means the mutually agreed interconnection agreement between the Transmission Provider and Seller pursuant to which Seller’s Interconnection Facilities and the Transmission Provider’s Interconnection Facilities will be constructed and operated and maintained.

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

[REDACTED]



***“Interim Milestones”*** has the meaning set forth in Section 4.1(a)(i).

***“kW”*** means a kilowatt of AC electric generating capacity.

***“kWh”*** means a kilowatt hour of Energy.

***“Letter(s) of Credit”*** means one or more irrevocable, transferable standby letters of credit, substantially in the form of Exhibit G, issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, without a “negative credit watch”, “negative outlook” or other rating decline alert by either S&P or Moody’s and having net tangible assets of at least \$10 Billion, in a form acceptable to the Party in whose favor the letter of credit is issued.

***“LGIA”*** means the Transmission Provider’s Large Generator Interconnection Agreement.

***“LGIP”*** means the Transmission Provider’s Large Generator Interconnection Procedures.

***“Maintenance Outage”*** means removal of a portion of the Project from service availability, excluding Planned Outages and Forced Outages.

***“Manager”*** has the meaning set forth in Section 18.2(a).

***“Measurement Period Performance Percentage”*** has the meaning set forth in Section 3.19(a).

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

***“Milestone Daily Delay Damages”*** means pro rata share of [REDACTED] per day payable to Buyer and Other Buyers based on their respective entitlement share of Product.

***“Milestone Daily Delay Damages Cap”*** has the meaning set forth in Section 4.1(h).

***“Milestone Schedule”*** has the meaning set forth in Section 4.1(h).

***“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.

***“Network Upgrades”*** means additions, modifications and upgrades to the Transmission Provider’s Transmission System, or any other electric delivery system beyond the Delivery Point to which Transmission Provider’s Transmission System is directly or indirectly interconnected or which is affected, to accommodate the interconnection of the Project to the Transmission Provider’s Transmission System.

***“Network Upgrade Cost”*** means the costs to make any Network Upgrades required by the Transmission Provider.

***“Newly Available Product”*** means any Product available to Seller following a default or termination by any Other Buyer or under any power purchase agreement relating to a Solar Project.

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

***“Notice”*** has the meaning set forth in Section 19.1.

***“NRIS”*** means Network Resource Interconnection Service.

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

***“Option Price”*** has the meaning set forth in Section 9.1.

***“Orange Project”*** means the project identified as such in Exhibit O.

***“Osceola Project”*** means the project identified as such in Exhibit O.

***“Other Buyers”*** means the Persons identified as such in Exhibit N, together with their respective entitlement share to Product from each of the Solar Projects.

***“Other Buyer’s Share”*** means the entitlement share (expressed as a percentage) of an Other Buyer to Product (with the Buyer’s Share and the shares of Other Buyers totaling one hundred percent (100%)).

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

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

***“Performance Assurance”*** means security in the form of cash, Letters of Credit, or Guaranty in the form and substance set out in this Agreement provided by a Party to the other Party to secure a Party’s obligations hereunder.

***“Performance Measurement Period”*** has the meaning set forth in Section 3.19(a).

***“Permitted Extensions”*** means extensions to the Guaranteed Commercial Operation Date due to Transmission Delay, Permitting Delay, or Force Majeure Extension.

***“Permitting Delay”*** has the meaning set forth in Section 4.3(c)(ii).

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

***“Planned Outage”*** means the scheduled removal of all or a portion of the Project from service availability. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage period, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project consistent with recommendations of equipment manufacturers and Prudent Operating Practice, (b) cannot be reasonably conducted during the Project’s operations, and (c) causes the amount of Energy delivered to the Delivery Point to be reduced by at least five percent (5%) of the Project Capacity.

***“Point of Interconnection”*** has the meaning set forth in Exhibit C.

***“Product”*** means the Energy, Renewable Attributes and Facility Attributes generated by the Project, net of Station Service.

***“Project”*** means Seller’s electrical plant and equipment used to generate electricity utilizing photovoltaic solar energy generator equipment and facilities located at the Site, Seller’s Interconnection Facilities and any and all additions, replacements or modifications. The Project is more particularly described in Exhibit B.

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

***“Project Cure Period”*** has the meaning set forth in Section 4.4(a).

***“Project Development Security”*** has the meaning set forth in Section 10.4(a)(i).

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

***“Project Quantity”*** means the total Energy production of the Project for a Contract Year as set forth in Exhibit D.

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

***“Purchase Option”*** has the meaning set forth in Section 9.1.

***“Qualified Institution”*** means a U.S. commercial bank or a licensed U.S. branch of a foreign bank, or other Person having an unsecured bond rating equivalent to A- or better as determined by at least two (2) Ratings Agencies, one of which must be either Standard & Poor’s or Moody’s, and net tangible assets of at least thirty billion dollars (\$30,000,000,000).

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

***“Receiving Party”*** has the meaning set forth in Section 14.1.

***“Referral Date”*** has the meaning set forth in Section 18.2(a).

***“Renewable Attributes”*** means Buyer's Share of any and all existing and future renewable resource attributes, emissions credits and other environmentally related attributes that arise from, result from, are created by or are attributable to the generation, production, purchase or sale of Energy from the Project. Renewable Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) Tax Attributes or (iii) emission reduction credits encumbered or used by the Project for compliance with local, state or federal operating and/or air quality permits.

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

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

***“Scheduling Coordinator”*** means the Persons designated by Buyer and Other Buyers by Notice to Seller as the Persons who are authorized and responsible for scheduling the amount of Energy expected to be delivered to the Delivery Point by the Project, consistent with the Operating Procedures, during any hour during the Delivery Term.

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

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

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

***“Seller Excuse Hours”*** means the hours Seller is unable to generate or deliver Energy due to Seller Excuses.

***“Seller Sales Damages”*** means:

(a) the Seller Sales Damages shall be the discounted value (discounted at the Interest Rate of the positive difference, if any, of: (i) all dollar amounts that Seller would, in the manner set forth below, be expected to receive from the sale of the Product under this Agreement through the remainder of the Term of the Agreement; plus (ii) all incremental costs over and above those that Seller would otherwise incur when delivering the Product to the Delivery Point; less (iii) all dollar amounts Seller reasonably would, in the manner set forth below, be expected to receive at then-prevailing market conditions from the sale to a third party of the Product that it would have provided to Buyer through the remainder of the Term.

(b) Seller shall calculate the Seller Sales Damages in a Commercially Reasonable manner by using the average of market bids or quotations provided by three (3) or more bona fide unaffiliated market participants, if available. The average of the bids/quotes that were obtained shall be deemed to be the market price. The quotes obtained shall be: (i) for a like amount, (ii) of the same Products, (iii) at the same or reasonably similar Delivery Point, (iv) for the remaining Term, and (v) determined in any other Commercially Reasonable manner. In no event shall Seller Sales Damages include any penalties, or ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Buyer's liability. For the purposes of this definition, Seller shall not be required to actually resell the Product to calculate the Seller Sales Damages as set forth herein. If Seller Sales Damages are owed as a result of an Event of Default and the Seller Sales Damages are a negative number then the Seller Sales Damages shall be deemed to equal zero dollars (i.e. if the estimated cost for Seller to sell substantially similar products is more than the amount it would have received from Buyer, neither Party shall owe any damages to the other).

(c) Seller shall provide Buyer Notice containing the Seller Sales Damages calculations, including the supporting data such as associated charges and other relevant assumptions used to calculate the Seller Sales Damages to the degree Seller deems pertinent within sixty (60) days after the Early Termination Date. Upon receipt of the Seller Sales Damages, if Buyer disputes the calculation of the Seller Sales Damages, in whole or in part, Buyer shall, within fifteen (15) Business Days following its receipt of such Notice, provide to Seller a detailed written explanation of the basis for such dispute; provided, however, Buyer can only dispute the calculation based on a failure as to the material assumptions and the sufficiency of the data used in preparation of the Seller Sales Damages. Any dispute as described above in this definition shall be pursued through the dispute resolution process set forth in Article 18. Upon resolution of the dispute, any payment required from one Party to the other shall be made by the owing Party within thirty (30) Business Days following such resolution.

***“Seller’s Delivery Term Security”*** has the meaning set forth in Section 10.4 (a)(ii).

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

***“Seller’s Ultimate Parent Company”*** means the ultimate parent of Seller, which as of the Effective Date is NextEra Energy, Inc.

***“Settlement Amount”*** means (a) Buyer Purchase Damages; or (b) Seller Sales Damages, as applicable.

***“Site”*** has the meaning set forth in the Recitals as further described in Exhibit I.

***“Solar Project”*** means the Project, the Holopaw Project or the Osceola Project.

[REDACTED]

***“Station Service”*** means the electric energy required by the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project.

***“System Emergency”*** means a condition on the Transmission Provider’s Transmission System, at the Project, or on transmission facilities used to deliver Energy from the Project to the Delivery Point which condition is likely to result in imminent significant disruption of service to the Transmission Provider’s Transmission System customers or is imminently likely to endanger life or property.

***“System Operator”*** means the operator of the Florida Municipal Power Pool.

***“Tax Attributes”*** means (i) investment tax credits (including any grants or payments in lieu thereof) and any other tax deductions or tax 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 tax credits, payments in lieu thereof and accelerated and/or bonus depreciation); and (ii) present or future (whether known or unknown) cash payments, grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money relating in any way to the Project.

***“Tax Equity Investor”*** means one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably

applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code , as amended (a pass-through lease).

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

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

**“Trade Action”** means any change in any quantitative restrictions, import relief, or other forms of trade relief instituted by Governmental Authorities, including any changes to or institution of tariffs, duties, fees, taxes, penalties, quotas, minimum pricing, or other restrictions.

**“Trade Action Cap”** means [REDACTED]

**“Transmission Delay”** has the meaning set forth in Section 4.3(c)(i).

**“Transmission Provider”** means [OUC/Duke Energy Florida] or any successor to the Transmission Provider’s Transmission System.

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

**“Transmission Provider’s Transmission System”** means the facilities for the transmission of Delivered Energy from the Delivery Point to Buyer’s electric delivery system.

## **1.2 Interpretation.**

The following rules of construction shall be followed when interpreting this Agreement:

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

(b) words used or defined in the singular include the plural and vice versa;

(c) references to Articles and Sections refer to Articles and Sections of this Agreement;

(d) references to Annexes, Exhibits and Schedules refer to the Annexes, Exhibits and Schedules attached to this Agreement, each of which is made a part hereof for all purposes;

(e) references to Applicable Laws refer to such Applicable Laws as they may be amended from time to time, and references to particular provisions of an Applicable Law

include any corresponding provisions of any succeeding Applicable Law and any rules and regulations promulgated thereunder;

(f) terms defined in this Agreement are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto as so defined;

(g) references to money refer to legal currency of the United States of America;

(h) the words “includes” or “including” shall mean “including without limitation;”

(i) the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Article or Section in which such words appear, unless otherwise specified;

(j) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(k) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(l) the word “or” will have the inclusive meaning represented by the phrase “and/or;”

(m) the words “shall” and “will” mean “must”, and shall and will have equal force and effect and express an obligation; and

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

## **ARTICLE 2**

### **TERM**

#### **2.1     *Term.***

This Agreement shall commence on the Effective Date and continue until the date that is twenty (20) years following the Commercial Operation Date (the “**Initial Term**”). The Initial Term may be extended at the option of Buyer for two (2) extension terms of five (5) years each or by one ten (10) year extension term (the “**Renewal Term(s)**”), with no change to the Contract Price, by Notice from Buyer to Seller at least one hundred and twenty (120) days prior to the expiration of the Initial Term or the initial Renewal Term, as applicable. The Initial Term and any Renewal Term(s) are collectively (the “**Term**”).

## **ARTICLE 3**

### **OBLIGATIONS AND DELIVERIES**



### **3.1     *Product.***

(a) Seller shall produce, deliver and sell to Buyer Buyer's Share of all Product which are or can be produced by or associated with the Project now and in the future (whether known or unknown) in accordance with the terms hereof. Seller and Buyer acknowledge that except in the case in which Buyer's Share is or becomes a one hundred percent (100%) entitlement to Product, the Buyer's Share under this Agreement is not intended to be the entire Product produced by or relating to the Project and that Seller has or will contract to sell the remaining shares of the Product to Other Buyers. Seller acknowledges that Buyer does not and shall not incur obligations to the Other Buyers through this Agreement and the rights and obligations of this Agreement shall be separate and independent of any agreements entered into by Seller with Other Buyers except as expressly, specifically set forth herein.

(b) In the event of availability of Newly Available Product resulting from permanent discontinuance of service to an Other Buyer pursuant to a power purchase agreement between Seller and such Other Buyer, Seller shall proceed to dispose of such Other Buyer's share of the Project Product as follows: Seller shall first offer to transfer to Buyer and all other Other Buyers a pro rata portion of the Newly Available Product. Any part of such Newly Available Product which shall be declined by Buyer or any such Other Buyer shall be reoffered pro rata to Buyer and/or such Other Buyer which have accepted in full the first such offer; such reoffering shall be repeated until such Newly Available Product has been reallocated in full or until Buyer and/or all such Other Buyers have declined to take any portion or additional portion of such Newly Available Product. If less than all of the Newly Available Product shall be accepted by Buyer and/or such Other Buyers pursuant to this clause (b), Seller may sell to a third party the remaining portion of Newly Available Product share for the remaining term of the applicable power purchase agreement with Seller for which service has been permanently discontinued.

### **3.2     *Purchase and Sale.***

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

(b) For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Energy on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer receives from Seller, all right, title, and interest in and to all Renewable Attributes and Facility Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Term, for all Delivered Energy and replacement Energy. Seller agrees to transfer and make such Renewable Attributes and Facility Attributes available to Buyer immediately to the fullest extent allowed by Applicable Law upon Seller's production or acquisition of the Renewable Attributes and Facility Attributes. Seller shall not assign,

transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Renewable Attributes and Facility Attributes to any Person other than Buyer.

### **3.3 Contract Price.**

Buyer shall pay Seller for each MWh of Buyer's Share of Product (i) during the period from and including the Initial Energy Delivery Date to the Commercial Operation Date, at the applicable rate set forth in Exhibit A; and (ii) during the period from and including the Commercial Operation Date through the remainder of the Delivery Term, at the applicable rate set forth in Exhibit A (as applicable during the respective periods, the “**Contract Price**”). Buyer and Seller acknowledge and agree that the consideration for the transfer of Renewable Attributes and Facility Attributes is contained within Contract Price. In the event that during any Contract Year Seller produces and makes an Excess Energy Delivery to the Delivery Point, within thirty (30) days after the end of such Contract Year, Seller shall credit Buyer by an amount such that in respect of all such Excess Energy Delivery, Buyer effectively paid the Excess Energy Rate for such Excess Energy Delivery pursuant to the settlement process described in Section 3.19.

### **3.4 Project Capacity.**

The “**Project Capacity**” is the full generation capacity of the Project net of all Station Service and net of losses, including transformation or transmission losses, to the Delivery Point, which shall be 74.5 MW AC as of the Commercial Operation Date. Throughout the Delivery Term, Seller shall sell and deliver Buyer's Share of all Product associated with the Project Capacity of the Project solely to Buyer, except as may be permitted under this Agreement in the case of an Event of Default of Buyer or during a Curtailment Period, Planned Outage or Maintenance Outage or Force Majeure Event where Buyer is prevented from accepting delivery of the Product.

### **3.5 Performance Excuses.**

(a) The obligation of Seller to deliver the Energy to the Delivery Point shall be excused only (i) during periods of Force Majeure, (ii) by Buyer's unexcused failure to perform its obligation to receive Delivered Energy at the Delivery Point, (iii) during Curtailment Periods and (iv) during Planned Outages and Maintenance Outages (“**Seller Excuses**”).

(b) The obligation of Buyer to receive and pay for the Product delivered at the Delivery Point shall be excused only (i) during periods of Force Majeure, (ii) by Seller's failure to perform its obligations to generate and deliver Energy to the Delivery Point, or (iii) during Curtailment Periods (“**Buyer Excuses**”).

(c) Except for a failure resulting from a Force Majeure or during a Curtailment Period, the failure of electric transmission service shall not excuse performance with respect to either Party.

### **3.6 *Buyer's Right to Curtail.***

(a) The Scheduling Coordinator may curtail, or require Seller to curtail, all or part of the Energy from the Project at any time for any reason, including Buyer Excuses. In the event that the curtailment does not arise out of Buyer Excuses, Buyer shall be responsible for and shall pay Seller for Buyer's Share of the Energy Not Received at the Delivery Point as a result of the curtailment directed by Scheduling Coordinator at the Contract Price for the amount of Buyer's Share of Energy Not Received as determined and calculated by Seller and agreed to by Buyer in a Commercially Reasonable Manner. In the event that Buyer requests Seller to curtail all or part of the Energy from the Project, Seller shall curtail the Delivered Energy as soon as reasonably possible after receiving, and otherwise in accordance with, Notice from Buyer.

(b) Seller shall include in a monthly invoice delivered to Buyer pursuant to Section 8.1 the amounts, if any, owed by Buyer pursuant to Section 3.5(a) and a description, in reasonable detail, of the calculation of the Energy Not Received.

### **3.7 *[Replacement Energy].***

[In the event of a Planned Outage, Maintenance Outage, Forced Outage, or an outage in connection with a Force Majeure Event or any other Permitted Excuses, Buyer has the right to purchase replacement energy as necessary for the period of such outage; *provided*, that Seller shall have no obligation to reimburse Buyer for such replacement energy; and *provided further*, that nothing in this Section 3.7 shall impact Buyer's obligations in Section 3.2(a). In connection with an outage for which a plan has been delivered pursuant to Section 7.1(a)(iii) (Events of Default), 16.1 (Force Majeure), or section 3(a) of a consent to assignment delivered pursuant to Section 15.2(d), Buyer (i) may purchase replacement energy after consultation with Seller or Collateral Agent (as applicable) regarding such plan or any updates thereto, for a period of time equal to the lesser of (A) the remaining period of time outlined in such plan or (B) seven days, and (ii) shall not be obligated to pay for Delivered Energy during such period. For the avoidance of doubt, in the event that a plan described in this Section 3.7 anticipates a timeline greater than seven (7) days, Buyer may continue to purchase replacement energy after consultation with Seller or Collateral Agent (as applicable) on an iterative basis until Seller resumes the delivery of Energy to the Delivery Point.]

### **3.8 *Offsets, Allowances and Renewable Attributes.***

(a) Buyer shall be entitled to Buyer's Share of all Renewable Attributes and Facility Attributes resulting from the generation of Energy at the Project. Buyer shall not be entitled to any Renewable Attributes resulting from the generation of electric energy that Seller made available to Buyer at the Delivery Point, which Buyer does not purchase under this Agreement.

(b) Seller shall transfer and assign to Buyer all Renewable Attributes associated with the Energy produced by the Project. On or before the tenth (10th) day following the end of each Month, Seller shall complete and provide to Buyer the bill of sale for Renewable

Attributes in the form attached hereto as Exhibit L, together with Seller's monthly invoice to Buyer for Product issued in accordance with Section 8.1.

(c) 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 Renewable Attributes, and (iii) any Renewable Attributes that the Buyer is not entitled to pursuant to the provisions of Section 3.8(a). Buyer acknowledges that Seller has the right to sell any Renewable Attributes to which Seller is entitled pursuant to this Section 3.8(c) to any Person other than Buyer at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Buyer hereunder. Buyer shall have no claim, right or interest in such Renewable Attributes that Seller has the right to sell under this Section 3.8(c) or in any amount that Seller realized from the sale of such Renewable Attributes.

(d) Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive any Tax Attributes, or to qualify for accelerated or bonus depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the sale, purchase and price for and Seller's obligation to generate and deliver Energy and Renewable Attributes and Facility Attributes, shall be effective regardless of whether the generation of Product or sale and delivery of Delivered Energy from the Project is eligible for, or receives Tax Attributes or to qualify for accelerated or bonus depreciation during the Term.

### **3.9     *Transmission.***

(a) Seller shall be responsible for presenting to and receiving Transmission Provider approval of the Project interconnection requirements and transmission facilities so that Seller can perform its Product deliveries hereunder in accordance with applicable Transmission Provider requirements. Seller shall be responsible for all costs to design, equip, construct and maintain the interconnection facilities necessary to deliver Energy from the Project. Seller shall be responsible for receiving NRIS from the Transmission Provider during Transmission Provider's LGIP. Subject to Section 4.2, Buyer shall be responsible for arranging for all transmission services required to effectuate Buyer's purchase of Product, including obtaining firm transmission service, in an amount of capacity equal to the Buyer's Share of the Project Capacity, and shall be responsible for the payment of any charges related to such transmission services hereunder, including charges for transmission or wheeling services, ancillary services, control area services, congestion charges, transaction charges and line losses. The Parties acknowledge that the Contract Price does not include charges for such transmission services, all of which shall be paid by Buyer.

(b) In the event that the Transmission Provider or any other properly authorized Person exercising control over the Transmission Provider's Interconnection Facilities or the Transmission Provider's Transmission System takes any action or orders Seller or Buyer to take any action that affects Buyer's ability to take delivery of Energy hereunder not caused

by or resulting from Seller's act or omission, a Curtailment Period or a Force Majeure, Buyer shall use its Commercially Reasonable efforts to attempt to mitigate the adverse effects of such action(s) on Buyer's ability to take delivery of Energy hereunder; including redispatching its generation resources other than the Project.

### **3.10 Scheduling.**

Scheduling Coordinator shall be responsible for the scheduling of all Delivered Energy during the Delivery Term, including arranging any Open Access Same Time Information Systems (OASIS), tagging, transmission scheduling or similar protocols with the Transmission Provider or any other Persons.

### **3.11 Operating Procedures.**

Seller and Buyer will endeavor to develop written operating procedures ("**Operating Procedures**") not less than sixty (60) days before the scheduled Initial Energy Delivery Date, which Operating Procedures shall only be effective if made by mutual written agreement of Seller and Buyer. The Parties agree that the Operating Procedures they will endeavor to establish will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include procedures concerning the following: (1) the method of day-to-day communications; (2) key personnel lists for Seller and Buyer; and (3) reporting of scheduled maintenance, Maintenance Outages, Planned Outages and Forced Outages of the Project.

### **3.12 Regulatory Approvals.**

(a) Buyer shall apply for and shall diligently pursue a reservation of network transmission service that secures a firm delivery path for the Delivered Energy from the Delivery Point to and over the Transmission Provider's Transmission System, in an amount of capacity equal to Buyer's Share of the Project Capacity, with such application being submitted not later than ten (10) Business Days following the Effective Date.

(b) Following execution of this Agreement by both Parties, each Party shall promptly seek to obtain all Governmental Approvals and other licenses, permits and approvals necessary to perform its obligations hereunder.

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

(a) Seller shall comply with all requirements of Applicable Law, Governmental Approvals and NERC relating to the Project (including those related to construction,

ownership, interconnection and/or operation of the Project and production and delivery of Product).

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

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

### **3.14 *Outage Notification.***

(a) Seller shall schedule Planned Outages for the Project in accordance with Prudent Operating Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld, conditioned or delayed. The Parties acknowledge that in all circumstances, Prudent Operating Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than August 1<sup>st</sup> of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld, conditioned or delayed. Buyer shall promptly respond within five (5) Business Days with its approval or with reasonable modifications to the proposed Planned Outage schedule and Seller shall use its best efforts in accordance with Prudent Operating Practices to accommodate Buyer's requested modifications and deliver the final schedule to Buyer. Seller shall contact and confirm by Notice to Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Operating Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld, conditioned or delayed. Seller shall use its best efforts in accordance with Prudent Operating Practices not to schedule Planned Outages during the period of April 1<sup>st</sup> through October 31<sup>st</sup> of the Delivery Term. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage or at any other time.

(b) In addition to Planned Outages, Seller shall promptly inform Buyer of any Forced Outage lasting for more than sixty (60) consecutive minutes. Such information shall be communicated by electronic mail to Buyer's designated personnel and describe the nature of the Forced Outage, the beginning date and time of such Forced Outage, the expected end date and time of such Forced Outage, the amount of Energy that Seller expects will be delivered at the Delivery Point during such Forced Outage, and any other information reasonably requested by Buyer. With respect to any such Forced Outage, Seller shall communicate and inform Buyer and thereafter provide Buyer with such Notice by any reasonable means requested by Buyer, including by telephone or electronic mail.

(c) If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent, in order to optimize the Delivered Energy from the Project. Upon such Notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; provided, however, that Seller shall take all reasonable measures consistent with Prudent Operating Practices to not schedule any Maintenance Outage during the weekday day light hours during the period of April 1<sup>st</sup> through October 31<sup>st</sup> of the Delivery Term. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Project that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such Notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify Buyer of any subsequent changes in generation capacity available to Buyer as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in Notices. Seller shall take all reasonable measures consistent with Prudent Operating Practices to minimize the frequency and duration of Maintenance Outages. Seller may schedule a Maintenance Outage at any time and without the requirement to notify Buyer in advance during conditions of low solar insolation.

(d) The Parties acknowledge and agree that the estimated monthly net output of Energy from the Project as set forth on Exhibit D does not take into account Planned Outages, Maintenance Outages, and Forced Outages.

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

(a) Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include information on power production, solar insolation, efficiency, availability, maintenance performed, Maintenance Outages, Planned Outages, Forced Outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically in an agreed format to Buyer within five (5) days of Buyer's request.

(b) Buyer, its authorized agents, and employees shall have the right of ingress to and egress from the Site and Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement; *provided*, that Buyer shall observe all applicable Project safety rules that Seller has communicated to Buyer; provided further, that Buyer shall (without waiving its sovereign immunity under Florida Statutes) indemnify Seller for damage to property or injury to persons to the extent caused by the negligent actions or willful misconduct of Buyer's authorized agents or

employees while such authorized individuals are at the Site or the Project.

**3.16 *Availability; Energy Production Forecasting.***

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

(b) No later than: (i) the earlier of January 15<sup>th</sup> preceding the first Contract Year or forty-five (45) Days prior to the commencement of the first Contract Year; and (ii) January 15<sup>th</sup> of each calendar year for every subsequent Contract Year, Seller shall provide to Buyer a non-binding forecast of the hourly delivery of Energy at the Delivery Point under this Agreement for an average day in each month of the following calendar year in a form agreed by the Parties.

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

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

**3.17 *Weather Station.***

(a) No later than sixty (60) Days prior to the Commercial Operation Date, Seller, at its own expense, shall install and maintain at least one stand-alone meteorological station at the Site to monitor, measure, communicate and report the meteorological data required under Section 3.17(b). Seller shall maintain and replace the meteorological station as necessary to provide accurate data with respect to the location of the Project.

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



- (i) real and reactive power production by the Project for each hour;
- (ii) changes in operating status, outages and maintenance events;
- (iii) any unusual conditions found during inspections;
- (iv) any significant events related to the operation of the Project; and
- (v) one (1) minute and hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Project: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, relative humidity, wind direction and speed, precipitation, barometric pressure, back of module surface temperature, and other pertinent meteorological conditions.

(c) Buyer shall have real-time access to the required meteorological data at a frequency not to exceed every five (5) minutes. Seller shall provide Buyer a report within thirty (30) days after the end of each month that provides the foregoing information for such month as well as any other additional information that Buyer reasonably requests regarding conditions at the Site and the operation of the Project that is collected and maintained by Seller in the ordinary course of Project operations.

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

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

### **3.18 *Change of Law.***

(a) Excluding a Change of Law regarding Trade Action and changes to corporate income tax rates prior to June 29, 2018, Buyer shall be responsible for Changes of Law which impact Buyer and Seller shall be responsible for Changes of Law which impact Seller.

(b) If corporate income tax rates are impacted by a Change of Law prior to June 29, 2018, Seller shall provide Notice to Buyer within thirty (30) days of such Change of Law and include with such Notice Seller's proposed adjustment to the Contract Price and the data, documents and assumptions on which Seller bases its position. If Buyer does not affirmatively and unconditionally accept by Notice to Seller the Seller's proposed adjustment to the Contract Price within ten (10) days after receipt of Seller's Notice, the Parties shall negotiate potential adjustment to the Contract Price for thirty (30) days after Buyer's receipt of Seller's Notice. If at the end of such thirty (30) day period the Parties have not mutually agreed upon an amendment to this Agreement to adjust the Contract Price to compensate Seller for the increase in Seller's costs associated with the Change of Law, Seller shall have the right to terminate this Agreement by Notice to Buyer within thirty (30) days after the end of the thirty (30) day negotiation period.

(c) In the event that a new ad valorem tariff is imposed by the Trade Action prior to June 29, 2018, Buyer and Seller will agree to an increase to the Contract Price by calculating a pro rata increase of [REDACTED] per 1% new ad valorem tariff on solar modules up to the Trade Action Cap. If the calculation results in an increase greater than the Trade Action Cap, Buyer and Seller will agree to an increase to the base Contract Price at the Trade Action Cap, or either Seller or Buyer may terminate the Agreement by Notice to the other Party without any further liability; and (ii) if a trade restriction other than an ad valorem tariff increase on solar photovoltaic modules is imposed due to a Trade Action and such trade restriction impacts Seller's costs, the Parties agree to meet to attempt to negotiate an increase to the base Contract Price; provided, however, to the extent the base Contract Price increase required by Seller exceeds the Trade Action Cap, either Seller or Buyer may terminate the Agreement by Notice to the Other Party without any further liability.

### **3.19 Contract Quantity, Guaranteed Energy Production and Excess Energy.**

(a) The quantity of Delivered Energy that Seller expects to be able to deliver to Buyer during any Contract Year (without consideration for Planned Outages, Maintenance Outages, Curtailment Periods or other Seller Excuses) is Buyer's Share of the Project Quantity in Exhibit D ("**Contract Quantity**"). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than Guaranteed Energy Production (as defined below) in the two (2) prior consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**") in accordance with the following formula:

**Measurement Period Performance Percentage** = Delivered Energy during Performance Measurement Period / [Contract Quantity during Performance Measurement Period \* (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period] \* 100

(b) Guaranteed Energy Production ("**GEP**") means a Measurement Period Performance Percentage of [REDACTED]

(c) If Seller has a Measurement Period Performance Percentage below [REDACTED] ("**GEP Failure**"), then within forty-five (45) days after the last day of the Performance Measurement Period, Seller shall Notify Buyer of such failure. If the Measurement Period Performance Percentage is greater than [REDACTED] Seller may cure the GEP Failure by paying Buyer within ten (10) Business Days after such Notice (the "**Cure Payment Period**") GEP Damages as described by the following formula:

**GEP Damages** = Contract Price x [REDACTED] x Contract Quantity during Performance Measurement Period x ((Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period) – Delivered Energy during Performance Measurement Period]

(d) If Seller has a Measurement Period Performance Percentage greater than [REDACTED] ("**Excess Energy Delivery**"), then within forty-five (45) days after the last day of the

Performance Measurement Period, Seller shall Notify Buyer of such Excess Energy Delivery. The Seller shall credit the Buyer within ten (10) Business Days after such Notice an Excess Energy Credit as described by the following formula:

**Excess Energy Credit** = 25% x Contract Price x [Delivered Energy during Performance Measurement Period – █████ x Contract Quantity during Performance Measurement Period x (Hours in Performance Measurement Period – Seller Excuse Hours in Performance Measurement Period) / Hours in Performance Measurement Period]

(e) The Parties agree that the damages sustained by Buyer associated with Seller's failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and the GEP Damages are a reasonable approximation of damages sustained by Buyer and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(f) If Seller has a Measurement Period Performance Percentage below █████ or does meet such threshold but does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default within ninety (90) days following the Cure Payment Period.

### **3.20 Signage.**

Seller shall install, at its own expense but subject to Buyer's approval, signage at the Project site that informs the public of Buyer's involvement with the Project as a purchaser of Product. The Parties shall work in good faith to determine the appropriate location and specifications of such signage, but in no event shall such signage be less visible or informative than that which Seller provides for itself at the Project Site. The Parties shall also work in good faith to jointly plan and execute all public communications and events related to the Project including any press release, groundbreaking or other ceremony, and ongoing media or other public announcements during the Term of this Agreement. All Persons attending events at the Site shall sign Seller's waiver of liability or shall not be allowed access to the Site and the Project. Buyer may provide or install, at its own expense and in a manner that does not interfere with the normal operation of the Project, displays or other materials that support public education regarding the Project. Seller shall use Commercially Reasonable Efforts to cooperate with Buyer to ensure the timely installation and display and maintenance of such materials.

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

### **4.1 Project Development.**

Seller, at no cost to Buyer shall:

(a) Design and construct, permit, finance, commission, start-up and test the Project,

including directly assigned interconnection facility cost but excluding Network Upgrades except as provided in Sections 4.2(a) and 4.2(b).

(b) Acquire all rights, title, entitlements and/or interests in the Site sufficient for Seller to be able to construct, operate and maintain the Project on the Site.

(c) Perform or cause to be performed all due diligence inspection, evaluation, testing and investigation activities relating to the viability of the Project.

(d) Perform or cause to be performed all studies and pay all fees, obtain all necessary approvals and execute all necessary agreements with the [TRANSMISSION PROVIDER].

(e) Acquire all Governmental Approvals and other approvals, consents and authorizations necessary for the construction, operation, and maintenance of the Project and production, delivery and sale of Product.

(f) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project and production, delivery and sale of Product.

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

(h) Within fifteen (15) days after each month until the Commercial Operation Date, provide to Buyer a monthly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's development and construction progress. Seller shall provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.

(i) Seller will make all Commercially Reasonable Efforts to achieve timely the interim milestones for Project construction as set forth in Exhibit J ("**Interim Milestones**"). The Interim Milestones are Seller's best estimate of the schedule for construction and installation of the Project and the failure of Seller to meet any such other interim milestone will not itself be a breach. Seller shall provide monthly status reports on development activity relative to the Interim Milestones, including any actual or anticipated delays and efforts to mitigate the delay.

(j) In addition to the damages for delay referred to in Sections 4.3 and 6.1, Seller shall (a) pay a maximum aggregate to Buyer and Other Buyers (a) Milestone Daily Damages for the milestones for up to [REDACTED] per milestone ("**Milestone Daily Damages Cap**") as set forth in the first two (2) rows of Exhibit K (Milestone Delay Damages) and (b) develop a remedial plan to complete development and construction of the Project by the Guaranteed Commercial Operation Date.

#### **4.2     *Network Upgrades.***

(a) Seller shall be responsible for submitting the necessary generator interconnection requests and causing the necessary transmission studies be performed to determine whether Network Upgrades are required to interconnect the Project with the Transmission Provider's Transmission System in accordance with the LGIA and LGIP. To the extent Network Upgrades are necessary, Seller shall coordinate with Transmission Provider to cause the Network Upgrades to be constructed. Buyer may incur or reimburse Seller for costs incurred by Seller for the Network Upgrades for the Project pursuant to 4.2 (b), and if Buyer incurs or reimburses Seller, Seller shall invoice Buyer for all Network Upgrade Costs incurred by Buyer under the LGIA. If Buyer funds the Network Upgrades, or causes a third party to fund such Network Upgrades, then Seller shall assign and transfer to Buyer any rights or interests of Seller in and to a refund of the cost of the Network Upgrades which Seller may have under the LGIA associated with the funding of such Network Upgrades from the Transmission Provider, and Buyer may thereafter reassign such rights and interests in and to a refund to any person, in Buyer's sole discretion.

(b) After Seller receives the facilities studies and estimate of Network Upgrade Costs from the Transmission Provider and from owners of any affected systems, and prior to initiating Network Upgrade construction, Seller shall provide to Buyer the studies and estimated costs of the Network Upgrades and the LGIA including any description of the reimbursement or crediting process for Network Upgrade Costs to review and approve prior to Buyer incurring Buyer's share of Network Upgrade Costs or reimbursing Seller for Seller's funding Buyer's Share of Network Upgrade Costs. If the Network Upgrade Costs exceed Ten Million Dollars (\$10,000,000) or Buyer is not satisfied with the reimbursement or crediting process for Network Upgrade Costs and Buyer decides not to pay Buyer's Share of the Network Upgrades Costs, then Buyer shall Notify Seller within three (3) Business Days of its decision and Seller shall have the right exercisable by Notice to Buyer sent within five (5) Business Days after receipt of Buyer's Notice to assume responsibility to pay Buyer's Share of the Network Upgrade Costs for the Project and obtain the credit from the Transmission Provider. In such event, Buyer shall not be required to incur or reimburse Seller for any costs of the Network Upgrades. If Seller does not give Notice to Buyer of Seller's intention to assume responsibility to pay Buyer's Share of the Network Upgrades, either Party may terminate this Agreement by Notice to the other Party without further liability. If Buyer incurs or pays for all or part of the Network Upgrade Costs for the Project and Seller terminates this Agreement, then Seller shall reimburse Buyer for Network Upgrades Costs incurred by Buyer, as described in Section 6.1(c).

#### **4.3     *Guaranteed Commercial Operation.***

(a) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, unless the Guaranteed Commercial Operation Date is extended in accordance with Section 4.3(c).

(b) If Seller believes that the requirements for Commercial Operation have been satisfied and fulfilled, Seller shall present to Buyer, an independent engineer's report, the form of which is attached as Exhibit L, verifying that each of the conditions set forth therein

has been satisfied or waived in writing by both Parties. The date identified in such report as the day Commercial Operation was achieved shall be the Commercial Operation Date in the absence of manifest error.

(c) Permitted Extensions to the Guaranteed Commercial Operation Date are as follows, provided that the Permitted Extensions shall not exceed one hundred eighty (180) days:

(i) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred and eighty (180) days if from the Effective Date Seller has used Commercially Reasonable Efforts to have the Project physically interconnected to the Transmission Provider's Transmission System and to complete all Electric Interconnection Upgrades, if any, but such interconnection or Electric Interconnection Upgrades cannot be completed thirty (30) days prior to the Guaranteed Commercial Operation Date. Seller shall provide Buyer Notice of such occurrence promptly upon the determination that such physical interconnection or upgrades cannot be completed timely in accordance with the Milestone Schedule and Seller shall work diligently to resolve the delay ("**Transmission Delay**");

(ii) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred eighty (180) days if from the Effective Date Seller has used Commercially Reasonable Efforts to obtain the Governmental Approvals necessary for the construction and operation of the Project, but is unable to obtain such Governmental Approvals by the deadline date therefor in the Milestone Schedule and Seller has worked diligently to resolve the delay ("**Permitting Delay**"); and

(iii) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred eighty (180) days for Force Majeure Events ("**Force Majeure Extension**"); provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

(d) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 4.3(c), such extensions cannot cumulatively exceed one hundred eighty (180) days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(e) If Seller claims a Permitted Extension, Seller shall provide prompt Notice to Buyer of the occurrence of the event causing delay and the anticipated delay impact, which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension.

#### **4.4 Project Cure Period and Delay Damages.**

(a) Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date. If the Commercial Operation Date has not been

achieved prior to the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions (up to one hundred eighty (180) days), then if Seller does not pay Buyer the Daily Delay Damages within thirty (30) days after receipt of Buyer's invoice therefor, Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date (after giving effect to Permitted Extensions) for up to an additional two hundred and forty (240) days ("**Project Cure Period**"). The Daily Delay Damages payable to Buyer for the Project shall not exceed the product of Buyer's Share percentage and [REDACTED] ("**Daily Delay Damages Cap**"). For the avoidance of doubt the Permitted Extensions and the Project Cure Period are sequential.

(b) Each Party agrees and acknowledges that (A) the damages that Buyer would incur due to Seller's delay in achieving the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty and (B) the Daily Delay Damages are an appropriate approximation of such damages.

(c) If the Project has not achieved Commercial Operation by the date upon which Seller has paid to Buyer the Delay Damages Cap, such failure shall be a Seller Event of Default and Buyer shall have the right to terminate this Agreement within sixty (60) days of such date upon ten (10) days' prior Notice to Seller.

## **ARTICLE 5**

### **METERING AND MEASUREMENT**

#### **5.1     *Metering System.***

Seller shall ensure the Metering System is designed, located, constructed, installed, owned, operated, tested, calibrated and maintained in accordance with the 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 revenue meters of a mutually acceptable accuracy range and type and measure deliveries of Energy in kilowatt hours. Seller shall be responsible for the cost of all metering that will be installed, owned, operated and maintained by Seller for the purpose of determining the amount of Energy delivered to the Delivery Point. None of Buyer, Buyer's Affiliates or the employees, subcontractors or contractors of any of them shall make adjustments to the Metering System without the written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer, may, at its own cost, install additional meters or other such facilities, equipment or devices on Buyer's side of the Delivery Point as Buyer deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Seller will be entitled to base its invoiced amounts for Product solely by reference to its own Metering System.

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

(a) Seller shall inspect and test all meters at such times as will conform to Prudent Operating Practices, but not less often than every two (2) Contract Years. Seller shall be responsible for all costs and expenses incurred by Seller for such inspection and testing.

Upon reasonable written request to Seller, Buyer may request, at its own expense, inspection or testing of any such meters more frequently than once every two (2) Contract Years.

(b) If any seal securing the 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 last three (3) months of the second half of the period from the date of the last test of the metering System to the date such failure is discovered or such test is made (“**Adjustment Period**”). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for 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) Buyer and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of the Metering System relating to obligations under this Agreement.

## **ARTICLE 6 EARLY TERMINATION**

### **6.1    *Early Termination.***

(a) In addition to applicable termination rights under Sections 7.2 and 16.1, this Agreement may be terminated prior to the expiration of the Term as follows:

(i) By Seller if an Interconnection Agreement in form and substance satisfactory to Seller, in its sole discretion, is not executed on or before on or before January 2, 2020, *provided* that in each case Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(ii) By Seller if Buyer has not, on or before May 1, 2020, and at its sole cost and expense, secured adequate transmission access and firm transmission service in accordance with the requirements of this Agreement and as required for Buyer to accept all Energy from the Project to be delivered to Buyer at the Delivery Point in accordance with this Agreement on terms and conditions satisfactory to Buyer in its sole discretion, *provided* that in each case Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;



(iii) By Seller in the event that Seller has not obtained the necessary fee, leasehold or other title to or interest in the Site on or before November 20, 2018, *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(iv) By Seller in the event that Seller has not obtained all Governmental Approvals necessary to construct and operate the Project in the manner contemplated by this Agreement, on or before October 20, 2019, *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(v) By Seller if all approvals of its management and board of directors (or equivalent governing body) required for the execution, delivery and performance of this Agreement have not been granted by April 30, 2018; *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(vi) By Buyer, if after giving effect to Permitted Extensions and the payment of Daily Delay Damages payments up to the Daily Delay Damages Cap, the Guaranteed Commercial Operation Date has not been obtained on or before August 31, 2021; *provided* that Buyer provide shall give Seller Notice of such termination within fifteen (15) Days after such date;

(vii) By Seller, in accordance with Section 3.18(b), *provided* that Seller shall give Buyer Notice of such termination within fifteen (15) Days after the right of termination under such section may be exercised; or

(viii) By Seller or Buyer in accordance with Section 3.18(c); *provided* that Notice of such termination shall be given by one Party to the other Party within fifteen (15) Days after the right of termination under such section may be exercised.

(b) Notwithstanding any provision of this Agreement to the contrary, in the event of termination pursuant to this Section 6.1, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination, *provided, however*, that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or any indemnity obligations under ARTICLE 12 or the provisions of ARTICLE 14, which provisions shall survive any termination of this Agreement.

(c) In the event that Buyer has incurred, or caused a third party to incur, unreimbursed costs related to Network Upgrades, upon any Seller's termination of this Agreement or termination by Buyer, Seller shall reimburse Buyer for the Network Upgrades costs incurred by Buyer, or a third party on behalf of Buyer, within thirty (30) days of receipt of Buyer's invoice therefor, with Interest.

## **ARTICLE 7 EVENTS OF DEFAULT**

## 7.1 *Events of Default.*

An “**Event of Default**” shall mean,

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party shall have such additional time (not exceeding an additional ninety (90) days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy and provides a plan to the other Party which outlines the actions that will be taken to cure the default and the proposed cure timeline.

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights or obligations hereunder other than in compliance with Section 15.1;

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

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

(i) Seller fails to satisfy the Performance Assurance requirements set forth in Section 10.4, as applicable, in each case within five (5) Business Days after receipt of Notice of such failure;

(ii) if at any time, Seller delivers or attempts to deliver to Buyer hereunder any Product that was not generated by or is not associated with the Project;

(iii) the failure by Seller to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Deadline, after giving effect to Permitted Extensions, if any, and payment of Daily Delay Damages up to the Daily Delay Damages Cap.

(iv) Seller Abandons the Project.

(v) Buyer is unable to acquire the Project and occupy, possess and use the Site and the Project free and clear of all liens, mortgages, security interests, claims and encumbrances through exercise of Buyer's Purchase Option.

(vi) the failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.19(a) and pay GEP Damages if between [REDACTED] of the Contract Quantity in the time period set forth in Section 3.19(f).

(vii) the failure by Seller to make delivery to Buyer of at least [REDACTED] of the Contract Quantity in any Contract Year.

(viii) if Seller sells or delivers or attempts to sell or deliver Energy and/or Renewable Attributes and Facility Attributes to any Person other than Buyer except as expressly, specifically permitted under this Agreement.

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

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

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") on which the following shall apply (i) if Seller is the Non-Defaulting Party, Seller's sole and exclusive remedy shall be to, (A) collect damages if any Event of Default arose at any time prior to the commencement of the Delivery Term, or] (B) collect the Termination Payment if any Event of Default arose during the Delivery Term and (ii) if Buyer is the Non-Defaulting Party, (A) Buyer may exercise its right pursuant to Section 10.4 to draw upon and retain Performance Assurance prior to commencement of the Delivery Term, or (B) collect GEP Damages and the Termination Payment if any Event of Default arose during the Delivery Term;

(b) As to either Party as the Non-Defaulting Party:

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

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

(iii) suspend performance; and

(iv) exercise its rights pursuant to Section 10.4 to draw upon and retain Performance Assurance (if any) that is in place at that time.

### **7.3 Termination Payment.**

The Termination Payment shall be the Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party as of the Early Termination Date netted into a single amount. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages (excluding replacement costs); provided, however, that any lost Renewable Attributes 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) each of the Settlement Amount and the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Settlement Amount 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 in respect of obligations and liabilities incurred prior to the Early Termination Date.

### **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 18.

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

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

### **7.7 Mitigation.**

Any Non-Defaulting Party shall be obligated to mitigate its damages resulting from any Event of Default of the other Party under this Agreement.

## **ARTICLE 8 PAYMENT**

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

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

(b) On or before the tenth (10<sup>th</sup>) day following the end of each month during the Delivery Term, Seller will document the production of Renewable Attributes by delivering with each invoice to Buyer a bill of sale and attestation for Renewable Attributes produced by the Project. The form of bill of sale and attestation is set forth as Exhibit M.

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

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months after the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.1(b)1(b) within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party which is not

an Affiliate of any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

## **ARTICLE 9 PURCHASE OPTION**

### **9.1     *Buyer Purchase Option.***

So long as a Buyer Default has not occurred and is continuing as of the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date, Seller grants to Buyer an option to purchase the Project twenty (20) years following the Commercial Operation Date and at the conclusion of each Renewal Term (the “**Purchase Option**”) for the greater of the Fair Market Value or the purchase price (the “**Option Price**”) as specifically described in Exhibit E. Exhibit E outlines certain milestones and time periods for the Parties to establish the Option Price and close the purchase and sale transaction.

## **ARTICLE 10 INSURANCE, CREDIT AND COLLATERAL REQUIREMENTS**

### **10.1    *Insurance.***

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

### **10.2    *Grant of Security Interest.***

To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, such Performance Assurance and all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, in addition to its other rights and remedies hereunder, Buyer may do any one or more of the following: (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 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 Buyer free from any claim or right of any nature whatsoever of Seller or other Person, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller’s obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer’s

obligation to return any surplus proceeds remaining after such obligations are satisfied in full, if applicable.

### **10.3 Seller Financial Statements.**

If requested by Buyer the Seller shall deliver within one hundred twenty (120) days following the end of each fiscal year of Seller's Ultimate Parent Company: (i) a copy of Seller's Ultimate Parent Company's annual report or 10K report, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's Ultimate Parent Company's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, in each case unless otherwise publicly available. If any such statements shall not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Seller diligently pursues the preparation, certification and delivery of the statements.

### **10.4 Seller's Performance Assurance.**

(a) Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Performance Assurance in the amount of [REDACTED] ("**Project Development Security**") without replenishment and in the form of cash, Letter of Credit or Guaranty within five (5) Business Days following the Effective Date of this Agreement until Seller posts Seller's Delivery Term Security. Seller's maximum aggregate obligation to Buyer and Other Buyers with respect to the Project Development Security shall not exceed [REDACTED];

(ii) Performance Assurance in the amount of [REDACTED] ("**Seller's Delivery Term Security**") and in the form of cash, Letter of Credit or Guaranty from the Commercial Operation Date until the end of the Term; provided that Seller may elect to apply the Project Development Security toward Seller's Delivery Term Security. Seller's Delivery Term Security shall be subject to replenishment; provided, however, that Seller's maximum aggregate obligation to the Buyer and Other Buyers with respect to the Performance Assurance shall not exceed [REDACTED].

(b) If, after the Commercial Operation Date, no amounts are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn from a cash deposit or Letter of Credit, if applicable, in accordance with Section 10.4(c). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days after Seller's provision of Seller's Delivery Term Security unless, with respect to cash held as Project Development Security, Seller elects by Notice to Buyer to apply the Project Development Security toward Seller's Delivery Term Security.

(c) Any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing may be satisfied by Buyer on a draw on Seller's Performance Assurance. In addition, upon termination, Buyer shall have the right to draw upon Seller's Performance Assurance for any undisputed amounts owed to Buyer under this Agreement if not paid when due pursuant to Section 8.1. Seller's Performance Assurance shall be subject to replenishment within five (5) days after any draw thereon by Buyer.

(d) Buyer shall deposit Seller's Performance Assurance in a Qualified Institution; provided that, interest on cash held as Project Development Security shall be retained by Buyer until Seller posts Seller's Delivery Term Security. Upon Seller's posting of Seller's Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified by Seller. After Seller posts Seller's Delivery Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the amount of interest due to Seller for Seller's Delivery Term Security. Buyer does not guaranty any particular rate of interest.

(e) If, during the Term, there shall occur a Downgrade Event in respect of Seller's Guarantor, then Seller shall deliver to Buyer replacement Performance Assurance in the form of a Letter of Credit, cash or a replacement Guaranty from a different Guarantor (meeting the requirements set forth in the definition thereof and acceptable to Buyer, such acceptance not to be unreasonably withheld) in lieu thereof in an amount equal to the then applicable amount of Performance Assurance; provided, however, that Seller shall only be required to maintain its Performance Assurance in the form of a Letter of Credit, cash or a replacement Guaranty for so long as (1) Seller's Guarantor's Credit Rating remains below BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's, if rated by two of the three Ratings Agencies, or (2) no Ratings Agency rates Seller's Guarantor.

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

(g) Any Letter of Credit provided by Seller pursuant to this Agreement must provide, among other things, that the Buyer is entitled to draw the full amount of such Letter of Credit if: (i) the Letter of Credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the Letter of Credit; or (ii) the issuer of the Letter of Credit fails to maintain a credit rating of at least A- from S&P 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 Buyer to replace such Letter of Credit with another Letter of Credit, in a form reasonably acceptable to the issuer of the Letter of Credit and Buyer. Costs of a Letter of Credit provided by Seller shall be borne by Seller.



## **10.5 Buyer's Performance Assurance**

Buyer agrees to deliver to Seller collateral to secure its obligations under this Agreement under the following circumstances:

(a) If, during the Term, there shall occur a Downgrade Event in respect of Buyer's long-term bonds, then Buyer shall deliver to Seller Performance Assurance in the form of a Letter of Credit or cash in an amount equal to the then applicable amount of Buyer's Performance Assurance; provided, however, that Buyer shall only be required to maintain its Performance Assurance in the form of a Letter of Credit or cash for so long as (i) Buyer's Credit Ratings remain below the lower of BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's if rated by two of the three Ratings Agencies, or (ii) that of the Seller or, if applicable the Seller's Guarantor. Buyer's Performance Assurance shall be subject to replenishment within five (5) days after any draw thereon by Seller after the failure of Buyer to pay the undisputed amount of any amount invoiced by Seller to Buyer.

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

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

## **ARTICLE 11 REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **11.1 Representations and Warranties.**

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 (i) all Governmental Approvals necessary for it to perform its obligations under this Agreement, and (ii) all Governmental

Approvals and rights, title and interest in and to the Site and as otherwise necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;

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

(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 and consummation of the transactions contemplated by this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under and the transactions contemplated by this Agreement;

(h) 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;

(i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or deliver or take delivery of the Product as provided in this Agreement; and

(j) Seller represents and warrants that as of the Effective Date it is an Affiliate of NextEra Florida Renewables, LLC.

## **11.2 General Covenants.**

Each Party covenants that throughout the Term:

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

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

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

(d) it shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

### **11.3 Seller Covenants.**

(a) Seller covenants as follows:

(i) from the date hereof through the expiration or termination of this Agreement, Seller shall comply with this Agreement and Applicable Laws;

(ii) from the Initial Energy Delivery Date through the expiration or termination of this Agreement, the Project shall be operated and maintained in accordance with this Agreement, Applicable Laws, and Prudent Operating Practices;

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

(iv) except as expressly provided for in this Agreement, Seller will not grant, create, confer, assign, transfer or convey any right, title or interest in or to the Project in favor of any third party which is not terminable without cost or expense to Buyer upon exercise by Buyer of the Buyer's Purchase Option.

(b) Seller represents and covenants that it has not sold and will not in the future sell or attempt to sell, convey, transfer or encumber any of the Renewable Attributes and Facility Attributes or any right, title or interest in or to the Renewable Attributes or Facility Attributes to any Person other than Buyer. Seller shall not report to any Person that any of the Renewable Attributes and Facility Attributes are owned by or belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Renewable Attributes and Facility Attributes are owned by and belong to it. At Buyer's request, the Parties shall execute and deliver such documents and instruments as may be reasonably required to effect recognition and transfer of the Renewable Attributes and Facility Attributes to Buyer. Except with regard to the execution and delivery of bills of sales and attestations similar to Exhibit L, Buyer shall bear the costs, fees and expenses associated with preparing and executing any such documents and instruments. Seller shall reasonably cooperate in any registration by Buyer of the Project (at Buyer's cost) in the renewable portfolio standard or equivalent program in any state and program in which Buyer may wish to register or maintained registered the Project by providing copies of all such information as Buyer reasonably requires for such registration

(c) Seller represents that, as of the Commercial Operation Date and continuing through the Term of this Agreement, the Project shall satisfy the criteria for qualifying small power production facilities under the Public Utility Regulatory Policies Act of 1978 and 18 C.F.R. § 292.204.

#### **11.4 Buyer's Covenants.**

Buyer covenants or affirms as follows:

(a) Buyer covenants that from the date hereof through the expiration or termination of this Agreement, Buyer shall comply with this Agreement and Applicable Laws.

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

(c) Buyer affirms that it elected to commence negotiations with Seller for the generation, sale and delivery of solar energy, renewable attributes and facility attributes from the Project pursuant to a competitive solicitation after determining that Seller's proposal was the most favorable alternative meeting Buyer's procurement criteria and requirements for solar energy and capacity.

### **ARTICLE 12 TITLE, RISK OF LOSS, INDEMNITIES**

#### **12.1 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 and interests therein or thereto by any Person arising prior to or at the Delivery Point.

#### **12.2 Indemnities by Seller.**

Seller shall release, indemnify, defend, and hold harmless, on an After-Tax Basis, Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("**Claims**") resulting from, or arising out of or in any way connected with (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 any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer,

Seller, or third parties, caused by the negligence of Seller excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

### **12.3 *Indemnities by Buyer.***

To the fullest extent permitted under Florida law, Buyer shall release, indemnify and hold harmless, on an After-Tax Basis, Seller and its directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (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, or (iii) any Governmental Charges for which Buyer is responsible hereunder, in all cases including any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller or third parties caused by the negligence of Buyer, excepting only such Claims to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

## **ARTICLE 13 GOVERNMENTAL CHARGES**

### **13.1 *Cooperation.***

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

### **13.2 *Governmental Charges.***

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

## ARTICLE 14 CONFIDENTIAL INFORMATION

### 14.1 *Confidential Information.*

(a) The Parties acknowledge that Seller asserts that this Agreement contains trade secret information. The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the “Confidential Information”). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the “**Disclosing Party**”) may make such Confidential Information available to the other (each, a “**Receiving Party**”) subject to the provisions of this Section 14.1.

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

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

(ii) Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Project and for the purposes of this Agreement who shall be bound by the terms of this Section 14.1;

(iii) Use such Confidential Information solely for the purpose of developing the Project and for purposes of implementing, performing, administering and enforcing this Agreement; and

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

(c) The restrictions of this Section 14.1 do not apply to:

(i) Release of this Agreement to any Governmental Authority required for obtaining any approval or making any filing pursuant to Sections 3.122 or 4.2, *provided* that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by redacting and/or requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

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

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

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

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including any Florida Public Records Law (Chapter 119, Florida Statutes) request); *provided, however*, that the Receiving Party, prior to such disclosure, shall provide reasonable advance Notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Project Investors and any other financial institutions expressing an interest in providing equity or debt financing or refinancing and/or credit support to Seller, and the agent or trustee of any of them, provided that they agree to comply with the requirements and limitations on disclosure and use of Confidential Information.

(e) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, *provided* that the Disclosing Party has given Notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 14.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project or as are necessary in order to fulfill such Party's obligations under this Agreement.

(f) The obligations of the Parties under this Section 14.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

## **ARTICLE 15 ASSIGNMENT**

### **15.1 Successors and Assigns; Assignment. [FOR REVIEW]**

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns. This Agreement and a Party's rights, obligations and interests shall not be assigned or transferred by either Party without the prior

written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding the foregoing, no consent shall be required for the following assignment if the assignee has demonstrated experience and ability and a level of creditworthiness to perform and assume obligations under other agreements similar to this Agreement with the other Persons:

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

(ii) Any assignment by the Project Investors to a third party in connection with a foreclosure of the Project Investor's mortgage and lien on the Project;

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

(iv) Any assignment or transfer of this Agreement by Seller to a Person succeeding to all or substantially all of the assets of Seller, provided that such Person's creditworthiness and the creditworthiness of any provider of Performance Assurance is equal to or better than that of Seller, there is an assignment and assumption agreement among all Parties and the assignee and the Performance Assurance in place at such time is replaced by equal or better security by assignee; and

(v) Any assignment or transfer of this Agreement by Buyer to any Other Buyer on this Project or on another solar photovoltaic electric generating project owned or leased by an Affiliate of Seller.

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

(d) Buyer acknowledges that upon an event of default under any financing documents relating to the Project, subject to receipt by Buyer of notice, and further subject to rights of Other Buyers, any of the Project Investors may (but shall not be obligated to) assume, or cause its designee or a new lessee or buyer of the Project with demonstrated experience and ability and a level of creditworthiness to perform and assume obligations under other renewable energy power purchase agreements similar to this Agreement, to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement, provided that, regardless of whether any such Project Investor or its designee assumes all of the interests, rights and obligations of Seller thereafter arising under this Agreement, the Performance Assurance and security required to be posted by Seller is replaced by the assignee and Buyer's interests, rights, remedies, benefits, privileges, and obligations under this Agreement will remain in full force and effect, including the right to terminate this Agreement.



(e) If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to Buyer arising or accruing hereunder from and after the date of such assumption, then Seller shall be released and discharged from the terms and conditions hereof except with respect to obligations arising prior to the assignment, and each such obligation hereunder from and after such date except with respect to obligations and covenants which survive expiration or early termination, but not any obligation or liability owned, accrued, incurred, or relating to the period prior to the date of such assumption, and Buyer shall continue this Agreement with the assuming party as if such Person had been named as Seller under this Agreement; *provided, however*, that if any such Person assumes this Agreement as provided herein, Buyer acknowledges and agrees that such Persons shall not be personally liable for the performance of such obligations hereunder except to the extent of the required Performance Assurance and the total interest of the Project Investors in the Project. Notwithstanding any such assumption by any of the Project Investors or a designee thereof, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder prior to such assumption.

## **15.2 Collateral Assignment.**

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

(b) Promptly after making such encumbrance, Seller shall deliver Notice to Buyer in writing of the name, address, and telephone and facsimile numbers of each Project Investor to which Seller's interest under this Agreement has been encumbered. Such Notice shall also include the name of the single representative of the Project Investors to whom all written and telephonic communications may be addressed by Buyer.

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

(d) If Seller intends to encumbers its interest under this Agreement as permitted by this Section 15.2, the Parties shall use Commercially Reasonable Efforts to enter into a mutually acceptable consent agreement substantially in the form of Exhibit N.

## **ARTICLE 16 FORCE MAJEURE**

### **16.1 Force Majeure Events.**

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

performance is impacted. As soon as practicable after commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim and the anticipated impact on the non-performing Party's ability to perform its obligations and the non-performing Party's plan to resume full performance of the obligations impacted by the Force Majeure Event. Seller shall not without the prior written consent of Buyer substitute Product from any other source for the output of the Project during an outage resulting from a Force Majeure Event. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Buyer shall not be required to make any payments for any Product that Seller fails to schedule, deliver or provide as a result of a Force Majeure Event during the term of such Force Majeure Event. This Agreement may be terminated by either Party with no further obligation to the other Party if such Force Majeure Event prevents the performance of a material portion of the obligations hereunder and such Force Majeure Event is not resolved and full performance resumed within one hundred eighty (180) days after the commencement of such Force Majeure Event; *provided, however*, if the Force Majeure Event occurs after the Commercial Operation Date and Seller is the non-performing Party, Seller shall have up to ninety (90) days following such Force Majeure Event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within fifteen (15) additional months or less from the date of the report and provide Buyer a copy of the engineer's report, at no cost to Buyer. If such engineer's report concludes that the Project is capable of being repaired or replaced within such fifteen (15) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 16.1 until the expiration of the period deemed necessary by the engineer's report (not to exceed fifteen (15) months), after which time, Buyer may terminate this Agreement by notice to Seller unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement.

## **ARTICLE 17**

### **LIMITATIONS ON LIABILITY**

#### **17.1   *Disclaimer of Warranties.***

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

#### **17.2   *Limitations on Liability.***

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED, SUCH EXPRESS REMEDY SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER

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

## **ARTICLE 18**

### **DISPUTE RESOLUTION**

#### **18.1 *Intent of the Parties***

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement (a “**Dispute**”) is the dispute resolution procedure set forth in this Article 18. Either Party may seek a preliminary injunction or other provisional judicial remedy at any time if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the Dispute by means of the dispute resolution procedure set forth in this ARTICLE 18.

#### **18.2 *Management Negotiations***

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

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days

from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.

(c) All communication and writing exchanged between the Parties in connection with these settlement negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties. The Parties shall bear their respective costs, expenses and fees relating to the activities under this Section 18.2.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 18.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 18.2(a) above, and subject to Sections 17.2, 20.7 and 20.8 of this Agreement, either Party may pursue all remedies available to it at law or in equity. Venue for any action or proceeding shall be state and federal courts in Orange County, Florida.

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

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any non-monetary material obligation of the other Party under this Agreement, including with respect to disclosure or misuse of Confidential Information, audit rights, access to facilities, access to information, data and documents, emergencies, imminent harm to persons or property of impermissible transactions; provided, that, the right to specific performance explicitly excludes Seller's obligation to construct the Project. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

## **ARTICLE 19 NOTICES**

### **19.1 *Notices.***

Whenever this Agreement requires or permits delivery of a “**Notice**” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified in herein and to the addresses set forth below; provided, however, that Notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement or procedure developed by the Parties. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a [schedule or dispatch order] for the delivery or acceptance of 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:           **[PROJECT COMPANY]**  
                              c/o NextEra Florida Renewables, LLC  
                              700 Universe Boulevard  
                              Juno Beach, FL 33408  
                              Attn:  
                              Telephone:  
                              Facsimile:

If to Buyer:           Florida Municipal Power Agency-All Requirements Project  
\_\_\_\_\_  
\_\_\_\_\_  
                              Attn: \_\_\_\_\_  
                              Telephone:   (\_\_\_\_) \_\_\_\_-\_\_\_\_  
                              Facsimile:    (\_\_\_\_) \_\_\_\_-\_\_\_\_

With a copy to:       Florida Municipal Power Agency-All Requirements Project  
\_\_\_\_\_  
\_\_\_\_\_  
                              Attn: General Counsel  
                              Telephone:   (\_\_\_\_) \_\_\_\_-\_\_\_\_  
                              Facsimile:    (\_\_\_\_) \_\_\_\_-\_\_\_\_

## **ARTICLE 20 MISCELLANEOUS**

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

This Agreement shall be in full force and effect, enforceable and binding in all respects as of the Effective Date until the conclusion of the Term or earlier termination pursuant to the terms of this Agreement; provided however, that this Agreement shall remain in effect until (a) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for the Product delivered or not delivered prior to the end of the Term, the Termination Payment, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (b) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation. Notwithstanding any provisions herein to the contrary, the obligations set forth in the following articles and sections shall survive (in full force) the expiration of termination of this Agreement: Sections 12.2 and 12.3 until the applicable statute of limitation lapses, 14.1 regarding confidentiality, for a period of two (2) years, 20.2, 20.7, 20.8, 20.9 and 20.11; ARTICLE 1, and ARTICLE 17 regarding limitation of liability.

## **20.2 Audits.**

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

## **20.3 Amendments.**

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

## **20.4 Waivers.**

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

## **20.5 Severability.**

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

## **20.6 Standard of Review.**

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

## **20.7 Governing Law.**

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

**20.8 *Waiver of Trial by Jury.***

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

**20.9 *Attorneys' Fees.***

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

**20.10 *No Third-Party Beneficiaries.***

Except indemnitees, [a Project Investor party to a consent to assignment among the Parties], and Other Buyers with respect to their priority right to purchase Product which is the subject of a terminated power purchase agreement for Product], this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

**20.11 *Project Members.***

This Agreement is a liability and obligation of the [All-Requirements Power Supply Project/Solar Energy 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" of FMPA as that term is defined in the Interlocal Agreement.

**20.12 *No Agency.***

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability

upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

**20.13 *Cooperation.***

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make Commercially Reasonable Efforts to cooperate and assist each other in making such change on terms and conditions mutually agreed by the Parties.

**20.14 *Further Assurances.***

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 20.14. No Party shall be required to take any action or execute any document under this Section 20.14 that would negatively change that Party's risk or benefit under this Agreement.

**20.15 *Captions; Construction.***

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

**20.16 *Entire Agreement.***

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

**20.17 *Forward Contract.***

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

**20.18 *Counterparts.***

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

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



IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

**[PROJECT COMPANY]**

**[FLORIDA MUNICIPAL POWER AGENCY  
ARP/SEP / OUC]**

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

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

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

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


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

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

**EXHIBIT A**

**CONTRACT PRICE AND EXCESS ENERGY RATE**

**CONTRACT PRICE**

<b>PERIOD</b>	<b>CONTRACT PRICE (\$/MWh)</b>
From and including the Initial Energy Delivery Date until the Commercial Operation Date	Seventy-five percent (75%) of the Contract Price
From the Commercial Operation Date through the remainder of the Term, as extended	

**EXCESS ENERGY RATE**

Excess Energy Rate During the Delivery Term	Seventy-five percent (75%) of the Contract Price
---------------------------------------------	--------------------------------------------------

## **EXHIBIT B**

### **DESCRIPTION OF PROJECT**

Seller intends to build, own and operate Project with a nameplate capacity rating of the Project Capacity. The Project will be located in [Osceola County/Orange County]. The Project will generate electrical power that will be sold wholesale.

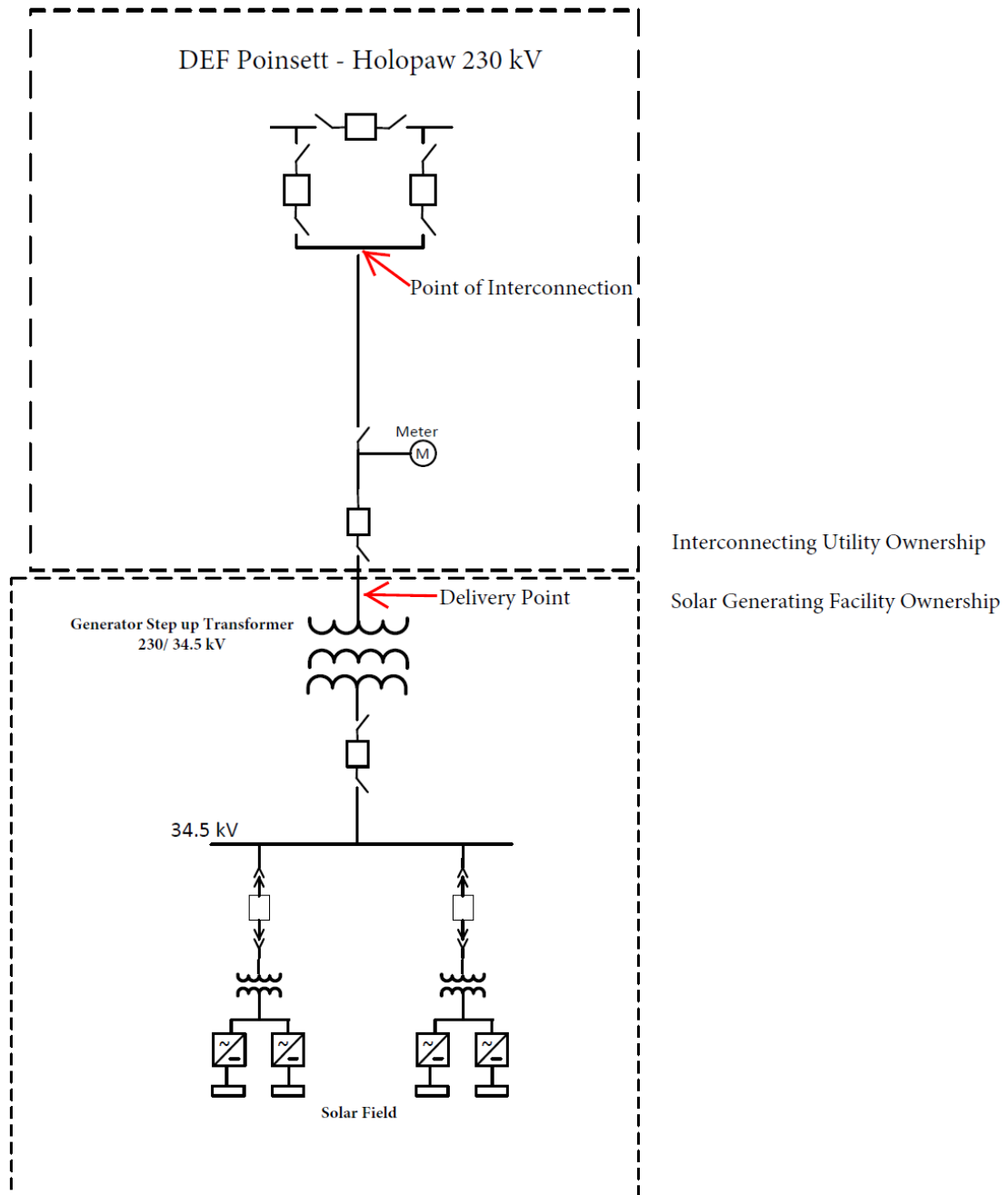
As presently planned, the Project will consist of:

- [solar equipment]
- Electrical transformation equipment located at the Project.
- An underground and aboveground electric cable collection system to carry electricity to the substation.
- An underground and aboveground fiber-optic data collection system.
- [\_\_\_] permanent meteorological (“MET”) towers.
- A temporary construction lay down area.
- Maintenance/field office(s).

Nothing in this Agreement or Exhibit B is intended to either (i) limit the right of Seller to make any changes to the Project consistent with the terms and conditions of this Agreement it determines to undertake consistent with Applicable Law, Governmental Approvals and Prudent Operating Practices, or (ii) grant any rights to Buyer regarding the description, nature or components of the Project.

## EXHIBIT C

### DESCRIPTION OF DELIVERY POINT AND ONE-LINE DIAGRAM SELLER TO REVISE



## EXHIBIT D

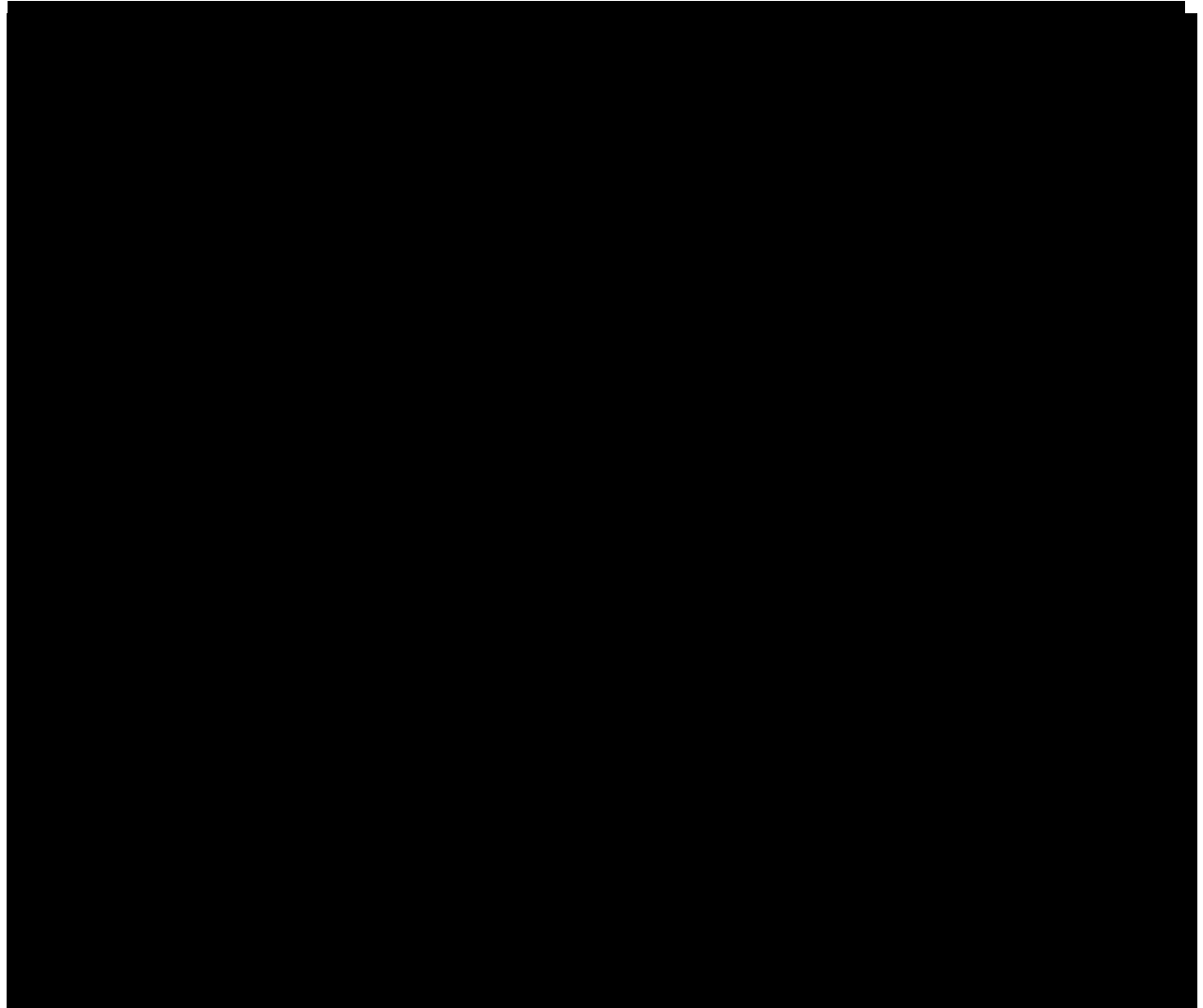
### PROJECT QUANTITY

Period	Delivered Energy (MWh)
Jul-Dec 2020	[102,568]
2021	[204,606]
2022	[204,071]
2023	[203,532]
2024	[202,989]
2025	[202,441]
2026	[201,888]
2027	[201,330]
2028	[200,767]
2029	[200,199]
2030	[199,627]
2031	[199,051]
2032	[198,471]
2033	[197,887]
2034	[197,300]
2035	[196,709]
2036	[196,116]
2037	[195,522]
2038	[194,924]
2039	[194,326]
2040	[193,726]
2041	[193,126]
2042	[192,524]
2043	[191,922]
2044	[191,320]
2045	[190,716]
2046	[190,111]
2047	[189,507]
2048	[188,901]
2049	[188,295]
Jan-Jun 2050	[93,845]

[REDACTED]

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

[REDACTED]



## EXHIBIT F FORM OF GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of \_\_\_\_\_, \_\_\_\_\_ (the “**Effective Date**”), is made by [NEXTERA ENERGY CAPITAL RESOURCES, LLC]. (“**Guarantor**”), in favor of [\_\_\_\_\_] (“**Counterparty**”).

### RECITALS:

- A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary [INSERT NEXTERA ENERGY PROJECT COMPANY] (“**Obligor**”), have entered into, or concurrently herewith are entering into, that certain Renewable Energy Power Purchase Agreement dated as of \_\_\_\_\_, 2018 (together, the “**Agreement**”); and
- B. WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed [spell out the dollar amount] U.S. Dollars (U.S. \$ \_\_\_\_\_) (the “**Maximum Recovery Amount**”).
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above).

2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”).



- (b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

3. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty; provided, however, that an amendment to this Guaranty increasing the Maximum

Recovery Amount and/or extending the termination date of this Guaranty may be executed solely by Guarantor.

**6. WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Obligor may have under the Agreement.
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

**7. REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

**8. TERMINATION.** This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement and (ii) [need fixed termination date – term of Agreement plus six months]; provided, however, that no such termination shall affect Guarantor's liability with respect to any Obligations arising under any Transactions entered into prior to the time the termination is effective, which Obligations shall remain subject to this Guaranty.

**9. NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

<b>TO GUARANTOR: *</b>	<b>TO COUNTERPARTY:</b>
NextEra Energy Capital Holdings, Inc. 700 Universe Blvd. Juno Beach, Florida 33408 Attn: Treasurer	_____ _____ _____ Attn: _____
[Tel: (561) 694-6204 -- for use in connection with courier deliveries]	[Tel: (____) ____-____ -- for use in connection with courier deliveries]

\* *(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. (561) 625-7504 and ATTN: Credit Department, Fax No. (561) 625-7642. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

#### **10. MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Florida, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns and shall be binding regardless of whether Counterparty and Obligor enter into amendments to the Agreement. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Middle District of Florida, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Circuit Court in and for Orange County, Florida (without prejudice to the right of any party to remove to the United States District Court for the Middle District of Florida) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_, 20\_\_, but it is effective as of the Effective Date

NEXTERA ENERGY RESOURCES, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT G**  
**FORM OF LETTER OF CREDIT**

**[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT**

**DATE OF ISSUANCE:**  
**[Date of issuance]**

**[BENEFICIARY] (“Beneficiary”)**  
**[Address]**  
**Attention: [Contact Person]**

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Messrs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “**you**”) this Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) for the account of [NextEra Energy Capital Holdings, LLC] [--- Address ---] and [NextEra Energy Resources, LLC, (--- Address ---)] (“**Account Parties**”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [*describe the underlying agreement which requires this LC*].

**1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be [*written dollar amount*] United States Dollars (US\$[*dollar amount*]) (such maximum amount referred to as the “**Stated Amount**”).

**2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [*bank address*] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “**Draw Certificate**”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: \_\_\_\_\_ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

**3. Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [\_\_\_\_\_] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00

noon, [\_\_\_\_\_] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [one year from the issuance date] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered paragraph 9) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF FLORIDA WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

\* \* \*

*SINCERELY,*  
[ISSUING BANK]

\_\_\_\_\_

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

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

Address:

## **EXHIBIT H INSURANCE REQUIREMENTS**

Before the Commercial Operation Date, Seller shall procure and maintain the following minimum insurance, with insurers rated “A-” VII or higher by A.M. Best’s Key Rating Guide, that are licensed to do business in Florida:

(a) Workers’ Compensation Insurance for statutory obligations imposed by applicable laws, including, where applicable, the Alternate Employer Endorsement, the United States Longshoremen’s and Harbor Workers’ Act, the Maritime Coverage and the Jones Act;

(b) Employers’ Liability Insurance, including Occupational Disease, shall be provided with a limit of (i) One Million Dollars (\$1,000,000) for bodily injury per accident, (ii) One Million Dollars (\$1,000,000) for bodily injury by disease per policy, and (iii) One Million Dollars (\$1,000,000) for bodily injury by disease per employee;

(c) Business Automobile Liability Insurance which shall apply to all owned, non-owned, leased, and hired automobiles with a limit of One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage;

(d) Commercial General Liability Insurance which shall apply to liability arising out of premises, operations, bodily injury, property damage, products and completed operations and liability insured under and insured contract (contractual liability), with a limit of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate. The products and completed operations coverage insurance shall be provided for the duration of any applicable warranty period;

(e) Excess Liability Insurance which shall apply to Employers Liability, Commercial General Liability and Business Automobile Liability Insurance, required in (b), (c), and (d) above, with a limit of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate;

(f) Upon commencement of construction of the Project, Builder's Risk Insurance with limits of insurance written on a probable maximum loss basis, including sublimits for wind, earthquakes and flood exposure;

(g) Following the Commercial Operation Date, All-Risk Property Insurance with limits of insurance written on a probable maximum loss basis, including sublimits for wind, earthquake, and flood exposures.

Except for Workers’ Compensation Insurance, Buyer shall be endorsed as an additional insured on Seller’s insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Buyer. All policies of insurance required to be maintained by Seller hereunder shall provide for a severability of interests clause and include a provision that Sellers’s insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Buyer.



In the event that any policy furnished by Seller provides for coverage on a “claims made” basis, the retroactive date of the policy shall be the same as the effective date of the Agreement, or such other date, as to protect the interest of Buyer. Furthermore, for all policies furnished on a “claims made” basis, Seller’s providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort. If coverage is on “occurrence” basis, Seller shall maintain such insurance during the entire term of the Agreement.

Following execution of this Agreement and annually thereafter, Seller shall promptly provide evidence of the minimum insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance. If any of the required insurance is cancelled or non-renewed, Seller shall within thirty (30) days provide written notice to Buyer and file a new certificate of insurance with Buyer, demonstrating that the required insurance coverage to be maintained hereunder has been extended or replaced. Neither Seller’s failure to provide evidence of minimum coverage of insurance following Buyer’s request, nor Buyer’s decision to not make such request, shall release Seller from its obligation to maintain the minimum coverage provided for in this Schedule 11.

Seller shall be responsible for covering all deductibles associated with the foregoing insurance coverage.

**EXHIBIT I**  
**SITE DESCRIPTION; MAP**

**[SELLER TO INSERT]**

## EXHIBIT J INTERIM MILESTONE SCHEDULE

Date	Milestone	Section
April 30, 2018	NEFR Management Approval	6.1(a)(v)
June 29, 2018	Latest Change in Law Date (Tariff and Corporate Tax)	3.18, 6.1(a)(vi)
November 20, 2018	Site Control	6.1(a)(iii)
October 20, 2019	Receipt of all Governmental Approvals	6.1(a)(iv)
January 2, 2020	Interconnection Agreement execution	6.1(a)(i)
February 15, 2020	Initial Energy Date	3.3
May 30, 2020	Electric Interconnection Upgrades Complete	4.3(i), 6.1(a)(ii)
June 30, 2020	Guaranteed Commercial Operation Date (COD)	4.3, 6.1(a)(vi)
December 27, 2020	COD with 180 days Permitted Extensions	4.3, 4.4, 6.1(a)(vi)
August 24, 2021	Outside COD with 180 days Permitted Extensions plus 240 days delay	4.3, 4.4, 6.1(a)(vi)

## **EXHIBIT K**

### **MILESTONES WITH DELAY DAMAGES**

<b>Date</b>	<b>Milestone</b>	<b>Section</b>
January 30, 2019	FDEP Environmental Resource Permit Received	4.1(i)
January 1, 2020	Start of Construction	4.1(i)
February 25, 2021	COD with 240 days delay	4.3, 4.4, 6.1(a)(vi)

**EXHIBIT L**  
**CERTIFICATE – COMMERCIAL OPERATIONS**

This certification ("Certification") is delivered by \_\_\_\_\_ ("Seller") to \_\_\_\_\_ ("Buyer") in accordance with the terms of that certain Renewable Energy Power Purchase Agreement dated \_\_\_\_\_ ("Agreement"), as amended from time to time, by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

- a) The Project and all equipment and systems comprising the Project have been fully commissioned.
- b) The Plant has demonstrated that it can safely and continuously produce and deliver the "***Project Capacity***" of 74.5MW<sub>ac</sub> to the Delivery Point. [Refer to **Attachment A**]
- c) Seller has delivered to Buyer the Delivery Term Security required under Section 10.4(a)(ii). [Refer to **Attachment B**]
- d) Seller has installed all equipment needed to enable telemetering of the Product from the Project to the Delivery Point, as may be necessary pursuant to the Interconnection Agreement, and such equipment, if needed, is fully operational.
- e) Seller has delivered to Buyer a report with the results of start-up and performance testing conducted by Seller to demonstrate the attainment of commercial operation status of the Project. [Refer to **Attachment A**]
- f) Seller has received all local, state and federal Governmental Approvals and other approvals, consents and authorizations as may be required by Applicable Law for the construction, interconnection, operation and maintenance of the Project and generation, delivery and sale of Product hereunder. [Refer to **Attachment C**]
- g) Seller has obtained and submitted to Buyer Certificates of insurance evidencing the coverage required by **Exhibit H**. [Refer to **Attachment D**]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_ PROJECT, LLC

\_\_\_\_\_, Vice President

**EXHIBIT M  
REC BILL OF SALE**

**RENEWABLE ATTRIBUTES ATTESTATION AND BILL OF SALE**

In accordance with the terms and conditions of that certain Renewable Energy Power Purchase Agreement (the “Agreement”) made the [\_\_\_\_] day of \_\_\_\_\_, 2018, by and between [FLORIDA MUNICIPAL POWER AGENCY/OUC], a [\_\_\_\_\_] (“Buyer”) and [PROJECT COMPANY], a Delaware limited liability company (“Seller”), Seller hereby sells, transfers and delivers to Buyer all Renewable Attributes produced by or associated with the Energy delivered by Seller to the Delivery Point, including but not limited to all renewable energy credits, green tags, environmental attributes and reporting rights, in the amount of one \_\_\_\_\_ for each megawatt hour of Energy delivered by Seller to the Delivery Point during the Operation Period set forth below. Capitalized terms used in this Renewable Attributes Attestation and Bill of Sale and not otherwise defined shall have the meaning set forth in the Agreement.

Project name and location: \_\_\_\_\_

Fuel Type: Photovoltaic - Solar

Capacity (MW<sub>AC</sub>): \_\_\_\_\_

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

Energy Admin. ID no.: \_\_\_\_\_

Operation Period:

Dates: From \_\_\_\_ to \_\_\_\_\_

MWh: \_\_\_\_\_

Buyer’s Share of Project Output (%): \_\_\_\_\_

Renewable Attributes Sold to Buyer: \_\_\_\_\_

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) the sale, transfer and delivery by Seller to Buyer of the Renewable Attributes which are the subject hereof is the one and only sale, transfer and delivery of the Renewable Attributes referenced herein;
- iii) the Energy delivered by Seller to the Delivery Point during the period indicated above was in the amount indicated above;
- iv) Seller has at all times complied with the requirements of Applicable Law with respect to the operation of the Project and the generation of Renewable Attributes.

- iv) to the best of Seller's knowledge, the Renewable Attributes associated with the Energy delivered by Seller to the Delivery Point have been generated and sold by the Facility.

IN WITNESS WHEREOF this Renewable Attributes Attestation and Bill of Sale confirms, in accordance with the Agreement, the transfer from Seller to [BUYER] of Buyer's Share of the Renewable Attributes as set forth above, and has been executed on the date set forth below.

Seller's Contact Person: [\_\_\_\_\_]

SELLER

By \_\_\_\_\_

Name \_\_\_\_\_

Its \_\_\_\_\_

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

## EXHIBIT N CONSENT TO ASSIGNMENT

### FORM OF CONSENT AND AGREEMENT ([NAME OF CONTRACTING PARTY]) ([NAME OF ASSIGNED AGREEMENT])

This CONSENT AND AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, 20[ ], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of \_\_\_\_\_ (the “Contracting Party”), \_\_\_\_\_, a \_\_\_\_\_ (the “Project Owner”), and \_\_\_\_\_, as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”).

A. The Project Owner owns, operates and maintains \_\_\_\_\_ (the “Project”).

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Assigned Agreement”).

C. \_\_\_\_\_ (the “Borrower”), the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, \_\_\_\_\_, as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of \_\_\_\_\_ (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned as collateral all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of \_\_\_\_\_ between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”, and, together with the Credit Agreement and any other financing documents relating to the issuance of promissory notes under the Credit Agreement (the “Notes”), the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and collateral assignment of all right, title and interest of the Project Owner in, to



and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows as of the date of this Consent:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has received no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and collateral assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event. No Disputes. After giving effect to the pledge and collateral assignment referred to in Section 1, and after giving effect to the consent to such pledge and collateral assignment by the Contracting Party herein, there exists no event or condition (a “Termination Event”) that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an “event of default” or “default” (or any other similar event however defined) by the Project Owner under the Assigned Agreement, in the manner and within the times prescribed therein, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section \_\_ of the Assigned Agreement)]<sup>1</sup> or (ii) suspend the performance of any of its obligations under the Assigned Agreement which can be performed notwithstanding the event of default or default without copying the Collateral Agent on any notice to the Project Owner required under the Assigned Agreement for Contracting Party to terminate the Assigned Agreement or suspend performance thereunder [(other than a termination pursuant to Section \_\_ of the Assigned Agreement)] and providing the Collateral Agent the opportunity to cure as provided below. The Contracting Party further agrees that it will not assign the Assigned

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<sup>1</sup> Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

Agreement without copying the Collateral Agent as set forth in in Section [ ] of the Assigned Agreement.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section \_\_ of the Assigned Agreement)]<sup>2</sup>, and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall (i) give written notice to the Contracting Party that Collateral Agent intends to cure the Termination Event and (ii) have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent shall have one hundred twenty (120) days to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event and Collateral Agent has provided a plan to the Contracting Party which outlines the actions that will be taken to cure the Non-monetary Event and includes the proposed timeline to cure the Non-monetary Event (the "Plan"); provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition

The Contracting Party shall be entitled to rely, and shall be fully protected in relying, upon any notice by Collateral Agent of its intent to cure a Termination Event in good faith believed by Contracting Party to be genuine and correct and to have been signed. **[FOR FURTHER DISCUSSION]**

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement or a relinquishment by Contract Party of any right or remedy in respect of the Assigned Agreement.

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<sup>2</sup> Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent's request, the Contracting Party will, within sixty (60) days after presentation by Collateral Agent of the proposed designee and agreement, enter into a new agreement with the Collateral Agent or the Collateral Agent's qualified designee for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same Project Owner Performance Assurance, covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement.

5. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of remedies following a default under the Financing Documents, the Collateral Agent may (but shall not be obligated to) assume, or cause any qualified purchaser at any foreclosure sale or any qualified assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights, duties and obligations of the Project Owner thereafter arising under the Assigned Agreement. If the interest of the Project Owner in the Assigned Agreement shall be assumed, sold or transferred as provided above, the assuming party shall agree in writing with Contracting Party and Collateral Agent to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption, shall provide Performance Assurance consistent with the terms of the Assigned Agreement, and the Contracting Party shall continue to perform its obligations under the Assigned Agreement in favor of the assuming party as if such party had thereafter been named as the "Seller" under the Assigned Agreement; provided that if the Collateral Agent or its designee (or any entity acting on behalf of the Collateral Agent, the Collateral Agent's designee or any of the other Secured Parties) assumes the Assigned Agreement as provided above, it shall not be personally liable for the performance of the obligations thereunder except to the extent of all of its right, title and interest in and to the Project and the amount of Performance Assurance. For purposes of this Article 5, a "qualified" purchaser or assignee or transferee shall be one which Contracting Party and Collateral Agent agree has the technical skill and financial wherewithal to operate and maintain the Project in the same manner as the Project Owner.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on Schedule II hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

7. No Amendments. The Contracting Party acknowledges that the Project Owner and Collateral Agent have informed Contracting Party that the Financing Documents restrict the right of the Project Owner to amend or modify the Assigned Agreement, or to waive or provide consents with respect to certain provisions of the Assigned Agreement, unless certain conditions specified in the Financing Documents are met. The Contracting Party shall not without the prior written consent of the Collateral Agent, materially amend or modify the Assigned Agreement, or accept any waiver or consent with respect to certain provisions of the Assigned Agreement, unless the Contracting Party has received from the Project Owner a copy of a certificate delivered by the

Project Owner to the Collateral Agent to the effect that such amendment, modification, waiver or consent has been made in accordance with the terms and conditions of the Financing Documents, which may in certain circumstances require the prior written consent of the Collateral Agent thereto.

8. Additional Provisions. [To be specified if necessary to clarify the Assigned Agreement.]

9. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [\_\_\_\_\_]
[\_\_\_\_\_]
Attn: [\_\_\_\_\_]
Telephone No.: [\_\_\_\_\_]
Facsimile No.: [\_\_\_\_\_]

The Project Owner: \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

The Contracting Party: \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

10. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns. No assignment of this Consent by a party hereto shall be effective without the prior consent of the other parties hereto, which consent shall not be unreasonably withheld.

11. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

12. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of Florida, without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By:

Name:

Title:

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

as Collateral Agent

By:

Name:

Title:

Acknowledged and Agreed:

[NAME OF PROJECT OWNER]

By:

Name:

Title:

Schedule I

Assigned Agreement

Schedule II

Payment Instructions  
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement  
(Section 2(c))]



**EXHIBIT O  
OTHER BUYERS**

<b>Project</b>	<b>Buyer</b>	<b>Buyer's Share of Project</b>
Osceola	OUC	X%
	FMPA ARP	X%
	FMPA SEP	X%
Holopaw	OUC	X%
	FMPA ARP	X%
	FMPA SEP	X%
Orange	OUC	X%
	FMPA ARP	X%
	FMPA SEP	X%

## **ATTACHMENT B**

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

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

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

- 1) Staff determines the FMPA positions that are essential to effective management of the Projects;
- 2) Staff determines the percent time each position spends serving the needs of each the Projects and the ARP;
- 3) The allocable cost of each position to each of the Projects is the percent time this position spends serving the needs of each the Projects determined in 2) multiplied by the current mid-point of the salary range of the position as maintained by FMPA's Human Resources Department and approved by the Board, and multiplied by FMPA's overhead adder percentage;
- 4) The total A&G allocated to each Project is the sum of the allocable costs of each position essential to effective management of the Project;
- 5) The total A&G allocated to the Solar Project will not exceed 100% of the cost associated with the single highest cost non-executive level FMPA position essential to the effective management of the Projects, and annual increases in total A&G allocated shall be commensurate with annual salary increases of such highest costs non-executive level FMPA position;
- 6) Once the annual A&G costs to be allocated to the Solar Project and ARP Solar Participants is determined, the amount is divided by 12 to arrive at the monthly allocable A&G costs.
- 7) For Solar Project and ARP Solar Participants, the monthly allocable A&G costs will be divided by the total amount of the solar energy received by the Solar Project and the ARP Solar Participants for the billing month to determine a monthly allocable A&G rate (\$/MWh). Each Solar Project and ARP Solar Participant pays this rate times the amount of solar energy each Participant received during the billing month.
- 8) The table below is an example of the calculation of annual and monthly allocable A&G costs to each power supply project and the Solar Project and the ARP Solar Participants for the FY2020 Budget using cost data and the process approved for the FY2018 Budget. This allocation process is subject to Board approval each year.

Position	FYE2018 Mid Point Salary	Example A&G Allocation for FY2020 Budget					
		ARP	STN	Tri-City	STN 2	St Lucie	Solar
General Manager	\$200,000	20%	20%	20%	20%	20%	2%
Admin Asst.	\$56,456	20%	20%	20%	20%	20%	2%
Director of Engineering	\$191,969	20%	20%	20%	20%	20%	2%
Engineer	\$117,722	19%	19%	19%	19%	19%	5%
Engineering Assistant	\$56,456	20%	20%	20%	20%	20%	2%
Director of Finance	\$191,969	18%	18%	18%	18%	18%	10%
Mgr. Contracts Compliance	\$132,777	18%	18%	18%	18%	18%	10%
Accountant III	\$92,539	18%	18%	18%	18%	18%	10%
Accounting Clerk	\$43,833	18%	18%	18%	18%	18%	10%
Payroll Clerk PT	\$28,228	20%	20%	20%	20%	20%	2%
Total	\$1,111,949	\$209,858	\$209,858	\$209,858	\$209,858	\$209,858	\$62,660
Overhead Adder	95.10%	95.10%	95.10%	95.10%	95.10%	95.10%	95.10%
Annual Allocable A&G	\$2,169,412	\$409,433	\$409,433	\$409,433	\$409,433	\$409,433	\$122,250
Monthly Allocable A&G	\$180,784	\$34,119	\$34,119	\$34,119	\$34,119	\$34,119	\$10,187

ATTACHMENT C  
WORKING CAPITAL ALLOWANCE

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

## Attachment D

### Project Development Fund Costs

As of the Effective Date of this Agreement, FMPA has incurred \$135,705.10 in Project Development Fund costs. No additional Project Development Fund costs shall be incurred after the Effective Date.

The amount of Project Development Fund costs allocable to Project Participants shall be calculated by dividing the total balance of Development Fund Costs incurred for solar development by the total expected energy production allocated to the Solar Project and ARP solar participants over the first 20 years of the Solar Project PPA and the power purchase agreement entered into between the ARP solar participants and Seller. The resulting dollar per MWh cost shall be allocated as a Project Related Cost.

[FMPA Note: The following is a table showing our projected calculations for project development fund reimbursement. We will include a table similar to this, with updated development fund expenditure and participation level numbers, in the final document:

Estimated Project Development Fund Cost (Joint Action Solar)		
Assumption/Estimate	Units	Value
Total Development Fund Expenditure	\$	135,705
Est. Participant Capacity	MW-AC	114
Est. Annual Capacity Factor	%	28%
Est. Annual Project Energy	MWh	279,619
Est. 20 Year Buy down Per Year	\$	6,785
Est. 20 Year Buy down Per MWh	\$/MWh	0.0243

## ATTACHMENT E

### Solar Project Committee Charter

#### 1. Purpose

This Solar Project Committee (Committee) is intended to govern the Florida Municipal Power Agency's (FMPA's) Solar Project as delegated by the FMPA Board.

#### 2. Mission

The mission of the Committee is threefold.

- (a) The Committee shall oversee the administration of the FMPA's Solar Project Power Purchase Agreement from the Solar Developer and make decisions provided for within that agreement.
- (b) As delegated by the FMPA Board, the Committee shall oversee the administration of the Solar Power Sales Contract between FMPA and the Solar Project Participants and make decisions provided for within that agreement.
- (c) The Committee shall establish an annual Solar Project budget for approval by the FMPA Board.

#### 3. Organization and Term

The Committee reports to the FMPA Board and shall exist until termination of the Solar Power Sales Contracts.

#### 4. Membership

Each Solar Project Participant will appoint a primary and alternative representative to the Committee. If a Solar Project Participant assigns its entitlement to another utility, the assigning Participant shall not have representation on the Committee while the utility receiving the assignment shall have representation on the Committee.

#### 5. Meetings

Notice of the time, date, and place of each meeting will be provided to each Committee member at least 10 days prior to any meeting. Meetings of the Committee shall be called by the chairperson, by any two members of the Committee, or as otherwise regularly scheduled by the Committee. The conduct of the meetings will follow *Roberts Rules of Order Newly Revised*, with

the chairperson running the meeting. In the absence of the chairperson, the chairperson may designate another Committee member to run the meeting.

## 6. Quorum

A quorum of the Committee is necessary for the Committee to be in session and take action.

For Discretionary Term Decisions, as defined in the Power Sales Contract, a quorum requires 100% of the Committee voting members present and able to participate in the meeting in person or by electronic means, including by telephone.

For budget decisions, approval of meeting minutes, and Committee business other than Discretionary Term Decisions, a quorum requires one half of the Committee voting members present and able to participate in the meeting in person or by electronic means, including by telephone.

## 7. Voting

Each Participant has one vote.

For Discretionary Term Decisions, unanimous consent of the Participants is required.

For budget decisions, approval of meeting minutes, and Committee business other than Discretionary Term Decisions, an affirmative vote will result from a simple majority of the quorum present.

## 8. Election of Chair

The Committee members shall select a chairperson from among their membership by simple majority vote. The term of office for the Committee chairperson is two years without limit on the number of terms an officer may serve.

## 9. Changes to Charter.

Changes to this Charter shall require unanimous consent of the Solar Project Committee.

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

<u>Name and Address of Participant</u>	<u>Solar Entitlement Share (MW)</u>	<u>Solar Entitlement Share (%)</u>
City of Alachua	9	16.07%
City of Bartow	12	21.43%
Homestead Public Services	10	17.86%
City of Lake Worth Utilities	10	17.86%
City of Wauchula	5	8.93%
Winter Park Electric Utility	10	17.86%
<b>Total</b>	<b>56</b>	<b>100%</b>

[FMPPA Note: This schedule is subject to change based on final participation levels among Project Participants]





# city commission **agenda item**

item type	Public Hearings	meeting date	3/12/2018
prepared by	Public Works	approved by	City Manager, City Attorney
board approval	N/A final vote		
strategic objective	Investment in Public Assets and Infrastructure		

## **subject**

Ordinance - Vacating and abandoning a portion of the right-of-way of Loren Avenue from Elvin Avenue to the City limit line, Home Acres, in Ravaudage (2)

## **motion / recommendation**

Approve motion to vacate northern portion of right of way. Staff agrees this right-of-way section is appropriate to vacate. All pertinent utility signoff's have been reviewed.

## **background**

The city received a request from the master developer of Ravaudage to vacate the northern portion of Loren Avenue from Elvin to the City limit line. As the portion of Loren south of Elvin has already been vacated and Elvin has been partially vacated with the remaining to be considered in the future when the developer controls all parcels, the city is supportive of this request.

Concurrently, the City of Maitland is considering the vacation of the portion of Loren from our adjoining boundary north to Monroe Avenue and Winter Park Staff has communicated this positive support to the Maitland staff for consideration.

## **alternatives / other considerations**

Not approve Request to Vacate

## **fiscal impact**

No direct financial impact as a part of this action

ATTACHMENTS:

After Recording Return To:  
City of Winter Park, City Clerk's Office  
401 Park Avenue South  
Winter Park, Florida 32789

**ORDINANCE NO. \_\_\_\_\_-18**

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING A PORTION OF THE LOREN AVENUE RIGHT-OF-WAY FROM ELVIN AVENUE TO THE CITY LIMIT LINE, DEDICATED BY HOME ACRES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "M", PAGE 97, OF THE PUBLIC RECORDS OF ORANGE COUNTY, MORE PARTICULARLY DESCRIBED IN EXHIBIT A; PROVIDING FOR CONFLICTS, RECORDING AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Winter Park has authority to adopt this Ordinance by virtue of its home rule powers and Charter with respect to abandoning and vacating rights of way no longer needed for public purposes, and the City Commission has made such a determination; and

**WHEREAS**, the adjacent property owner has requested the right-of-way vacation and abandonment set forth herein and the City has determined that portion of Loren Avenue right-of-way being vacated and abandoned by this Ordinance is no longer needed by the City of Winter Park.

**BE IT ENACTED by the People of the City of Winter Park, Florida as follows:**

**Section 1.** The City Commission of the City of Winter Park, Florida hereby vacates and abandons that certain portion of the Loren Avenue right-of-way legally described in that certain legal description and sketch of description attached hereto as **Exhibit "A"**.

**Section 2.** In the event of any conflict between this Ordinance and any other ordinance or portions of ordinances, this Ordinance controls.

**Section 3.** After adoption, this Ordinance shall be recorded in the public records of Orange County, Florida.

**Section 4.** This ordinance shall take effect immediately upon its passage and adoption.

**ADOPTED** at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor Steven Leary

ATTEST:

\_\_\_\_\_  
City Clerk Cynthia S. Bonham

# SKETCH OF DESCRIPTION (THIS IS NOT A SURVEY)

## DESCRIPTION: (PARCEL A)

A PORTION OF LOREN AVENUE AND ELVIN AVENUE, HOME ACRES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "M", PAGE 97, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NW CORNER OF THE NW 1/4 OF THE NE 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST; THENCE N89°59'35"E ALONG THE NORTH LINE OF THE NW 1/4 OF THE NE 1/4 OF SAID SECTION 1, A DISTANCE OF 255.49 FEET; THENCE S00°03'34"W, A DISTANCE OF 123.83 FEET TO THE POINT OF BEGINNING; THENCE S89°56'26"E, A DISTANCE OF 50.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF LOREN AVENUE ALSO BEING THE WEST LINE OF BLOCK P, HOME ACRES; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE S00°03'34"W, A DISTANCE OF 285.28 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°58'13", AND A CHORD BEARING AND DISTANCE OF S44°55'33"E 21.21 FEET; THENCE ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 23.55 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ELVIN AVENUE, THENCE DEPARTING SAID NORTH RIGHT-OF-WAY S00°02'30"W A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF ELVIN AVENUE; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE N89°54'39"W, A DISTANCE OF 65.01 FEET; THENCE N00°03'34"E, ALONG THE WEST RIGHT-OF-WAY LINE OF LOREN AVENUE A DISTANCE OF 350.24 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING APPROXIMATELY 0.42 ACRES (18,311 SQUARE FEET) MORE OR LESS.

## SURVEYOR'S NOTES:

1. The lands as shown hereon lie within Section 01, Township 22 S., Range 29 E., Orange County, Florida.
2. This is not a survey.
3. Bearings shown hereon are assumed relative to the North line of the NW 1/4 of the NE 1/4 of Section 1, Township 22 South, Range 29 East; said bearing being N88°59'35"E (assumed).

SHEET 1 OF 2

**HLSM, LLC**

Henrich-Luke-Swaggerty-Menard  
Professional Surveyors & Mappers

Licensed Business No. 7276

794 Big Tree Drive, Suite 108  
Longwood, Florida 32750

P: (407) 647-7346  
F: (407) 982-7166

Survey@HLSM.US

Job No: I-004

Date: 1/19/18

Drawn By: JJR

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

William F. Menard  
Professional Surveyor & Mapper  
Florida Registration #5625

# POINT OF COMMENCEMENT

NW CORNER OF NW 1/4 OF  
NE 1/4 OF SEC-01-22-29

N 88°59'35" E

255.49'

**MONROE AVENUE**  
(RIGHT-OF-WAY VARIES)

NORTH LINE OF  
NW 1/4 OF NE 1/4 OF SECTION-01-22-29

LOT 1  
BLOCK O

LOT 16  
BLOCK O

LOT 15  
BLOCK O

LOT 7  
BLOCK P

## SKETCH OF DESCRIPTION

(THIS IS NOT A SURVEY)

C1  
L=23.55'  
R=15.00'  
DEL=89°58'13"  
CB=S44°55'33"E  
CD=21.21'

### LINE TABLE

LINE	BEARING	LENGTH
L1	S00°03'34"W	123.83'
L2	S89°56'26"E	50.00'
L3	S00°02'30"W	50.00'
L4	N89°54'39"W	65.01'

### LEGEND:

P.O.B. POINT OF BEGINNING  
P.O.C. POINT OF COMMENCEMENT  
PC POINT OF CURVATURE  
PT POINT OF TANGENCY  
R/W RIGHT-OF-WAY  
L LENGTH  
R RADIUS  
DEL DELTA  
CB CHORD BEARING  
CD CHORD DISTANCE

BLOCK O

LOT 12  
BLOCK O

LOT 11  
BLOCK O

LOT 10  
BLOCK O

LOT 9  
BLOCK O

**ELVIN AVENUE**  
(50' PUBLIC RIGHT-OF-WAY  
PER HOME ACRES,  
PLAT BOOK M, PAGE 97)

NORTH R/W LINE

SOUTH R/W LINE

LOT 20 BLOCK M

350.24'

N 00°03'34" E

**LOREN AVENUE**  
(50' RIGHT-OF-WAY)

**PARCEL A**  
0.42 ± ACRES  
18,311 ± SQUARE FEET

PC

C1

PT

L3

L4

L5

L6

L7

L8

L9

L10

L11

L12

L13

L14

L15

L16

L17

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L255

L256

L257



# SKETCH OF DESCRIPTION (THIS IS NOT A SURVEY)

## DESCRIPTION: (PARCEL A)

A PORTION OF LOREN AVENUE AND ELVIN AVENUE, HOME ACRES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "M", PAGE 97, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NW CORNER OF THE NW 1/4 OF THE NE 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 29 EAST; THENCE N89°59'35"E ALONG THE NORTH LINE OF THE NW 1/4 OF THE NE 1/4 OF SAID SECTION 1, A DISTANCE OF 255.49 FEET; THENCE S00°03'34"W, A DISTANCE OF 123.83 FEET TO THE POINT OF BEGINNING; THENCE S89°56'26"E, A DISTANCE OF 50.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF LOREN AVENUE ALSO BEING THE WEST LINE OF BLOCK P, HOME ACRES; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE S00°03'34"W, A DISTANCE OF 285.28 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°58'13", AND A CHORD BEARING AND DISTANCE OF S44°55'33"E 21.21 FEET; THENCE ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 23.55 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ELVIN AVENUE, THENCE DEPARTING SAID NORTH RIGHT-OF-WAY S00°02'30"W A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF ELVIN AVENUE; THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE N89°54'39"W, A DISTANCE OF 65.01 FEET; THENCE N00°03'34"E, ALONG THE WEST RIGHT-OF-WAY LINE OF LOREN AVENUE A DISTANCE OF 350.24 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING APPROXIMATELY 0.42 ACRES (18,311 SQUARE FEET) MORE OR LESS.

## SURVEYOR'S NOTES:

1. The lands as shown hereon lie within Section 01, Township 22 S., Range 29 E., Orange County, Florida.
2. This is not a survey.
3. Bearings shown hereon are assumed relative to the North line of the NW 1/4 of the NE 1/4 of Section 1, Township 22 South, Range 29 East; said bearing being N88°59'35"E (assumed).

SHEET 1 OF 2

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William F. Menard  
Professional Surveyor & Mapper  
Florida Registration #5625

**POINT OF COMMENCEMENT**

NW CORNER OF NW 1/4 OF  
NE 1/4 OF SEC-01-22-29

N 88°59'35" E

255.49'

**MONROE AVENUE**  
(RIGHT-OF-WAY VARIES)

NORTH LINE OF  
NW 1/4 OF NE 1/4 OF SECTION-01-22-29

LOT 1  
BLOCK O

LOT 16  
BLOCK O

LOT 15  
BLOCK O

LOT 7  
BLOCK P

**SKETCH OF  
DESCRIPTION**

(THIS IS NOT A SURVEY)

C1  
L=23.55'  
R=15.00'  
DEL=89°58'13"  
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**LEGEND:**

P.O.B. POINT OF BEGINNING  
P.O.C. POINT OF COMMENCEMENT  
PC POINT OF CURVATURE  
PT POINT OF TANGENCY  
R/W RIGHT-OF-WAY  
L LENGTH  
R RADIUS  
DEL DELTA  
CB CHORD BEARING  
CD CHORD DISTANCE

BLOCK O

LOT 12  
BLOCK O

LOT 11  
BLOCK O

LOT 10  
BLOCK O

LOT 9  
BLOCK O

NORTH R/W LINE

**ELVIN AVENUE**  
(50' PUBLIC RIGHT-OF-WAY  
PER HOME ACRES,  
PLAT BOOK M, PAGE 97)

SOUTH R/W LINE

LOT 20 BLOCK M

350.24'

N 00°03'34" E

LOREN AVENUE  
(50' RIGHT-OF-WAY)

PARCEL A  
0.42 ± ACRES  
18,311 ± SQUARE FEET

L4

EAST R/W LINE

WEST R/W LINE

PC

PT

C7

L3

NORTH R/W LINE

SOUTH R/W LINE

LOT 10 BLOCK L

LOT 1 BLOCK P

LOT 2 BLOCK P

LOT 3 BLOCK P

LOT 4 BLOCK P

LOT 5 BLOCK P

LOT 6 BLOCK P

LOT 7 BLOCK P

LOT 8 BLOCK P

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LOT 211 BLOCK P

LOT 212 BLOCK P

LOT 213 BLOCK P

LOT 214 BLOCK P

LOT 215 BLOCK P

LOT 216 BLOCK P

LOT 217 BLOCK P

LOT 218 BLOCK P

LOT 219 BLOCK P

LOT 220 BLOCK P

LOT 221 BLOCK P

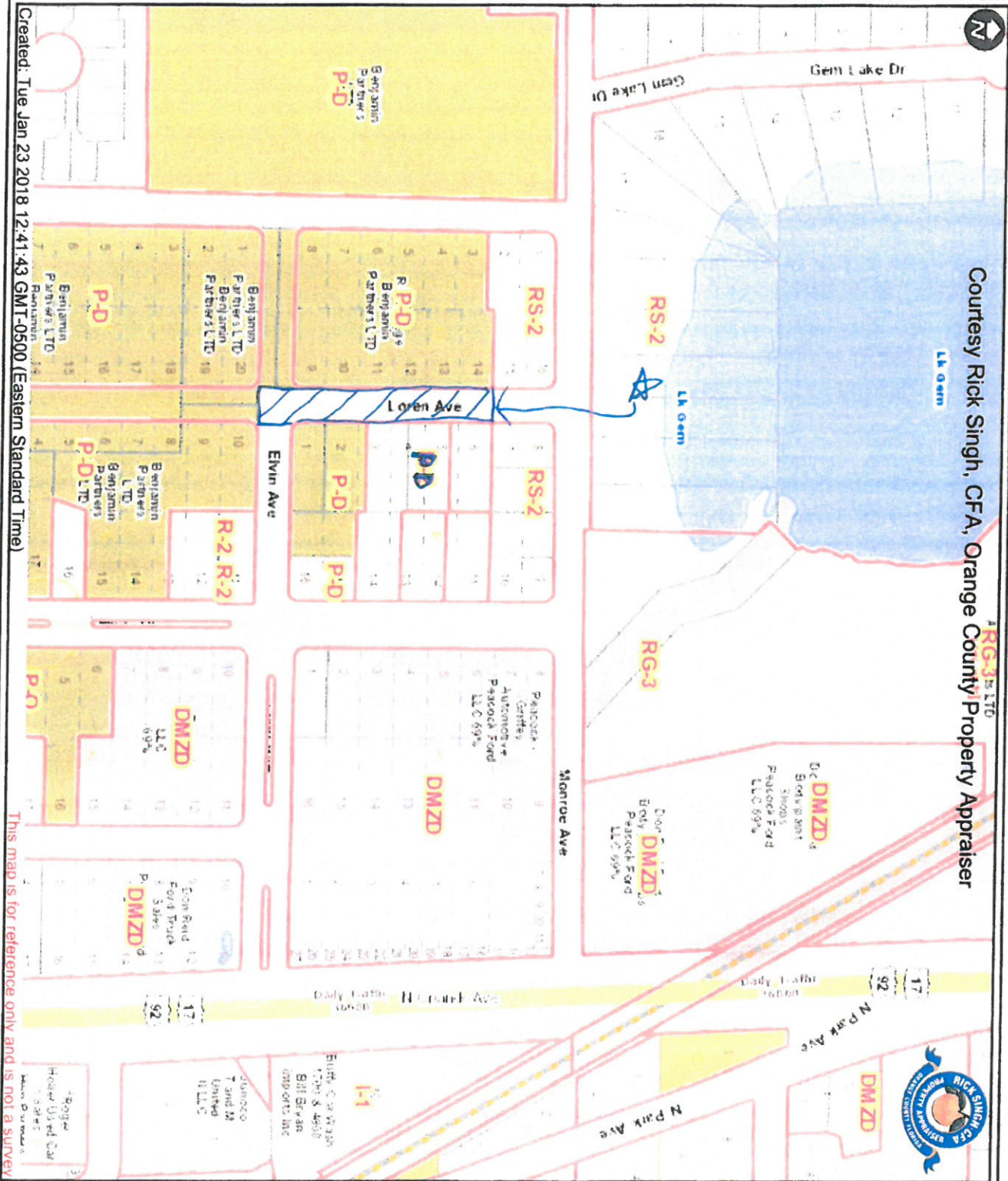
LOT 222 BLOCK P

LOT 223 BLOCK P

LOT 224 BLOCK P

LOT 225 BLOCK P

LOT 226 BLOCK P









January 23, 2018



**LETTER OF NO OBJECTION**

Daniel B. Bellows  
Sydgan Corporation  
P.O. Box 350  
Winter Park Florida 32790

Via Email: [w1454@aol.com](mailto:w1454@aol.com)  
Copied to: [Dave.C.Kennedy@centurylink.com](mailto:Dave.C.Kennedy@centurylink.com)

**SUBJECT: PROPOSED VACATE OF A PORTION OF LOREN AVENUE, BETWEEN ELVIN AVENUE AND MONROE AVENUE, ACCORDING TO *HOME ACRES SUBDIVISION* AS RECORDED IN PLAT BOOK M, PAGE 97, ORANGE COUNTY FLORIDA PUBLIC RECORDS; ORANGE COUNTY PARCEL ID'S 01-22-29-3712-16-072, -051, -020; 01-22-29-3712-15-010, -030; 01-22-29-3712-12-051; 01-22-29-3712-13-010.**  
**PRN 796390**

Dear Mr. Bellows,

Please be advised that Embarq Florida, Inc., D/B/A Centurylink has no objection to the proposed vacate and abandonment of a portion of Loren Avenue, between Elvin Avenue and Monroe Avenue, according to *Home Acres Subdivision* as recorded in Plat Book M, Page 97, Orange County Florida Public Records, as requested by Daniel B. Bellows.

The location of said vacate is more particularly shown on the attached diagram. The adjacent Property Addresses are 1180 Bennett Avenue, Loren Avenue, 1303 Loren Avenue, 1304 Loren Avenue, 1308 Loren Avenue, and 1315 Loren Avenue, Winter Park Florida 32789 and 322 Monroe Avenue, Maitland Florida 32751. Orange County Parcel ID's are 01-22-29-3712-16-072, -051, 020; 01-22-29-3712-15-010, -030; 01-22-29-3712-12-051; 01-22-29-3712-13-010.

Should there be any questions or concerns, please contact me at 352-425-8763 or by email at [stephanie.canary@centurylink.com](mailto:stephanie.canary@centurylink.com).

Sincerely,

**EMBARQ FLORIDA, INC., D/B/A CENTURYLINK**

  
Stephanie Canary  
CenturyLink  
319 SE Broadway Street  
Mailstop: D7303L0401-4058  
Ocala FL 34471  
[stephanie.canary@centurylink.com](mailto:stephanie.canary@centurylink.com)  
Phone: Cell: (352) 425-8763

PRN 796390

Construction Department  
3767 All American Blvd  
Orlando FL 32810



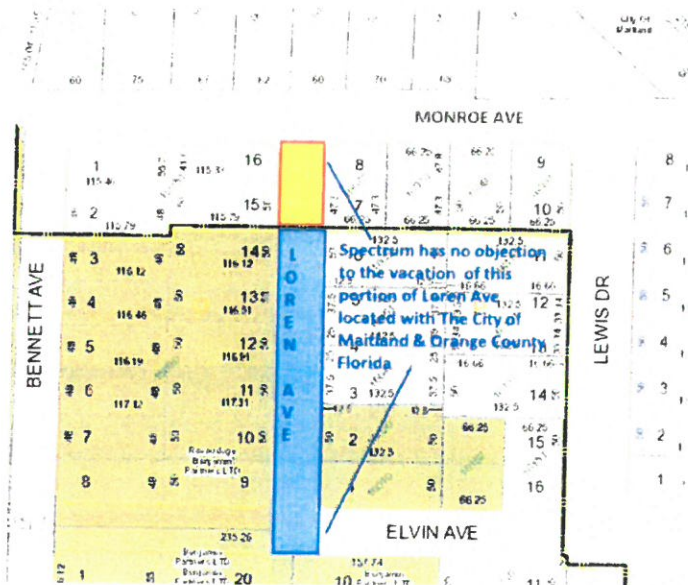
January 19, 2018

Dan Bellows  
Sydgan Corporation  
P.O. Box 350  
Winter Park, FL 32790

Re: Request for a Vacate of Right of Way  
Loren Ave- located in City of Maitland & Orange County FL.

Dear Mr. Bellows:

Charter Spectrum has reviewed your request to vacate of right of way and have no objection to the vacation as shown in this highlight drawing below.



If you need and additional information, please contact me at my office 407-532-8511.

Sincerely,

*Tracey Domostoy*

Tracey Domostoy  
Construction Supervisor  
Charter- Spectrum

Cc: emailed Dan Bellows <w1454@aol.com>

Winter Park Electric Department  
City of Winter Park  
401 Park Avenue South  
Winter Park, FL 32789  
407-599-3400  
Mr. Dan Dalessandro, Director

January 02, 2018

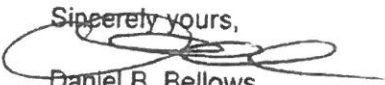
Dear Mr. Hotard,

I am in the process of requesting that the City of Winter Park and the city of Maitland vacate a portion of a Road Rights of Way, as shown on the copy of the enclosed tax map.

The site address is a portion of Loren Ave., between Elvin Avenue and Monroe Avenue. and lies within the Home Acres subdivision found in Plat Book M, Page 97. In order to have this action heard, I must provide letters of no objection from utility companies who may have utilities within the rights of way.

Please review your records, complete the form below, and return this letter to me. If you have any questions, please contact Dan Bellows at (407) 644-3151.

Sincerely yours,

  
Daniel B. Bellows  
Sydgan Corporation  
PO Box 350  
Winter Park, FL 32790-0350

☐ The subject parcel is not within our jurisdiction.

☒ The subject parcel is within our jurisdiction. We ~~do~~ do not (circle one) have any facilities within the easement/right of way. We have no objection to the vacation.

Additional Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: Michael A. Passarella  
Digitally signed by Michael A. Passarella  
DN: cn=Michael A. Passarella, o=City of Winter Park, ou=Electric Utility  
Operations, email=mpassarella@cityofwinterpark.org, c=US  
Date: 2018.01.05 10:35:09 -05'00'

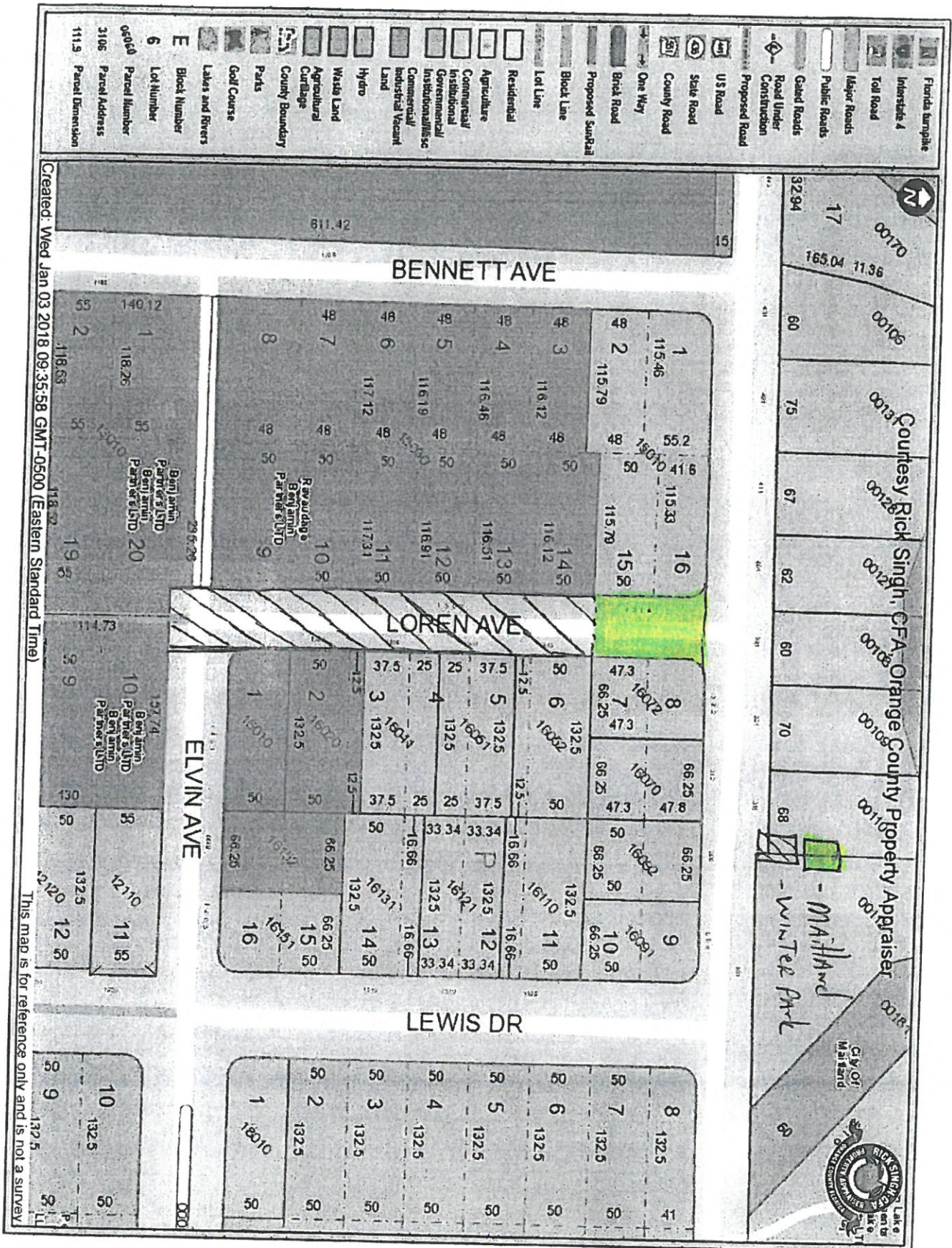
Print Name: Michael A. Passarella

Title: Engineering Manager

Date: 01/05/2018

Phone Number: (407) 691-7801









TECO/PEOPLES GAS SYSTEM, INC.  
600 W. Robinson Street  
Orlando, FL 32801  
407-420-6608  
Ms. Debbi Frazier

January 02, 2018

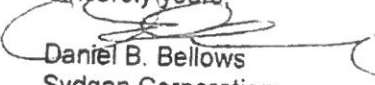
Dear Ms. Frazier,

I am in the process of requesting that the City of Winter Park and the city of Maitland vacate that portion of a Road Rights of Way, as shown on the copy of the enclosed tax map.

The site address is a portion of Loren Ave., between Elvin Avenue and Monroe Avenue, and lies within the Home Acres subdivision found in Plat Book M, Page 97. In order to have this action heard, I must provide letters of no objection from utility companies who may have utilities within the Rights of Way.

Please review your records, complete the form below, and return this letter to me. If you have any questions, please contact Dan Bellows at (407) 644-3151.

Sincerely yours,

  
Daniel B. Bellows  
Sydgan Corporation  
PO Box 350  
Winter Park, FL 32790-0350

☐ The subject parcel is not within our jurisdiction.

☒ The subject parcel is within our jurisdiction. We do/~~do not~~ (circle one) have any facilities within the easement/right of way. We have no objection to the vacation.

Additional Comments: \_\_\_\_\_

Signature: 

Print Name: Shawn Winsor

Title: Gas Design / Project Manager

Date: 1-5-2018

Phone Number: 407-420-6663









City of Winter Park  
401 Park Ave South  
Winter Park, FL 32789  
407-599-3355  
Mr. David Zusi, Water and Sewer Department

January 03, 2018

Dear Mr. Zusi,

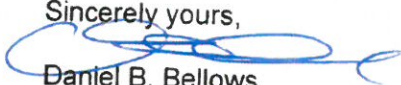
I am in the process of requesting that the City of Winter Park and the City of Maitland vacate a portion of LOREN AVENUE between Elvin Avenue and Monroe Avenue, as shown on the copy of the enclosed tax map.

The site address is LOREN AVENUE \* and lies within a subdivision found in Plat Book M, Page 97 in the Home Acres Subdivision. In order to have this action heard, I must provide letters of no objection from utility companies who may have utilities within this Rights of way.

Please review your records, complete the form below, and return this letter to me. If you have any questions, please contact DAN BELLOWES at (407) 644-3151.

\* BETWEEN Elvin avenue and Monroe Avenue

Sincerely yours,

  
Daniel B. Bellows  
Sydgan Corporation  
P.O. Box 350  
Winter Park, FL 32790

\_\_\_\_ The subject parcel is not within our jurisdiction.

☒ The subject parcel is within our jurisdiction. We do do not (circle one) have any facilities within the easement/right of way. We have no objection to the vacation.

Additional Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: 

Print Name: David L. Zusi

Title: Water & Wastewater Utility Director

Date: 1-8-18

Phone Number: 407-599-3219

